ILPA IMMIGRATION LAW PRACTITIONERS' ASSOCIATION
PRESIDENT: IAN MACDONALD QC

Mr G Liddell
Immigration Service Enforcement Directorate
HM Immigration Office
Becket House
60-68 St Thomas Street
London SE1

7 February 2000 by fax 378 9113 and by mail

Dear Mr Liddell

Unfortunately, your letter attaching the draft Immigration (PACE Codes of Practice) Direction 2000 was received on 14 January, too late for us to be undertake any detailed consultation with our members about the proposed Direction. However, we do have a number of comments and requests to make.

Firstly, we would comment that the manner in which this Direction has been drafted is unhelpful and certainly will not assist those subject to the Immigration Services's new powers, or their advisers, to easily understand the rights and protection being offered by the modified PACE codes.

It is helpful to have a schedule, which specifies which paragraph of which code will apply to each power. However, this schedule needs to be accompanied by the full text of each modified paragraph. Immigration detainees and their advisers cannot be expected to have the PACE codes in their possession or to know what they contain.

During the course of the parliamentary debate on the Immigration and Asylum Act 1999, ILPA expressed concern that immigration officers were being given wide ranging coercive powers without being held publicly accountable for their actions. The Government gave a commitment to provide modified codes of practice in response to this criticism. However, unless the modified codes are produced in an accessible and transparent form, this commitment cannot be said to have been met in more than name.

We also have a couple of detailed point to raise in relation to the contents of the Codes. Firstly, we can see no justification in paragraph 2.4 of Code A for deleting the requirement to inform a person, who is to be searched, of the name of the officer conducting the search. In Code A of PACE, the only exception to this requirement is where a person is searched in relation to terrorist offences. ILPA would hope that immigration offenders are not being compared to terrorists for the purposes of the modified codes.

Secondly, we can see no justification for deleting paragraph 2.6 of Code A and, therefore, depriving someone detained and searched in relation to an immigration offence, of the knowledge that he can obtain a copy of the record of his search if he applies for one.

Such detainees will often be those most in need of such information, as they are likely to have very little knowledge of their rights under British law.

ILPA is also concerned about the nature of the proposed Pilot Project. No detail is given about where it will take place, although it appears from press reports that it will be in Newham. Neither is it clear how long the pilot project will last, who will evaluate its success or failure nor what criteria will be used for such an evaluation.

The letter suggests that a major criteria will be the ability of immigration officers to carry out such operational duties in the place of police officers. This, of course, must be an important consideration.

However, as the powers to be used will predominantly affect members of ethnic minority communities, ILPA would have expected that consideration of the impact on such communities would have been central to any evaluation of the pilot project.

ILPA believes that this must be so given the fact that the Race Relations (Amendment) Bill, when passed by parliament, will impose liability on the immigration service if any of their procedures or practices constitute institutional racism.

ILPA, therefore, believes that it is essential that the pilot project assesses the impact of the powers on ethnic minority communities and that those communities and lawyers who practice in immigration law are involved in any assessment of the effectiveness of the pilot project. We would welcome further discussion on this point.

Yours sincerely

Andrew Nicol QC
Chair of ILPA