



IMMIGRATION LAW PRACTITIONERS' ASSOCIATION
PRESIDENT: IAN MACDONALD QC

ILPA Annual Report 2009/2010

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OBJECTS OF THE ASSOCIATION

The objects of the Association are:

- To promote and improve the giving of advice to and the representation of immigrants from whatever part of the world whether coming or intending to come to the United Kingdom for settlement or some limited purpose and to promote further and assist by whatever means the giving of advice to and representation of immigrants or emigrants to or from any other part of the world.
- To disseminate information and views on the law and practice of immigration and nationality in the United Kingdom and elsewhere.
- To enhance and expand the teaching of immigration and nationality law in the United Kingdom or elsewhere.
- To coordinate the activities and interests of immigration and nationality law practitioners, to make contact with similar bodies in other countries and to make representations for and on behalf of immigration and nationality practitioners.
- To secure a non-racist, non-sexist, just and equitable system of immigration and nationality law practice in the United Kingdom and elsewhere.

CHAIR'S REPORT

2009-2010 has been an extraordinary year for ILPA and its members, which many may feel has been marked by its challenges and changes rather more than its triumphs. But triumphs there have been and it is worth celebrating each achievement whilst we continue to strive to address each challenge. In the current climate ILPA's work is more crucial than ever and the ability to harness the strength of all our members in rising to these challenges gives cause for optimism.

The reports of our subcommittees and our General Secretary of course detail the year's key events but I highlight just a few notable examples. It was with great sadness and frustration that we saw the demise of Refugee and Migrant Justice (RMJ). We are most grateful to all those who assisted ILPA, *pro bono*, as an intervener in the *CMX* litigation, and to all those members who rallied to assist Refugee and Migrant Justice's clients. The fiasco of the legal aid tenders has angered many members and any diminution in availability of quality service provision in this complex and demanding area is to be deeply regretted. Recent announcements of proposals to charge significant fees for appeals and to remove legal aid for immigration and for asylum support cases are most concerning and will be vigorously opposed.

The advent of a new Government has brought its own challenges, as the Coalition Agreement commitment to reduce net migration to tens of thousands over the lifetime of the parliament (a woolly statement but translating as a reduction of approximately 50%) crystallised into policy on capping routes of immigration. The sudden introduction of 'interim limits' on Tiers 1 and 2 (for highly skilled migrants and sponsored skilled workers) of the Points-Based System, through unsophisticated arbitrary mechanisms, caused great difficulties and concern for individual migrants and their employers and exercised many practitioners. We await with interest the outcome of several members' Judicial Review actions in this regard. The report of the Migration Advisory Committee and the announcements of the Home Secretary in November 2010 further raise the spectre of government turning its attention next to students and to family migration routes and to restricting settlement.

In a climate of arbitrary caps, an increase in human rights-based claims and in litigation appears inevitable and practitioners will increasingly need to draw on both breadth and depth of expertise to secure solutions for clients and protect migrants' rights.

Some of the positive news stories during the year have included the Home Secretary's announcement to abandon the earned citizenship provisions of the Borders, Citizenship and Immigration Act 2009 – provisions to which ILPA had strenuously objected throughout the passage of the Act; the Certificate of Approval requirement for marriage in the UK is at last being repealed, removal without notice has been stopped following cases for which ILPA provided, in one instance, a witness statement; and following *HJ (Iran) and HT (Cameroon) v SSHD* [2010] UKSC 31 it is no longer acceptable for the UK Border Agency to claim an individual can be returned and hide their sexual identity to avoid persecution.

Full details of ILPA's activities in the past year are set out in the enclosed reports of the Officers, the Convenors of our subcommittees and in particular the General Secretary, which demonstrate the extent and impact of ILPA's work this year. As always tremendous thanks are due to our members, the Secretariat, Subcommittee Convenors and the Executive for their considerable efforts and contributions.

