ILPA response to the Chief Inspector of Borders and Immigration's questionnaire as part of the re-inspection of administrative review

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 organizations.

1. The Chief Inspector previously recommended that the Home Office should make it clear to applicants in published guidance and on the online application form that the deadline for applying for an administrative review is calculated from the deemed date of receipt of the eligible immigration decision unless the applicant can demonstrate they received this on a later date.

Have you noticed any improvement in this area since our previous inspection? *

- ○ Yes
- ○ No X

Additional comments:

The letter of refusal says that the person has 14 days from receiving it to reply but a person who is not represented will not necessarily understand about deemed receipt and will assume that what matters is when they got the letter.

If they have not saved the envelope there may be problems: in some cases there is a time lag between the dates of decision letters and the postage of those letters; in some cases (not all) the letter is dated five days or more prior to the date of receipt. A legal representative will retain proof of the date of posting, and thus be able to rebut a presumption of deemed service, but individuals are unlikely to think to do this.

2. The Chief Inspector previously recommended that where an applicant fails to qualify for a fee waiver, the Home Office must ensure that the invalidity notice informs the applicant that they may reapply with the fee within seven days.

Have you noticed any improvement in this area since our previous inspection? *

- ○ Yes
- ○ No

No response.

Additional comments:

We have insufficient examples to make a general comment on this.

At the time of the last application we had seen few domestic violence cases. In those we have seen since, the invalidity notice has not informed the applicant that they may reapply with the fee within seven days.

3. The Chief Inspector previously recommended that the Home Office should ensure that all substantive issues raised by the applicant within an administrative review request are addressed, and that decision notice accurately reflects this.

Have you noticed any improvement in this area since our previous inspection?

- ○ Yes
- ◉ No

Additional comments:

Not consistently. Our experience is that in the majority of cases all substantive issues are rehearsed, but this is not the same as their being addressed.

The letters adequately address the point in straightforward cases "You said I had omitted a document; I had not" "You have misread a requirement of the rules" etc. But in general (there are exceptions, see response to question nine below) they do not do so in cases that involved reasoned argument, points of law and debate. Arguments are set out in detail and then we are told that the Home Office maintains its position. Paragraphs from the reasons for refusal letter are repeated.

One striking example was a case that took place before the last inspection, where an applicant received a poor administrative review decision and challenged this by judicial review. The refusal was of the cut and paste variety described above. The Home Office withdrew the decision on the administrative review at the door of the court; the claimant having spent several thousand pounds by then. They then proceeded to make a second decision, after the last inspection, which repeated all the errors of the first. This too was challenged by judicial review and, eventually, conceded.

4. On a scale of 1-5, how effective and efficient do you consider the administrative review process?
(1 being not effective and 5 being very effective) *

- [x] 1
- [ ] 2
- [ ] 3
- [ ] 4
- [ ] 5

Additional comments

We consider that effective and efficient are not the same. We rank the process one out of five for effectiveness, and one out of five for efficiency.

We do not consider that the process is effective. See comments on question 3 above. It does not work in the majority of cases where there is scope for debate and reasoned argument must be addressed. It is a process suited only to dealing with administrative errors that is being used far more broadly than that.

We do not consider that it is efficient to have to pay a fee of £80 and to go through an administrative review, in some cases to achieve a correction to a misspelling of a name, a gender, or Certificate of Sponsorship number on a biometric residence document when previously it was possible to achieve a correction much more quickly. In some of these cases applicants have paid a premium for the priority postal service. A client was issued with a biometric residence permit with a period of leave shorter than that on his certificate of sponsorship. The Home Office website states that matters to do with the period of leave should be emailed to the Administrative Review team (it does not say that an application is required). The lawyer emailed the administrative review team who said only that an application for administrative review should be submitted. The lawyer observes that it can take four or five days for the team to respond, cutting down the period for a review.

At the Home Office Business User Forum of 27 May 2015, Alison Harvey of ILPA raised with the Home Office applicants and their representatives being told that they should use administrative review route to correct printing errors in biometric residence Permits. The response given by Phillip Smith, of the Home Office, responsible for biometric residence permits was that:

- out of country Biometric Residence Permits error corrections are not subject to Administrative Review; and
- in-country correction of biographic details is also not subject to administrative review but correction of other errors is.

