ILPA response to the Chief Inspector's inquiry into UK Visas and Immigration's handling of complaints

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.

The complaints procedures are used less and less frequently by members. The following comments are typical

> *"We have had such negative experience of UK visas complaints handling that we no longer use the complaints system at all and instead liaise with our UK Visas and Immigration contacts directly or, in extreme cases, send pre-action protocol letters to contacts we have within the departments to pass our complaints to the relevant team/caseworker."*
>
> *"I have occasionally written to the Home Office complaints system, but rarely with much success. It entails extremely heavy lifting, and I don't think I have ever had a sensible response first time. "*
>
> *"In two recent instances where very obvious errors had been made, I made complaints, the complaints staff didn't understand the problem, the MP wrote to Sarah Rapson in one case, and had four goes at the other before someone who understood the problem responded and, in both cases, apologised and offered £100 compensation. Probably not enough but I couldn't face it any more."*

An example of this is a non-EEA national wife of an EEA jobseeker. She applied for an EEA residence card in March 2013. This was refused, she appealed and her appeal was allowed in February 2014. In late May the Home Office sent a package to a third party address (which was similar to the address of her representatives, but not the same). The third party apparently returned this to the Home Office later, although the Home Office did not confirm this. An enquiry through the MP elicited this information in late June 2014. The legal representatives wrote in July asking that the card be issued to the correct address. The MP also chased. Neither lawyers nor MP received any reply. The lawyers issued a pre-action protocol letter the response to which was "The Secretary of State apologises for the mistakes in the handling of this case which it is accepted falls below expected standards of service".

Judicial review is a remedy of last resort and in considering whether it is appropriate to use it a lawyer must consider whether an alternative remedy is available, including whether a complaints procedure provides such a remedy. The matter has recently been considered in the High Court in *Said & Ors, R (on the application of) v Secretary of State for the Home Department* [2015] EWHC 879 (Admin) (29 April 2015), not in the case of UK Visas and Immigration's procedure, but that

of the Border Force. The Home Office applied to have the case struck out because of the availability of an alternative remedy in the form of the Border Force Complaints Procedure. HHJ Anthony Thornton QC made the memorable comment that

> *the suggestion that the use of the B*[order] *F*[orce] *C*[omplaints] *P*[rocedure] *scheme for these disputes was as appropriate as a suggestion was like suggesting that a fly was a satisfactory replacement for an elephant.*

He explained that conclusion as follows:

> *456. The B*[order] *F*[orce] *C*[omplaints] *P*[rocedure] is *described in great detail in Version 7 of the Complaints Management Guidance Booklet …The Booklet does not provide a structured process for the submission, processing and deciding of complaints and does not define the limits of its terms of reference or the principles that should be applied in determining both the availability of financial compensation and its quantification.*
>
> *…The complaints procedure is not designed or suitable for complex claims. Thus, claims presenting difficulties of law, factual ascertainment or those more suited to an adversarial dispute resolution process are not intended to be covered by the procedure.*
>
> 458. *The B*[order] *F*[orce] *C*[omplaints] *P*[rocedure] *procedure is, regrettably, neither set out in a succinct and precise form nor is it readily available or well-publicised. Its existence is, however, sufficiently well-known to practitioners that, in 2011, it processed over 10,000 complaints of maladministration against the UKBA.*

We append at annex 1 a response to a complaint by the Border Force. This evidence many of the problems we identify herein with UK Visas and Immigration responses to complaints we reco0mmend that when this enquiry is finished, the Chief Inspector move on to look at how the Border Force deals with complaints.

Legal Aid lawyers working on fixed fees struggle to find time to make complaints save where this is identified to be the most effective way of achieving a positive result for a client, which is rare. Those paid privately are similarly reluctant to spend their time and the client's money on a procedure that is not perceived to be an effective way of resolving a problem for a client. The lack of any response to a complaint, as explained below, makes it difficult to justify spending time on it.

What of those who cannot bring a judicial review because they are not legally represented or do not have the means?

When one considers the Parliamentary and Health Service Ombuds' consideration of complaints about UK Visas and Immigration[1] it is immediately striking how few have been made as formal complaints to UK Visas and Immigration.

