



IMMIGRATION LAW PRACTITIONERS' ASSOCIATION

ILPA Annual Report 2012/2013

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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
Adam Weiss – Secretary
Syd Bolton
Hazar El-Chamaa
Jed Pennington
Ronan Toal
Zofia Duszynska

Adrian Berry – Chair
Esther Lieu – Treasurer
Katie Dilger
Ayesha Mohsin
Sue Shutter
Meghan Vozila

SUBCOMMITTEE CONVENORS

Access to Justice Subcommittee:	Ronan Toal, Alison Pickup, Mark Henderson
Children Subcommittee:	Judith Dennis, Baljeet Sandhu
Detention & Fast Track Subcommittee:	Kay Everett, Pierre Makhlof, Steve Bravery
Economic Migration Subcommittee:	Philip Barth, Tom Brett-Young, Philip Trott, Smruti Jeyanandhan
European Subcommittee:	Elspeth Guild, Alison Hunter
Immigration Offences Subcommittee	Jawaid Luqmani, Richard Thomas
Family & General Subcommittee:	Sue Shutter, Pat Saini
Legal Aid Subcommittee:	Ayesha Mohsin, Sonia Routledge, Carita Thomas
New York	Tanya Goldfarb, Anushka Sinha, Jennifer Stevens
Refugee Subcommittee	Eric Fripp, Ana Gonzalez
South West Subcommittee:	Rosie Brennan, Natasha Williams, Glyn Morgan
Training Subcommittee	Elizabeth White and Sharzad Nouraini
Yorkshire & North East Subcommittee:	Ish Ahmed, Christopher Cole

CHAIR'S REPORT

In the last twelve months ILPA members have faced an extraordinary headwind from the Government in the form of a blizzard of initiatives that attack, among other things, legal aid for access to justice, the application of human rights, rights of appeal and the scope of judicial review as a legal remedy. The rapid pace of policy and legislative initiatives has created an extremely challenging environment in which to be practising in the field immigration, asylum and nationality law. Moreover, the volume and complexity of the Immigration Rules and the staff guidance and instructions continues to grow.

Throughout this time ILPA members have thrown themselves into ILPA's policy work, drafting responses to consultations, representing ILPA at meetings, lobbying the Home Office and working hard to secure a just and equitable immigration law practice. I am extremely grateful to all those members who have helped in all sorts of ways, large and small, through individual initiatives and through the Sub-Committees. As Chair I have had the privilege to see the work that is put in across each of the substantive areas we cover, from the detained fast-track to economic migration. The industry of ILPA members and your commitment to giving up time for our work is remarkable.

The work that members carry out complements the extraordinary work undertaken by the Secretariat on our behalf. In the last twelve months staff members have had to deal with all that has been thrown our way, while operating at the same time in the context of ILPA's continuing internal restructuring (of which more below). That ILPA has emerged from this period in such good shape is due to the work put in at the ILPA office on our behalf. I am very grateful to all members of the Secretariat for their efforts.

As I have mentioned already, the Government have seen fit to launch initiative after initiative in the field of immigration. There is an inter-ministerial working group whose purpose is to create a hostile environment formigrants. On the pretext of making savings, the Government made severe cuts to legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which came into effect in April 2013, only to launch almost immediately a further initiative to cut back what little remains of legal aid still further. This attack on the funding for legal services to secure access to justice has the characteristics of an ideological attack on the state funding of legal services, particularly as regards civil legal aid.

The impact of the legal aid cuts on those of us who provide publically funded legal services has been severe. Many have ceased to provide such services, of those that remain, many are under financial pressure and working within an extremely tight and precarious financial landscape. That these members are able to give any time at all to ILPA's work is remarkable. Yet these members do much of ILPA's work. In the next twelve months ILPA will be looking at further ways that we can support the work done by them.

As all members know, the new Immigration Bill abolishes rights of appeal in immigration matters where international commitments to provide protection or to avoid a violation of human rights are not in issue. At the same time, there is an attempt to outline by way of primary legislation the scope of the public interest for the purposes of Article 8 of the European Convention on Human Rights and, further, an attempt to narrow the aperture through which a Claimant must pass in order for an application for judicial review to succeed.

Taken together with the hacking back of legal aid, these measures form a body of work that prioritises the Government and the executive generally at the expense of fundamental rights,

control of the unlawful exercise of power, effective judicial protection, the rule of law, and the role of an independent and impartial judiciary in the UK constitutional order. Many migrants will be shut out from access to justice as a result.

In addition to this catalogue of horrors, the Immigration Bill goes further, with measures that among other things will drive migrants into the hands of unscrupulous landlords or on to the streets by shutting them out of lawful private tenancies, and which will prevent or hinder them from accessing necessary health care. These measures will render many migrants vulnerable to further exploitation when they come into force.

In the ILPA office the last year has seen the restructuring of the Secretariat. From September 2013, ILPA has a new post, that of Director. Our new Director is Nicole Francis who I am delighted to be able to welcome to ILPA and to the AGM. Nicole was previously at the AIRE Centre. Although she has only been in post since September, she has already made a great start in her new role. I have every confidence that she will impress you as she had impressed me. I encourage those of you at the AGM who have yet to meet her to introduce yourselves to her.

Alison Harvey, who was General Secretary until September, is now our Legal Director. In the year to September Alison has borne the weight of her role as General Secretary (a role that carried both legal policy and chief executive responsibility) for longer than we had anticipated. We were not able to appoint a Director the first time that we advertised, as none were considered suitable. The necessity of a further recruitment round meant that there was delay in appointment of the Director. I am extraordinarily grateful to Alison for her work during this period and throughout the entire year. The pressures put on her by the ceaseless innovation in Government immigration policy and the need for an ILPA response on each occasion, coupled with the fact that the job of General Secretary had grown to be too big for one person (leading to the decision to have a Director and a Legal Director) meant that she faced higher hurdles than anticipated. That she had leapt over them is a testament to her industry, work rate and very high standards. I am pleased that we now have Alison's skills and talents as our full time Legal Director. I am sure that the Home Office will find her even more formidable now that she is working on nothing other than legal policy.

We are also recruiting a Legal Officer to work part-time under Alison. At the time of writing this, we have yet to conduct the second round interview. However I hope to be able to introduce the successful candidate at the AGM. By having a full-time Legal Director and a part-time Legal Officer ILPA will have additional capacity to work on legal policy.

Mention must also be made of the hard work of the other members of the Secretariat. Elizabeth White, Personal Assistant to the General Secretary and latterly to the Director remains at the heart of the Secretariat's work. In addition to the core tasks she performs she is also brilliant at nudging those of us on the Executive Committee about tasks that we are supposed to perform and in making sure that the work of ILPA is done on time. During the period of restructuring of the Secretariat Elizabeth has played an important role in ensuring that our work continued smoothly.

I am also grateful to Lana Norris, our Finance Manager. As our outgoing Treasurer, Esther Lieu, can testify, Lana's role is key in ensuring that solid accounting and healthy financial balances underpin ILPA's work. In a time of economic uncertainty and Government-imposed austerity, many small organisations are facing very uncertain futures. ILPA's financial good health is a testament not only to sound financial planning but also to the role Lana has played as Finance Manager at the heart of our operation.

We have also benefited greatly from the services of ShahrazdNouraini, Training and Membership Coordinator, while Helen Williams has been on maternity leave. Shahrzad has been a model of efficiency and effectiveness. Our training programme continues to lead the immigration law field and our membership grows steadily. Shahrzad has ensured that the training courses run smoothly and that delegates are given an excellent service. She has also overseen the administration of our membership. The growth in membership is partly about gaining new members but also about retaining members whose membership might otherwise lapse. We are grateful for her work in retaining members who fail to renew their membership on time.

Philip Reilly, our Information Officer, has been doing good work making sure that we have a proper electronic archive of documents, policies, notes of meetings and so on. Those members who use the members' section of our website will know how useful our online resources are and how they enable us to research matters swiftly and efficiently when a question about a policy issue emerges in casework. It is thanks in large part to Philip's work that we have this facility. He has been very active also in ensuring that the latest developments are emailed to members with a relevant interest in the area in question. I am very grateful to him for all his hard work.

From among this year's Executive Committee, I am sorry that we will be losing Adam Weiss, our Secretary, and Esther Lieu, our Treasurer. Adam has played a leading, active role on the Executive Committee for a number of years. He has been a key problem solver and heavy lifter when volunteers were needed for important tasks. He has also been a key member of the European Sub-Committee, bringing his intellectual vitality and enthusiasm to that Committee's work. He has a new job as the Legal Director of the European Roma Rights Centre in Budapest, which makes it difficult for him to continue as Secretary. He will remain a member of ILPA. We wish him every success in his important new role and look forward to his continued involvement with ILPA in the years to come. Esther has completed her pupillage in London and has now accepted a tenancy at Queen's Square Chambers in Bristol. Esther has been a superb Treasurer of ILPA. As you will see from her report our finances are in fine shape. I am very sorry to see her go. Our loss is Queen's Square Chambers' gain.

I would also like to thank Katie Dilger for her work on the Executive Committee this year. Katie has been an extremely useful member of the Committee. Although she had not stood for election to the new Committee, this is due to her wish to focus on specific legal policy project work that benefits migrants. ILPA is grateful for her work and her continuing commitment to migrants' rights.

Sue Shutter has decided not to stand for the Executive Committee again after many years on the Committee. Sue has been central to ILPA's work over so many years that it seems hard to envisage the Executive Committee without her. Both at ILPA and even more so at JCWI, she has been tireless in her work on behalf of migrants. Her editions of the JCWI Handbook are what many of us first read when entering the field of immigration law. Her advice, knowledge of ILPA's history, long memory of how past legislation and policies were challenged, and commitment to setting a new policy environment more favourable to migrant rights have been indispensable to ILPA's work. The good news is that we will be still be able to call upon her for advice and to talk through any policy issues that arise. We will miss her presence on the Executive Committee keenly but she will not become a stranger to our work.

Finally Ian Macdonald has announced his retirement as President of ILPA. Ian has said he has retired because he will be 75 on his next birthday and wishes to reduce his commitments and safeguard his health. Ian also wished to retire as President to enable new blood to take on the task

of challenging the Government policy on immigration, legal aid and access to justice. He will remain a member of ILPA.

Ian has been President of ILPA for 24 years and we are extremely grateful to him for his dedicated service and support over those years. Ian was instrumental in setting up ILPA and his commitment to create an organisation with a strong secretariat backed by a chair and executive committee of practitioners has been achieved. ILPA has continued to develop and grow as an organisation and it is now a good opportunity for Ian to step aside and allow the next generation of immigration practitioners to step forward.

His retirement will be formally confirmed at our AGM on the 23rd November 2013. At the AGM a new Executive Committee will be appointed for ILPA. This Executive Committee will meet for the first time on the 17th December 2013 and it will consider and agree the next steps with regards to the office of President of ILPA. Further communication with members will follow that meeting.

Mention should also be made of the Executive Committee members who seek to continue to serve. Syd Bolton, Hazar El Chamaa, ZofiaDuszynska, Ayesha Moshin, Ronan Toal, and Meghan Vozila have all made important and valuable contributions to the Executive Committee's work. Each one has drawn on their areas of expertise and skills to contribute to the Committee's work. ILPA has benefitted immensely from their time and contribution. Jed Pennington, who has been an ordinary member of this year's Committee, has agreed to become Secretary for the forthcoming year. I am very grateful to him for volunteering. The role of Secretary needs to be filled by someone who knows how ILPA works. As an Executive Committee member Jed has that knowledge. I am also delighted to welcome Ellie Sibley as Treasurer. Ellie works for the AIRE Centre. She has very kindly volunteered to be our Treasurer. In addition she will help maintain the close links between ILPA and the AIRE Centre that have been so fruitful and productive in recent years.

ILPA is also grateful to all the hard-working Sub-Committee Convenors and ILPA members who act to drive forward ILPA's work in each area. Most of the practical policy work that members undertake, takes place through the Sub-Committees. Time is given up to attend Home Office meetings, draft responses and co-ordinate vital policy work. There are too many people to thank individually but we owe a debt of thanks to all members who give up their time for us.

Subject to approval at the AGM, ILPA is about to become a charity. This is the result of hard work by Alison Harvey and Meghan Vozila among others. This new development will enable us to attract new tranches of grant funding, save some money in taxes and enable us to promote ILPA's work on a wider canvass. It is a welcome development in ILPA's role.

As I have already noted, ILPA's finances are in very good shape. As a result we are well placed to develop our role in the next twelve months. We are making plans to expand the range of training courses we provide and to deliver more courses out of London, to recruit new members working in the field of UK immigration law, to strengthen the support we provide to those working in the legal aid sector, to set out a positive immigration policy agenda across all the areas in which we are active and to develop and strengthen our media communication strategy. ILPA is well placed to continue to support its members in the work that you do and to support the migrants on whose behalf we act. Despite the exceptionally challenging environment in which we are acting, members can expect to see ILPA continue to work at full tilt on your behalf.

Adrian Berry
Chair, November 2013

TREASURER'S REPORT

ILPA appointed new auditors Ramon Lee and Partners in June 2013 following approval at an Extraordinary General Meeting on 21 May 2013 and as agreed at the previous AGM. With their guidance, it was agreed that the format of ILPA's accounts be changed to that of the Statement of Recommended Practice: Accounting and Reporting by Charities (SORP) in advance of ILPA becoming a charity and to enable a better comparison of performance next year. We are grateful to them for their continued support and advice. ILPA continued to benefit from the generous support of Jeremy Stone and we are grateful to him for his longstanding assistance.

ILPA's work continues to impress members, those with whom we work and funders in spite of the challenging environment. This is reflected in pre-tax profits for the financial year 2012 - 2013 of £130,252. This is considerably higher than the profit made in 2011-2012 (£42,795) and represents 18.5% of the annual turnover.

This year's turnover of £704,805 is considerably higher than that of last year (£585,332), and is attributable to an increase in income from training courses, membership fees and grant funding, alongside savings in associated expenditure (which has increased by £32,016 from last year).

It was identified that ILPA had been paying corporation tax on all its activities, including those which are properly attributable to 'mutual trading' and exempt from taxation. We are grateful to the very hard work of the finance officer Lana Norris with support from Alison and our auditors at the time H W Fisher & Company who calculated the money recoverable amounting to a refund of Corporation Tax of £43,074.

In 2012 – 2013 ILPA received funding from Unbound Philanthropy, the Diana, Princess of Wales Memorial Fund (to December 2012), Trust for London and the Joseph Rowntree Charitable Trust and we are grateful to them for their valuable support and commitment to ILPA's vision and objectives. We are particularly grateful to the Diana, Princess of Wales Memorial Fund for giving us a 'legacy' grant of £55,510 towards core funding, and the Joseph Rowntree Charitable Trust for their flexibility and understanding during a time of staff changes.

Monthly financial reports and Treasurer reports inform the Executive Committee of ILPA's financial position on a regular basis and provide for continual oversight of ILPA's finances. Adjustments were made in 2011 – 2012 to the manner in which membership fees are reported; this year we were therefore able to draw more accurate comparisons on a year – on – year basis.

ILPA continues to hold reserves in line with its reserves policy. Unrestricted reserves have increased considerably in 2012- 2013 and stand at £576,999. The amount of reserves is kept under review: we do not intend to retain an unnecessarily high sum, nonetheless we remain conscious that in the current economic climate, income from both core activities and funders is less secure and it is prudent to safeguard our position. Money has been invested with the Cooperative Bank and Triodos Bank both of whom provide ethical and secure forms of investment.

Due to moving to a chambers in Bristol I am standing down as Treasurer for ILPA. I have thoroughly enjoyed being on the EC for the last two years and am very grateful to the EC and Secretariat for being such supportive, committed and engaging colleagues from whom I have learnt so much.

Esther Lieu
Treasurer November 2013

DIRECTOR'S REPORT

ILPA Staff

Nicole Francis	Director (from September 2013)
Alison Harvey	Legal Director (from September 2013, General Secretary to August 2013)
Sarah Myerscough	Legal Officer (from December 2012 until May 2013)
Shahzrad Nouraini	Training & Membership Coordinator (Maternity cover from October 2012)
Lana Norris	Finance Manager with Administration
Nirmala Rajasingam	Refugee Children's Project Coordinator (to December 2012)
Philip Reilly	Information Officer
Elizabeth White	Personal Assistant to Director
Helen Williams	Training & Membership Coordinator (Maternity leave from December 2012)

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.

The Secretariat has worked tirelessly this year to deliver on all of their key functions against the backdrop of the restructuring. I am very grateful to them all for all their hard work.