This does not appear to be an accurate description of current policy as far as in-country cases are concerned, but there is a lack of clarity about this. We attach at **Annex 1** a copy of the standard letter that is sent with a biometric residence permit.

It is not efficient for legal representatives to receive an £80 payment from the Home Office to their client account with no indication as to which client it pertains. This is a problem with refund of administrative review fees, just as it with immigration health service charge refunds. It causes problems on audit and with accountants.

It is not efficient that while there is an expedited service for applications, there is no expedited service for administrative review, to correct a straightforward error. Nor is efficient when the only dispute is as to the length of a grant of leave or a typographic error, and there is no dispute that a person has leave, that such a person is prevented from travelling.

Case study (February 2017)

A Tier 2 intra-company transferee earning enough to be allowed to spend up to nine years in the UK, applied for further leave to remain. The certificate of sponsorship dates, application fee, immigration health surcharge and covering letter all explained that a five-year extension of leave is sought (not the normal two years). The applicant renewed two months early using premium service because of essential business travel commitments. The biometric residence permit was issued with only two years of further leave: a clear case working error. The lawyers raised this with the administrative review team and were told that they must lodge a formal application. The applicant needed to travel. It was confirmed that as he had valid leave he could travel and apply when he returned, although the Home Office failed to highlight that this would only work if he returned within the 14-day time limit. He is constantly travelling for next two months (no more than 48 hours here in one go). He was informed that if he left the UK whilst administrative review is pending it will be treated as withdrawn and that it cannot be fast-tracked; he must allow 28 days. It has been lodged, whilst he is travelling, with a threat of judicial review if an attempt is made to treat it as withdrawn.

One solicitor encapsulates the views of many in stating "*They seem to be no more now than a tedious step one has to take before issuing a judicial review, i.e. effectively part of the pre-action protocol.*

5. Have you experienced any change in Home Office administrative review performance since our previous inspection in 2015? *

- ○ Yes
- ◉ No

Additional comments

See responses to the other questions. Experiences of the process are generally negative, but it is not consistent.

6. Have you received any complaints relating to administrative reviews? *

- ○ Yes
- ○ No

Not answered.

If you answered yes, please provide details of the nature of these complaints

In general, as lawyers, we are not the recipient of complaints, but of instructions to challenge poor decisions. We are receiving such instructions; from those who can afford to bring a judicial review challenge.

7. Do you consider the Home Office current timescales for processing administrative reviews adequate? *

- Yes
- No

This question does not admit of a yes or no answer.

Please explain why and how the process could improve

In, for example student cases turning on whether the applicant has been found to be a genuine student, where there has been an interview, it is extremely difficult to obtain the transcript of the interview in time to prepare the administrative review. If an interview is relied upon to justify a refusal on the grounds that a person is not a genuine student, then the transcript of such an interview should be served with the Notice of Decision but it is not.

Problems arise in cases where a person does not benefit from s 3C leave. These problems would exist whether or not the process were quicker. The answer is not to speed up the process, but to deal with the question of 3C leave.

Different aspects of s 3C leave were the subject of debate during the passage of the Immigration Act 2016. In the Public Bill Committee an amendment was tabled that would have reversed the effects of the judgment of the Court of Appeal in *R (Iqbal v SSHD)* [2015] EWCA 838, a judgment subsequently upheld by the Supreme Court.[1]

Mr Iqbal was granted entry clearance in January 2007 to come to the UK as a student. He had leave to remain until 30 April 2011. On 19 April, before leave had expired, Mr Iqbal made an application for further leave to remain as a Tier 4 Student. He did not submit the correct fee with his application because he had not appreciated that it had recently been increased by some £29. On 26 April the application and supporting documents were returned to him and he received them on 2 May, after leave had expired. He was informed that the failure to pay the proper fee meant that his application was invalid.