Medical Justice's report *Biased and Unjust: the Immigration Detention Complaints Process*, published in August 2014[2] explores the thinking of detainees

[1] See http://www.ombudsman.org.uk/search?queries_keyword_query=UKVI (Accessed 19 August 2015)
[2] See http://www.medicaljustice.org.uk/about/mj-reports/2283-biased-and-unjust-the-immigration-detention-complaints-process-27-08-14.html (accessed 19 August 2015).

I feared making any complaints, or voicing anything against the guards and other detention staff because it was for my benefit to lie low and not seen as a trouble maker… I was made feel like they can stamp on me or spit at me, and had no option than to submit to anything they subjected me to.

Making a complaint feels pointless as you won't get any form of justice. You are just isolating yourself, putting yourself at risk of bad treatment. You have the fear of deportation coming sooner as you show yourself to be a trouble maker.

The Home Office were only forced to respond to my complaints seriously when I was lucky enough to get a good solicitor. Eventually the Home Office apologised for detaining me unlawfully and paid compensation. After I was released I was granted refugee status. Most detainees in my position never got any justice."

The Home Office has this month published a revised process for handling complaints in immigration detention.[3]

We strongly suggest that the review encompass consideration decisions of the Parliamentary and Health Service Ombuds and of pre-action protocol letters received by UK Visas and Immigration to identify how many of these concern matters that, in theory, could be addressed satisfactorily through proper complaints handling.

Are complaints dealt with in a timely manner?

All too frequently, no. In many cases, no reply is received at all.

Examples

" My experience is that complaints are not dealt with in a timely manner based on the following *experience:*
On 13 May 2015, we sent a complaint to UKVI by email and by special delivery. We clearly identified our client's full name, our client's nationality and our client's date of birth.

On 29 May, we received a response asking for our client's passport number which was provided on the same day.

On 2 July 2015, we received an email to explain that UKVI would be unable to reply within the service standard of 20 days.

It was only on 29 July 2015 that we received a letter from UKVI. This was nearly 11 weeks after the complaint was submitted"

.

"I complained about a serious breach of data protection to the Asylum support Team" on 28 May 2015 and they have not even acknowledged it."

[3] Detention Services Order 03/2015, *Handling of Complaints* https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454297/DSO_03_2015_Handling_complaints.pdf (accessed 19 August 2015)

"[Complaints] *are rarely even acknowledged.* "

"I *put in a complaint which was acknowledged and did not hear further after that and have not to date. My client's visa took nearly a year to be issued before the Foreign Office issued after my client won at the first tier Tribunal.* "

"*A complaint, submitted in February 2015, has yet to be acknowledged. It relates to the online entry clearance application form for the dependant of a person with UK Ancestry. There is no option in this form for the applicant to indicate that they are the husband/wife/civil partner/unmarried partner of someone with UK ancestry.*

There is a drop down menu to select 'relationship to sponsor' and here are the options (and you have to select an option otherwise the form cannot be submitted online):

> *Aunt/Brother/Cousin/Daughter/Father/Friend/Grandparent/Mother/Nephew/Niece/ Sister/Son/Uncle/Work colleague*

Not only has the complaint gone unanswered but this form remains unchanged. With one client we settled on 'Aunt' as the best we could do. "

"[Experience is normally]…*several weeks' wait for a response which frequently does not address the issues raised*"

"This complaint remains unresolved after 13 months. Lawyers assisted a client to make an application for entry clearance in China on the www.visa4uk.fco.gov.uk website in June/July 2014. It came up with the wrong visa application centre. There was no way to correct so the lawyers made a second application which was successful, cancelling the first one and applying for a refund, using the facility to make that request on the website. That request for a refund was made on 15 July 2014. A second attempt to request a refund was made on 28 August 104; feedback was given on the website and an email concerning the matter was sent to hocommunications@communications.homeoffice.gov.uk. A further request was made on 14 October 2014.

On 21 November 2015 the lawyer wrote a formal complaint letter to the Complaints Allocation Hub at Lunar House. This was never acknowledged.

On 22 January 2015 the lawyer the person's MP to follow this up. There was no reply. On 5 March 2015 the lawyer emailed the MP who said he had taken no action as there was no evidence of the client being on the electoral roll in his constituency. I replied with evidence of the address.

On 1 April 2015 the lawyer wrote directly to the Immigration Minister. On 22 April 2015 an email reply stated that the Minister did not have the client's authority to take action on the matter.