During this year a high priority has been placed on training of the Secretariat staff. Shahrzad Nouraini attended courses on Salesforce, Essential Charity Law, Examining the Impact of the Destitute Domestic Violence Concession, Essentials of Intellectual Property, Technology Planning in Small Charities, dotMailer for Salesforce and Optimising Member Engagement through Social Media. Elizabeth White attended courses on How to Demonstrate the Outcome of your Campaigning & Policy work and Get it Read not Deleted – Secrets of a Successful E-Newsletter. Lana Norris attended a course on Essential Charity Law and Charity Taxation – The Risks and Traps and a London Members' meeting run by the Charity Finance Group focusing on Financial Planning in Small Charities. Philip Reilly attended courses on Technology Planning for Charities, Data Protection, Harnessing the Web 2013 Conference – MemberWise, Data-Driven Email marketing – dotMailer. Sarah Myerscough attended Excel and Word training courses. Nicole Francis has attended training on Salesforce, Harnessing the Web 2013 Conference – MemberWise.

Sue Shutter from the EC attended a Kingston Smith seminar: Strengthening your governance arrangements.

The Secretariat has been assisted by Andy Gregg and Anne Singh on a consultancy basis and we are grateful to ArzuGedikozer for her assistance as a volunteer. We were also helped by Jeremy Stone and Vicky Sholund of the Charity Accounts people (Accountants), Oakland Associates (IT), Brendan McDaniel of Third Sector IT (membership database design and development), Keith Robinson of Fat Beehive (website design), Pat Kahn (designer) and Ramon Lee (Auditors) to whom thanks for their support and assistance.

Without our funders the breadth and depth of our current work would not be possible. I would like to thank the Joseph Rowntree Charitable Trust for supporting the legal work in the Secretariat and for the information service. I would also like to thank Unbound Philanthropy for its second grant which funds the Information Officer post and its third grant which is funding further Building of Capacity of ILPAs Secretariat. I thank Trust for London for enabling us to fund bursaries on some of our courses and for funding a number of free training events. Finally I would like to thank Diana, Princess of Wales Memorial fund for its support for the Refugee Children's Project which came to an end this year.

I thank the Executive Committee for all their work during a year of great change. I am particularly grateful to Adrian Berry for all his support and guidance during my first two months.

I have already been very impressed by the quality and quantity of the work produced by the ILPA Secretariat, The Executive Committee and our wider membership. In November I met with the Subcommittee convenors to discuss with them how we could further develop and grow their work. I look forward to meeting many more of you at the AGM and in the coming months and years.

In terms of ILPA's future our strategic objectives for the period up until 2015 are as follows:

1. Management and dissemination of information
2. Development and diversification of ILPA's training programme
3. Increase ILPA's capacity to influence decision makers and support those working to them
4. Increase membership so that more practitioners in immigration, asylum and nationality law and related areas benefit from the services that ILPA provides
5. Strengthen governance and maintain quality throughout the association through best management of human resources
6. Engage with discussions regarding the regulatory environment, accreditation schemes and enforcement thereof
7. Maintain a diverse source of revenue

I look forward to working with you all to ensure that we achieve these objectives.

Nicole Francis

Director

November 2013

Context

"...the agency has been a troubled organisation since it was formed in 2008, and its performance is not good enough... lack of transparency and accountability; ...a closed, secretive and defensive culture...The agency is often caught up in a vicious cycle of complex law and poor enforcement of its own policies"

Home Secretary Written Statement 26 March 2013

Thus spake the Home Secretary, abolishing the UK Border Agency. Things fall apart. Would that legal aid, judicial review and the rule of law prove as resilient as the seemingly immutable cultures of the Agency, after some delay reinvented as UK Visas and Immigration and Immigration Enforcement, and the Legal Services Commission in its new incarnation as the Legal Aid Agency.

The Home Secretary and the Lord Chancellor may rail at our courts, but we have seen some judgments of stunning quality this year. The Supreme Court's approach to statelessness and to deprivation of citizenship in *Al-Jedda* [2013] UKSC 62 can be expected to have a global impact. Lord McPhail's swansong judgment for the Inner House of the Court of Session has gone some considerable way to putting language analysis reports back in their box: *M.A.B.N. and K.A.S.Y. v SSHD (represented by The Advocate General for Scotland)* [2013] CSIH 68 (12 July 2013).

The Home Secretary's ill-judged attempt to codify a modified version of Article 8 of the European Convention on Human Rights has been rejected in the courts. In *MF(Nigeria) v SSHD* [2013] EWCA Civ 1192, the highest level reached so far, her case before the Court of Appeal as to what the rules sought to do was virtually unrecognisable from the position she had taken in the lower courts and before the Tribunal. Meanwhile in *R(MM & Ors) v Secretary of State for the Home Department* [2013] EWHC 1900 (Admin) the minimum income requirement was found to be an unlawful interference with the rights to family life of the refugee and British citizen claimants. While the requirement was not struck down the judgment was in such terms as have led the Home Office, never one to miss an opportunity to create a backlog, to "pause" decisions turning on the minimum income threshold in refugee, British citizen and now we learn in the notes to Statement of Changes in Immigration Rules HC 803, armed forces cases. The disappointment, although not entirely unexpected, on the family rules front was *Bibi v SSHD* [2013] EWCA Civ 322. The challenge to the English language requirement for spouses and partners failed.

In *N v UK* (Application no. 26565/05), the European Court of Human Rights pointed to the possible use of Article 8 and this was used with success in *Rose Akhalu (health claim: ECHR Article 8)* [2013] UKUT 400 (IAC). Meanwhile in *R(SQ (Pakistan) et anor) v The Upper Tribunal Immigration and Asylum Chamber et anor* [2013] EWCA Civ 1251 it was held that the threshold for a breach of Article 3 may be lower in a case involving children.

An interesting use of Article 8, to found waiver of a fee, is seen in *R (Osman Omar) v Secretary of State* [2012] EWHC 3448 (Admin).

The challenge to the legality of the sponsor-licensing system in *R (on the application of New London College Ltd) v SSHD* [2013] UKSC 51 did not succeed. This has implications for future challenges to the legality of co-opting businesses, landlords and others to immigration control. We wait to see what the Home Office will try to make of Lord Sumption's finding, the subject of a powerful dissent by Lord Carnwath, that in the administration of immigration control the Secretary of State has a range of ancillary and administrative powers not spelt out in statute. On a happier note, success in *R (Zhang) v SSHD* [2013] EWHC 891 (Admin), which concerned the inability of those in the Points-Based System to switch in-country to a Points-Based System dependent category, led to a change in the immigration rules.

JB (Jamica) v SSHD [2013] EWCA Civ 666 saw detention in the detained fast track declared unlawful because there was no reasonable prospect of deciding a case of a gay man from Jamaica rapidly. A majority of the Court of Appeal also held that Jamaica should not have been designated as a country where "there is in general no serious risk of persecution" given the treatment of gay

men and lesbians in that country. The case, which is on its way to the Supreme Court, may be seen as the forerunner of Detention Action's challenge to the legality of the detained fast-track, which has been granted permission. It has been a long time since the European Court of Human Rights held in *Saadi v UK* that detention for administrative convenience was lawful in the circumstances of the case, a judgment that has done much harm and is (over-) ripe for challenge.

Systemic failings, involving not just courts and officials but also lawyers were highlighted by the Court of Appeal in *R v Mateta & Ors* [2013] EWCA Crim 1372, which concerns the prosecution and conviction under various provisions relating to the use of false instruments, of those who have a defence under Article 31 of the Refugee Convention and s 31 of the Immigration and Asylum Act 1999. Similarly, whole system failures were highlighted in *L, HVN, THN and T v R* [2013] EWCA Crim 991 which concerned the prosecution of trafficked persons, including those working in cannabis factories. The Court of Appeal's finding that "the culpability, of any victim of trafficking may be significantly diminished, and in some cases effectively extinguished, not merely because of age... but because no realistic alternative was available to the exploited victim but to comply". Meanwhile incompetent and/or unethical legal representatives were the particular targets of the High Court's ire in cases such as *R (on the application of Rehman) v Secretary of State for the Home Department* [2013] EWHC 1351 (Admin).

The figure of the venial and/or incompetent legal representative, especially in the field of asylum and immigration, has stalked the debates in parliament on legal aid and judicial review. There is a failure to recognise that the best protection against poor advice is good advice, for good lawyers have been put under severe pressure. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 came into force on April Fools' Day 2013. There is no legal aid for non-asylum immigration cases and the situation for poor clients with immigration cases is desperate. To the stress of legal representatives' jobs is adding having to turn away persons who need our help and will very likely lose their cases, and all that is bound up in them, without their help. Brave lawyers have climbed the mountain that is an application for an exceptional funding. As of 28 October 2013 there have been 166 applications for exceptional funding in immigration cases and three grants. Extrapolate the total number of exceptional cases and you get some 1000 per annum, compared with the 7,000 or so that formed the basis of Government estimates. Yet officials tell us that Ministers remain satisfied that the tests being applied are the right ones.

Lest we all forgot to count our blessings, only eight short days after the 2012 Act came into force the Government announced proposals to "transform" legal aid, this time without benefit of primary legislation. Where the 2012 Act aimed directly at clients, the new proposals were clever, they attacked clients through their lawyers. The Lord Chancellor, describing the proposed prison law cuts explained that this was not about saving money but ideological. Lawyers' pay would be cut. Judicial review applications would be at risk, with payment only following a grant of permission, so that it would be the lawyers, not the Legal Aid Agency, turning the clients away. Borderline cases would no longer be funded. Most pernicious of all lawyers would be required to become immigration officers and if the potential client cannot evidence 12 months lawful residence in the UK, continuing at the time of the application for legal aid, deny them legal aid. "Cannot evidence" – British citizens, especially those leading chaotic lives, will be caught by this as much as any person under immigration control.

Cases such as *BahaMousa*, *Al Skeini* would no longer be funded and nor would the very (admittedly few) cases that parliament had insisted on retaining within scope in 2012, certain trafficking cases and domestic violence cases for example. Meanwhile all those denied legal aid in any other context now face not being eligible for legal aid for judicial review. Were we in the habit

of writing the sort of annual report that trumpets victories we should point to the concessions wrung from the Government. Tiny babies need no longer show 12 months lawful residence, legal aid is preserved for survivors of domestic violence, trafficked persons, refugees and for challenges to detention. But we do not write that sort of annual report and can therefore point out babies will need still to be lawfully resident at the time of applying for legal aid, that the sooner you are recognised as a refugee the longer you are kept out of legal aid, that trafficked persons and survivors of domestic violence will get no legal aid for judicial review on top of getting none beyond the confines of the 2012 Act and that detainees will get no legal aid for claims for damages for unlawful detention or breach of human rights. These proposals have ignited protest, in particular from the Bar, in a way that the Legal Aid, Sentencing and Punishment of Offenders Bill never did, and, perhaps in response, the senior judiciary have become more vocal even than they were during the passage of that Bill. What is harder to determine is whether such opposition is welcomed or feared by the Lord Chancellor.

Mitigation of proposals to make funding for the judicial review permission stage at risk were put off to a future consultation but when it arrived it brought its own raft of troubles. The Government has public interest challenges in its sights. The many of you who have slaved pro bono for ILPA and others will be surprised to hear public interest challenges described by the Lord Chancellor in the 11 September 2013 Daily Mail as a “lucrative industry”. The judicial review system is “a promotional tool for countless Left-wing campaigners”, with no mention of the only victories on offer being those in which the Government has broken the law or of the way in which organisations across the political spectrum have used judicial review to challenge illegality. ILPA members have done a brilliant job in marshalling the evidence to present to the Department and to parliament to challenge these claims. The Lord Chancellor has standing and costs in his sights and his proposed scheme will insulate incompetent and the unlawful departments from challenge.

The Home Office appears blissfully oblivious of the Ministry of Justice’s desire to cut the number of judicial reviews. Proposals in the Immigration Bill will cut appeal rights leaving only asylum and human rights appeals standing. The Appeals Impact Assessment published with the Bill suggests that this might lead to over 5,000 new judicial reviews being started, with some 1000 progressing to a full hearing. In the tribunal, every “not in accordance with the law” claim will be refracted through the prism of human rights, somewhat surprising given a widespread lack of enthusiasm for human rights in Government. That lack of enthusiasm is manifested in the Bill in requirements that the courts have regard to an interpretation of Article 8 which is at odds with established jurisprudence. The question of whether it would be reasonable to expect a child to leave the United Kingdom rather than whether it would be unduly harsh. For example, the effect of removal on a child must be “unduly harsh” rather than not in that child’s best interests. A person with no lawful leave, without more, is liable to removal, as are their family members.

When the Bill was presented to parliament a provision proposed that the Secretary of State could certify the appeals of “foreign criminals as defined, before they started or while they were in progress, and send the appellant from the UK to complete the appeal from overseas if to do so would not cause him/her serious irreversible harm”. In Committee that clause was amended to extend it to all deportation cases.

For a bail hearing to take place within 14 days of removal directions being set will require the consent of the Secretary of State, while any bail hearing within 28 days of a previous hearing with no material change must be dismissed. This from a department repeatedly found to be in breach of Article 3 of the European Convention on Human Rights for its treatment of mentally ill detainees and that has paid out substantial damages,

When a vessel sank off Lampedusa, killing some 360 people, newspaper reports spoke of the “bodies of migrants” being recovered. At what point does “migrant” become a substitute for person in every context? Those deaths, and others in the deserts of Niger, are reminders that there is a more hostile environment than that which the UK Government can create, even at the fringes of legality. People board those boats again and again, knowing what to expect. It does not stop them. So when will we give up the project of being vicious? Not yet and not even at the price of our own liberties. Part III of the Bill sets private citizens up as immigration officers over each other with landlords and landladies required to check the status of tenants. The provisions are modelled on the scheme for employers as viewed through rose-tinted spectacles. Meanwhile, the designation of the National Health Service, banks and the Driver and Vehicular Licensing Agency as the loci of immigration control are all given the imprimatur of primary legislation. Marriage is back on agenda. Everyone marrying in the UK must put up with an extension of the period of giving notice of a marriage and with civil preliminaries for a marriage conducted according to the rites of any church and those with the temerity to marry a person from outside the EEA face up to 70 days agonising wait while the Secretary of State decides what action to take. That action will not include preventing the marriage unless the couple do not comply with any investigation or, of course, if one of them just happens to be removed before it can take place.

Meanwhile the Crime and Courts and Justice and Security bills described in last year’s report have passed into law.

On the business immigration side there have been attempts to make the environment a little less hostile for the highly skilled the Graduate Entrepreneur category continues to open up. Exceptional talent has for certain applicants been watered down to “exceptional promise”. Intra-company transferees have been relieved of the obligation to speak English until they seek to extend leave after the first three years. Increasingly, flexibility on this route seems to be used to offset the strictures imposed on other routes. As this report goes to press, the investor and entrepreneur routes are being looked at in the hope of making them more attractive.

The long-awaited priority postal service has finally appeared, unsurprisingly bringing the benefits ILPA predicted when it proposed it years ago.

Another fruit of many years of labour, in May the European Commission referred the UK to the European Court of Justice because, in breach of EU law, the UK fails to apply the 'habitual residence' test to EU nationals who reside in the UK and claim social security benefits and instead imposes its own “right to reside” test. ILPA and the AIRE centre have worked hard to raise this matter at European level. We continue to provide the Commission with information about asylum, not least about the meltdown in asylum work that resulted from the ill-judged “Asylum Operating Model”. Essentially abandoned, there are nonetheless some middle managers in the Home Office who maintain the fiction that it has simply morphed into the “Change” model. It leaves chaos in its wake. Many experienced staff have departed faced with the downgrading of their jobs, morale is low to non-existent and the backlogs pile ever higher. The lack of institutional memory is staggering; we are told that the Home Office is “piloting” interviews and decisions being done by the same person, where that was the norm under the New Asylum Model, not yet fully abandoned.

Mr Justice Blake completed his work as President of the Upper Tribunal (Immigration and Asylum Chamber) this year. During his tenure, he has enriched the jurisprudence and the reputation of the Tribunal among judges and lawyers as well as addressing processes and procedure.

The year ends with the transfer of judicial review to the Tribunal, something ILPA has long resisted. We are pleased to see that judicial reviews calling into question the lawfulness of detention, nationality judicial reviews, judicial reviews about a refusal to licence as a sponsor and judicial reviews calling into question the validity of primary or subordinate legislation will not be transferred. We are sorry that the others will. We are pleased that the Secretary of State will continue to be represented by counsel and Treasury solicitors, not by Presenting Officers. But relatively few judicial review decisions have been promulgated by the Upper Tribunal and it has yet to demonstrate the robust use of case management powers that will be needed given the Home Office's current failure to comply even with standard rules about acknowledgement of service, as set out in *R (Jasbir Singh) v SSHD* [2013] EWHC 2873 (Admin). We shall watch developments closely.

Training

With Helen Williams on maternity leave, ILPA has done its best to maintain the momentum of the training programme, involving Helen's maternity cover, as well as other ILPA staff to support our training efforts. With this, we have been able to continue to provide a reliable and diverse training programme for members and non-members alike. This year we have delivered 81 training events, including the final Refugee Children's project training event, as well as three Trust for London funded events. Courses have taken place in London, Birmingham, Bristol, Manchester and Leeds.