Mr Iqbal submitted a further application on 6 May 2012, after his leave had expired. The college at which he planned to study lost its licence before his application was considered and his application therefore fell for refusal because the college he had identified was no longer approved.
If he had been entitled to the automatic extension of leave under s 3C, then he would have been given 60 days in which to identify another approved institution which would accept him. He was not given that opportunity because the Secretary of State considered that he

[1] *R (Mirza) v SSHD* [2015] UKSC 0209 and *R (Iqbal) v SSHD* [2015] UKSC 2015 0210 and *R (Ehsan) v SSHD* [2015] UKSC 0211 (14 December 2016). See Amendment 217, debated Public Bill Committee, 10th sitting (morning) cols 371–374 (3 November 2015).

had no right to remain because the relevant application had been made after his leave had expired.

The Court of Appeal held that if a person such as Mr Iqbal makes an in-time application to vary their leave to remain which they reasonably think is a valid application, but, after their leave expires it turns out that the application was not valid, they have been in the UK without leave and without the protection of s 3C leave, even though they did not know this and had no reason to think it, between the expiry of the existing leave and the Secretary of State's decision that the application was invalid.

At the hearing, the Secretary of State was no more keen on this interpretation of the law than the claimant. The Secretary of State argued that an application which is invalid under the rules may nevertheless be an application that engages and brings into effect s 3C. She argued that when a person is notified that an application is invalid this constitutes a decision on the application within the meaning of s 3C. If that decision is made before leave has expired, the person's original leave will simply expire in the normal way and s 3C has no role to play (see s 3C(1)(c)). If it is decided after the expiry, leave will terminate at the date of the decision: s 3C(2)(a). She cited 'strong policy reasons' for this approach. Firstly, that at the point at which the application is made neither the Secretary of State nor the applicant will know for sure whether or not the application, made in good faith and believed to be valid, is valid, and this could have consequences such as the applicant turning out to have been working unlawfully. Second, that the approach resulted in complexity and was difficult for to understand both for applicants and caseworkers, giving rise to uncertainty and thirdly that this complexity was exacerbated because, for example, obligations to enrol biometric information arose at a later date.

The Court of Appeal however, held that the section could not be interpreted in this way.

By the time the Bill reached Parliament the Home Office had decided that it could live with the effect of the judgment of the Court of Appeal in *Iqbal.* ILPA raised the matter directly with the Bill team and received the following response:

> *'the Court of Appeal stated in Iqbal that an invalid application did not trigger 3C leave and that this must be the way Parliament would have expected the legislation to work. The Court made the point that the power to enable regulations to be made prescribing the formal requirements of certain applications was first introduced by the Nationality, Immigration and Asylum Act 2002 and that it is clear that an application must be validly made in accordance with the rules. In making these findings the Court of Appeal adopted the Secretary of State's secondary or alternative argument in Iqbal.*
>
> *The concern that the Home Office had in Iqbal was around certain practical consequences that would apply to people who would not know that they had made an invalid application. Having carefully considered the rules and processes the Home Office has on validity following Iqbal, we do not think that an amendment to section 3C is necessary or desirable.*
>
> *The Immigration Rules provide that in order for an application to be valid the applicant must enrol their biometric information (where required to do so), pay the correct fee and Immigration Health Surcharge (where required) and provide the mandatory documentation required for the application. Where a fee is omitted or the wrong fee paid, an applicant who has not made a valid application will be written to and advised what further action to take to ensure that their application is valid. Where people respond to that letter within the specified time limit (ten days) and provide the missing information they will have made a valid application and will be unaffected by the judgement in* Iqbal. *In addition we are improving our*

processes so that in the future it will be more difficult for people to submit an invalid application.

Where a person has not made a valid application initially and despite having been contacted by the Home Office, has not corrected the errors in their application Iqbal confirms that the application does not operate to extend their leave under section 3C. Where that person commits an offence by working illegally, the question of whether to prosecute will be one for the CPS who, in applying the charging test, must be satisfied that prosecution would be in the public interest. The Home Office considers that where someone genuinely believed that they had made a valid application and thought they had leave to remain in the UK as a result of section 3C leave, it is very unlikely to be in the public interest to prosecute.