On 1 May 2015 the legal representative wrote to the Immigration Minister again. On 9 June we received a letter asking for clarification about the reference number. This we answered on 12 June 2015.

> *On 20 July 2015 an email was received to say the matter had been referred to the Visa Section in Beijing where it remains pending."*

We suggest that the enquiry investigate whether the response rate to complaints is affected by

- The identity of the complainant;
- The part of UK Visas and Immigration against which the complaint is made;
- Whether a pre-action protocol letter is issued simultaneously.

Bail for Immigration Detainees issued a briefing paper *No place to go: delays in Home Office provision of Section 4(1)(c) bail accommodation* in September 2014.[4]

Chapter 9 deals with the handling of complaints. As explained therein, Bail for Immigration Detainees normally first seeks informal resolution with the Home Office Section 4 bail team of any delay in the conclusion of any stage of a Section 4 (1)(c) bail accommodation application. If such an approach does not result in the requested action being taken within a reasonable time (wherever possible in line with any guidance or policy published by the Home Office) then it may proceed to lodging a formal complaint about the service provided by the Home Office via the complaints procedure. Bail for Immigration Detainees states

> *At any point in this process, while continuing to pursue their application for a Section 4 (1)(c) bail address with the Home Office we may refer clients on to public law firms for consideration of judicial review of their ongoing detention, which may include consideration of delays on the part of the Home Office in provision of Section 4 (1)(c).*

In 58% of the s 4(1)(c) applications in the study where Bail for Immigration Detainees made a written request to the Section 4 bail team at the Home Office to resolve the delay, Bail for Immigration Detainees either received a written answer or saw the required action taken in the case but did not receive any related correspondence from the Home Office.
In 27% of cases where Bail for Immigration Detainees sought resolution of the specific delay, the requested action was not taken by the Home Office nor did they respond to correspondence.
At the end of the study, in 13% of cases where Bail for Immigration Detainees sought resolution of a delay the application for a bail address was still pending.
The average time taken by the Home Office to take a requested action following a request from Bail for Immigration Detainees to resolve a specific delay (if the action was taken): 8.82 days.
Of the 29 cases in its sample, 19 proceeded to a formal complaint. These include cases about licence address checks where Bail for Immigration Detainees went straight to issuing a formal complaint to the Home Office without attempting informal resolution of the delay because of the time that had elapsed before the case reached Bail for Immigration Detainees.

In 16 (84%) of cases, Bail for Immigration Detainees received an answer from the Home Office to the formal letter of complaint. In four of these 16 cases the Home Office response was unsatisfactory, and Bail for Immigration Detainees requested a review. An answer to this request was received in three of the four cases, in an average time of 14 days.

The average time to receive an answer to a formal complaint in those cases where a response was received was 23.93 days. In 81% of cases where an answer was received, the Home Office complaint allocation hub responded within the required 20 working days.

[4] Available at http://bit.ly/1DqTEQL (accessed 19 August 2015).

In Medical Justice's *Biased and Unjust*[5] it is recorded that the Home Office and its contractors are required to reply to the complainant in 10-15 days for all complaints, except serious misconduct cases which may take 12 weeks and that the target timescales were met in just over half of service, clinical and minor misconduct complaints. Four complaints investigated by contractors took over 50 days and one 83 days. Where the targets were not met, the complainant was rarely kept informed. The report continues (references omitted):

> *Many H*[er] *M*[ajesty's] *I*[nspectorate of] *P*[risons] *and I[*ndependent*] M[*onitoring*] B[*oard*] reports comment on the delays and recommend that the complaints system is reviewed to ensure speedier responses. They also have recommended that the target timescales be shortened. Twelve weeks is too long to investigate serious misconduct complaints, given the circumstances of detainees and their uncertain future. One I[*ndependent*] M[*onitoring*] B[*oard*] concluded that 'the current time limit poses a serious curtailment on I[*ndependent*] M[*onitoring*] B[*oard*] 's ability to monitor the just and fair treatment of detainees because information about complaints of this type is withheld from us until a decision has been made after a lengthy period. One practical result of such a limit is that the complainant is very likely to have been deported by the time a conclusion is reached*'.[i]

Do the responses to complaints deal satisfactorily with all issues raised in the complaint?