Thank you to all those who served on the Executive this year. I must take this opportunity to thank Sue Shutter in particular who, after ten years as Secretary, has decided to stand down from this office. Sue has tirelessly supported ILPA for so many years and her generosity with her time and expertise for the benefit of members has been much appreciated. She has assisted the EC

on so many occasions, often proving invaluable as our 'institutional memory' for quick reference. I am delighted that Sue has kindly softened the blow by agreeing to stand for the EC. I would also like to single out Alasdair Mackenzie who is standing down this year after three years on the EC. Alasdair has been an active and thoughtful EC member throughout and was an invaluable support to ILPA when stepping in as Acting Chair for some six months during my maternity leave last year. He will be much missed on the EC, though doubtless ILPA will continue to benefit from his contributions as an active member.

I am, as always, amazed by and grateful for the seemingly inexhaustible energy and dedication of our General Secretary, Alison Harvey, in leading ILPA's activities and representing migrants and members' interests with her trademark passion, precision and determination. As we look ahead to new and mounting challenges in the coming year, I draw confidence and optimism from Alison's energetic commitment to ILPA, its members and the rights of migrants.

The ILPA secretariat is key to ILPA's work and one of the positive developments of the past year has been the excellent and growing secretariat. This year we have been pleased to welcome Lana Norris as Finance Manager (maternity cover for Kit Eaves), Natasha Tsangarides in the new role of Project Manager, Refugee Children's Project and Zoe Marsden in the new role of Project Manager, Information Technology & Website Project (following her excellent contribution during Kit's previous maternity leave). They join the superb, longstanding team of Helen Williams, Elizabeth White, and Steve Symonds, to whom we are most grateful for their ongoing excellent work.

Following the successful bids last year for funding from Unbound Philanthropy and The Diana Princess of Wales Memorial Fund, two exciting projects are now well underway. The enormous task of entirely overhauling ILPA's IT systems and website (led by Zoe Marsden, ably assisted by Helen Williams) will ultimately deliver operational efficiencies and great benefits to members who will be able to access additional services such as member-only web services including on-line archive searching of ILPA resources. Natasha Tsangarides has been developing and coordinating ILPA's programme of free training for practitioners in immigration and also other fields working with refugee children (commencing in February 2011) and its work to produce best practice guides in this critical area (to be launched in May 2011). This is essential work to support this most vulnerable group. We are also delighted to continue to receive funding from the Joseph Rowntree Charitable Trust to support the post of the Legal Officer.

The General Secretary's report details the extensive written output of ILPA this year and our attendance at a vast array of meetings and stakeholder groups. Members have generously donated their time, in a year when they can least afford it, to make essential contributions to these responses and meetings and their input is greatly appreciated. Thanks are also due to the Secretariat in co-ordinating responses often under great time pressure.

The Treasurer's report sets out ILPA's financial situation, which has been strengthened this year by funding from the Diana Princess of Wales Memorial Fund and Unbound Philanthropy. However, it must be born in mind that this funding provides for specific, important strategic projects and for the core of ILPA's activities. ILPA's key source of income remains its members, through membership fees and through attendance on courses. Training course income has declined, as expected, compared to last year (which had been temporarily increased by the exceptional circumstances of the meteoric level of change with the introduction of the new Points-Based System). However ILPA will continue to develop a stimulating programme of training focussed on members changing needs to seek to maintain overall attendances. ILPA cannot do the vital campaigning and lobbying work from which the whole sector benefits without funds and

ILPA is continuing to strive to optimise operational efficiency, enhance high quality training programme and promote membership.

Whilst we welcomed an increased number of new members to ILPA this year overall membership again decreased. The general economic circumstances and the continuing huge financial pressure in the publicly funded sector have sadly continued the trend in memberships lapsing (in many cases due to members ceasing to practise immigration law). ILPA has implemented practical measures to better facilitate membership renewals (e.g. direct debit) and will seek to maintain and build membership despite the economic conditions. ILPA's IT and Website project is key in this regard enabling us in due course to further augment the benefits of membership. As immigration and asylum practise becomes more challenging, ILPA's role in lobbying and in providing information and training to best equip practitioners to overcome difficulties is arguably ever greater and we shall aim to maintain, grow and support the membership accordingly.

