ILPA comments on

Detention Service Order 04/2012, December 2014 issue (version 2)

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 of 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.

We have taken the opportunity to comment on the order as a whole, not only on the changes.

Introduction

In some centres long delays can arise in getting the legal visitor from the entrance to the interview room and in bringing the client to join them. This then eats into the time for the visit. The order should contain an injunction that transfers should be made promptly and that consideration should be given to start times for legal visits when assessing how to deploy staff and how many persons are needed on reception and for escorts.

Identification of visitors

We have repeatedly taken up with the Home Office, in the context of visits to their offices as well as to removal centres, the question of identification. This is made unnecessarily bureaucratic. There is no reason whatsoever for a centre not to accept an old, cancelled passport as ID for a personal visitor (provided the person can be identified from the photograph on it, which for most adults will be the case). We fail to see how an old passport is somehow inferior to showing a rail pass and an employer's id card, an acceptable combination of documents according to this order. Other government departments make more sensible requirements. In other contexts, the Home Office does not require a valid passport, for example for right to rent checks where the Code of Practice[1] states:

Group 1 – Acceptable single documents	
1.	A passport (current or expired) showing that the holder is a British citizen or a citizen of the UK and Colonies having the right of abode in the UK.
2.	A passport or national identity card (current or expired) showing

A purposive approach to identity checks might generate a more sensible list.

[1] Code of Practice on illegal immigrants and private rented accommodation: Civil penalty scheme for landlords and their agents October 2014, available at (accessed 4 February 2014). https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/376788/Code_of_Practice_on_illegal_immigrants_and_private_rented_accommodation__web_.pdf

Paragraph 9 on legal visits is inaccurate and liable to confuse. It reflects a general trend in the Home Office to focus on regulation by the Office of the Immigration Services Commissioner and to be much less clear about solicitors, barristers and legal executives.

The paragraph beginning "If the legal representative is an immigration advisor" then goes on to cover those authorised to practice by a professional body or supervised by such a person. The wording of the paragraph is confusing. We should normally read "If the legal representative is an Immigration Advisor" to mean "If the legal representative is regulated by the Office of the Immigration Services Commissioner and not authorised to practice by a professional body", but the next part seems to intend the contrary as it refers to those "authorised to practise by a professional body or supervised by such a person." Then at the end of the paragraph it appears once again to be about those regulated by the Office of the Immigration Services Commissioner, as the reference is to checking via the Office of the Immigration Services Commissioner website, which will only work for those regulated by the Office of the Immigration Services Commissioner.

Those who may visit the detainee in the legal representative category may be:

1. Solicitors – working under the supervision of the Solicitors Regulation Authority
2. Trainees, clerks and paralegals who work under the supervision of a solicitor (they do not have their own regulator);
3. Barristers regulated by the Bar Standards Board;
4. Legal Executives regulated by the Chartered Institute of Legal Executives;
5. Advisors regulated by the Office of the Immigration Services Commissioner (at level 2 or above as work on detention and bail is not permitted at level 1);
6. Those regulated with or authorised by EEA bodies (for example be regulated by their national bar associations);
7. Clerks and paralegals who work under the supervision of those regulated with or authorised by EEA bodies.

Only those at point five will be listed on the OISC website. Those at point one will be listed on the Law Society's website at http://solicitors.lawsociety.org.uk/?Pro=True . Those at point two will not be listed anywhere but will be working under the supervision of a named individual solicitor listed on the Law Society's website. Barristers and Legal Executives (points three and four) will be less frequent visitors but the directory of practising barristers is at https://www.barstandardsboard.org.uk/regulatory-requirements/the-barristers'-register/ and the CiLex Directory is at http://www.cilex.org.uk/about_cilex_lawyers/cilex_lawyers_directory.aspx Those regulated by the OISC will be on the OISC website. Other EEA national bar associations are likely to hold registers but, as with UK solicitors, of their members rather than those working under the supervision of their members.