No. See three anonymised letters annexed hereto which Bail for Immigration Detainees wrote to the UK Visas and Immigration complaints allocation hub asking them to review their inadequate responses to Bail for Immigration Detainees complaints about delays in dealing with applications for bail accommodation under s 4(1)(c) of the Immigration and Asylum Act 1999. Among the matters in the responses Bail for Immigration Detainees received that are the subject of the request for the review:

- failure to offer an adequate explanation for the delay in dealing with the application;
- failure to deal with the complaint about not providing reasons for the decision;
- delays, and setting out why their responses are inadequate;
- Demonstrably incorrect reasoning that fails to reflect the National Offender Management Service Policy on release on licence;
- A request that a fresh application be made, without explanation;
- Failure to take a proactive approach to resolving the concern (or to explain why this has not been done).

Some responses to complaints evidence cursory examination of the complaint

> *"A request was made for a refund on a visa fee. This was taken up with the Complaints Allocation Hub letter on 1 May 2015 a letter was received on 29 May suggesting that the lawyers seek a refund online. This was evidence of a very superficial reading of the matter complained about, as it was set out clearly in the letter of complaint that this had already been attempted. The lawyer wrote again on 4 June 2015 and requested a review of their initial response. This has yet to be acknowledged.*"

[5] *Op.cit.*

"The response did not deal with the complaint and the issues raised satisfactorily. The response appeared to be generic and was dismissive of the concerns raised. We were seeking confirmation as to whether or not our client was subject to normal checking procedures on entry to the UK. The response did not appear to have actual knowledge about what occurred on the date in question. As a result, we have complained further and we are awaiting a response."

"A woman applied for naturalization but was refused in December 2013 on the grounds that she had a criminal conviction dating from 2008 which she had not disclosed. She had no criminal conviction, but another woman of the same name and nationality, but with a different date of birth, had. She knew that the Home Office had confused her with the other person in the past because in 2009 she had been refused entry clearance as a spouse on the grounds of this criminal conviction and her legal representatives had made a Subject Access Request for her file and found the papers about another woman mixed up with hers. The immigration judge had accepted this, the appeal was allowed, the Home Office Presenting Officer had undertaken to sort out the files, and she got her entry clearance. It took MP's correspondence throughout 2014, both to UK Visas and Immigration and the Information and Record Management Services about the data breach, for the Home Office eventually to send for her paper file in October 2014, check it and confirm that it had made a mistake, and she was granted British citizenship in December 2014.

Her MP continued the complaint about data breaches and delay in investigating this. The first response to the complaint was to say that naturalization is not a right and that full checks have to be made. The MP's office tried again, saying that the complaint was mainly that full checks had not been made, otherwise the Home Office would have found out months earlier that it had made a mistake. The next response in April 2015 finally confirmed that her details had not been passed on to anyone else and refused any compensation. The MP's office tried again and the HO agreed £100 compensation in July 2015"

"An elderly woman who has been settled in the UK for a very long time, whose husband is a British citizen, thought by applying for EEA permanent residence she would be able to travel to with him to other EU countries without needing a visa. This was of course a misinformed application, but when the Home Office refused it, they sent the standard EU refusal letter saying 'as you appear to have no alternative basis of stay in the UK you should now make arrangements to leave.' The couple were terrified, she wrote to the Home Office sending scans of all her old passports, with ILE/ILR stamps since the 1960s, saying that she thought she did have the right to stay. The couple went on holiday – and got texts from Capita on behalf of the Home Office while they were away. Her MP's office (Parliamentary candidate's office at the time) wrote to the Complaints Allocation Hub about this in April 2015. The Complaints Allocation Hub responded that 'the application was refused correctly and this triggers the Capita Intervention…' This letter seriously flawed letter was lost in the post and she never received it, the MP's office got a copy later and wrote a further complaint to Sarah Rapson about the complaint response as well as the original letter, getting an apology and £100 compensation."

Medical Justice's *Biased and Unjust* cites Her Majesty's Inspectorate of Prisons' report on an unannounced inspection of Harmondsworth Immigration Removal Centre on 5 – 16 August 2013 concluding that:

'Most complaints were not upheld, including some that should have been. One complaint about a broken water heater had been only partially upheld because the responding officer had said that boilers were repeatedly vandalised by other detainees. In another, a detainee complained about being given no notice of an external hospital appointment and being two hours late as a result. In the response, the lack of notice point was ignored and the second part of the complaint was not upheld because the delay had been due to 'unforeseen operational requirements'.