I again ask all members to remember to publicise the benefits of ILPA membership (including the extensive lobbying work we do, our training and our information services) to potential new members. ILPA's excellent courses are also open to non-members (for a higher fee) and the increase in interest from commercial training providers in immigration and asylum indicates an interest in such training from practitioners outside the membership (such as those whose primary practice is in other areas of law).

A superb training programme was developed again this year, through the excellent work of Alison and Helen and the training subcommittee. A huge thank you to all those who train for us, without whom the exceptional standard of ILPA's courses would not be possible. Your contribution is invaluable. Training plays a vital part in achieving our objects, as well as being an essential income generator. We continue to welcome suggestions for new courses and new trainers from the membership (please direct suggestions to Helen and the Training Subcommittee). I do believe that ILPA offers the finest training in the sector and of course in choosing ILPA as your trainer you are also helping to support the lobbying, information provision and other work which we do, day in day out, unlike other training providers. Whilst small courses are often not economic for us, particularly when they are based out of London, we continue to try to run them wherever possible for the benefit of members. We hope that attendance levels will enable us to expand the programme for next year.

ILPA continues to play a pivotal role in informing our members, quickly and effectively, of important changes, through our mailings, our information service, our e-mails to members, and in the longer term through our courses. We look forward to further improvements in how we can communicate with and serve members needs through the improvements in ILPA's systems which the funding from Unbound Philanthropy is facilitating.

Finally, I would like to thank all of you for the support you as members provide to ILPA in so many ways, from attending courses to representing ILPA at meetings, drafting consultation responses and sharing information. The generosity of our members in giving time and knowledge to others is exceptional and indeed distinguishes us from many other areas of practice. The willingness of immigration and asylum practitioners to collaborate to achieve common goals is key to our strength.

Members are of course the lifeblood of the organisation, enabling ILPA to make an impact in this important area, supporting members and the migrants they represent, including some of the most vulnerable members of the community, by increasing knowledge, enhancing best practice and applying informed pressure to policy makers to secure essential changes.

Whilst we face great challenges in the year ahead, the sheer dedication and determination of our members together with the funding we have secured to support projects to expand ILPA's excellent work, enable ILPA to provide support to members and ensure we remain a force to be reckoned with.

Sophie Barrett-Brown

Chair

23 November 2010

Executive Committee Members and Subcommittee convenors

The Executive Committee

Ian Macdonald QC – President
Sue Shutter – Secretary
Adrian Berry
Emily King (Pope)
Linda Rowe
Adam Weiss

Sophie Barrett-Brown – Chair
Kahiye Alim – Treasurer
Mark Henderson
Alasdair Mackenzie
Solange Valdez
Sheona York

There were no changes to the membership of the Executive Committee during the year.

Subcommittee convenors during the year:

Access to Justice Subcommittee	Ali Bandegani, Mark Henderson,
Children Subcommittee:	Judith Dennis, Lisa Nandy, Baljeet Sandhu,
Detention & Fast Track Subcommittee:	Steve Bravery, Kay Everett, Pierre Makhoulf,
Economic Migration Subcommittee:	Shazmeen Ali, Philip Barth, Nichola Carter, Philip Trott,
European Subcommittee:	Elsbeth Guild, Alison Hunter
Family & General Subcommittee:	Jen Greenwood, Sue Shutter, Pat Saini
Legal Aid Subcommittee:	Jackie Peirce, Sonia Routledge
Offences Subcommittee	Jawaid Luqmani, Richard Thomas
South West Subcommittee	Rosie Brennan, Natasha Williams
Training Subcommittee	See General Secretary's report. Supported by Helen Williams
Yorkshire & North East Subcommittee	Christopher Cole

TREASURER'S REPORT

It has been a year of expansion and developing of new funding streams. ILPA has secured two important strategic funding from the Diana, Princess of Wales Memorial Fund and Unbound Philanthropy.

The Executive Committee has identified the need to diversify the funding base by developing more grant based projects given the competition in the training market and pressures on the membership.

The grant from the Diana, Princess of Wales Memorial Fund will enable ILPA to expand its children's work by providing free training to lawyers and publishing resources to assist those working with refugee children.