In addition to ILPA's regular programme of training, Alison Harvey provided in-house training to the NSPCC. She also provided training for MPs' researchers as part of the ILPA-HJT project.

Trust for London project

Following on from the successes and lessons learnt from ILPA's Refugee Children's Project, ILPA applied for and was awarded a 3-year grant from Trust for London to provide free training events and training bursaries on topics such as immigration, asylum, nationality and related areas of law to qualified London-based ILPA members representing impecunious clients. Delegates include those who are doing immigration and asylum legal aid cases, staff of law centres and not for profits working with refugees and migrants, members working pro bono with those no longer entitled to legal aid, staff of not for profits trying to become accredited or accredited at a higher level to give immigration advice, and non-practitioners working in the field whose expertise may benefit participants at a training session.

To date we have provided 3 grant-funded training sessions, including *A basic introduction and refresher to legal aid under LASPO, Domestic violence and persons under immigration control* – a joint project with Rights of Women, and *Family reunion for refugees*. We have also provided 24 bursary places on 4 regularly scheduled ILPA courses. In total, we have been able to provide free training to 138 qualified ILPA members. If you would like to be notified about upcoming free Trust for London training sessions, please log on to the member section of our website and sign up to become a member of ILPA's Legal Aid Subcommittee.

Training Subcommittee

The training subcommittee reviews ILPA's training programme and makes suggestions for new or adapted courses as well as for all aspects of delivery of the programme. We are grateful to members of the training subcommittee who took time to meet this year and discuss the direction of the program. Attendees included Adam Weiss, Robert Sparks, Jonathan Kingham, Hazar El-

Chamaa, Penny Salmon, Sarah Rimmington, Elizabeth White, Alison Harvey and Shahrzad Nouraini. These members shared their ideas in terms of logistics and content, and provided the secretariat with insight into the best ways to ensure the greatest engagement from tutors.

ILPA members are encouraged, if interested, to get involved with this committee to provide the valuable insight needed to continue to develop this successful program. Please get in touch with Secretariat if you are interested in getting involved.

Venues

This year ILPA training courses have been generously hosted by ASG Immigration, Bindmans LLP, Burges Salmon Solicitors, Kings Chambers, Garden Court Chambers, Penningtons Solicitors, Kingsley Napley, Landmark Chambers, and Queen Mary School of Law.

ILPA/ILPA supported Seminars and Conferences and training partners

ILPA and ILPA-supported seminars and conferences were as follows:

- Butterworths' Immigration Law Conference 31 January 2013
- ILPA's Implementing & Delivering Free Movement of EU Workers and Citizens in the UK, 19 April 2013
- Public Law Project 'Public Law and The Tribunals' 4 June 2014
- Public Law Project conference 'Judicial Review Trends and Forecasts' 14 October 2013
- International Bar Association Global Immigration Conference, 21-22 November 2013

Speakers

Our thanks go to the following trainers and guest speakers, who have provided their time and expertise to ILPA's training program during the year. Please note, firms and organisations listed are current as of the date when training was delivered:

Aamilah Hussnain, ASG Immigration	David Chirico, 1 Pump Court
Adam Weiss, The AIRE Centre	David Lemer, Doughty Street Chambers
Adrian Berry, Garden Court Chambers	Dr Heinrich Vana, BreiteneckerKolbitschVana, Austria
Alan Deve, UNHCR	Dr Helena Wray, Middlesex University
Alison Harvey, ILPA	Dr Jane Herlihy, Centre for the Study of Emotion and Law
Alison Hunter, Wesley Gryk & Partners	Edward Nicholson, No 5 Chambers
Alison Stanley, Bindmans LLP	Ellie Sibley, The AIRE Centre
Amy Baker, Ernst and Young LLP	Elsbeth Guild, Kingsley Napley LLP
Andrea Als, Pricewaterhouse Coopers Legal LLP	Emma Cohen, Bindmans LLP
Angus Bujalski, Rugby Football Union	Erica Restall, Switalskis LLP Solicitors
Angus Menzies, KPMG LLP	Gillian Brownlee, Kingsley Napley LLP
AvvEttore Berretta, Studio Legale Associato, Italy	Glyn Lloyd, Morgan Cole LLP
Barry O'Leary, Wesley Gryk Solicitors LLP	Graeme Kirk, Gross and Co Solicitors
Bojana Asanovic, Lamb Building	Hamish Arnott, Bhatt Murphy solicitors
Carla Thomas, Fragomen	Hazar El-Chamaa, Penningtons Solicitors LLP
Cate Briddick, Rights of Women	Helen Smith, Kingsley Napley LLP
Chris Randall, Bates Wells and Braithwaite LLP	Hilkka Becker, Irish Immigrants Council, Ireland
Christopher Cole, Parker Rhodes Hickmotts	Jackie Morin, European Commission
Colin Yeo, Renaissance Chambers	

Jackie Peirce
 James Perrott, PricewaterhouseCoopers Legal LLP
 Jawaid Luqmani, Luqmani Thompson & partners
 Jean Lambert, European Parliament
 Jed Pennington, Bhatt Murphy
 John McCarthy, Designated First-tier Tribunal judge, Immigration and Asylum Chamber, Birmingham
 John Walsh, Doughty Street Chambers
 Jonathan Kingham, Lexis Nexis
 Judith Farbey QC, Doughty Street Chambers
 Karl Waheed, Waheed Cabinet, France
 Kate Roberts, Kalayaan
 Kathryn Cronin, Garden Court Chambers
 Katie Dilger, Wesley Gryk Solicitors
 Laurie Fransman QC, Garden Court Chambers
 Linda Rowe, PricewaterhouseCoopers plc.
 Liz Barratt, Bindmans LLP
 Luc Walley, Blanmailland & Co, Belgium
 Mahmud Quayum
 Malini Skandachanmugarasan, Laura Devine Solicitors
 Maria Malheiro Reymão, SRS Advogados & Associados, RL, Portugal
 Marie-Christine Allaire-Rousse, South West Law
 Mark Lilley-Tams, Paragon Law
 Mark Symes, Garden Court Chambers
 Meghan Vozila, Sturtivant & Co
 Melanie Plimmer, Kings Chambers
 Michael Oliver, New Bridge Street Chambers
 Michal Meduna DG JUST C.2 Union Citizenship and Free Movement
 Michelle Brewer of Garden Court Chambers
 Mr Justice Nicholas Blake QC
 Nadine Finch, Garden Court Chambers
 Naomi Angell, Osbornes Solicitors LLP
 Navtej Singh Ahluwalia, Garden Court Chambers
 Nichola Carter, Carter Thomas
 Nick Rollason, EILN
 Nuala Mole, The AIRE Centre
 Pat Saini, Penningtons Solicitors LLP
 Paul Whinder, KPMG LLP
 Penny Salmon, Penningtons Solicitors LLP
 Peter Jorro, Garden Court Chambers
 Peter Stack, PwC LLP
 Philip Barth, Withers LLP
 Professor Holger Hoffmann, Bielefeld, Germany
 Rachael Azimi, PwC LLP
 Raggi Kotak, 1 Pump Court
 Rebecca Chapman, Garden Court Chambers
 Richard Drabble QC, Landmark Chambers
 Robert Sparks, Fisher Meredith LLP
 Ronan Toal, Garden Court Chambers
 Rory O’Ryan, Garden Court North
 Rosalind Fitzgerald, Bindmans LLP
 Sandra Akinbolu, Lamb Building
 Sarah Rimmington, UKCISA
 Sasha Rozansky, Pierce Glynn Solicitors
 Solange Valdez, Ealing Law Centre
 Sonali Naik, Garden Court Chambers
 Sophie Barrett-Brown, Laura Devine Solicitors
 Stefan Vnuk, Lawrence Lupin Solicitors
 Steve Bravery, Bravery Law Consultancy
 Sue Kukadia, Ernst and Young LLP
 Susanne Mooij, Everaert Advocaten, Netherlands
 Tim Barnden, Wesley Gryk Solicitors LLP
 Tim Buley, Landmark Chambers
 Tom Brett-Young, ASG Immigration
 Trevor Wornham, Wornham and Co Solicitors

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	1	Children	1
Detention and Asylum Fast-Track	3	European	12
Family and General	6	Economic Migration	9
Immigration Offences	1	Legal Aid	3
New York	1	Refugee	2

South West	2	Training	1
Yorkshire and North East	1		

Members' meetings

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 as follows:

New Immigration Rules, 18 March 2013

ILPA/HIG meeting re proposed exclusion of migrants from legal aid, 29 April 2013

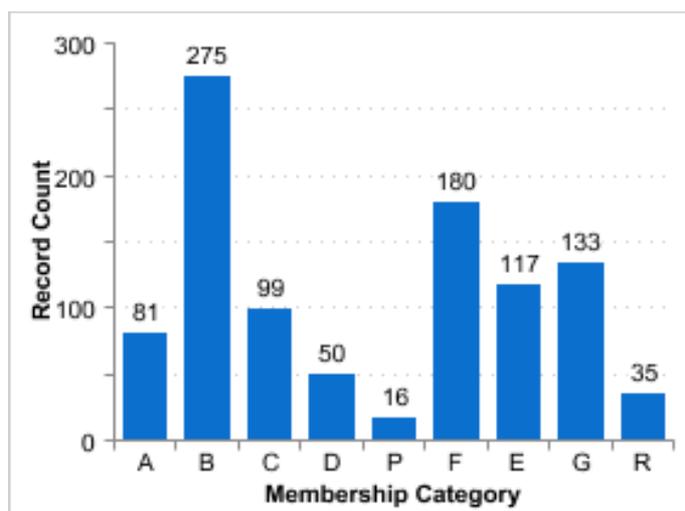
New consultations (private rented sector, health, civil penalties, 23 July 2013

Immigration Bill, 14 October 2013

Membership

As of 4 November 2013 the total number of ILPA members is 997 (up from 979 last year) with a total of 2749 individual contacts (up from 2459 last year). One hundred and forty-nine new members joined this year. All new members and their referees were given training at concessionary rate as a thank you for their referrals and continued support.

Members by Category



Categories:

- | | |
|---|--|
| A Law Centres, local Citizens' Advice Bureaux and not-for-profits with a turnover of less than £500,000 | R Full time student / retired member * / unemployed. |
| B Solicitor firms with 1 to 5 fee earners OISC regulated organisations with 1 to 5 advisers and all organisations not listed elsewhere | P Pupil barristers / trainee solicitors (Please provide proof of pupillage / training contract) |
| C Solicitor firms with 5 to 26 fee earners OISC regulated organisations with 6 to 25 advisers. Not-for-profits** with a turnover of over £500,000 | E Practising barristers over 5 years call Practising solicitors with over 5 years pqe Advisers accredited with the OISC/registered with ILEX for more than 5 years |

D Solicitor firms with 26 or more fee earners OISC regulated organisations with 26 or more advisers

G Practising barristers over 10 years call
Practising solicitors with over 10 years ppe
Advisers accredited with the OISC/registered with ILEX for more than 10 years

F All other individuals

Twenty-nine per cent of all members now pay their membership fees by direct debit and we are grateful to all of those who have signed up to this programme as it allows us to spend less time on administration and more time on programmes. We encourage everyone who is able to do so to sign up to Direct Debit by contacting the Secretariat.

Dissemination of information and communications

From December 2012 to November 2013 members have been sent 12 hard copy mailings and 303 numbered enclosures.

Information Service Project

The Information Service is part of the work supported by funding from the Joseph Rowntree Charitable Trust. Since the last AGM, the Information Service has produced five Updates and 17 Information Sheets covering topics including Access to healthcare, Article 8, the Asylum Operating Model, the best interests of the child, the Joint Committee on Human Rights' report on separated children, the family immigration rules, family tracing, family visits, illegal working, Legal Aid, medical examinations, immigration checks in private rented accommodation, options for graduates, the *Ruiz Zambrano* judgment and statelessness. In addition forms were produced to help organisations monitor the effect of the legal aid cuts on their services. All of these publications are available in the Info Service section of the website. The General Secretary (later Legal Director) and from December to May the Legal Officer, worked with a range of organisations and networks, especially around the legal aid cuts and the immigration bill. In addition, the General Secretary/Legal Director and Legal Officer provided one-to-one support to non-lawyers in these organisations on existing systems and proposals for change. Events are described in the section on liaison with other organisations below. We are grateful for the support of the Joseph Rowntree Foundation during the periods when we have been without a Legal Officer and look forward to the project returning to full strength next year.

Information Officer Project

Philip Reilly is coming to the end of the second year of the project to overhaul the management of ILPA's information, old and new. He provides essential support in disseminating incoming information to members. He has worked through many of the correspondence files held in paper form in the ILPA office and in the archives. All relevant documents have been uploaded to the website and are therefore now available to Members. The ILPA Office is becoming much less cluttered as a result. A large number of Home Office Policy Documents (for example Immigration Directorate Instructions and Operational Guidance notes) have been uploaded; all versions found are uploaded so Members have access to versions available on particular dates. The number of resources on the site totalled 10415 as of the beginning of November 2013, an increase of 56% in the number of resources available compared with December 2011. Many resources have multiple documents attached to them and thus the number of actual documents available is much greater than this.

There are now between 10,000 and 12,000 visitors to the website per month with noticeable peaks when the Immigration Rules change. About 60% of visitors each month continue to be returning visitors and about 40% are new visitors.

Other Publications and Projects

ILPA's official journal is the *Journal of Immigration, Asylum and Nationality Law*, published by Bloomsbury Professional. Helena Wray, Senior Lecturer in the Department of Law at Middlesex University is the Managing Editor, Gina Clayton, Visiting Lecturer at Middlesex University, formerly joint managing editor, having stepped down during the year. Book reviews editor, Dr Prakash Shah.

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

For ILPA publications during the year, see the Refugee Children's Project below.

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. We are grateful to members who agreed to be interviewed by individual researchers for projects.

Mike Tarnoky was ILPA's representative on Refugee Action's Access to Justice project. Alison Harvey was a member of the Advisory Group for Glasgow University's *Translation and asylum claims: matters of law language and silence* research and involved in work to look at the continuation of the project in the context of a larger bid on language, now secured. Alison Harvey represented ILPA at COMPAS's meeting re possible large-scale future research on 5 September 2013.

ILPA and Queen Mary College School of Law, University of London continue their collaboration on Niovi Vavoula's doctoral studentship as part of the College's work to broaden the value of doctoral research to non-governmental organisations. Niovi is looking at the collection and exchange of personal data in Europe, in the context of immigration control and terrorism. She continues to be a valued member of ILPA's European subcommittee and worked closely with Shahrzad Nouraini to organise our European conference in May.

See also international work below. 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 ended in December 2012 but with a conference, two publications and a final training session in December 2012 has very much earned its place in this year's annual report. The project aimed to raise the quality of legal representation of refugee children through training, information provision, publications including best practice guidance, conferences and seminars. We thank the advisory group for the project:

Liz Barratt, Bindmans LLP
Judith Dennis, Refugee Council
Nadine Finch, Garden Court Chambers
Kalvir Kaur, Fadiga and Co. Solicitors
Denise McDowell, Greater Manchester
Immigration Aid Unit

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

The two publications produced as part of the project were:

- *Working with migrant children: community care law for immigration lawyers* Adam Hundt and Zubier Yazdani, ILPA December 2012
- *Separated Children and Legal Aid Provision* Solange Valdez, ILPA December 2012

The project's third conference *The Voice of the Child: Upholding Best Interests* was held on 5 December 2012. Some 130 delegates attended including tribunal judges, UK Border Agency staff, young people supported by the Refugee Council, representatives of the Chief Inspector of Borders and Immigration and a representative of the European Asylum Support Office. This year instead of a separate young person's panel people were involved in the plenaries alongside the other speakers:

Adrian Berry, ILPA	Syd Bolton, Coram Children's Legal Centre
Sir Nicholas Blake (keynote speaker)	Judge Nicholas Crichton
Judith Dennis Refugee Council	Nadine Finch, Garden Court Chambers
Alison Harvey, ILPA	Pat Monro, Tribunal judge
Sonali Naik, Garden Court Chambers	Alison Stanley, Bindmans LLP
Solange Valdez, Sutovic and Hartigan solicitors	

Sessions focused on family tracing, with workshops on age disputes and detention, trafficking, European law and legal aid. Delegates were mainly lawyers and legal representatives, but there were also Judges, immigration judges and officials from the Home Office, the Borders and Immigration Inspectorate and NGOs. The day was highly praised in feedback and was both challenging and exciting.

Alison Pickup and Baljeet Sandhu provided training to Kent Social Services on age disputes for our final training session. Funds remaining from the project will be used to support ILPA training, providing bursaries in conjunction with the Trust for London Project and to support the production of publications, including reprinting publications issued during the lifetime of the project.