Amending the legislation to reflect the alternative argument that an application is valid until the SSHD notifies the applicant that it is invalid, would mean that even where an applicant knowingly made an invalid application their immigration leave would be extended. We do not think that would be a desirable outcome.

We believe that our processes and the public interest test strike the right balance in protecting an individual who has made a genuine error from being prosecuted while maintaining effective immigration control.'[2]

The Supreme Court agreed with the Court of Appeal. Applying ordinary principles of statutory interpretation, for no challenge was before it as to the legality or rationality of the rules and regulations, it found no ambiguity in the words of regulation 37 of the Immigration and Nationality (Fees) Regulations 2011.[3] It upheld the Court of Appeal's rejection of Mr Iqbal's ground of alleged unfairness, holding that the comments of the tribunal in *Basnet v SSHD*[4] do not lay down a universal rule and the Secretary of State had not failed to publicise the fee change. In contrast, in the joined case of *Ehsan*[5] it treated the failure to provide biometric information as giving rise to power to invalidate the application.

Before the Supreme Court the Secretary of State reverted to the position she had taken prior to the hearing before the Court of Appeal and adopted in the correspondence with ILPA: that an invalid application did not result in leave being extended.

The Supreme Court reviewed the position that the Secretary of State had taken before the Court of Appeal.[6] Lord Carnwath said

> '*I have found this a troubling case. It is particularly disturbing that the Secretary of State herself has been unable to maintain a consistent view of the meaning of the relevant rules and regulations. The public, and particularly those directly affected by immigration control, are entitled to expect the legislative scheme to be underpinned by a coherent view of their meaning and the policy behind them. …*
>
> *31. The problem is only too vividly demonstrated by the course of the arguments in this case. The policy concerns which underlay the Secretary of State's position in the Court of*

[2] Andrew Eliot, Head of Bill Team, Home Office, to Alison Harvey, Legal Director, ILPA, 28 October 2015, by email.
[3] SI 2011/1055.
[4] [2012] UKUT 0113 (IAC).
[5] *R (Ehsan) v SSHD* [2015] UKSC 0211 (14 December 2016).
[6] Lord Carnwath, at paragraphs 16ff.

Appeal were and remain very real. They should have been apparent to the Department at least since 1996, when judgment was given in the ILPA case. Against that background, there was surely a need to introduce some measure of flexibility to ensure that bona fide applicants were not unduly penalised for simple mistakes which could be readily corrected.[7]

An amendment was also moved in Commons' Committee which would have replaced s 3C(2) of the Immigration Act 1971 'The leave is extended by virtue of this section' with 'The leave is extended from the day on which it would otherwise have expired'.[8]

Section 3C requires that the original leave has already expired when the Secretary of State makes her decision for the protection of s 3C to kick in for the period while an appeal can be brought or is pending. If the Secretary of State does manage to decide the application before the original leave expires, and refuses it, the applicant does not benefit from s 3C while the appeal or administrative review could be brought or is pending. The problem is with s 3C(1)(c):

'**3C Continuation of leave pending variation decision**

(1) This section applies if—
  (a) a person who has limited leave to enter or remain in the United Kingdom applies to the Secretary of State for variation of the leave,
  (b) the application for variation is made before the leave expires, and
  (c) the leave expires without the application for variation having been decided.

(2) The leave is extended by virtue of this section'.

Thus persons refused before their original leave expires may have the right to appeal or to apply for administrative review, but run the risk of becoming overstayers if their leave expires before the conclusion of proceedings.

The amendment was rejected. ILPA took the matter up directly with the Bill Team, who said:

'As the Solicitor General set out in committee, it has always been the case that, where an application is refused and the applicant still has immigration leave, leave is not extended by section 3C while a challenge to the refusal can be brought. Section 3C applies only where an application remains undetermined at the point that the applicant's extant leave expires.

We do not think that paragraph 152 of the explanatory notes suggests otherwise. That paragraph sets out how section 3C operates, by way of background to the change to section 3C made by clause 30 of the Bill. The reference to leave being extended by section 3C while an appeal or administrative review against a refusal decision remains pending is in the context of the situation where the applicant finds that "their leave expires while their application remains undecided".