The Unbound Philanthropy grant will fund the modernisation of ILPA's IT infrastructure by funding the development of a new website which will incorporate a members' area, an archive of information and integrate online payments. The new accounting system is streamlining the administration of the finances.

The Joseph Rowntree Charitable Trust continues to support the work of the Legal Officer's post which has made a valuable contribution to ILPA's activities and information dissemination.

The close scrutiny of income and expenditure continues with close monitoring of cash flow and expenses on a monthly basis.

Challenges for the Future

The retention of membership and increasing the membership base has been identified as priority by the Executive Committee with the establishment of a subcommittee on Membership.

The new IT infrastructure should contribute to the efforts to support and develop the membership in the face of the pressures of legal aid cuts.

The training market remains highly competitive. ILPA's training remains highly regarded in this market.

Kahiye Alim, Treasurer

GENERAL SECRETARY'S REPORT

It has been a year of losses in the field of asylum, immigration and nationality law, and ILPA members have felt them all. June saw Refugee and Migrant Justice (formerly the Refugee Legal Centre) go into administration and rapidly close. The Refugee Legal Centre was one of the organisations that grew out of UKIAS, an organisation that supported ILPA from its inception and the organisations and their staff have contributed much to ILPA over many years. The Legal Services Commission tender has taken its toll, and may continue to do so; some firms and organisations, such as Devon Law Centre, have been forced to close, others have been forced or have decided not to do immigration and asylum, or not to continue to offer legal aid, still others have reduced the volume of this work that they do. Then, at the end of the year, came proposals to impose fees for appeals before the Immigration and Asylum Chambers and a Ministry of Justice Green paper, proposing to cut legal aid funding for immigration cases and for asylum support.

There have been too many losses of comrades, and of those dear to them. I shall not list them all but pause to remember the sad news of the death in August after an illness of Elizabeth Dubicka, a friend since Bar school, known to, and respected by, so many members in her roles as a barrister, as an immigration judge and for her work with the Refugee Women's Legal Group. In October, members, officers and staff were profoundly saddened to learn of the untimely death of David Burgess, described by Chris Randall in the obituary he wrote for the ILPA mailing as 'the finest immigration lawyer of his generation.' David was present at the inaugural meeting of ILPA in 1984 and all those working in the field have been using, on a daily basis since then, the points of law David identified and won, and continue to be inspired by the standards he set. The proposals to cut legal aid have brought to mind David's unforgettable speech at the 2003 AGM, a ringing defence of legal aid and indictment of those who fail to understand the inequality of arms that denies those who flee, who move and who are poor, justice and equality before the law.

Even cheerful sights, such as that of Vicky Guedalla riding towards a happy retirement on a bright red bicycle, have left us feeling a little bereft. Vicky's work over the years, on the EC and as convenor of the Legal Aid subcommittee, has benefited all members of ILPA. Her profound commitment to her clients, to civil liberties and anti-racism has informed so many of ILPA's policy positions over the years. Her brilliant reasoning, couched in perfect prose, always courteous, always savage, told the Legal Services Commission exactly what we thought of them,

We do the giants of our past an injustice if we think of them as having practised in halcyon days of adequate funding and a kinder legal framework. They had to go out and win the right to an appeal before an independent tribunal, the right not to be returned to torture, legal aid for appeals and for bail hearings, and they had for many years to do this without benefit of a human rights act. They had to contend with the effects of the poor practice of others, with many people giving rotten advice to refugees and migrants, unhindered by any regulatory framework whatsoever. That was the context in which ILPA was founded; it was not built for the good times.

The clients are still there, their needs for justice and for dignity before the law undiminished. Those who would take advantage of them are still there. Racism, xenophobia and a lack of understanding of, at worst a hatred of, the poor, are still there. An ability to advise and represent those who not enjoy equality of arms remains an essential element of the struggle for justice for migrants and refugees. The need to take up the points won in individual cases to ensure that they are respected for the benefit of all and to challenge foolish or malevolent laws or practices beyond the context of individual cases is still there. In this context, '*hasta la victoria siempre*' is as much a statement of fact as it is an injunction.