The Parliamentary and Health Service Ombuds has recorded unsatisfactory responses to complaints.

Mr C

Mr C[6] relied on UKVI's guidance but this information was at odds with Immigration Rules. Mr C complained because he applied for indefinite leave to remain in the UK and this was refused by the UK Visas and Immigration (UKVI) despite Mr C following UKVI's guidance….UKVI did not listen to the complaint when Mr C first contacted it and failed to address his complaint. It had not corrected the guidance.

Putting it right [following the Ombuds' intervention]

UKVI apologized to Mr C for misleading him and for not fully responding to his complaint. It agreed to reimburse Mr C the cost of submitting his application, with interest. It also agreed to pay £250 compensation to Mr C for the inconvenience and distress that its actions had caused him and his family.

UKVI will review its guidance … This is so that terminology is clearly defined and the guidance properly reflects the Immigration Rules.

Mr B

When processing his application, UKVI mislaid several of Mr B's original documents, including his birth certificate.[7]… When Mr B submitted his application, he supplied various original documents, including his birth certificate. UKVI mislaid these and could not locate them for more than a month. Mr B complained to UKVI, but it unilaterally closed his complaint without responding to him. Its reasoning for this was that the application had been decided…We upheld Mr B's complaints about the lost documents and the way UKVI had dealt with the complaint about them. UKVI should not have … closed his complaint without sending a response. We upheld Mr B's complaints about the lost documents and the way UKVI had dealt with the complaint about them.

Mr C

Mr C[8] complained about UK Visas and Immigration's (UKVI) handling of his application for a permanent European Economic Area (EEA) residence card. Mr C said his application was

[6] Case 296 September 2014
[7] Case 18, March 2014.
[8] Case 279 September 2014

refused as a result of UKVI's inadequate guidance. … UKVI refused because he did not have enough evidence of Comprehensive Sickness Insurance (CSI). Mr C complained to UKVI and appealed the decision at the same time.

UKVI did not initially reply to Mr C's complaint, but following our involvement (on the basis that Mr C told us he was not seeking legal action, although he was in fact actually appealing the decision) it responded and explained that applicants must hold C[omprehensive] *S*[ickness] *I*[nsurance], *which Mr C did not. It declined to comment further because the matter was going to appeal. Mr C lost his appeal …Mr C then complained to UKVI that he had been misdirected by guidance on its website … UKVI apologized for giving him wrong information but clarified that he had failed to show evidence of C*[omprehensive] *S*[ickness] *I*[nsurance]. *UKVI did not address Mr C's concerns about the website guidance….It was reasonable for UKVI not to engage with Mr C's complaint while his appeal was ongoing. However, it ought to have explained this to Mr C rather than ignoring his complaint. UKVI also gave Mr C wrong information during the complaints process and did not respond to Mr C's concerns about its website guidance.*

Putting it right [following intervention by the Ombuds]

UKVI apologized to Mr C for its poor complaint handling. It agreed to review its guidance in relation to supplementary evidence that might be required to demonstrate comprehensive sickness insurance.

We see cases where the Home Office seems to be telling the Ombuds that it will take some action within three months.

Example

A man from Gambia was refused asylum and lost his appeal in April 2013. He made further submissions in July 2013 which are still pending. His MP reminded the Home Office periodically of his outstanding submissions. He prepared a complaint to the Ombuds which was made in November 2014, explaining that his MP and his solicitors had been pressing the Home Office for a reply. The Ombuds responded saying that he should use the Home Office complaints procedure. This was done on 20 December 2014. The Home Office replied on 19 January 2015 that it would 'endeavour to decide his case within the next six months' but no response to the complaint was made. Another attempt was made. The Home Office responded to him on 11 February 2015 again saying that it 'aim[ed] to make a final decision on your case within the next six months' from 19 January 2015. They did not do so. His solicitors and MP both wrote to the Home Office shortly before 19 July 2015 to remind them of their commitment, and the Ombuds's promise to consider a fresh complaint if the response to the internal complaint was not satisfactory. The Home Office wrote to the solicitors on 20 July 2015 that 'we aim to review your client's case within 3 months.' This has not dealt with the case or the complaint but appears to impede recourse to the Ombuds.

