

ILPA proposals for the Independent Chief Inspector of Borders and Immigration's Inspection Plan 2015-2016

The Immigration Law Practitioners' Association (ILPA) is a registered charity and a professional membership association. The majority of members are barristers, solicitors and advocates practising in all areas of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Founded in 1984, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive programme training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on advisory and consultative groups convened by Government departments, public bodies and non-governmental organisations.

ILPA is grateful for this opportunity to make suggestions for the plan. We are happy to discuss suggestions further as required.

Top priorities

Decisions being made by Capita

Capita is undertaking immigration detention casework on behalf of the Home Office. We have examples of cases where it has proven impossible to get through to them on the telephone and where they have failed to respond to correspondence about a detainee at risk. **We have seen responses to rule 35 reports (torture) signed off by Capita, maintaining detention.**

Section 4 (1)(c) bail accommodation

The Inspectorate carried out an Inspection of Asylum Support (September 2013 – January 2014), but Home Office immigration bail accommodation provided under Section 4(1)(c) was not included. Research by Bail for Immigration Detainees, published as 'No place to go: delays in Home Office provision of Section 4(1)(c) bail accommodation' in September 2014 found that the average time taken by the Home Office to conclude Section 4 (1)(c) applications in property other than initial accommodation property, from receipt of application to letter of grant, was 15 weeks (range five to -503 days). A recent Freedom of Information request by Bail for Immigration Detainees found that some applicants are waiting in detention for up to two years for a bail address from the Home Office. There are delays at every stage of the application process, including an average of six weeks according to the Bail for Immigration Detainees report for the Home Office simply to decide what type of accommodation is suitable. Section 4 (1)(c) grants expire before detainees can use them to use to apply for bail.

Separation of families

In 2013 Bail for Immigration Detainees published 'Fractured childhoods', a report on the separation of families for the purposes of immigration control. Other than this report, hardly any information is available on this issue, despite the widespread use of separation by the Home Office, and the consequences for the welfare of children. The effect of cuts to legal aid has compounded problems since 2013. The Immigration Act 2014 makes provision for parents to

be deported before their appeal or while it is pending. The decision making on detention, removal and deportation and the extent to which account is taken of the duty under section 55 of the Borders Citizenship and Immigration Act 2009 to have regard to the need to safeguard and promote the welfare of children could usefully form the subject matter of an inspection.

OTHER SUGGESTIONS (in no particular order)

UK Visas and Immigration and Border Force involvement in appeals and judicial reviews

We recommend an inspection of how preparation for appeals and the handling of the pre action protocol stages of a judicial review are carried out, as well as handling of litigation (quality and timeliness of material presented to the tribunal or court; preparedness for hearings whether appropriate information and guidance is given to those presenting appeals and follow up after appeals, in particular those where the Home Office loses. We are particularly interested in what happens between filing appeal and hearing date and the effect of the lack of any point of contact with whom to discuss the case. What are the implications for “door of the tribunal” concessions or concessions during a hearing that, had they been made earlier, would have saved the appellant the costs of preparation and attendance and saved tribunal or court time? An inspection of a Presenting Officers’ Unit could form part of this work.

Family entry clearance applications

In particular decision making on the very detailed financial evidence required in Appendix FM-SE. This is a basis on which applications are frequently refused. On appeal appellants spell out what evidence had been provided and which the Entry Clearance Officers had not understood, or provide more evidence with the appeal to show that they qualify. In our experience it is rare for the Entry Clearance Managers to overturn the refusal and hence separation continues until the appeal is concluded. We have examples of cases where documents submitted have been ignored; where the implications of self-employment have not been understood or bank statements have not been read correctly. In many cases there is evidence to show that there will be no recourse to public funds, but perhaps not the exact evidence specified (e.g. the latest bank statement and pay slip are dated some 33 days before the date of application) but the 'evidential flexibility' policy is not being applied.

The Sheffield visa section

More and more applications submitted overseas are being dealt with in Sheffield there many reports of applicants turning up at visa application centres with their documents only to be told that these need to be sent directly to Sheffield. There has been very little scrutiny of how Sheffield handles these applications.

Interviews of detainees facing removal

To examine how interviews and other interactions are conducted with detainees facing removal or waiting for emergency travel documents to be issued, and how the information arising from such interviews is recorded and reported upon. Experience shows that once a person is appeal rights exhausted, does not have any on-going immigration matters in their case or, if they are waiting for a travel document, there are few or no notes of the interviews or records of contact between Home Office officials and detainees. This can lead to discrepancies between what is claimed to have been discussed and agreed, and that which is disputed.

Compliance visits to sponsors

We are interested in how these visits are dealt with and in particular the day in which minor or technical failures to comply with sponsor duties are dealt with. We are interested in whether there is consistency in the ways in which sponsors are treated and if not, why not?

Asylum casework

What has been the effect of getting rid of caseowners, or even, in some cases, different persons making the decision and conducting the interview. What is now causing the lengthy delays?

Customer contact services

The Croydon contact centre and Nationality/EEA helplines can be incredibly frustrating with long waiting times, menus of options that are impossible to navigate and seemingly little ability to redirect calls if one ends up in the wrong place. The outsourced visa application international enquiry service (HGS) often gives either the wrong information or glib non-answers. Calls are not “escalated” to an expert where they should be.

English Language testing

The way in which the Home Office is dealing with the thousands of students and other applicants alleged to have cheated in their English language tests. We have seen long delays in dealing with cases of persons whose test provider is held to be suspect. Where these are refused and the case goes to appeal it is often the case that the Home Office produces no evidence in support of their allegation of fraud at the appeal.

Decision making on applications to extend discretionary leave to remain

The routing of applications is a matter worth of inspection, why were cases in the North-East sent to Cardiff or Liverpool. From our perspective this has no discernible effect on efficiency and it takes a long time to get a decision on these cases from either Cardiff or Liverpool? We have seen clients’ paperwork lost. We have also Cardiff lost all the paperwork for one client and we highlight the delays in Liverpool. Requests to trace family members emerge seemingly without consideration of whether this is appropriate, for example in cases where the applicant was under 18 when they were first granted Discretionary leave but have now had a least one extension and are in their mid-twenties.

Movement of supported persons and detainees

In both asylum support and detention the assumption is often that staying in one place is the norm and movement the exception. We have repeatedly asked UK Visas and Immigration and its predecessors to test that assumption by interrogating the evidence as we consider that whether the assumption is true or false has implications for planning and delivery of services and for casework.

Follow-up inspection to the 2010 Family Removals Inspection

In the 2010 inspection report, the Chief Inspector was particularly critical of failures by the Home Office to gather health and welfare information about families before initiating enforcement action, and failures to offer families an adequate opportunity to return voluntarily. Despite all the changes, concerns continue to be raised in these areas and about notice of removal. The separation of families in the returns process has increased. Implications for access to justice and welfare are of concern.

Further submissions

A new announcement is that all applicants will have to travel in person to Liverpool to present their further submissions. How are requests for a waiver of this requirement handled, whether the on the grounds of destitution, journey length, health, presence of small children. What steps are taken to ensure that those who arrive late in the day are seen and that they are dealt with promptly so that they can make the return journey? Where it apparent that person will be sleeping rough because they cannot travel, what steps are taken to assist them? What assistance is given to those in need of medical attention, or in need of food and without the means to provide it? Where are the submissions processed?