The work chronicled in this annual report is a testimony to the work that continues to be done, and, in what feels like a very dark year, reminds us of the significant victories that have been won and the quality of the work being produced. It makes the case for striving for excellence, and for coming together to work collectively, not for self-interest, but to support each other to promote excellence and to speak up to protect the interests of refugees and migrants.

My thanks go to the Executive Committee for giving time to ILPA in a year that has placed so many demands both on them and on the Association. They have continued their oversight of ILPA's approach to new developments on all fronts: in immigration, asylum and nationality law and policy; in the courts and tribunals and in the systems for funding. This included the decision that ILPA should intervene in the *CMX* litigation to set out the difficulties and pressures facing all immigration law practitioners, and seeking, when it became clear that Refugee and Migrant Justice would not be saved, to mitigate the effects of the closure on clients. We are grateful to Bindmans and Partners, Samantha Knights and Helen Mountfield QC for their *pro bono* work that made that intervention possible. In addition, members of the Committee have supported the Secretariat in through staff changes, and been involved in recruitment. They have continued work on governance, approving new protocols for ILPA's work in litigation and on declarations of interest, and set up a membership subcommittee to identify how best to recruit and retain members. I extend particular thanks to Alasdair Mackenzie who stands down this year after three years on the Committee, for all the support he has given to ILPA during that time. Sue Shutter steps down as Secretary after a decade in this role, but I am delighted that she remains on the Executive Committee and continues to support ILPA with her expertise. She gives unstintingly of her knowledge of the history, proceedings and policies of ILPA, as well as of the development of immigration law. The Executive Committee, staff and members are in her debt. One again, thanks to Sue Henderson, at Laura Devine solicitors, for the assistance she has given to the Secretariat.

ILPA Staff

Kit Eaves	Administrative and IT Manager
Alison Harvey	General Secretary
Zoe Marsden	Office Manger with Finance, then Project Manager, ILPA Information Technology and Website Project
Lana Norris	Finance Manager with administration (maternity cover for Kit Eaves)
Steve Symonds	Legal Officer
Natasha Tsangarides	Project Manager, Refugee Children's Project
Elizabeth White	Personal Assistant to the General Secretary
Helen Williams	Training and Membership Coordinator

In addition, Meghan Vozila and Ali Bandegani provided invaluable support as our professional interns during the year.

Role of the Secretariat

The core functions of the ILPA secretariat are:

- The coordination of liaison with Government, tribunals, courts and NGOs
- The co-ordination and distribution of submissions to parliamentary committees, government and the European institutions
- The design and implementation of the ILPA training programme

- Updating members and others on all matters of asylum, immigration and nationality law, practice and policy
- Servicing and supporting the Executive Committee and implementing its policy decisions, work that includes the identification and collation of the management information, including financial and membership information about ILPA and its membership, necessary to allow the Executive Committee to determine the opportunities, challenges, risks and threats to ILPA
- Building and sustaining links between all the different areas of ILPA's activities
- Support for the ILPA subcommittees and members active on ILPA's behalf.
- Responding to enquiries from members, the media and the public

The staff of the Secretariat is as big it has ever been, and just as busy. Staff members have this year, with no diminution in the existing services to members, not only taken on extra tasks in a period when members have been under exceptional pressure, but also invested in the future through work on our new IT and website project, funded by Unbound Philanthropy, and the addition of a substantial new project, the Refugee Children's Project, funded by the Diana, Princess of Wales Memorial Fund. We continue to benefit from the support of the Joseph Rowntree Charitable Trust for the Legal Officer's post for which we are extremely grateful.