This is the intended position. People who still have extant immigration leave at the point of refusal are in a different position to those who are refused after their leave expires. People with extant immigration leave may be able to submit another in-time application for immigration leave. That is not an option for those whose application is refused after their leave has expired.

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[7] Lord Carnwath at paragraphs 30 and 31. The reference to the *ILPA* case is to *(Immigration Law Practitioners' Association) v SSHD* [1997] mm AR 189.

[8] Amendment 216, debated Public Bill Committee, 10th sitting (afternoon) cols 371–374 (3 November 2015).

Furthermore the changes made by the Immigration Act 2014 to appeal rights means that where a person's application is refused while they still have extant leave, they are in a better position than they were previously. Before the Immigration Act 2014, a refusal made while a person still had leave would not result in a right of appeal. Following the changes made by that Act the availability of a right of appeal or administrative review is unaffected by whether a person has extant leave at the time of the decision.

Given this position we do not see any reason to change the long standing position on when 3C leave is triggered.'[9]

The reference to paragraph 152 of the Explanatory Notes to the Bill[10] is to the following passage, highlighted by ILPA:

> *'A person who currently has leave and applies to extend their leave to enter or remain may well find that their leave expires while their application remains undecided, or while an appeal or administrative review against a refusal decision remains pending. To prevent people being left without leave, section 3C … provides…'*

ILPA continues to press the matter with the Home Office, for example, at meetings with its Complex Casework team and at its Business User Forum. The question of 3C leave has become all the more pressing as the hostile environment becomes ever more hostile. A person without the protection of 3C leave is an overstayer and is committing a criminal offence. They must give up their job; hand back their driving licence; is likely to be evicted from their flat and to see their bank account closed. All this can happen however quick the process is. The period of 14 days in which to bring an administrative review, and a further 28 days for it to be decided, if indeed it is decided within this time frame.

8. Do you think that current administrative review guidance is clear and accessible for applicants?
*

- ○ Yes
- ◉ No

Additional comments:

See e.g. response to question 1 above. When a person receives their biometric residence permit, they are told that if there are mistakes on it they should email the Home Office. This is to identify whether they are entitled to bring an administrative review. They are not told that if they are going down the administrative review route they have 14 days in which to do so.

Our discussions revealed that representatives found the guidance confusing as to e.g. whether a spouse (i.e. a case where there is deemed to be a right of appeal) could /had to bring an administrative review when their biometric residence card was issued with errors.

[9] Andrew Elliot, Head of Bill Team, Home Office, to Alison Harvey, Legal Director, ILPA, 6 November 2015, by email.
[10] Bill 74 EN 2015–2016.

The hard copy form which can be used in entry clearance cases is described as "Points-based system" (March 2009),[11] although it is the one and only version. This confuses applicants (and not a few representatives).

There is a lack of clarity about whether you can send documents with an online form. You can email them subsequently but many representatives understand this to be the case only if they are requested. The documents are not always requested even when the form flags up that they are available and waiting to be sent. In one case, where an applicant for leave under Tier 4 to do an MBA was refused as not being a 'genuine student' the applicant indicated that a letter from the tutor (she had started the course) was available as well as a letter from the college confirming attendance etc. She also indicated that she had not been given a transcript of her interview. No documents were requested.

9. In your experience, how consistent is administrative review decision quality? *

- ○ Very Consistent
- ○ Consistent
- ◉ Not consistent

Additional comments

See response to question 3 above. Overall, quality is poor and there is some consistency in this. All too often the review does not engage with legal argument: the refusal decision is simply repeated and arguments rebutted with a 'no', with no reasoning given. For example the decision-making in cases where students have been held to have failed the 'genuine student' test is described as 'exceptionally poor'. We attach some examples of administrative reviews in these cases at **Annex 2**.

We have seen exceptions to poor quality, for example a case in which an entrepreneur was refused on 'genuineness' grounds and the decision was subsequently overturned on administrative review. In this case we identity that there was a spate of very poorly reasoned refusals on genuineness tests in entrepreneur cases, and perhaps this was the reason that they were being looked at closely on administrative review.