Litigation

Alison Harvey continued to serve on the Advisory Group for the Strategic Legal Fund which passed from the Diana, Princess of Wales Memorial Fund to Trust for London. She was among those consulted at the time of the transfer and contributed to the subsequent evaluation.

ILPA supported the following cases including with evidence, often in the form of witness statements and by putting the lawyers in touch with members with pertinent evidence:

- The Children's Society's challenge to the failure to provide legal aid for separated children under immigration control (ongoing)
- Detention Action's challenge to the Detained Fast Track (ongoing)
- Refugee Action's challenge to levels of asylum support (ongoing)
- Public Law Project's challenge to the legal aid residence test (ongoing)

ILPA also sought to intervene in MF (Nigeria) although our application to do so was refused, primarily on the grounds that we were seeking to intervene at too late a date. We are grateful to Liz Barrett of Bindmans LLP, David Chirico and Michael Beloff QC who acted pro bono for ILPA in this matter.

Liaison with Government and other organisations

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. 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. Members have given generously of their time and the quality of representation they have provided has further enhanced ILPA's reputation.

Home Office liaison

March saw the abolition of the UK Border Agency and it took some time for the successor parts of the Home Office to be named UK Visas and Immigration and Immigration Enforcement. We have therefore referred to Home Office liaison save where the context demands. The formal groups and the ILPA representatives who attended during the year are:

Home Office Operational Forum: Alison Harvey, Philip Trott

UK Visas and Immigration Business User Forum: Sophie Barrett-Brown, Philip Trott, Julie Speed, Tom Brett-Young

Complex Casework Directorate Partner Forum: Alison Harvey, Philippa Roffey and Solange Valdez

National Asylum Stakeholder Forum and its subgroups: main meeting Alison Harvey, Sarah Myerscough; Children (Sarah Myerscough, Amie Henshall); Asylum Operating Model (Sarah Myerscough, Alison Harvey); Equality (formerly Quality and Equality): Alison Harvey

North East Regional Stakeholder Group: Bryony Rest

In addition there were multi-lateral meetings with the Home Office as follows:

- National Asylum Stakeholder Forum ad hoc (-ish) meetings on detention and enforcement with representatives of Immigration Enforcement: Smita Bajaria, Alison Harvey
- Home Office Strategy & Assurance Group meetings: Torture (Alison Harvey); Mental Health & Disabilities (Jed Pennington), Children (Sarah Myerscough), Trafficking (Catherine Robinson)

There were one-off meetings with the Home Office as follows:

- Criminal Casework Directorate Corporate Partners meeting 27 November 2012; Alison Harvey
- With Rob Jones, Head of Asylum Policy and UK Border Agency colleagues re Statelessness 19 February 2013; Adrian Berry, Alison Harvey (also with UNHCR and Asylum Aid).
- Paul Barrett & Nicola Smith, Economic Migration Policy, Immigration & Border Policy Directorate, re forthcoming changes to immigration rules 7 March 2013; Alison Harvey
- Visit to Casework Team, Asylum Casework Directorate, Leeds 16 May 2013; , Ish Ahmed, Naveed Aslam, Chris Cole, Ben Davison, Alison Harvey,
- UK Visas and Immigration Senior managers' away day 19 June 2013; Tom Brett-Young
- Meeting re investors and entrepreneurs 22 August 2013; Philip Barth, Rose Carey, Hazar El-Chamaa, Vanessa Ganguin, Nadine Goldfoot, Alison Harvey, Devan Khagram, Graeme Kirk, Linda Rowe, Meghan Vozila, Philip Trott.
- Stephen Bray, Bill Gale, Rob Jones & Neil Forshaw of UK Visas & Immigration re Statelessness 4 September 2013; Adrian Berry, Alison Harvey, (with UNHCR & Asylum Aid)
- Conference of the Migration Statistics User Forum 17 September 2013; Alison Harvey
- Simon Bentley of Home Office re section 4 support and Draft Deregulation Bill 2 October 2013, Alison Harvey (with Refugee Action and the Asylum Support Appeals Project)
- Dan Hobbs Director, Appeals and Litigation and colleagues 7 October 2013; Alison Harvey, Alasdair Mackenzie
- Sally Weston re Immigration Bill 18 October 2013; Katie Dilger, Alison Harvey, Paul McCarthy, Rowena Moffatt, Sonali Naik, Sarah Rimmington, Sadat Sayeed
- Home Office Income and Charging Team re fees 13 November 2013; Alison Harvey, Kate Gamester, Jonathan Kingham, Sue Shutter

- UK Visas and Immigration Migration and Customer Contact Senior Management Team meeting 13 November 2013 (Sheffield): Sophie Barrett-Brown

As detailed in the report of the South-West subcommittee, Kenny Chapman of the Home Office has attended its meetings during the year. Jed Pennington represented ILPA at a workshop on a review on the mental health issues in Immigration Removal Centres at Tavistock Institute of Human Relations on 16 October 2013 as part of the work that the Tavistock is doing for the Home Office on this subject.

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, Mark Henderson
- Tribunal (Immigration and Asylum Chambers) Presidents' Stakeholder Forum; Mark Henderson
- Asylum Support Tribunal User Group; Sasha Rozansky
- Court of Appeal (Civil Division) Users' Committee; Adrian Berry, JawaidLuqmani.

One-off meetings held during the year were:

- Roundtable at Upper Tribunal on Age Assessment 5 March 2013; Alison Pickup
- Bail workshop 11 October 2013; James Elliot

In addition Alison Harvey gave a talk to immigration judges at Taylor House about the Legal Aid, Sentencing and Punishment of Offenders Act and the new legal aid proposals on 30 May 2013.

Ministry of Justice

The Legal Services Commission was absorbed back into the Ministry of Justice as the Legal Aid Agency during the year and Her Majesty's Courts Service merged with the Tribunals Service to form Her Majesty's Courts and Tribunals Service. The regular meetings and those who have represented ILPA at them during the year are:

- Legal Aid Agency/Law Society Civil Contracts Consultative Group: Sarah Myerscough, Alison Harvey
- Administrative Justice Advisory Group: Tim Buley, Alison Harvey, Philip Reilly

There were series of meetings as follows:

- Adjournments & postponements Her Majesty's Courts & Tribunals Service, Legal Aid Agency, Home Office & Tribunals judiciary 28 January 2013 (Alison Harvey, Jo Swaney, Alasdair Mackenzie, Smita Bajaria, Catherine Meredith, Harriet Short, Sarah Myerscough) and 23 July 2013; Alison Harvey, Alison Pickup (with Scottish Immigration Law Practitioners' Association)

The 28 January 2013 meeting was followed by a meeting on the fundamental review of the First-tier Tribunal for which Pierre Mahklouf joined the meeting.

In addition the following one off meetings were held:

- With Ian Hollings and Philip Howarth, Legal Services Commission re immigration cases 20 November 2012; Alison Harvey, Sonia Routledge, Solange Valdez
- Outcomes of face-to-face tenders 17 December 2012; Alison Harvey
- Exceptional Case Determinations 26 February 2013; Alison Harvey, Ayesha Mohsin
- Cate Fisher researcher from Ministry of Justice re immigration onward appeals scoping review 28 February 2013; Alison Harvey

- Legal Aid Agency meeting on Exceptional Funding 1 July 2013; Marie-Christine Allaire-Rousse, Alison Harvey, Solange Valdez,
- Legal Aid Agency: provision in Immigration Removal Centres 20 September 2013; Alison Harvey
- Judicial Review consultation stakeholder event 28 October 2013; Alison Harvey

International Organisations and international work

Inter-Governmental

- Home Office Science and European Migration Network Seminar on Intra-EU Mobility 12 December 2012; Sarah Myerscough
- Migration Policy Group and European Commission Seminar hosted by Runnymede Trust on Citizenship in the UK as part of Citizenship Policy Dialogue seminar series – 28 November 2012; Adrian Berry, Alison Harvey
- Fundamental Rights Agency conference Justice in an age of austerity (Brussels) 6-7 December 2012; Alison Harvey
- Home Office and European Migration Network conference: Identification of trafficking victims and subsequent investigative measures 6 June 2013; Shahrzad Nouraini

Official bodies and non-Governmental

- Kelley Loper, University of Hong Kong re project on legal representation of asylum seekers 22 November 2012; Alison Harvey
- Refugee Studies Centre University of Oxford workshop ‘The Deportation of Unaccompanied Minors from the EU’ 3 May 2013; Alison Harvey
- Deborah Anker, Clinical Professor of Law Harvard University 20 March 2013; Alison Harvey
- ECRE Directors’ Forum 21 May 2013 (Brussels); Alison Harvey
- Meeting on the McCarthy case with Hilka Bekker of the Immigrant Council of Ireland and Stuart McTaggart Barrister 13 June 2013; Adam Weiss, Adrian Berry, Alison Hunter, Bojana Asanovic, Buster Cox, Simon Cox
- ECRE Annual General Meeting (Prague), 9-11 October 2013; Alison Harvey
- Embassy Group conference for consuls, 12 November 2013; Rowena Moffatt (speaker)

This year ILPA continued its work with the European Council for Refugees and Exiles’ project on legal advice for separated children. Mark Symes was ILPA’s point of contact for the ECRE’s European Asylum Curriculum Reference Group, European Council on Refugees. Alison Harvey and David Chirico were points of contact for the ELENA network.

Other official bodies

Regular meetings:

- Chief Inspector of Borders and Immigration Refugee and Asylum Forum: Charlene Stakemire, Fiona Ripley, Alison Harvey
- Chief Inspector of the UK Border Agency’s Independent Advisory Group on Country Information; Harriet Short
- Office of the Children’s Commissioner for England Advisory Group (refugee children); Alison Harvey

Other meetings were held as follows:

- Administrative Justice and Tribunals Council Conference 22 November 2012; Tim Buley

- Meeting with Suzanne McCarthy, Commissioner and Dr Ian Leigh, Deputy Commissioner, OISC 23 January 2013; Adrian Berry, Alison Harvey
- Chief Inspector of Borders and Immigration Media Briefing 23 January 2013; Sue Shutter
- Office of the Immigration Services Commissioner freelance consultant Peter Wrench 12 March 2013; Alison Harvey
- Equality and Human Rights Commission Forced Labour Roundtable 21 June 2013; Alison Harvey, Shahrzad Nouraini
- Meeting with Chief Inspector's office re Non-suspensive appeals 1 October 2013; Alison Harvey, Eric Fripp
- Meeting with the Office of the Chief Inspector of Borders and Immigration (Rob McClean and Carol-Ann Sweeny) re inspection of European Casework 6 November 2013; Alison Harvey, Alison Hunter, Catherine Platt, Ellie Sibley, Frances Trevena, Jessica Stooke, Philip Allcorn, Nicholas Rollason, Sophie Barrett-Brown.

Parliament

ILPA gave written and oral evidence to the following parliamentary committees:

- Joint Committee on Human Rights inquiry into the human rights of unaccompanied migrant children oral evidence 11 December 2012 Alison Harvey
- Home Affairs Committee enquiry into asylum oral evidence 2 July 2013 Alison Harvey
- Joint Committee on Human Rights re inquiry on implications for access to justice of the Government's proposal to reform Legal Aid oral evidence 23 October 2013 Alison Harvey
- Immigration Bill Public Bill Committee oral evidence 29 October 2013 Adrian Berry
- Draft Deregulation Bill Committee 30 October 2013 oral evidence Alison Harvey

ILPA provided written evidence and published parliamentary briefings as follows:

- Briefings on Crime and Courts, Immigration, Justice and Security and Immigration Bills
- Briefing for the House of Lords re Secondary Legislation Scrutiny Committee on consultation practice , 4 December 2012
- To Law Society re the judgment in *Metock* for the Law Society's submission to the House of Lords' Committee on the European Union C-127/08 – February 2013
- To the Joint Committee on Human Rights re call for evidence on legislative scrutiny priorities for 2013-14 - June 2013
- Briefing for the Westminster Hall debate: Effects of the new family immigration rules, in the name of Viendra Sharma MP, 19 June 2013
- Briefing for the backbench debate on legal aid in the names of Sarah Teather MP, David Lammy MP and David Davis MP, 27 June 2013
- Briefing for House of Lords debate: Effect of cuts in legal aid funding on the justice system in England and Wales, 11 July 2013
- Briefing for the House of Lords' debate on the Motion to regret the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013, 17 July 2013
- To the Joint Committee on Human Rights call for evidence re Protocol 15 to the European Convention on Human Rights – September 2013
- To the House of Lords Select Committee on the European Union Sub-Committee F call for evidence: The EU's five year agenda for EU and home affairs activity (2015 - 2019) - October 2013
- Joint Committee on Human Rights call for evidence re human rights judgments – October 2013
- Briefing for the short debate Requirements for those who apply for UK citizenship or nationality, Lord Roberts of Llandudno/Lord Taylor of Holbeach 10 October 2013

In addition Alison Harvey and Sarah Myerscough met with Eleanor Scarnell, re the Home Affairs Committee enquiry on asylum on 12 December 2012, Alison Harvey met with the advisor to the Joint Select Committee on the Deregulation Bill on 29 August 2013 and Alison Harvey, Alison Stanley, Emma Cohen, Kathryn Cronin and Nadine Finch worked with the International Adoption Committee on the preparation of evidence to the House of Lords Select Committee on adoption.

ILPA provided written evidence to the cross-party parliamentary inquiry into asylum support for children and young people in December 2012. Barry O’Leary gave oral evidence to the All Party Parliamentary Group on Migration’s enquiry into family immigration, to which ILPA also submitted written evidence in January 2013, and represented ILPA at the launch of the report. Others involved in work with this All-Party Parliamentary Group were Alison Harvey, Adam Hundt and Sarah Myerscough. Alison Harvey was a speaker at the All Party Parliamentary Group on Legal Aid’s meeting on 15 May and attended other meetings of the group, including with the Minister, Lord McNally. ILPA also worked with the All-Party Parliamentary Groups on Children (Sarah Myerscough) and Refugees (Alison Harvey).

Alison Harvey participated in a briefing for MPs on the legal aid changes on 25 June 2013. Zofia Duzynska represented ILPA at a meeting with the Labour party front bench re the legal aid changes on 9 July 2013. Ayesha Mohsin represented ILPA at a meeting with David Davis, David Lammy and Sarah Teather about legal aid on 4 September 2013. Adrian Berry addressed a cross party meeting on the Immigration Bill and children on 11 November 2013.

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. See also this report *passim*, for work in partnership with non-governmental organisations and networks for training. Member organisations are mentioned when we have been involved with them on specific initiatives and events, often broader than immigration.

Regular meetings and representation on groups during the year include:

- Bar Council Civil (Public) Panel; John Walsh
- Housing and Immigration Group; Adrian Berry, Alison Harvey
- The Law Society:
 - Immigration Law Committee, Stefan Vnuk;
 - Specialist Practitioners Group: Ayesha Mohsin, Sarah Myerscough, Alison Harvey
 - Immigration and Asylum Scheme Chief Assessor’s Technical Board: Nicola Cockburn, Zofia Dusynska
- Refugee Children’s Consortium, Nadine Finch, Nirmala Rajasingam, Sarah Myerscough, Alison Harvey
- Strategic Legal Fund, Alison Harvey (Diana, Princess of Wales Memorial Fund, thence Trust for London);

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* AB Charitable Trust, Administrative Law Bar Association, Advice Network South West, Advice Services Alliance, AIRE Centre, Amnesty International, Anti-Trafficking Legal Project, Asylum Aid, Bail for

Immigration Detainees, Bail Observation Project, The Bar Council, Bates Wells and Braithwaite LLP, Bindman's LLP, Bingham Centre for the Rule of Law, British Refugee Council, Centre for Emotion and Law, the Council for Assisting Refugee Academics, COMPAS, Coram Children's Legal Centre, Diana, Princess of Wales Memorial Fund, Detention Action, Doughty Street Chambers, ECPAT UK, Electronic Immigration Network, Entitlement Working Group, Esmée Fairbairn Foundation, Garden Court Chambers, Garden Court North, Helen Bamber Foundation, Howard League for Penal Reform, Inter-country Adoption Centre, Islington Law Centre Migrant Children Legal Unit, Kalayaan, Kenworthy's Chambers, Joint Council for the Welfare of Immigrants (including Movement Against Xenophobia), Joseph Rowntree Charitable Trust, JUSTICE, Justice Alliance, The Law Society, LawWorks, Legal Action Group, Legal Aid Practitioners' Group, Legal Voice, LexisNexis, London Migrant Voices for Change network, London School of Economics, Matrix Chambers, Low Commission, Medical Justice, Migrant Voice, Migrant's Law Project at Islington Law Centre, Migrants Rights Network, Mind, Muslim Professionals Forum, New Residents and Refugee Forum, No Resource to Public Funds Network, Refugee Action, Pro Bono Unit, Public Law Project, Refugee and Communities Forum of East London, Refugee Law Initiative, Rights of Women, Scottish Refugee Council, Speechly Bircham, Sigrid Rausing Trust, Society of Legal Scholars Southall Black Sisters, The Bureau Investigates, The Children's Society, Tooks Chambers, Trafficking Law and Policy Forum, Trust for London, Unbound Philanthropy, University of Law Pro Bono Unit, Welsh Refugee Council.