Staff changes during the year have led necessitated reorganising responsibilities and staff members have been enthusiastic in stepping up to new challenges and willing to take on new tasks. The increase in staff has led to increased management responsibilities for me and I am grateful for the support staff members have provided to me. When Kit Eaves returned from maternity leave we were fortunate to be able to retain Zoe Marsden, who had provided maternity cover, to manage our new IT and website project. This project encompasses no less than the overhaul of all ILPA's information technology and communications, with a new website at the heart of improved facilities for members, including access online to the archive of ILPA mailing documents. The understanding Zoe had gained of all aspects of the ILPA's work during the maternity cover has proved invaluable to the project, as have her project management skills. Helen Williams has been seconded to the project for one and half days per week, enabling us to draw on her vast expertise of training, membership and all aspects of ILPA's work.

In June 2010, we were delighted to welcome Natasha Tsangarides as manager of the Refugee Children's Project, funded by the Diana, Princess of Wales Memorial Fund. Natasha will be known to many ILPA members as from her work with the Immigration Advisory Service, where she led on the research and training that culminated in the *Refugee Roulette* report. This experience, encompassing the provision of training to lawyers, the organisation of conferences on legal topics and the production of publications, is proving invaluable to the project.

Towards the end of October 2010 we were fortunate to recruit Lana Norris to the post of Finance Manager with administration to cover for Kit Eaves' second maternity leave. Lana has rapidly come to grips with all aspects of the role and is already a highly valued member of the team.

Staff have benefited from a range of training and also attended a number of conferences to assist them in their roles. ILPA has joined the National Council of Voluntary Organisations to make its support available to staff and to the Executive Committee. Helen Williams and Elizabeth White have both attended National Council for Voluntary Organisations' events for membership organisations and Kit Eaves an event on data protection. Helen Williams, Zoe Marsden and Kit Eaves attended the London Advice Services Alliance training on developing information technology. Helen Williams, Zoe Marsden and I attended the CHASE conference on information

technology for membership organisations. All staff received training in the summer to support our IT upgrade to Office 2007, and Lana Norris received training on Quickbooks accounting software. Alison Harvey, Steve Symonds and Natasha Tsangarides also undertook training on immigration, asylum and nationality law.

We have been assisted by Jeremy Stone (Accountant), Helen Dewar (librarian), Andy Humphreys, and subsequently Oakland Associates (IT), Matt Morris (membership database design), Fat Beehive (website design), Pat Kahn (designer) and HW Fisher (Auditors) to whom thanks for their support and assistance.

Context

Instead of a new Bill on immigration, asylum and nationality law this year, we have a new Government, not to mention two new Immigration and Asylum Chambers. The landscape in which we are working has undergone, and will undergo, profound changes. The Legal Services Commission will become an Executive Agency of the Ministry of the Justice and the Office of the Immigration Services Commissioner is to be ‘merged’ (no further details yet). The new Legal Standards Board has now been set up. Meanwhile the Ministry of Justice intends to merge administration of the courts and tribunals and has raised the prospect of a merging of the tribunals judiciary and the judiciary. Fees are proposed for appeals before the Immigration and Asylum Chambers of the tribunals. The end of the year has brought proposals to remove legal aid in immigration and in asylum support cases. The UK Border Agency and the Ministry of Justice, like other Government departments, face large budget cuts.

The proposed consolidation of immigration, asylum and nationality law has disappeared from view. Nonetheless, at the level of primary legislation there have been changes. The changes to the laws on nationality by birth and by registration in the Borders Citizenship and Immigration Act 2009, for which ILPA had argued for so many years, came into force on 13 January 2010. In November 2010 the Home Secretary announced that the Government would not implement the naturalisation provisions of the Borders, Citizenship and Immigration Act 2009, citing their bureaucracy and complexity, matters to which ILPA had drawn the attention of all parties during the passage of the Act. A much longer-running argument has finally been won with a remedial order laid before parliament to repeal those provisions of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 that underpin the Certificate of Approval for marriage scheme. After many years of ILPA work with fellow members of the Refugee Children’s Consortium, a Government has finally made an unequivocal commitment to end the detention of children, but we are acutely aware that it is a promise they have yet to keep. Discussions on ‘alternatives to detention’ have all been about alternatives to enforced removal; a smokescreen that has hidden the true alternative to detention by administrative fiat without limit of time and with immediate and long-term consequences for children’s health and well-being: that alternative is liberty.