We recommend that the investigation examine how often the Ombuds receives complaints about UK Visas and Immigration, what they are about, how often the Home Office makes a commitment to deal within a certain time, and how often that commitment is met. If there is a formal Ombuds investigation of a case, does UK Visas and Immigration keep records of the

decisions and the directions the Ombuds's office makes for future action and does it monitor compliance?

Are responses to complaints written in plain English and comprehensible to the person making the complaint?

In one of the Bail for Immigration Detainees' letters annexed hereto it is identified that lengthy extracts from the client's immigration history have been provided with no explanation as to the relevance of these.

A member who responded writes that he has no problems with the clarity of the English when the Agency has managed to reply, but that replies are not usually received. Another responds in similar vein

> *Yes, the response does appear to be written in plain English and did make sense even though it did not address the points that were raised*

Another member provides an example of a confused, if not unsatisfactory, response

> *In recent weeks, I made a complaint to the Home Office regarding a client who was charged £19.20 per applicant (family of three) when they went to enrol their Biometrics at the Post Office, despite their paperwork clearly stating it would be free. We requested a refund.*
>
> *Several emails later, and having sent original proof of receipts in the post, within a week, a cheque arrived at our office covering the full amount. The following week, another email was received saying they needed the original receipts etc. to deal with the claim. I replied, saying it was already sorted*

Where the complaint is upheld are appropriate and proportionate remedies offered?

Very often in immigration cases, including those where very large sums of money in compensation are at stake, at the centre of the case is not financial loss but maladministration. Very often the individual who complains wants to know that the problem will never happen again and that their actions have protected others. We are not optimistic about UK Visas and Immigration's learning from complaints and reacting when it does not appear to learn from the most serious findings made against it in the courts or in cases that it settles before they are adjudicated upon by the courts.

The UK has repeatedly been found to have breached detainees' rights under Article 3 of the European Convention on Human Rights, the prohibition on torture, and inhuman and degrading treatment and punishment.[9] That such breaches have repeatedly taken place, and that cases of

[9] For example *R (BA) v Secretary of State for Home Department* [2011] EWHC 2748 (Admin) ;*R (S) v Secretary of State for the Home Department* [2011] EWHC 2748 (Admin) (5 August 2011, *R (HA) v Secretary of State for the Home Department* [2012] EWHC 979 (Admin) (17 April 2012), *R (D) v Secretary of State for the Home Department* [2012] EWHC 2501 (Admin) (20 August 2012); R(MD) V SSHD [2014] EWHC 2249 (Admin).

breaches of Article 3 continue to be settled in the courts, suggest that there is no appropriate and proportionate response to findings of the utmost gravity.

Women in detention have been subjected to severe abuse by the staff of centres.[10] It was suggested in those cases that an attempt was made to remove the victims from the jurisdiction before they could bring a case. Such allegations are not new. We recall for example the comments of Mr Justice Munby in *R (Karas and Miladinovic) v Secretary of State for the Home Department* [2006] EWHC 747 (Admin):

> *I am driven to conclude that the claimants' detention was deliberately planned with a view to what in my judgment was a collateral and improper purpose – the spiriting away of the claimants from the jurisdiction before there was likely to be time for them to obtain and act upon legal advice or apply to the court. That purpose was improper. It was unlawful.*

A failure to put in place structures that ensure that alleged victims remain in the jurisdiction while their cases are investigated suggests a response that is neither proportionate nor adequate.

Responses to findings of misuse of force have similarly not produced changes in behaviour. Despites complaints of inappropriate use of restraints over many years, Her Majesty's Chief Inspector of Prisons has reported on an 84 years' old frail Canadian man suffering from dementia who died in detention in handcuffs having been kept handcuffed for five hours.[11]

The 2012 report of the Chief Inspector of Prisons on the Cedars centre in which families are detained found:

> *HE.18 Substantial force had been used in one case to take a pregnant woman resisting removal to departures. The woman was not moved using approved techniques. She was placed in a wheelchair to assist her to the departures area.*
>
> *When she resisted, it was tipped-up with staff holding her feet. At one point she slipped down from the chair and the risk of injury to the unborn child was significant. There is no safe way to use force against a pregnant woman, and to initiate it for the purpose of removal is to take an unacceptable risk.*