The 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. We are also grateful to Colin Yeo of Garden Court's free movement blog and forum for highlighting ILPA's work.

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:

- Asylum Support Appeals Project AGM 10 December 2012; Alison Harvey
- Haslar Visitors Group AGM 6 March 2013; Alison Harvey
- No Recourse to Public Funds Network conference on legal aid 27 March 2013; Alison Harvey and Sarah Myerscough
- Bail Observation Project launch of report 14 May 2013; Alison Harvey speaker
- Rights of Women event on domestic violence and legal aid: Who falls through the legal aid gaps 29 May 2013; Alison Harvey (speaker)
- Public Law Project 'Public Law and The Tribunals' 4 June 2013 Alison Harvey
- Association of Visitors to Immigration Detainees AGM 13 June 2013; Alison Harvey
- 15th Justice Annual Human Rights Law Conference 24 October 2013; Alison Harvey (Chair of workshop)
- Praxis AGM 31 October 2013; Alison Harvey (speaker)

Responses and submissions

In addition to the parliamentary briefings described above and the information disseminated through the Information Service, ILPA wrote the following formal responses, submissions and letters this year. Many of these are enormous documents involving many weeks of research. The publication of draft versions of our responses has assisted in ensuring that we influence and support the submissions of others.

1. To Sir Nicholas Blake re fresh claim Judicial Review and re remission of cases to the First-tier Tribunal, 18 January 2013
2. To Ministry of Justice consultation on Judicial Review 24 January 2013
3. To the Ministry of Justice consultation on Fee remissions in the First-tier Tribunal (Immigration and Asylum Chamber) January 2013

4. Comments to UK Border Agency Quality Assurance Team re new draft standards to audit “live appeals” 30 January 2013
5. To Graham Ralph, Head of Asylum, UK Border Agency re Screening Unit, 6 February 2013
6. To the European Commission re screening, 6 February 2013
7. ILPA and AIRE Centre to head of European Operational Policy, UK Border Agency re definition of domestic violence, 14 February 2013
8. Comments to HM Courts and Tribunals Service on the Fundamental Review of the Immigration and Asylum First-tier Tribunal February 2013
9. Comments on UK Border Agency Asylum Interview Pre-Brief – February 2013
10. To UN Office of the High Commissioner for Human Rights (OHCHR) providing information about arbitrary deprivation of nationality February 2013
11. To the Independent Chief Inspector of Borders and Immigration’s thematic inspection into the handling of asylum claims made by unaccompanied children February 2013
12. To Information Commissioner’s Office consultation: Subject access code of practice February 2013
13. To Bill Gale, UK Border Agency, re statelessness, 10 March 2013
14. ILPA and the AIRE centre to Brendan Crean, Identity and Data Directorate, the UK Border Agency re Biometric Residence Permits, 20 March 2013
15. To UK Border Agency re draft guidance on Humanitarian Protection March 2013
16. To President of the First Tier and Upper Tribunals, Immigration and Asylum Chamber re Judicial Review Guidance the Upper Tribunal, Immigration and Asylum Chamber March 2013
17. To the Home Office re Quality Standards for the National Referral Mechanism April 2013
18. To the Bar Council: Transforming legal aid: delivering a more credible & efficient system 04/2012
19. ILPA and the AIRE centre to Brendan Crean, Identity and Data Directorate, Home Office re retention of Biometric Residence Permits, 20 May 2013
20. To the Ministry of Justice re Fee remissions for the courts and tribunals May 2013
21. ILPA’s submission to The Low Commission in response to Context Paper on Asylum and Immigration – May 2013
22. To Treasury Solicitors re letters to the Administrative Court re charter flights, 11 June 2013
23. To the Ministry of Justice re Transforming legal aid: delivering a more credible and efficient system June 2013
24. Submission to Independent Advisory Panel on Non-Compliance Management June 2013
25. To Tribunal Procedure Committee re amendments to Tribunal Procedure (Upper Tribunal) Rules 2008 arising from statutory changes to judicial review June 2013
26. To the Tribunal Procedure Committee on the proposed Tribunal Procedure (First-tier) (IAC) Rules 2013 and amendments to the Tribunal Procedure (UT) Rules 2008 July 2013
27. To the Home Office re its proposal on Passport Return - July 2013
28. To the Rt Hon David Davis MP re legal aid, 29 July 2013
29. To the Civil Procedure Rules Committee re Costs Budgeting and Costs Management July 2013
30. To the Home Office re Prevention of illegal working: Strengthening and simplifying the civil penalty scheme August 2013
31. To Home Office re Tackling illegal immigration in privately rented accommodation August 2013
32. To Department of Health on Migrant Access to the National Health Service August 2013
33. To the Home Office on Controlling Immigration – Regulating Migrant Access to Health Services in the UK August 2013
34. To the OISC re proposals to amend the Code of Standards and Commissioner's Rules August 2013
35. To European Commission re Asylum Screening 13 September 2013

36. To the Ministry of Justice for its review of the legal services statutory framework September 2013
37. Comments on Legal Aid Agency immigration billing training module September 2013
38. Comments on Home Office Draft Asylum Policy Instruction: Asylum Interviews September 2013
39. Comments on the Home Office draft Medico-Legal Reports: Asylum Instruction September 2013
40. Comments on the Home Office draft Asylum Policy Instruction on Dependants and former dependants October 2013
41. Comments for the Immigration Enforcement evaluation of the Immigration Enforcement Go HOME campaign October 2013
42. Comments on the Draft Immigration Rules on Armed Forces October 2013
43. To the Ministry of Justice consultation Transforming Legal Aid: Next Steps October 2013
44. To the Ministry of Justice re Judicial Review: proposals for further reform November 2013
45. To the Bingham Centre for the Rule of Law Judicial Review Submission November 2013
46. For House of Commons Westminster Hall debate on Home Office lost documents November 2013
47. For House of Lords debate on the Special Immigration Appeals Commission (Procedure) (Amendment) Regulations 2013 November 2013

ACCESS TO JUSTICE SUBCOMMITTEE REPORT

We ended last year's Access to Justice annual report by observing that "these are challenging times, but ILPA continues to fight hard for access to justice". Both those statements are true of 2013 which has seen an onslaught on access to justice for all but perhaps particularly for immigrants. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO") came into force in April, removing legal aid from almost all non-asylum immigration cases. Within days of its implementation, the Government announced a consultation on proposals to further restrict legal aid, including by the introduction of a residence test for access to civil legal aid. This proposed test has been widely denounced as undermining the rule of law and introducing a discriminatory barrier to access to justice, contrary to fundamental rights at common law as well as under the ECHR and EU law. Despite the extremely robust response from ILPA and others to this draconian step, the Government announced in September its intention to press ahead with its plans and draft legislation is due to be published shortly.

Perhaps as a result of the changes brought about by LASPO, the Upper Tribunal at least has noticed an increase in the number of unrepresented appellants before it and in September 2013 published a guide for unrepresented appellants in the Upper Tribunal.

As well as severely restricting legal aid, the Government has continued to limit access to the courts to challenge immigration decisions. The Crime and Courts Act 2013 removed appeal rights for family visitors, and now we face an Immigration Bill, currently at Committee stage in Parliament, which will remove all appeal rights for those not making asylum or human rights claims, and allow the Secretary of State to certify human rights appeals by "foreign criminals" so that they can only be brought after removal including where she considers that the appellant "would not, before the appeals process is exhausted, face a real risk of serious irreversible harm". This means in practice destroying families and removing people from the country where they have lived for most or even all of their lives before an independent tribunal has had the opportunity to consider the proportionality of doing so. Given the extremely restrictive approach the Home Office takes to its

own Article 8 Rules in such cases, the implications for access to justice, let alone private and family life, are potentially devastating.

The Crime and Courts Act also removed the restriction on transfer of immigration judicial reviews to the Upper Tribunal contained in s.31A of the Senior Courts Act 1981 and with effect from 1 November 2013, the majority of immigration judicial reviews will now be heard by the Upper Tribunal, and if issued in the High Court will be transferred there. The Lord Chief Justice's direction under s. 18(6) of the Tribunals, Courts and Enforcement Act 2007 provides for the transfer of most cases challenging decisions made under the Immigration Acts, where the claim was issued in the High Court on or after 9 September 2013, or where permission was refused on the papers on or after that date and the renewal of that application to an oral hearing is still pending on 1 November. ILPA lobbied fiercely against the amendment in the Crime and Courts Act and has been concerned by the breadth of the direction because the Upper Tribunal is still inexperienced in dealing with judicial review cases, but sadly to no avail.

Since the transfer of fresh claim judicial reviews in late 2011, only 9 decisions have been reported (of which 3 were granted). ILPA wrote to Blake J again in January 2013 raising some outstanding concerns and queries concerning the practice in considering fresh claim judicial reviews, including the lack of clarity over the process for considering urgent applications. Practice Statements were issued by the Senior President in April 2013, which provide more detailed explanation of the way in which the Upper Tribunal approaches fresh claim judicial reviews and urgent applications, including confirming the circumstances in which an urgent application should be made to the Queen's Bench Division duty judge rather than to the Upper Tribunal. The Statements however contain worrying statements of 'normal' practice in curtailing time limits set down in the Procedure Rules in fresh claim judicial review cases, including the time for renewal and for applications for permission to appeal.

Amendments to the Civil Procedure Rules in July removed the right to oral renewal of an application for permission to apply for judicial review (or of an application for permission to appeal against the refusal of permission by the Administrative Court) where the Judge considering permission has certified the claim as totally without merit. These provisions have not as yet been replicated in the Upper Tribunal.

There have been an extraordinary number of consultations impacting on access to justice issues this year, including two each on judicial review, legal aid, fee remission, and changes to the Tribunal Procedure Rules. Sub-committee members have worked hard to produce detailed responses to all, backed up by concrete examples from ILPA members' case files. The Tribunal Procedures Committee proposals to amend the First-tier Tribunal (Immigration and Asylum) Rules so as to bring them into line with the other chambers of the First-tier Tribunal were a breath of fresh air amidst the onslaught on access to justice, including its creative proposals to remove some of the more extraordinary provisions in the existing rules, such as the Home Office's ability to unilaterally terminate an appeal by withdrawing the underlying decision, and the requirement for decisions in asylum cases to be served on appellants by the Home Office rather than the Tribunal. One of its less welcome proposals, that of restricting repeat bail applications, is now being put on a statutory footing by the Immigration Bill.

The Tribunal Procedures Committee also proposed abolishing the separate fast-track Rules for those in the Detained Fast Track process, leaving it to individual Tribunal judges to use their case management powers to reduce timescales for those in detention rather than arbitrarily allocating people to the inherently unfair fast-track process on the basis of a Home Office decision made at screening. ILPA strongly supported the Committee's proposals. In late August, Detention Action

was granted permission to judicially review the detained fast track process, including on the grounds that the appeals process is too unfair to be safe.

As well as these new developments, ILPA has continued to press many of its long-standing concerns, including the lack of transparency in the work of the Upper Tribunal's reporting committee, and inaccuracy in and late provision of charter flight letters sent by the Home Office to the Administrative Court (and copied to ILPA). Amendments to the Practice Statements on remittal made in late 2012 appear to have improved the prospects of appeals being remitted to the First-tier Tribunal when they need to be reheard afresh.

ILPA has continued to engage with the Tribunal, senior courts and the Home Office in efforts to improve access to justice. We have attended the Tribunal's Joint Stakeholder Meetings, the Administrative Court Office User Group meetings, as well as ad hoc meetings arranged by the Courts and Tribunals Service ("HMCTS") on issues such as adjournments, bail, age assessments and the "fundamental review" of the work of the First-tier Tribunal being carried out jointly by HMCTS and members of the Tribunal judiciary.

In June 2013 Mark Henderson stood down as co-convenor of the Access to Justice subcommittee after many years of battling to promote and protect our clients' rights to access justice. ILPA is grateful to Mark for all his work for the sub-committee and his continued commitment in attending the Tribunal and Administrative Court user group meetings.

Co-convenors: Mark Henderson, Alison Pickup (to November 2013), Ronan Toal (from June 2013)

CHILDREN SUBCOMMITTEE REPORT

December 2012 marked the end of ILPA's Refugee Children's Project, an incredibly successful programme of training and resource to practitioners nationally. The sub-committee met with the Secretariat in December to feed in sub-committee members' views on what work ILPA could usefully do on children's issues after the end of this project with a commitment that work in this area would continue within ILPA's overall work programme.

The children's sub-committee has benefitted immensely from the assistance of ILPA's information officer with regular updates communicated to the sub-committee mainly through e-mail. Our members are actively involved in a range of networks and organisations, including the Refugee Children's Consortium (RCC), and through ILPA and the RCC continue to comment on changes to immigration law, policy and practice impacting children. More recently, members have been actively lobbying and campaigning against the new Immigration Bill, which contains radical provisions including cutting appeal rights, increasing powers to conduct ID checks and attempts to put the Government's interpretation of the right to private and family life under Article 8 of the European Convention on Human Rights into statute.

Work undertaken by members this year, like many, has been driven by the on-going attack on access to justice for our clients. The sub-committee met in April to discuss emerging thoughts on the implications of Legal Aid, Sentencing and Punishment of Offenders Act 2012 for children, focusing on the difficulties practitioners were encountering without legal aid for immigration matters. We admired members' relentless dedication to continue to battle the changes and the new proposals. The meeting led to a co-ordinated effort, from both the legal and non-legal sector members, to combine forces with a view to educating children's charities and organisations on the likely impact of the new proposals on children and to encourage responses to Government condemning the proposals. In May 2013 a national event for children's charities and NGOs was

jointly hosted by Islington Law Centre, The Children's Society and Coram Children's Legal Centre, with presentations from a number of leading children's lawyers in immigration, family, prison and criminal law. Since the event, members have supported attendees in their responses, helping to keep this issue high on the agenda. The recent inquiry into the proposals by the Joint Committee on Human Rights highlighting members' concerns, particularly around the impact on children.

In June 2013 The Children's Society, as Claimants represented by Islington Law Centre, lodged a Judicial Review against the Lord Chancellor for failing to bring back into scope immigration for cases involving separated and unaccompanied children under the Legal Aid, Sentencing and Punishment of Offenders Act 2012. The permission application is yet to be determined and members will be updated on the progress of the case when further news is forthcoming.

Case law that may be of interest to members

Despite the cuts to legal aid immigration case law around children has continued to evolve and develop over the last year - highlighting the ever-increasing need for children and families to have access to legal representation in order to secure relevant rights to which they are entitled. This is particularly so when Government continues to increase the bar to entitlement rights for many, illustrated, for example, by the introduction of the 'reasonable to return' criterion in the Immigration Rules in 12 December 2012.

Over the last year the Courts continued to grapple with the changes to the immigration rules introduced in July 2012 and the Government's attempts to circumvent Article 8 Strasbourg jurisprudence, particularly in relation to children and the assessment of best interests (*Izuazu (Article 8 - new rules) Nigeria* [2013] UKUT 45 (IAC); *Ogundimu (Article 8 - new rules) Nigeria* [2013] UKUT 60 (IAC); *MF (Nigeria) v SSHD* [2013] EWCA Civ 1192).

In children's health cases the Court recently found that there was a need for separate and careful consideration under Article 8 of the European Convention on Human Rights *R(SQ (Pakistan) & Anor) v The Upper Tribunal Immigration and Asylum Chamber & Anor* [2013] EWCA Civ 1251) in such cases and in some cases the Secretary of State's duty under s.55 may require her to carry out detailed investigations to ascertain relevant facts i.e. whether the Secretary of State might be required to obtain or even procure medical evidence enabling her to make an informed decision to satisfy her duty under s55 of the 2009 Act (see *R(OA (Nigeria) v SSHD* [2012] EWHC 3128 (Admin)). Although, in *AN (Afghanistan) v SSHD* [2013] EWCA Civ 1189 (11 October 2013) Underhill LJ held, on the facts of that case (including a daughter of a family who was 16 at the date of hearing), that the Tribunal had not been under any obligation to require further information, or inquiries to be made, in regards to the best interests of the child dismissing the appeal on Article 8 grounds.