Nowhere are the fault-lines in the coalition Government clearer than in the area of migration. Alongside the commitment to end the detention of children sits a commitment to reduce net migration to the tens rather than the hundreds of thousands. As the Labour Government did with its ‘tipping point target’ (more removals than fresh asylum claims) the coalition Government has pinned its reputation on immigration to something that is ultimately outside its control, since emigration and the free movement of EEA nationals affect the net migration figure. To date those coming to the UK under Tiers 1 and 2 of the Points-Based System have borne the brunt of efforts to deliver upon this commitment. The interim cap on Tiers 1 and 2 was implemented with more speed than judgment, and has drawn criticism from very many quarters. Ministers’ comments

indicate that Tiers 1 and 2 are but the starting point, with students likely to enjoy a special place in the firing line. While the naturalisation provisions of the Borders Citizenship and Immigration Act 2009 have not survived, the desire to break the link becoming to the UK and settling in it remains.

The new Government has shown little enthusiasm for driving up standards through collective work with other countries. It took the decision not to opt in to two recast European Directives on asylum: the ‘procedures’ and ‘qualification’ directives. It also took the decision not to opt-in to the proposed EU Directive on prevention and combating trafficking in human beings. Among the matters it has failed to address, despite prompts from ILPA, the failure to make a simple amendment to the immigration rules to reflect the judgment in *Metock* (C-127/08), despite the existence of UK Border Agency guidance indicating that the rules are wrong, stands out. However, the Home Secretary’s acceptance in the *Saeedi* case that the EU Charter of Fundamental rights can be relied upon directly in the UK offers some hope for the future.

At the last AGM ILPA welcomed Nick Blake who had just been newly announced as the President of the Immigration and Asylum Chamber in the Upper Tier Tribunal. Mr Justice Blake followed up in detail points members had raised with him at the AGM in subsequent correspondence with ILPA. ILPA was pleased to see the rules for the Immigration and Asylum and Immigration Chambers in the First Tier and Upper Tribunal made by the Procedure Rules Committee and not by the Government, as had initially been proposed. The Presidential Guidance Note on time for lodging applications for permission to appeal and the Joint Presidential Guidance Note on child, vulnerable and sensitive witnesses are both welcome developments, along with explanations of changes to the reporting of determinations and the making of references to the European Court of Justice that will, we hope, be to address longstanding concerns. Guidance on bail is eagerly, not say impatiently, awaited. All this is under the shadow of *R(Cart) v Upper Tribunal* [2010] EWCA Civ 859 and *Eba v Advocate General for Scotland* ([2010] CSiH 45, in which the Supreme Court will be called upon to determine the extent to which the Tribunal is subject to judicial review. Meanwhile, clients and their representatives in different parts of the country are now able to make applications to regional administrative courts.

A new shadow is cast by proposals to charge fees for appeals. The Tribunals service Q & A states
“The Tribunals Service has always reserved the right to charge fees for appeals and, in some cases, has exercised that right (e.g. Lands and Gender Recognition jurisdictions).”

But it is notable that those applying for a Gender Recognition certificate with an income of less than £26,204 pay a fee of £30 and no fee exceeds £140. In the Lands Tribunal, fees (new fees from 29 November 2010 (SI 2010/2601) are higher but the matters with which they deal, such as restrictive covenants and right to light applications, are hardly of the same order as matters in immigration and asylum appeals, and in any event are likely directly to affect the value of the property in question. They are not precedents for the fees proposed for the Immigration and Asylum chambers, discussed further in the Access to Justice subcommittee report.

As usual, against a shifting policy background it is to the courts that refugees and migrants have looked to uphold their rights and this is discussed in more detail in the subcommittee reports. *R (Medical Justice) v SSHD* [2010] EWHC 1925 (Admin), for which ILPA provided a witness statement, and the case of *R (MA/BT) v SSHD* that preceded it, have stopped, for the time being, the practice of removal that notice that has so roused the indignation of ILPA members and been the focus of so much work over the years, much of which is evidence in the case. Reference was made in the Supreme Court to ILPA’s research on age assessment *When is a child not a child?* in *A v London Borough of Croydon & Anor; M v London Borough of Lambeth & Anor* [2009] UKSC

8, where the Supreme Court held that an age dispute arising in the context of eligibility for support under s 20(1) of the Children Act 1989 was a matter ultimately to be determined by the court. The judgment puts paid, once and for all, to the notion that one can date stamp a child.