The Inspectorate called for force not to be used. Instead the Agency offered a consultation. It was only in the face of a legal challenge that it backed down. The case of *R (on the application of Yiyu Chen and Others) v Secretary of State for the Home Department* (CO/1119/2013) was an urgent judicial review claim challenging the Secretary of State's failure to have a policy in place in respect of the use of force against children and pregnant women. The claim was issued on 31 January 2013 following the Secretary of State's rejection of the Her Majesty's Inspectorate of Prisons' recommendation that she use force against these two groups only in situations where there is a risk of harm to self or another.

[10] Yarls' Wood affair is a symptom, not the disease, Nick Cohen, The Observer, 14 September 2013.
[11] *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

The Claimants sought urgent interim relief in the form of an injunction, prohibiting the Secretary of State from using force against these two groups until the issues were determined. On 12 February 2013 Mr Justice Collins granted an injunction prohibiting the Secretary of State's from using force against the four claimants (a pregnant woman and three children, all at risk of an enforced removal).

On 22 February 2013 the Secretary of State reinstated the former policy from Chapter 45 of the Enforcement Instructions and Guidance, which states that the UK Border Agency cannot use force against pregnant women, save to prevent harm. On 10th April 2013, Lord Taylor of Holbeach told the House of Lords that:

> *The recommendation in the report by HM Inspectorate of Prisons on Cedars pre-departure accommodation that force should never be used to effect the removal of pregnant women and children was rejected by the UK Border Agency.* [12]

The Government response to the Home Affairs Select Committee Eighth Report of session 2012-2013: The work of the UK Border Agency (April - June 2012) states:

> *The UK Border Agency would prefer that pregnant women, vulnerable adults and under 18s who form part of family groups in Cedars left the UK voluntarily and compliantly. It would not be practical to consider a blanket ban on the use of physical intervention on pregnant women and under 18s as this might encourage non-compliance and render the Agency unable to maintain effective immigration controls.*

Bhatt Murphy solicitors, who acted for the claimants in *Chen*, wrote to the Home Affairs Select Committee on 28 March 2013, saying

> *We are concerned that the policy position set out in that response* [the government's response to the Committee*] directly contradicts the assurances which have been given to the Court and the parties in this action, which is now reflected in policy guidance published on the UK Border Agency's website, and upon which the Claimants have been invited by the Home Secretary to withdraw their claim for judicial review*.

Problems are not limited to detention. The case of child EG[13] who starved to death when his mother's support was cut off was discussed at the National Asylum Stakeholder Forum on 8 November 2012, at which ILPA was represented. Organisations present asked for an urgent response to the findings of the case review. The UK Border Agency staff member responded that the matter had to be discussed with other departments such as the Department for Work and Pensions. The ILPA representative expressed disagreement: the UK Border Agency could at once put in place a system whereby asylum support continued until a person was getting mainstream benefits, pending discussions with the other Government departments about the best way to achieve the transfer. The Home Office policy lead, Mr Rob Jones, Head of Asylum in the Strategy, Immigration and International Group of the Home Office suggested that there was a need to collect more evidence to understand the extent of the problem. It was suggested to him that a child and a mother having starved to death constituted sufficient evidence of a problem and a need for action.

[12] HL Deb, 10 April 2013, c313W.
[13] Westminster Safeguarding Children's Board Serious Case Review, Executive Summary Child EG.

Although ILPA is asked to meet with the Home Office as a representative body, when it does and raises concerns so it is repeatedly told that it must provide individual, identifiable case examples of the problems it raises. When it raises individual examples it is told that these are "anecdotal" (thereby evidencing confusion between anecdotal and qualitative evidence).

All this suggests that we are very far from the Home Office providing an appropriate and proportionate response to the gravity of the wrong exposed by the complaint, whatever redress is provided to the individual complainant. While this continues, it is difficult to envisage that use of the complaints procedure will increase.

Adrian Berry
Chair
ILPA
21 August 2015

Appendices

Annex 1 Response by Border Force to a letter of complaint (anonymised)
Annex 2 Bail for Immigration Detainees re Immigration Act 1999 s 4(1)(c): requests to UK visas and Immigration to review responses to complaints