The Courts continued to hammer home the significance and importance of the duty to treat children's best interests as a primary consideration in immigration cases (including detention and deportation cases: *R(Abdollahi) v SSHD* [2013] EWCA Civ 366); *SS (Nigeria) v SSHD* [2013] EWCA Civ 550 (22 May 2013)). In *Azimi-Moayed and others (decisions affecting children; onward appeals)* [2013] UKUT 197 (IAC) although the Upper Tribunal, chaired by the President, dismissed the case involving two children, it took the opportunity to issue guidance about immigration decisions affecting children finding that the duties to have regard as a primary consideration to the best interests of a child are 'so well established that a judge should take the point for him or herself as an obvious point to be considered', irrespective of whether the appellants or the advocates had done so. However, emphasising that where the evidence gives 'no hint of a suggestion that the welfare of a child is threatened by the immigration decision in question' further

judicial exploration is not necessary. See also decision of the Court in *CW (Jamaica) v SSHD* [2013] EWCA Civ 915 23 July 2013, relating to deportation.

In *LH (Nigeria) & Anor v SSHD* [2013] EWCA Civ 26 (30 January 2013) the Court of Appeal found that assessing whether or not children should be separately represented in appeals was fact specific and depended on the particular circumstances of a case, which should be considered by the legal representatives involved by reference to the age of the child (and nature of instructions) and the particular circumstances of the case.

The sub-committee welcomed two notable cases over the year: In May 2013 the Administrative Court in *SM & Anor v SSHD* [2013] EWHC 1144 (Admin) the Courts recognised that where there had been findings that the removal of a child would breach his or her human rights, the Secretary of State's policy to grant Discretionary leave only was incompatible with her duties under S.55 of the 2009 Act and case specific consideration of the welfare of the child concerned is necessary, in making a decision on what leave to awarded, in some instances indefinite leave to remain appropriate. More recently a Court decision recognising in *SQ (Pakistan)* [2013] EWCA Civ 1251 that children who require medical treatment are more likely to be entitled to remain in the UK to receive it under Article 3 ECHR because unlike cases involving adults, they may be more likely to satisfy the "exceptional circumstances" test in *N v UK*.

The sub-committee welcomed a number of cases involving children arriving into the UK with protection claims. In *ST (Child asylum seekers) Sri Lanka* [2013] UKUT 292(IAC) the UT held that when considering hearing evidence from a child aged 12 or under the matter should be explored by the judge with the advocates and the responsible adult accompanying the child. The guidance in the Senior President's Practice Statement of 30 October 2008 'Circumstances Under Which a Child Vulnerable Adult or Sensitive Witness May Give Evidence' must be applied and the judge should alert the parties if s/he is minded to depart from a favourable assessment of credibility made by the Secretary of State (although the Court also found that the "best interests of the child" are relevant in section 83 appeals only to the extent that they illuminate a claim that the appellant is a refugee or entitled to humanitarian protection).

In the case of *R(AN & FA (Children)) v SSHD* [2012] EWCA Civ 1636 Black LJ handing down judgement for the majority in the Court of Appeal found that, referrals to the local authority "must be made immediately" by immigration officials when an unaccompanied child was detected (the cases involving children on arrival at port) and that there was a requirement in all but exceptional cases (raising acutely urgent issues relating to health or trafficking) that the child be referred to social services before being screened for asylum purposes. The court found that weight to be given to interviews, conducted on arrival, without this safeguard would be diminished, and where no timely referral to the Local Authority was made, a child would have been unlawfully detained from the end of the "booking in" process and the time of the referral to the Local Authority. Since the judgement, practice of allowing children time to 'rest and recuperate' for up to 4 days prior to asylum screening have been implemented nationally by the Home Office.

The case of *MA & Ors v SSHD* [2013] EUECJ C-648/11 was finally handed down confirming that the asylum claims of unaccompanied children must be determined, having regard to the minor's best interests, in the state where the most recent application for asylum has been lodged by the child and the child not be removed to a third country under the Dublin II regulations, unless they can be reunited with a family member in another member state.

The Court of Appeal in *L & Ors v The Children's Commissioner for England & Anor* [2013] EWCA Crim 991 held that where a child victim of trafficking was facing criminal proceedings (the

appeals concerned children found in cannabis farms in the UK and prosecuted due to detection there) the child's best interests were a primary consideration; the criminal courts had a statutory duty to make enquiries about a defendant's age beyond cursory assessment of the young person in court, requiring further evidence and/or investigation if necessary; a criminal court had to decide whether the offences committed by a child was a manifestation of his/her exploitation, if so, the court would have to stay proceedings because allowing the prosecution to continue would amount to an abuse of process. The Court provides useful guidance to criminal courts about how child victims of human trafficking should be approached when they become involved in criminal activities and prosecutions against them have already been commenced.

More recently in *R (Atamewan) v SSHD* [2013] EWHC 2727 (Admin) the Court was asked to consider the question of the extent of the Secretary of State's obligations in respect of a victim of 'historic trafficking' whereby the Secretary of State was failing to award protection under the NRM on the basis that a potential victim was no longer considered to be a trafficking victim because of the passage of time having broken away from their trafficking circumstances. Aikens LJ held that relevant passages in the Secretary of State's 'Guidance to the Competent Authorities' misinterpreted Arts 4, 10(2) and 13(1) of the Trafficking Convention and the 'NRM decision' that a person in these circumstances was no longer considered to be a victim of trafficking was unlawful, ordering the return of the Claimant to the UK so that she be granted 12 months' and one day's leave so she was able to participate in police investigations in her case.

Although sadly, we found the Court of Appeal rowing back from the potential protection afforded to former unaccompanied asylum seeking children who had not benefitted from the family tracing duty under *KA (Afghanistan) in EU (Afghanistan) & Ors v SSHD* [2013] EWCA Civ 32 (31 January 2013). Nevertheless, the Court recognising that it was obvious that it would be inhumane to return an unaccompanied young child to a country such as Afghanistan where it was determined that the child had no family to take care of him/her on arrival (see also *SHL v SSHD (Tracing obligation/Trafficking) Afghanistan* [2013] UKUT 312 (IAC); *R (Shinwari) v SSHD* [2013] EWHC 2148 (Admin); *R (Hashemi) v The Upper Tribunal (Immigration and Asylum Chamber) & Anor* [2013] EWHC 2316 (Admin)).

Other cases of interest to members (by no means an exhaustive list): *R (AA) v SSHD* [2013] UKSC 49 (age dispute cases in detention); *R (Kebede & Anor) v Newcastle City Council* [2013] EWCA Civ 960 31 (Local Authority resourcing higher education for children in their care); *R (GE) v SSHD & Anor* [2013] EWHC 2186 (The Secretary of State's duties under s.23C of the Children Act 1989); *Re A (Children)* (Rev 1) [2013] UKSC 60 (consideration of whether the High Court has jurisdiction to order the "return" to this country of a small child who has never lived or even been here, on the basis either that he is habitually resident here or that he has British nationality). We have not included cases relating to EU law, which may be covered by our colleagues in the European sub-committee.

Projects, initiatives and policy developments with relevance to this sub-committee

The leave given to unaccompanied children whose asylum claims are refused but are not considered suitable for forced return due to their age was brought into the Immigration Rules on 6th April 2013 (HC 1039 Unaccompanied children). The effect of the rule change is that recipients of this leave may no longer fit the criteria for Department of Work and Pensions benefits as the eligibility criteria referred to 'leave outside of the rules'. ILPA, working with the Housing and Immigration Group, wrote to the Home Office seeking clarification on the impact of the new change. This matter remains unresolved at the time of writing. The name of that leave also changed to 'UASC leave'.

Members contributed comments through the Refugee Children's Consortium on the current Home Office guidance instruction 'Processing an asylum claim from a child' which is currently being updated. At the time of writing we are expecting further consultation on a revised document.

The European Council for Refugees and Exiles is coordinating a piece of research across seven member states under the Right to Justice funding stream of the European Commission. The research is looking at the availability and quality of legal advice to unaccompanied children. ILPA is represented on the Advisory board and ILPA's sub-committee co-convenor Judith Dennis is conducting the UK research.

Earlier this year there was a cross-party parliamentary inquiry into asylum support for children and young people, led by former children's minister Sarah Teather MP, supported by The Children's Society. The inquiry found widespread examples of families in extreme poverty, on levels of support falling far below mainstream benefits with many children and families being forced to live in inhabitable and distressing living arrangements. See http://www.childrensociety.org.uk/sites/default/files/tcs/asylum_support_inquiry_report_final.pdf

In addition to the Home Affairs Select Committee report on asylum, two of the most significant reports scrutinising government policy with regard to children of interest to the sub-committee were published this year.

In December 2012 ILPA's Legal Director Alison Harvey and ILPA's sub-committee co-convenor Baljeet Sandhu gave evidence to the Joint Committee on Human Rights into their enquiry on the rights of unaccompanied migrant children in the UK. In June 2013 the Committee published its report amongst the many helpful observations and recommendations was the JCHR's support of the appointment of guardians for separated children, which ILPA has long supported. The Committee is still waiting for the Government's response to the report. See <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news/publication-of-first-report-human-rights-of-unaccompanied-migrant-children-and-young-people/>

In October the Independent Chief Inspector of Borders and Immigration published its report into the Home Office's handling of asylum claims by unaccompanied children. Amongst its recommendations (all accepted by the Home Office) was that the Home Office 'applies the law consistently and correctly to children's asylum claims regardless of where they are considered'. Alarming though it is that the Home Office should have to be told this by the Chief Inspector, it is welcomed by the sub-committee! See <http://icinspector.independent.gov.uk/home-office-committed-to-the-welfare-of-unaccompanied-children-seeking-asylum-but-significant-improvements-are-needed-in-delivery/>

Reports by NGOs this year included the Coram Children's Legal Centre report on age disputes, with a particular focus on how local authorities approach challenges to their process and conclusions. See http://www.childrenslegalcentre.com/index.php?page=happy_birthday?

The Refugee Council and The Children's Society published its review into the care and support for trafficked children, which had been commissioned by the Home Office. Unsurprisingly, the current arrangements were left wanting and several recommendations were made, including a call for guardians. http://www.refugeecouncil.org.uk/assets/0002/9408/Still_at_Risk-Report-final.pdf

Co-convenors: Judith Dennis and Baljeet Sandhu

DETENTION AND ASYLUM FAST TRACK SUBCOMMITTEE REPORT

Legal practitioners working in the field of immigration detention may have been relieved that the Government has not abolished legal aid for detention matters, but they are now prevented from providing legal aid advice and help on matters that have a direct bearing on a person's continued detention and threatened deportation. That is particularly the case with Article 8 private life and family life matters. With further attacks aimed at depriving immigrants of their in-country appeal rights, and their right to access judicial review, the future looks bleak for anyone who may care for rights in the UK.

Recent events have highlighted problems with the detention estate including a fire at Campsfield House (thought to have been started by a suicidal detainee); the tragic death of a Pakistani man in Pennine House short term holding facility on 26 July 2013; the tragic death of another Pakistani man who died unaccompanied on a train to the northwest hours after he was released on medical grounds from Colnbrook IRC; the inquest into the death during removal of Jimmy Mubenga that uncovered a shocking story of a cruel deportation system, of racism and inhumanity, and returned a verdict of unlawful killing; of detainees at Yarl's Wood IRC who are reported to be 'facing sexual abuse'; and the continuing detention of pregnant women.

Members of the sub-committee have continued working in this hostile environment with the aim of ensuring that what few rights remain are protected and can be exercised by our clients. But the Home Office is fighting hard to restrict and deny rights. In the recent case of David Francis ([2013] EWHC 2115 (Admin) – 17/7/13) that is now before the Court of Appeal, the Secretary of State is arguing that she has no discretion but to detain where immigration detention follows a recommendation for deportation made by a criminal court, and that no damages arise from a claim for unlawful detention where the power to detain derives from paragraphs 2 and 3 of Schedule 3.

With this hostile environment in mind the sub-committee is working to defend and develop what protections may exist and be possible for detainees. We recently took part in the First-tier Tribunal workshop on immigration bail, feeding back details of the concerns raised and practical solutions discussed through the ILPA membership. Members of the sub-committee have also been involved with working with NOMS and Probation Trusts on offender management issues for foreign nationals, including the provision of beds in Approved Premises and delays arising in allocating accommodation for detainees seeking release where probation approval must be sought.

We have also been heartened by the news that the Migrant Law Project has gained permission to apply for judicial review on behalf of Detention Action so as to challenge the legality of the detained 'fast-track' procedure. That case is to be heard in March next year and we remain hopeful that it will succeed. Details about this case have also been circulated by ILPA, alongside a call for evidence to support the legal case.

Co-convenors: Pierre Makhlof, Steve Bravery (to September 2013) and Kay Everett

ECONOMIC MIGRATION SUBCOMMITTEE REPORT

This subcommittee met nine times during 2012-13, and in general attendance by members has been good. The key issues addressed over the year are as follows:

Business User Forum

Members of the subcommittee have been regular attendees of the Home Office's new Business User Forum. Following the re-structure at the Home Office following the disbandment of the UK Border

Agency and the appointment of a new Director General for “UK Visas and Immigration” (Sarah Rapson – previously of HM Passport Office), the Home Office (and “UK Visas and Immigration” in particular) have spoken at great length about improving customer service. This has included the recent “customer service week” although it must be said that this historic event appears to have failed to capture the public’s imagination.

Genuineness Test

Despite the announcement by the immigration minister of a period of “policy stability” there have been 12 Statements of Changes in Immigration Rules since the last AGM. These have included significant changes to routes commonly discussed by this subcommittee, with perhaps the most significant being the introduction of a subjective “genuineness” tests. This was first introduced to the Tier 1 (Entrepreneur) route by HC 943 in January 2013 and gave decision makers the power to determine whether a particular applicant was a genuine entrepreneur or not. In addition to concerns about the ability of Entry Clearance Officers and Immigration Officers to judge whether somebody would make a good entrepreneur or not, the introduction of a subjective test to the supposedly objective Points Based System is of grave concern given that there is no full right of appeal for Entry Clearance applications, a situation which will be made even worse should the proposals in the new Immigration Bill to remove in-country rights of appeal come into force.

Not content with introducing subjectivity to the entrepreneur category, further “genuineness” tests were introduced through HC 628 in September. Genuineness tests requiring the subjective judgement of a decision maker were introduced to the Tier 2 (Minister of Religion), Tier 2 (General), Tier 4 (Student) and Tier 1 (General) categories. The subcommittee is keen to compile a database of anonymised decisions citing “genuineness” reasons under the Points Based System.

Priority Postal Applications

The Home Office initially piloted and then, following feedback which included comments from members of the subcommittee, rolled out a priority postal application route for Tier 2 in-country extension applications. Members of the subcommittee are generally positive about this new application method.

Changes to Public Enquiry Office Appointments

Lack of availability of Public Enquiry Office appointments was reportedly put down to the unscrupulous “harvesting” of appointments. To combat this, the Home Office first introduced a £100 booking fee, followed by a requirement to pay the entire premium processing fee up front. Members report that Public Enquiry Office appointments are now far easier to obtain. However, the representatives’ appointment booking service has now been disbanded. The full effect of these changes have yet to be felt, but members will continue to monitor and report on the situation.

Review of Tier 1 (Investor) and Tier 1 (Entrepreneur) categories

Members of the subcommittee have been involved with the Home Office’s review of the Tier 1 (Investor) and Tier 1 (Entrepreneur) categories. This included a meeting attended by various interested parties, including members of the subcommittee and the Home Office. The problems with these two categories and proposed changes were discussed. It was suggested by the subcommittee that there should be a mechanism for the acquisition of points by providing a public benefit. For example, additional points could be awarded where investments are made into particular business sectors for Tier 1 (Entrepreneur), and in relation to where the monies are to be invested under the Tier 1 (Investor) category. These suggestions received a positive response which may result in future rule changes which may benefit those sectors.

Passport return pilot

The Home Office first consulted on and are now piloting a passport return service. Members of the subcommittee contributed to a response to the consultation. Under this scheme, in-country applicants applying to extend their Tier 2 leave are having their passports returned following receipt of their application. This is accompanied by a letter confirming that the applicant may travel provided that they still have extant leave (other than s.3C leave) upon their return to the UK. However, at this time only the main applicant's passport is being returned automatically, not their dependants' or any biometric residence permits so, particularly in the case of someone whose last leave was endorsed on a biometric residence permit or where other members of the family need to travel, it is difficult to see what has been gained from this scheme.

Members of the subcommittee have been involved in various other Home Office consultation exercises and assisted in ILPA's responses to those, including those relating to "Strengthening Illegal Working" and the recent Immigration Bill. Members have volunteered their time to arrange and attend meetings, collate information and prepare responses. We would like to express our gratitude to all those who have devoted a huge amount of time to these tasks.

We would like to thank all the ILPA members and the Secretariat for their participation and support of the subcommittee.

Co-Convenors: Philip Barth, Tom Brett Young (from March 2013), Smruti Jeyanandhan (to February 2013) and Philip Trott

EUROPEAN SUBCOMMITTEE REPORT

This Sub Committee met regularly throughout the 2012/13 year at approximately 4 – 6 week intervals. Attendance at meetings have been in the range of 10 – 15 people at each meeting but there has been a fairly high turn-over of participants.