Another case which was dealt with well involved a woman applying for indefinite leave to remain at the same time as her husband (who had leave under Tier 1 (General)) and their children, because a caution she had received, more than two years ago, had not been put on the settlement application form. The lawyer's representations argued that they filled in the form from information given by her husband, that he did not remember the caution; that he signed the form not she; that the caution was spent for all other purposes and that the refusal of a mother of two young children was disproportionate. Arguments as to her general character and conduct were advanced the decision was changed.

As described above, administrative review is designed to deal with straightforward administrative errors and here there is less of a problem with quality.

[11] https://www.gov.uk/government/publications/application-for-administrative-review-of-visa-decision

10. Does the administrative review process impact on your business? *

- (•) Yes
- ( ) No

If yes, please explain how

Yes it is providing increased work for legal representatives.

Yes, see above the response to question 4 above re refund of the fee to solicitors in successful administrative reviews.

As to the impact on our clients' businesses, or on their employers, again the answer is yes. See response to question seven above: employees become overstayers with no permission to work because they do not enjoy the protection of 3C leave.

It is also a problem for workers and their employers that they cannot both challenge a review and make a fresh application, thus sorting the matter out as fast as possible (potentially on the same day, using the same day service). This was a matter we canvassed in our previous response to the Chief Inspector.

When the government consulted ILPA on the draft rules for administrative review, ILPA responded in August 2015:

> *An administrative review should not be stopped when an application is made. It may be vital for an applicant to overturn a wrong decision as this will stay on his/her record but necessary for him /her to try to make rapid progress by submitting a fresh application.*
>
> *A person should not be required to submit a fresh application (e.g. after becoming an overstayer) rather being allowed to remain lawfully present and submit additional documents with the administrative review application. … evidential errors cannot be corrected in most cases, so people will need to make new applications within 28 days of becoming overstayers. Knowingly overstaying is a criminal offence which the Home Office appears to encouraging by this approach.*

This was taken on board and the rules as issued did not require an applicant to choose between an administrative review and a fresh application and allowed applicants to use administrative review to correct errors other than those which would alter the outcome of the eligible decision.

Then HC 297 was published on 13 July 2015, changing the rules with effect from 3 August 2015 for all applications for administrative review made on or after that date. As we wrote to the Chief Inspector's first enquiry

> *"The effect of the changes was that those who wished to make a fresh application during the 14- day period that their leave is extended under section 3C to give them time to make a fresh application for leave to remain would no longer complete an administrative review waiver form. Instead, paragraph AR2.10 was been amended to provide that administrative review is no longer pending if a person makes a fresh leave to remain application. This means that 3C leave ends. Any subsequent application for administrative review is treated as invalid.*

HC 297 inserted new paragraph 34X (4) which provides that while an administrative review application is awaiting determination, making a fresh application for entry clearance, leave to enter or leave to remain has the effect of withdrawing the administrative review.

New paragraph 34N (4) is in similar terms, providing that if a new application is made during the period when application for administrative review may be brought, an application for administrative review may not be made. Thus a person cannot obtain a simultaneous fresh application and administrative review by making the fresh application first. "

As per our submission to that enquiry there was no explanation of the change and the Explanatory Memorandum to HC 297 provided:

7.5. Some people in relation to whom an eligible in-country decision has been made prefer to make a fresh application for leave to remain rather than proceed with an application for administrative review where they recognise that their original application was correctly decided. At present they are unable to make a fresh application for 14 days if their original application was made in time and their leave expired while the application was under consideration, because section 3C(1) of the 1971 Immigration Act extends their leave and section 3C(4) prevents an application for variation of leave being made during this period. Accordingly, if they wish to make a fresh application during the 14 day period that their leave is extended under section 3C, they must complete an administrative review waiver form in accordance with paragraph AR2.10. This is confusing for applicants and creates an administrative burden on the Home Office. To rectify this, paragraph AR2.10 has been amended to provide that administrative review is no longer pending if a person makes a fresh leave to remain application. This means that 3C leave ends and the person is able to make a fresh application without the need to submit the waiver form.