The wording "or employed by or supervised by the person registered in line with section 84(4)(d)(e)and (f)appears to introduce new categories but does not. It is talking about EEA lawyers and those working under their supervision mentioned earlier in the same paragraph, for section 84(4)(e) and (f) of the Immigration and Asylum Act 1999 it reads.

> *84(4)…(d) he is registered with, or authorised by, a person in another EEA State responsible for regulating the provision in that EEA State of advice or services corresponding to*

immigration advice or immigration services or would be required to be so registered or authorised were he not exempt from such a requirement;

(e)he is authorised by a body regulating the legal profession, or any branch of it, in another EEA State to practise as a member of that profession or branch; or

(f) he is employed by a person who falls within paragraph (d) or (e) or works under the supervision of such a person or of an employee of such a person.

Any practising solicitor and any practising barrister can do immigration work without further authorisation. The supervising solicitor is responsible when trainees, clerks and paralegals do work. There are particular rules on who can do legal aid work in immigration and asylum which are requirements of the contract with the Legal Aid Agency, but do not apply to those doing private work. Those regulated by the Chartered Institute of Legal Executives must specialise in immigration to do this work. As previously stated, those regulated by the OISC must be qualified to Level 2 or above of the OISC scheme to do detention work.

The first point to get clear is whether you intend to require all representatives, or just those regulated by the Office of the Immigration Services Commissioner to complete a section 84 form. If the former, then you need to change the "If the legal representative is an immigration advisor" sentence.

The second point is whether the Office of the Immigration Services Commissioner wishes to see all these forms (which may well be the case) rather than just those for OISC advisors.

It will be seen that checking is not a straightforward matter. It has the potential to result in delays and a high margin of error. In the case of persons in category two above, you will not check the visiting individual against a website but the supervising solicitor. Checking EEA reps is likely to be a challenge and may involve looking at websites in foreign languages.

It is vital that checks do not delay legal visits, which are often conducted under tight time pressure because of the urgency of the case, the availability of interview rooms and of course money: payment by the Legal Aid Agency and payment by clients themselves where the case is privately funded. Checking online may well be too elaborate for up front checks. It may be necessary to require sight of the firm's ID document or introductory letter and then keep it on file and do any checks subsequently.

It is of course necessary to be sensible about representatives visiting on a daily basis, for example because there is a detained fast track contract and to avoid bureaucratic and meaningless requirements. ILPA representatives are familiar with Home Office bureaucracy, which is often unrelated to the exigencies of the situation, for example only today the start of a meeting at Lunar House was delayed by some 20 minutes because of the time taken for the counter signature of endless chits at the front desk. We do urge the Home Office to take a purposive approach to security checks, to think about why it is doing them and what is necessary in the particular case. Meaningless checks, perceived by those carrying them out and those subject to them as having no real purpose, do not command respect and are more likely not to be adhered to, or to result in frustration if they are adhered to rigorously.

We refer you to the response of Medical Justice on medical practitioners. Legal representatives may be asking a medical practitioner to visit to see a client about whom they have concerns, or to prepare a medical report, including in urgent cases. The difficulties encountered by medical practitioners do create problems for those with conduct of a case.

Bringing laptops into establishments

Again the question of meaningless bureaucracy arises. Are you requiring a representative entering an establishment daily to sign a declaration daily? If so, why? Legal representative working on legal aid are paid a fixed fee and spent waiting and filling in forms thus reduces time that can be spent on the substantive case. Meanwhile, a private client pays for such time. Why cannot the firm simply sign any declaration and this stand until they withdraw it?

Moreover, why the declaration? It would not be acceptable to withdraw the facility without reason and/or in an oppressive manner.

Closed visits

We have no idea what "or are considered to pose a reasonable risk of involvement" in the third to fourth lines of paragraph 24 means and similarly with "if a drug dog indicates on the visitor". Are words missing or is this jargon? It is not fit for purpose as an instruction in any event.