We welcome the accession of Croatia as a member state on 1 July 2013 (though we note that the UK Government has decided to impose transitional arrangements on the free movement of workers) and look forward to the final lifting of transitional arrangements for Bulgarian and Romanian workers on 1 January 2014.

Many thanks also to Niovi Vavoula, the Queen Mary University of London Phd student who has been assisting the Sub Committee this year and has provided regular updates on Schengen, SIS and VIS.

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

The effects of the CJEU's judgment in *Zambrano*, which effectively creates the possibility that EU citizens may enjoy EU family reunion rights without having to exercise a free movement right have been on going. There have been a series of decisions of the CJEU relevant to the issue in 2012/13 all of which have confirmed that this right exists and must be tested on the basis of the genuine enjoyment of EU citizenship. However, the CJEU has been fairly firm on the requirement that the family show that if they are not allowed to remain in the home Member State then they will be required to leave the EU altogether. If there is the possibility that the family could move to another Member State and thus enjoy family life there then, according to the CJEU, this is the correct approach (see C-87/12 *Ymeraga*). However, the CJEU has recently cast doubt on the UK's interpretation of the C-434/09 *McCarthy* judgment as excluding dual British Irish citizens from enjoying EU family reunion rights in the UK where they have not obviously moved (or even where they have). In C-86/12 *Alokpa*) the CJEU found that French babies born in Luxembourg and always

having lived in Luxembourg are entitled to enjoy EU family reunion with their third country national mother but subject to a resources and sickness insurance requirement. The Sub Committee has also prepared a note for practitioners on McCarthy.

European Operational Guidance

After an ILPA member helpfully shared with us the European Operational Guidance last year which was submitted on the basis of an FOI request, the subcommittee made a further request this year for the most up to date Guidance. The subcommittee prepared a very detailed analysis of the Guidance by subject matter, noting the main difficulties between the guidance and EU law as interpreted by the CJEU. The Guidance was circulated to all Members and the Sub Committee's detailed analysis is available on the ILPA website. The areas we covered include:

- Suspect marriages and civil partnership of convenience;
- Extended family members;
- Evidence of nationality and identity;
- Derived (derivative) rights of residence;
- Requests for documents;
- Residence under the mental health act;
- Detention;
- Public policy, public security and public health;
- Adoption.

We await a response from the Home Office. Many thanks to everyone who assisted with this project, your work was most appreciated. We will keep everyone informed of the outcomes and we encourage ILPA members to use the analysis for the purposes of information and assistance when assessing and advising on the compatibility of Home Office actions in respect of EU citizens and their family members based on the Operational Guidance.

Abuse of Rights and Sham Marriages

The UK was one of the four governments which signed the letter to the Presidency of the EU in May 2013 complaining that their countries were suffering from EU citizens abusing their rights, claiming social benefits and entering into sham marriages. The Presidency (Ireland) passed the letter to the Commission which sought further particulars from the four Member States to identify the extent of the problem. None of the Member States have come up with figures regarding the abuse of social benefits. In the meantime, an academic study in July carried out by researchers at the LSE and CEU indicated that there is no evidence of substantial benefits abuse by EU citizens moving from one Member State to another (papers.ssrn.com/sol3/papers.cfm?abstract_id=1976014), the Centre for European Policy Studies published in October 2013 an e book on the subject and also in October 2013 the Commission published [a study, carried out by a consultancy](#) which comes to the same conclusion (apparently only 38,000 EU citizens are claiming job seekers allowance in the UK and are more likely to be in employment than British citizens). The sham marriages issue is also for the moment lacking in any substantial evidence from the Home Office. The European Commission is still waiting.

Meetings/Consultation with the Home Office and Submissions to Parliament

The Sub Committee has had regular meetings with the Home Office European Unit over the year however, turn over in the unit has been problematic for us. Members of the Sub Committee have been invited to assist with the forthcoming inspection of the European Unit by the Chief Inspector of Borders, John Vine. The Sub Committee also submitted evidence to the House of Lords inquiry into the successor of the Stockholm Programme.

The Sub Committee has engaged with the Home Office regarding the matter of charging. We have not yet received a satisfactory answer as to the legal basis of the charging or the level of the fee.

Information and Updating

The Sub Committee is very grateful to a number of people including Rowena Moffat, Bojana Asanovic, Siobhan Lloyd and Basmah Saqib for their hard work providing summaries and analyses of decision of the UT, the CJEU and the ECtHR. All of these case summaries can be found on the ILPA website.

The Sub Committee has also produced the quarterly European Update and once again we thank Professors Steve Peers and Kees Groenendijk for their really helpful work providing us with the legislative updates and updates on the EC Turkey jurisprudence.

The Sub Committee hosted a substantial conference on the UK's implementation of free movement of workers in April together with Queen Mary University of London and the EILN. Representatives from the European Commission were present and spoke as well as the now departed President of the Upper Tribunal and lawyers from a variety of other EU countries. It also held the annual seminar on free movement of persons once again with the present of UT judge McCarthy, and Mr Meduna from the European Commission.

FRONTEX

The Sub Committee has followed with interest the new FRONTEX package and updated itself on the developments.

Join the Sub Committee

The Sub Committee is only as strong as its members. We encourage anyone interested in EU law to come forward and join the EU Sub Committee.

Co-convenors: Alison Hunter and Elspeth Guild

FAMILY & GENERAL IMMIGRATION SUBCOMMITTEE REPORT

The Family and General Immigration subcommittee has met six times since the last AGM and has been busy during this year in coping with the results of the 9 July 2012 immigration rule changes and the consultations before the present Bill was published, and now in working on the Bill. We also facilitated all-members' meetings on the new immigration rules on 18 March 2013, on the Home Office consultations on 23 July 2013 and on the Immigration Bill on 14 October 2013. We were involved in ILPA's response to the Low Commission, set up by the Legal Action Group to look at the availability of advice in the wake of the ending of legal aid for most immigration matters, and the Office of the Immigration Services Commissioner's consultation on changes to its Code of Practice.

Family rules and decisions

The 9 July 2012 rules, HC 194, created huge problems and great confusion for many applicants and advisers. The evidence required by Appendix FM-SE is inordinately complicated, in particular in relation to business and self-employed people and the rules contained many errors, pointed out by ILPA; some were corrected in the next rule change, HC 565.

The extension of these rules in HC 820, which had no transitional provisions, compounded the injustice for people who had applied before the rule change but whose applications were decided afterwards, in particular in relation to children who had been here seven years who now had to provide more evidence about why it would be unreasonable to force them to leave. ILPA continues to press the Home Office on the operation of the rules.

Cases where the sponsor is claiming a listed disability benefit have also been complicated, in providing the specific type of evidence required to show the claim. Any family decisions which the Home Office makes outside the rules on human rights grounds are made under the new Article 8 definition, but previous caselaw, eg *Chikwamba*, *Beoku-Betts*, is still relevant. The case of *MF (Nigeria)*, upheld in the Court of Appeal on 8 October, [2013] EWCA Civ 1192, is helpful in confirming that ‘the real Article 8’ is still out there and relevant, but the influence of the new rules is seen in all family decisions. The only way to get ‘the real Article 8’ considered is through appeals; when people have a right of appeal against removal, if the Home Office makes such a decision, rather than leaving them waiting in limbo with no status in the UK, or through judicial review.

The legal challenge to the financial requirements of the rules on spouses, *MM*, [2013] EWHC 190, dragged on throughout the year - the judicial review was heard in April and the decision came out in July. The decision was helpful, finding that a rigid demand of £18,600 is unreasonable and disproportionate and that the Home Office should rethink. It did not; it successfully applied to appeal to the Court of Appeal and in the meantime has ‘paused’ consideration of cases where all other requirements apart from £18,600 are met, and the person would in fact be able to support his/her spouse. Practice at the Tribunal seems to vary; some Presenting Officers are requesting, and being granted, adjournments on this basis; some cases have gone ahead and have been allowed on human rights grounds. The Court of Appeal hearing has now been fixed for 3 and 4 March 2014; it is unreasonable to keep other people’s cases pending for so long, in particular when they are entry clearance cases and couples are kept apart. Please pass examples of such cases to ILPA.

The subcommittee was involved in ILPA’s response to the All-Party Parliamentary Group on Migration’s inquiry into family migration, concentrating on spouses and elderly dependent relatives. This was published on 10 June 2013, making use of ILPA’s response. We also responded to the Home Office consultation on proposed changes to the immigration rules from 1 December 2013 on family members of the armed forces, opposing plans bringing these more closely into line with the requirements of Appendices FM and FM-SE.

The eventual implementation of the *Zambrano* decision was by amendments to the EEA regulations, creating ‘derivative residence permits’ which came into effect from 12 November 2012. Very few such permits have been issued – the Home Office continues to drag its feet in making any decisions. A member had a case where a breastfeeding mother was told that she could leave her baby to be cared for by her husband. If the other parent is in the UK it is assumed that he/she is able to care for the child, even when the marriage has broken down and there is no continuing contact with the child. Entry clearance applications have been routinely refused. The case of *MA & SM (Iran) (2013)* UKUT 380 (IAT) usefully summarises the *Zambrano* result and has helped some entry clearance appeals to succeed.

From 28 October 2013, people applying for indefinite leave to remain as spouses and partners have to meet both the higher B1 standard of English language, and to pass the Home Office's Life in the UK test. Applicants for naturalisation will have to pass the Life in the UK test, and can no longer rely on an ESOL qualification. Applicants for entry clearance are still at present able to rely on the A1 language level. The subcommittee has helped to publicise these changes and will be monitoring the effects – this may mean people applying for extensions rather than settlement, and thus being subject to the restrictions on access to services proposed in the new Immigration Bill for longer periods.

Home Office administration and delays

The subcommittee has had ongoing correspondence with the Home Office about several practical issues, pressing for improved administration. We wrote about the disproportionate effects on people of their applications being declared invalid, usually after their leave to remain had expired. The Home Office 'evidential flexibility' policy is not being operated consistently, or at all, and applications are invalidated for silly reasons, and for Home Office failures to take the fees properly – caseworkers do not appear to be familiar with the case of *Basnet* on fees. The Home Office application forms are often confusing and contradictory; the subcommittee has pressed for improvements and has also written about some of the common problems with biometric residence permits.

On 25 June 2013 appeals against the refusal of family visit visas were abolished – the subcommittee has tried to note and monitor changes in dealing with applications since, now that there is no independent review of the decision, as nearly half the appeals heard had been successful. It appears that the Tribunal had let staff and judges go, forgetting that there would be a lot of these appeals still in the pipeline, as well as the remaining appeals, so that the delays in hearing immigration appeals have grown. At the time of writing, hearing dates in March and April 2014 are common. ILPA has also noted the on – off – on again – off again nature of debate on creating a power for the Home Office to take bonds of up to £3000 for sponsors of visitors, with the intention of ensuring they will leave at the end of their visits – it was off again at the time of writing, 6 November 2013.

The subcommittee discussed the Home Office 'racist van' campaign and its unintended effects, creating unity among almost everyone else outside that it was a mistake. It was reported to have persuaded one person to leave the country after he read about it in *The Guardian*, but the Home Office evaluation of this and its other short-term publicity campaigns suggested 60. The Minister confirmed on 31 October that the van would not be used again.

Legacy continued to be an issue throughout the year. JRs of delays in cases, and of granting discretionary leave rather than indefinite leave continued. The Chief Inspector of Borders and Immigration published a scathing report on legacy on 22 November 2012, which he followed up with a further report in June 2013 and the Parliamentary Home Affairs Select Committee continues to demand quarterly reports on its progress. It is unclear whether it is anywhere nearer the end. The department dealing with these people's cases is now called the Older Live Cases Unit, rising phoenix-like from the incomprehensibly-named Case Audit and Assurance Unit, itself descended from the Case Resolution Directorate. None have succeeded in making decisions on all the cases promised to be concluded by July 2011.

Students

London Metropolitan University, after having its sponsor licence revoked in August 2012 and taking a judicial review of that decision in September 2012, was able to continue to provide education for its existing international students while its licence remained revoked. Its licence was

reinstated in April 2013 and it settled its judicial review in October 2013, it is not clear on what terms. But the ripple effects of this on the decisions of international students on coming to the UK and the general 'hostile environment' being created for anyone with questions about their immigration status, and by implication for all, continue. The difficulties for students wanting to leave the UK, or to make fresh applications to the Home Office, when the Home Office has not returned their passports, continued through the year. Problems are reported with the on-line application system and with incorrect Home Office information about procedures for family members. The Home Office has set up an email 'educators' helpdesk' to answer queries from Tier 4 sponsors; it is to be hoped it will work better than the employers' helpline.

New Immigration Bill

The Queen's Speech on 8 May 2013 included the promise of a new Immigration Bill, which was published on 10 October 2013 and the second reading was on 22 October 2013. Over the summer, the Home Office had put out consultation documents on proposals to require private landlords to check the immigration status of their tenants and prospective tenants, and both the Home Office and the Department of Health put out consultations on access to the National Health Service and the proposal of a levy added to immigration fees. ILPA responded to all these consultations, opposing the proposals and explaining some of the problems there would be in implementing them. By the time this report is read, the Commons Committee stage will be completed, at breakneck speed, by 19 November. The Committee went through clauses 1-14 in the first day of debate. The main part of the Annual Report discusses the Bill in detail but subcommittee members, as well as many other ILPA members, have been working on amendments and briefings to parts of the Bill concerned with family appeals and Article 8, the increased internal immigration control measures, fees for immigration applications and the oversight of the Office of the Immigration Services Commissioner. This Bill will be a main area of work through the next months as it continues through Parliament. Please do join us in this work!

Co-coordinators: Pat Saini and Sue Shutter

IMMIGRATION OFFENCES SUBCOMMITTEE REPORT

Only two meetings were held by the subcommittee over the last 12 months (in July and September 2013) and the aim of both meetings was to try and reinvigorate activity on the part of the subcommittee at a time when significant changes, in particular to public funding, were at the forefront of the mind of many practitioners.

A further meeting scheduled on 5 December 2013 to which we hope members with an interest in this area will attend with the aim being to consider recent decisions in the Court of Appeal in both the criminal context in terms of sentencing for those with document offences as well as in the civil context in terms of the rolling back of right following the decision in SS (Nigeria).

Work has already begun on examining provisions within the new immigration bill with the areas of particular concern arising from extension of powers to immigration officials, the denial of an opportunity to make further applications for bail for periods of 28 days in the absence of material changes of circumstances as well as a new regime for tackling the issue of "sham" marriages which are likely to see increased use of immigration type of powers as the regulatory regime involved will inevitably have an increased impact on particular sections of the community.

The intention will be to try and create an exchange of information opportunity from those practising in related fields such as prison law and crime.

Richard Thomas and Jawaid Luqmani continue to be the co-convenors with Jed Pennington undertaking a valuable liaison role within ILPA.

Co-convenors: Richard Thomas and Jawaid Luqmani

LEGAL AID SUBCOMMITTEE REPORT

Meetings

When considering this year from a purely legal aid perspective, it has been relentless. Before firms have had an opportunity to properly digest and adapt to the impact of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, they were faced with the spectre of more cuts on the immediate horizon.

Reviewing the 2012 Legal Aid subcommittee annual report, it is clear that we have very much picked up, from where we left off last year.

The Legal Aid Subcommittee has met three times since the last AGM, to discuss the impact of Legal Aid, Sentencing and Punishment of Offenders Act 2012, ILPA's response to the Ministry of Justice's Transforming Legal Aid Consultation, and more recently to discuss ILPA's response to the Ministry of Justice consultation: Judicial Review – Proposals for Further Reform, as well as the importance of maintaining the momentum in the campaign against the cuts proposed in the earlier consultation.

Alison Harvey attended various meetings with the Legal Aid Agency and the Civil Contract Consultative Group. Other members of the subcommittee have also attended meetings, which has been of great assistance. On 30 September 2013 ILPA gave evidence to the Joint Committee on Human Rights' enquiry into the implications for access to justice of the Government's proposed legal aid changes. In April 2013 the Legal Services Commission became Legal Aid Agency, part of the Ministry of Justice and the Legal Aid, Sentencing and Punishment of Offenders Act 2012 came into effect.

Work which remains in scope since April 2013:

- Asylum (including applications for subsidiary / Humanitarian Protection and applications based on Articles 2 & 3 of the European Convention on Human Rights);
- Special Immigration Appeals Commission work (i.e. any appeal to the Commission, however it arises – asylum, deportation, deprivation of citizenship);
- Judicial Review (though with very significant specific exclusions for immigration as described below);
- Work relating to bail and temporary admission;
- Applications on behalf of victims of domestic violence (including from family members of EEA nationals);
- Applications for leave to enter or remain on behalf of victims of trafficking (where there has been a positive reasonable grounds or conclusive grounds decision that the person is a victim of trafficking)
- Advocacy for the above categories in the First Tier and Upper Tier Tribunal and the Court of Appeal and Supreme Court;
- Asylum support work (relating to accommodation) but not advocacy.