Thus suggests that the change is to advantage applicants. ILPA has subsequently raised with the Home Office that the disadvantages to applicants are greater than the advantages. As far as we can ascertain from those conversations the earlier decision not to take this approach in the rules as originally published was not reversed following consideration of all arguments, rather, it appears to have been forgotten.

Do you have any other issues to bring to the attention of the Independent Chief Inspector?

Lack of any remedy in curtailment cases

Section 64 *Continuation of leave repeals* of the Immigration Act 2016 removes section 3D of the Immigration Act 1971 on the basis it is "no longer necessary." Section 3D of the Immigration Act 1971 is the provision under which a person's leave continues on the same terms and conditions pending an appeal or administrative review of a decision to revoke or cancel leave. The Explanatory Notes to the Act contend that the provisions revoked 'have no continuing purpose'.[12] This is currently true, but for reasons that merit closer

[12] Explanatory Notes, para 298.

examination as ILPA set out in its November 2015 comments to the Chief Inspector for his first inspection of administrative review.[13]

The Government's I*mmigration Bill – Statement of Intent on Administrative Review in lieu of Appeals,*[14] the Explanatory Notes accompanying the Bill which became the Immigration Act 2014, published on both 10 October 2013[15] and 03 February 2014[16] and statements made during the passage of that Act gave examples of where those losing rights of appeal would instead be given an administrative review. These included where leave is revoked or cancelled.[17] This example disappeared when the Explanatory Notes to the Bill became the Explanatory Notes to the 2014 Act. The subsequent Immigration Rules on administrative review[18] do not provide for administrative review where a person's leave is cancelled or revoked. Such a person has no right of appeal and no administrative review and thus becomes an overstayer from the moment leave is cancelled, whether or not the decision is subsequently successfully challenged by means of judicial review. Judicial review is a costly remedy beyond the means of many.

We continue to regard it as wholly wrong that domestic violence cases and cases of bereaved spouses and partners are alone singled out from Appendix FM as having an administrative review. We continue to ask, is it assumed that the bereavement/violence means that they have no family life claim? If so, this ignores relationships with children, or other family members. It also omits consideration of private life, which may be highly relevant in such cases. For all the reasons set out above, we consider that administrative review is wholly inappropriate in such cases.

***Akturk v SSHD* (CO/576/2016) (Holman J)**

This judgment will be published in the next couple of weeks. It concerns whether the removal of the right of appeal for Turkish citizens relying on EU Association Agreement with Turkey (the "Ankara Agreement") is incompatible with Article 41 (1) of the Additional Protocol (standstill clause) of the Ankara Agreement and, if so, whether that incompatibility is cured by the availability of administrative review. We urge the inspectorate to scrutinise the judgment.

The Chief Inspector's previous report and the Home Office response to it were relied on in evidence. A response to a request under the Freedom of Information Act submitted in evidence showed that for that for Turkish Ankara Agreement cases the prospects of success have reduced from over 40% on appeal to less than 1% on administrative review. Counsel were Nathalie Lieven QC and Emma Daykin, instructed by Ibrahim Aytac from Stuart & Co.

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[13] http://www.ilpa.org.uk/resources.php/31561/ilpa-comments-to-the-chief-inspector-of-borders-and-immigration-for-the-inspection-into-administrati

[14] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/254851/SoI_Administrative_review.pdf,

[15] http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0110/en/14110en.pdf, para 73

[16] http://www.publications.parliament.uk/pa/bills/lbill/2013-2014/0084/en/14084en.htm, para 77

[17] Explanatory Notes to Bill 206-EN 2013-2014 at para 73 'an administrative review may be sought when a person's leave is curtailed or is revoked'. See: http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0110/en/14110en.htm (accessed 11 November 2016) and see HL Bill 84-EN 2013-14, para 77. Available at: http://www.publications.parliament.uk/pa/bills/lbill/2013-2014/0084/en/14084en.htm (accessed 11 November 2016).

[18] HC 395, Appendix AR.