Paragraph 26: Is the reference to three months supposed to imply that this will be the normal period of imposition of such an order? It runs the risk of being read as such. This should not be the case. The risk assessment should be reviewed at each visit and not monthly as suggested in paragraph 27. The syntax of "IRC centre mangers can specify a longer period in an individual case if she or she can justify it" has gone awry but, moreover, the sentence provides no guidance. There is no indication as to what further evidence of risk might be. This guidance is not sufficiently specific to justify this further interference with an individual's freedom of association.

To what does the reference to "behaviour of visitor" in paragraph 29 relate? Presumably it is only of relevance to those who have visited previously as, at the time of deciding whether the visit will be closed, the behaviour of the particular visitor will not be known.

At paragraph 31, conduct of different degrees of seriousness has been lumped together. Being aggressive and being abusive covers a range of behaviours, not all of which justify exclusion. Visitors to detainees will often be under extreme stress; it is very upsetting to see a family member or close friend incarcerated, in distress or suffering. We recall that the treatment of the mentally ill is detention has repeatedly been found to have breached article 3 of the European Convention on Human Rights[2] while there have been the most grave allegations of sexual abuse of detainees.[3] HM Chief Inspector of Prisons has reported on several cases of unnecessary use of handcuffs, including in the cases of wheelchair users, a dying man "*while sedated and undergoing an angioplasty procedure in hospital*", and an 84 years' old frail and

[2] 133 R (HA (Nigeria) v SSHD, HC 2012 available at http://www.bailii.org/ew/cases/EWHC/Admin/2012/979.html ; R (BA) v SSHD [2011] EWHC 2748 (Admin) (26 October 2011) available at http://www.bailii.org/ew/cases/EWHC/Admin/2011/2748.html ; R (S) v SSHD [2011] EWHC 2120 (Admin) (5 August 2011) available at http://www.bailii.org/ew/cases/EWHC/Admin/2011/2120.html ; and R (D) v SSHD [2012] EWHC 2501 (Admin).

[3] Yarl's Wood affair is a symptom, not the disease, Nick Cohen, The Observer, 14 September 2013.

dementia-suffering man who died while in handcuffs having been kept handcuffed for five hours.[4] Home Office figures for the period July to September 2013 show 624 people on "self harm watch" (what would elsewhere be called suicide watch) in immigration detention, 94 incidents of "self-harm" (which includes attempted suicide. In 2012 there were 208 incidents of what statistics call "self-harm" requiring medical attention and 1804 detainees formally recognised as being at risk of such harm[5] . There no figures for self-harm not requiring medical attention) and one death, of a 43 year old man at Pennine House Short Term Holding Facility. ILPA is also aware of many substantial claims for damages involving false imprisonment where aggravated damages and damages for personal injury have been awarded including for the use of force, restraint and assaults.

Seeing a friend or relative being subject to inhuman or degrading treatment or sexual abuse may lead a person to become somewhat aggressive or abusive. That is not a reason for banning them, indeed to do so may increase the likelihood that the inhuman or degrading treatment or abuse continues.

The banning of legal representative risks interfering with access to justice for a person who is detained and may interfere in an unjustified manner with the representative's right to practice and ability to fulfil their professional obligations. We should expect that in all circumstances where a representative is banned, this is taken up with their professional body. We cannot envisage circumstances in which conduct acceptable to a professional body should lead to a ban and, equally, we consider that the professional body should have an opportunity to exercise the range of their powers in cases where an individual has fallen short of their professional code of conduct. In such cases it is not only the instant client who needs to be protected from them and their conduct may offend more broadly than the official body that bans them.

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Chair

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5 February 2014

[4] *Report of unannounced inspection of Harmondsworth Immigration Removal Centre*, 2014, section 1, paragraph 1.3 available at http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/immigration-removal-centre-inspections/harmondsworth/harmondsworth-2014.pdf

[5] Response to Freedom of Information of information requests, see http://www.ctbi.org.uk/96 . See also the evidence of the Association of Visitors to Immigration Detainees to the Home Affairs Select Committee for its report on Asylum, Seventh report of session 2012-2013, HC 71, 8 October 2013 http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/71/71vw32008_HC71_01_VIRT_HomeAffairs_ASY-73.htm . See also HL Deb, 27 June 2012, c71W.