Work out of scope since April 2013:

- Anything not listed above, eg applications reliant on Article 8, Entry Clearance applications, so most immigration and EU matters
- To avoid a breach of Article 6 of the European Convention on Human Rights (which currently is held not to apply in immigration cases), people can apply for Exceptional Funding, however to date based on the information provided by the Legal Aid Agency as far as we know only 2 or 3 cases have secured funding through this route, despite the Public Law Projects dogged efforts to assist people with their applications for exceptional funding. By July 2013 the Legal Aid Agency reported only one grant of funding for an immigration case, and only after a pre-action protocol letter was sent. The Public Law Project has calculated the rate of success for non inquest cases to be less than 1%.
- In addition firms no longer have devolved powers when applying for funding for Judicial Review matters.
- Legal aid is not available for judicial review claims in relation to an issue in respect of which an appeal or judicial review of the same or substantially the same issue was resolved adversely to the applicant/appellant, less than one year previously or where judicial review is sought of removal directions given not more than one year after a decision was made to remove the individual or any appeal against such a decision was determined.
- With respect to applications for funding certificates, the Legal Aid Agency require firms explore the possibility of Conditional Fee Arrangements and attempt to obtain insurance to cover the cost of legal action. Reports to date of members' experiences of seeking quotes for 'After the Event' insurance for undertaking Judicial Review on the basis of a Conditional Fee Arrangement seem to bear out the hypothesis that there is simply no market for this, however much the Legal Aid Agency might wish it were otherwise. The Agency has indicated it will look into the matter.

Solange Valdez, Sonia Routledge and Jackie Peirce, have kindly shared the information they have gleaned from having read through the contract, guidance notes etc, pointing many people in the right direction when the complexities of have stumped us. It is noted that many practitioners have benefited from Solange Valdez' in-depth knowledge and understanding of the contract.

Outcome of Tender Process

Most firms were issued with a maximum of 100 matter starts per branch, which the Legal Aid Agency informed us, was as a result of more firms entering the tendering process. Some firms anticipated and planned for this, whilst other firms were caught by surprise. Firms that may have missed out on matters starts in the previous tendering round, returned to the arena, whilst others responded by giving up on legal aid.

In an attempt to try and gather data about the impact these changes had had on an individual's ability to find a lawyer, Alison Harvey prepared a questionnaire, which was circulated to firms and NGOs trying to capture and document people's experiences

Transforming Legal Aid Consultation

For what appear to be ideological reasons, more cuts were proposed in April 2013. In summary the changes proposed are as follows:

1. A Residence Test : removing legal aid for those without 'strong connections' to the UK
2. Removing Legal Aid for Judicial Review Permission Applications
3. Merits Test- removing legal aid for borderline cases
4. Barristers fees to be cut
5. Removal of the 35% uplift to cases where permission was successfully obtained in cases before the Upper Tribunal
6. Reduction in experts fees

7. Restrictions on criminal legal aid for prison law matters

ILPA responded to the consultation set out the inherent unfairness in depriving people of an opportunity to challenge decisions made in relation to them, as a result of not having the private means to enable them to do so, and no longer being able to access legal aid. ILPA also pointed out that fewer and fewer firms would be willing to continue taking on legal aid work, if practitioners were not paid properly, as it was becoming less financially viable to do so.

In particular, thanks to Sonia Routledge, Alison Harvey, Jed Pennington, and Adrian Berry, for all their sterling work drafting ILPA's response. Also thank you many others who contributed. Many firms and chambers prepared their own responses, which added more weight to what was being said.

The government has faced scathing criticism of the proposals. Treasury Counsel wrote to the Attorney General expressing their concerns about the proposals, which they said would undermine the accountability of public bodies "to the detriment of society as a whole and the vulnerable in particular".

Lord Neuberger, President of the Supreme Court has stated that reduced access to legal aid could lead to inefficient claims costlier for the court system. He has stated that if people had to drop claims, it would be "a rank denial of justice and a blot on the rule of law".

The campaign against these proposals must continue as Chris Grayling is determined to press ahead. In the Government's response to the "Transforming Legal Aid" consultation it was stated that all the proposals above would be implemented, although the Government would consult further on the proposed payment mechanism for judicial review cases. Small concessions were made in relation to the "residence test" but this will be implemented in the main, to be brought into force by secondary legislation in early 2014.

The residence test, as currently framed, would mean that people wishing to claim any civil legal aid (not just immigration) will have to prove to their lawyer that they are living in the United Kingdom lawfully, and have been for at least 12 months, with lawyers having to decide whether or not a person is lawfully resident in the UK. Signed statements will not be permitted to satisfy the evidence requirement of the test. More detail on what will be acceptable evidence will be set out in secondary legislation. However:

- The Government has decided that babies under 12 months old will continue to be eligible for legal aid despite not having 12 months' lawful residence. However, they will still need to be lawfully resident.
- The test will not apply to the following categories of case (which the Government explains as broadly relating to an individual's liberty, or where the individual is particularly vulnerable or where the case relates to the protection of children):
 - Detention cases and challenges to the lawfulness of detention by way of judicial review
 - Victims of trafficking (as defined in the Legal Aid Sentencing Punishment of Offenders – so people with a positive reasonable grounds or conclusive grounds decision). With restrictions – will not cover judicial review.
 - Victims of domestic violence and forced marriage – with restrictions, will not cover judicial review
 - Protection of children cases
 - Special Immigration Appeals Commission

- Refused asylum seekers who need advice to make a fresh claim and when making a challenge to a negative decision on a fresh claim by way of judicial review
- Judicial review of certifications by the Home Office under sections 94 [Appeal from within the United Kingdom: unfounded asylum or human rights claim] and 96 [Earlier right of appeal] of the Nationality, Immigration and Asylum Act 2002
- Short breaks in residence (up to 30 days in aggregate) will be permitted with the 12 months residence treated as continuous.

Ministry of Justice consultation: Judicial Review – Proposals for Further Reform

On 1 November 2013 ILPA submitted its response to the consultation, which also raised issues about the funding of these matters through legal aid. Responses were sought in connection with a number of issues including:

- Do you agree that providers should only be paid for work carried out on an application for judicial review in cases either where permission is granted, or where the Legal Aid Agency exercises its discretion to pay the provider in a case where proceedings are issued but the case concludes prior to a permission decision? Please give reasons.

ILPA responded by setting out the importance of Judicial Review as a remedy, to individuals who have no other avenue through which to seek redress. The importance of legal aid and the dangers of further depriving people of the means to challenge decisions, was underlined. The importance of preserving access to judicial review takes on even greater significance in the context of the Immigration Bill which will restrict appeal rights.

Carita Thomas, Rowena Moffatt, Ronan Toal, Sonia Routledge, Alison Harvey and Adrian Berry worked incredibly hard in preparing and finalising the consultation response, so many thanks are owed to them.

This year Sonia Routledge stood down as co convenor of Legal Aid Subcommittee. We are very grateful to her, for all of her efforts, which include her contributions to the consultations, her generosity in sharing her knowledge and experience of dealing with the Legal Aid Agency. It was a pleasure co-convening the sub committee with Sonia.

Carita Thomas has kindly agreed to become a co convenor. She is already a very active campaigner on legal aid issues, and so is welcome addition to the cause.

For the year ahead, the priority of the subcommittee will be to continue campaigning against further cuts in legal aid and access to justice. This work will continue in consultation and coordination with other representative bodies, NGOs, charities and sympathetic parliamentarians. We encourage and welcome the participation of members in this work. It is always extremely helpful for ILPA to be informed of initiatives being pursued by members this respect, whether lobbying MPs, writing letters or articles to the press or for publication on online for or attending meetings concerning legal aid.

Co-convenors: Ayesha Mohsin, Sonia Routledge, Carita Thomas

REFUGEE SUBCOMMITTEE

This report is very brief as this sub-committee was set up earlier this year and so far there have been two meetings, on 8th May 2013 and 25th September 2013. The number of attendees has been small so far.

This sub-committee was set up as it was felt that refugee issues were important and therefore, there should be a dedicated ILPA forum.

Although everyone appeared to be constantly distracted this year by constant consultation papers and Legal Aid Agency/Legal Aid Sentencing and Punishment of Offenders Act 2012 struggles, Eric and Ana wish to continue with the effort. Our main aim at this stage is to monitor upcoming changes in legislation and report on issues/challenges affecting practitioners.

Co-convenors: Eric Fripp and Ana Gonzalez

ILPA NEW YORK SUBCOMMITTEE

The subcommittee has met once since its inception in mid-October this year.

We would like to thank all ILPA members for welcoming us and look forward to growing in numbers and contributing further in the coming year.

Co-convenors: Anushka Sinha, Jennifer Stevens and Tanya Goldfarb

ILPA SOUTHWEST SUBCOMMITTEE REPORT

The idea of an ILPA South West network was initiated by Natasha Gya Williams who established the group formally in the autumn of 2008. In 2009 Natasha was joined by Rosie Brennan and in 2013 by Glyn Lloyd. Natasha, Rosie and Glyn now co-convene the group which has a network of practitioners across the South-West. The aims of the network are to:

- develop systems for information dissemination, support and feedback for members distributed over this large geographical region;
- hold training events and meetings in the South West;
- engage where appropriate with the Legal Aid Agency and Home Office raising any geographically specific issues and report back to ILPA nationally with these issues.

Over the last five years we have held bi-annual conferences in Bristol (which is the most geographically central location) each spring and autumn and these have become established and successful events attended by a significant number of members. We have also established a working link with the Advice Network for the South West and so we are able to liaise with colleagues working in the advice sector who are often the first contact for groups such as asylum seekers.

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, Swindon and Cheltenham, as well as Newport, Cardiff and Swansea in Wales. There is a wide variety of work being undertaken by practitioners in the region and several of the locations are asylum dispersal areas.

The work undertaken this year includes.

Database: continuing to update and consolidate a database of ILPA SW members so that email information pertinent to the South West can be disseminated;

Bi-annual conferences/training events: continuing the tradition of holding bi-annual conferences/training events. In 2012-2013 the following events were held: May 2013 and October 2013. The conferences covered a range of topics and attempted to respond to training needs identified by our South West members. Since November 2012 our conferences have been hosted at the offices of Burges Salmon solicitors who generously provide conference space, support, facilities and refreshments to us at no charge.

We are extremely grateful to the following guest speakers who kindly gave up their valuable time to prepare and present training at our 2012-2013 events:

- Adrian Berry (Garden Court chambers) – ILPA EEA training session: “Direct rights, derivative rights and rights yet undiscovered” (October 2013) This was the first paid ILPA training offered to South West membership in two years, and had a solid uptake of 18 attendees.
- S Chelvan (No5 Chambers) – Asylum claims and sexual identity (May 2013)
- Natasha Gya Williams (Nicholas Moore Solicitors) – Family rules update, Points-Based System Tier 2 sponsorship update and Work options when Tier 2 does not fit (October 2013)
- Dr Nick Gill (Exeter University) – Asylum appeal success rates (May 2013)
- Judith Hockin (Veale WasbroughVizards) – Points-Based System work update (May 2013)
- Glyn Lloyd (Morgan Cole LLP) – Points-Based System Tier 2 sponsorship update and Update on Immigration rules (October 2013)

The Legal Aid Agency declined invitations to attend either meeting in 2013.

Kenny Chapman (UKBorderAgency/Home Office) attended our meetings in May 2013 to answer questions and give an update. He was unable to attend the Oct 2013 meeting but gave an email commitment to continue to engage with ILPA South West.

Advice sector links: building a successful relationship with the Advice Network organisation based in Bristol many of whose members deal with immigration cases in Law Centres and Advice agencies. Several advice agencies such as Devon and Cornwall Refugee Support in Plymouth have now joined as ILPA members;

Lines of communication with UK Border Agency/Home Office:

We have had on-going contact and meetings with Public Enquiry Office in Cardiff, and the regional sponsorship licence team based in Portishead.

Up until the disbanding of the Public Enquiry Office representative service in August 2013, the Public Enquiry Office Cardiff was very responsive to regional representative needs; however with the centralised format of booking appointments the Public Enquiry Office Cardiff’s latitude to arrange appointments is no longer available. The Public Enquiry Office Cardiff remains helpful to representatives wishing to canvass immigration issues in advance of lodging applications.

The sponsorship team in Portishead has been very helpful in instances of delays regarding sponsorship system updates (e.g. new Certificate of Sponsorship allocations etc.). Kenny Chapman (now Head of South West Immigration Compliance and Enforcement Team) has attended three out of the last four ILPA South West meetings and has also met with a Plymouth stakeholder group hosted by Rosie Brennan in September 2013. He has been responsive to members’ requests particularly in relation to delays with travel documents, issues around specific cases etc.

Attendance at meetings/engagement with other organisations: Rosie Brennan continues to monitor representation issues in Plymouth following the collapse of the legal aid sector in 2010 by

attending the local asylum and refugee forum in Plymouth and the South West Councils forum in Taunton.

All co-convenors liaise with a number of other organisations such as Advice Network South West, Association of International Student Advisors South West/Wales, AIESEC UK, Law Society etc.

Contact point for ILPA South West members who require referral information or wish to discuss particular legal issues.

Future Steps:

- Continue to build on the formula of inviting guest speakers to address specific concerns expressed by membership.
- Act as regional conduit for raising issues with Home Office locally.
- Continue to grow ILPA membership in region and to consolidate knowledge and experience among more members.

Co-convenors: Rosie Brennan, Natasha Gya Williams, Glyn Lloyd (from May 2013)

ILPA YORKSHIRE AND NORTH-EAST SUBCOMMITTEE REPORT

This year, even more so than those that have gone before, has been notable for the vast changes faced by practitioners both locally and nationally. The post-April changes to funding in legally aided asylum/immigration cases and the changes in the law have kept local practitioners in Yorkshire & the North East busy trying to keep their heads above the water. This has meant that formal subcommittee meetings have not been as frequent as we would have liked. The post-April 2013 (post-Legal Aid Sentencing and Punishment of Offenders) world is yet to fully take effect and we face the looming prospect of changes to Judicial Review funding, cuts to Upper Tribunal funding and the Immigration Bill all coming upon us early next year. Subcommittee members have been active in the region in campaigning but we will need to do more, as so far this has had little impact.

The subcommittee has had formal meetings with Refugee Council at the Angel Lodge Induction Centre, Wakefield to discuss issues affecting new arrivals into the region. The meetings have been useful and we will endeavor to continue them on a biannual basis moving forward. We have also had a chance to see how the Legal Aid Agency's electronic appointment system works from the Refugee Council's side as they are the ones charged with making it work. These meetings with the Refugee Council have also been useful in identifying problems faced by new arrivals.

The last sub-committee meeting took place in May 2013 and had a good turnout. Issues discussed included Legal Aid Changes (initial experiences/feedback/discussion of Legal Aid, Sentencing and Punishment of Offenders Act 2012) and feedback from the visit to the Asylum Casework Team in Leeds.

Alison and members of the sub-committee visited the Home Office at Waterside Court, Leeds. The Home Office explained the system they used in Leeds to categorise asylum cases of new arrivals into the region. It appeared that it was very much a blunt tool, where it seemed the Home Office just used nationality to define which team dealt with a client's case. The '*easier to remove*' nationalities were dealt with by a particular team and '*harder to remove*' nationalities were dealt with by another team. On the whole an interesting but rather worrying insight, which showed that

the Home Office was categorising cases without any individual consideration. It was also of note that many of the Home Office's case owners were leaving their jobs as their roles had been downgraded. This would inevitably lead to de-skilling of those considering asylum cases. There was also talk of getting rid of the case owner model altogether, which was worrying, as it singled a potential return to long-delays without an individual being responsible for a case.

Since that meeting, subcommittee members have been encouraged to actively participate in the Northern Immigration Lawyers campaign being coordinated by Garden Court North against the changes to Judicial Review and the Immigration Bill.

We hope that a further meeting of the subcommittee can be arranged before the end of the year or early in the New Year to discuss the potential impact of the Immigration Bill and changes in Judicial Review.

The subcommittee continues to publicise and encourage members to attend local training events. The desire for local training continues and we hope that this desire will translate into attendance at local events, so that we can continue to arrange local training.

The subcommittee benefits from information from the other subcommittees, which is shared on a monthly basis via the ILPA emails and website. Members are encouraged to join the subcommittees that they are interested in. A list of all subcommittees can be found at <http://www.ilpa.org.uk/pages/subcommittees.html>.

We hope to meet more regularly in the coming year. To this end, if members have issues that they would like to raise at local meetings or training that they would like to see in the region please email Chris or Ish. It is more important than ever that locally members continue to participate and remain active against the scandalous changes affecting our clients.

Thank you to all subcommittee members and ILPA for your continued support and to Ison Harrison who kindly host our meetings.

Co-convenors Ish Ahmed & Christopher Cole



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