The Home Secretary's response to *HJ (Iran) and HT (Cameroon) v SSHD* [2010] UKSC 31, reported as "*I do not believe it is acceptable to send people home and expect them to hide their sexuality to avoid persecution.*" This is somewhat difficult to square with the Government's having fought the case all the way to, and through, the Supreme Court, but welcome nonetheless. The judgment has echoed around the world, both in the courtroom and outside.

Government reactions to *R (ZO (Somalia) et ors v SSHD* [2010] UKSC 36, *Pankina v 2010*] EWCA Civ 719, *R (English UK) v SSHD* [2010] All ER (D) 86 (Jul) and *ZN (Afghanistan) et ors v SSHD* [2010] UKSC 21 have been... limited. In *Pankina*, *English UK* and *ZN*, the Government moved to take powers to do that which the courts had said it had no power to do, but without examining the wider implications of the judgment. If it is unconstitutional to place a mandatory criterion in guidance, then simply to place the criterion challenged within the immigration rules, rather than examine wholesale the division between rules and guidance, cannot be an adequate response and can only result in further litigation. The response to *ZO (Somalia)* was worse than inadequate, as the Home Office has taken the line that those whose claims for asylum had failed could not have made an application before new rules were introduced following the judgment; an approach that fails to understand the judgment at all.

At the European level there have also been exciting developments. In particular the cases of *Ibrahim* and *Texeira* (C-310/08 and C-480/08) on retained rights of residence have demonstrated how far Directive 2004/38 goes to protect rights of free movement under European Union law.

The case of *Muuse* [2010] EWCA Civ 453, on lawful detention demonstrates how far the UK Border Agency has to go when it comes to respect for the rule of law. It is one of many judgments in which High Court judges have expressed outrage at the UK Border Agency's conduct. But the prize for giving expression to all our feelings must go to Lord Justice Ward in *MA (Nigeria) v Secretary of State for the Home Department* [2009] EWCA Civ 1229:

"The history fills me with such despair at the manner in which the system operates that the preservation of my equanimity probably demands that I should ignore it, but I steel myself to give a summary.....I ask, rhetorically, is this the way to run a wheel store?"

It would be possible to fill the whole of this report with descriptions of cases and I have omitted as many as I have included, leaving the subcommittee reports to fill in just some of the gaps. It is against this background that practitioners' opposition to the proposed cuts to legal aid and the proposed imposition of fees for appeals must be understood.

The closure of Refugee and Migrant is all the harder to bear because it was avoidable. While the immediate causes of the closure will long be debated, the underlying cause can be clearly laid at the door of the Legal Services Commission and the Ministry of Justice, who were intransigent in their refusal to address the problems fixed fees and payment schemes for work in progress create for all practitioners. Although there was every indication that it would cost less in financial terms to save Refugee and Migrant Justice than to close it, and this has been borne out by subsequent developments, the Commission and Ministry declined to play a part. While the Commission and Ministry continued to insist that other practitioners were 'coping' and could pick up the work, despite the voices of those same other practitioners being raised in protest, they were slow to take any steps to mitigate the effects of the closure on clients and to support other practitioners. Indeed,

without the *CMX* litigation, one wonders whether they would have done anything at all. As it was, no opportunity was missed to allow bureaucracy to triumph over commonsense. It was individual practitioners, within Refugee and Migrant Justice and outside, who did most to secure representation for Refugee and Migrant Justice clients.

The Legal Services Commission and the Ministry have shown a similarly cavalier approach to the outcome of the tenders in immigration and asylum. As long as 'acts of assistance' continue to be counted, they appear able to bear with equanimity the loss or diminution of the contribution of individuals and firms working to the highest standards in the legal aid field. Those who have secured contracts are well aware that, however excellent their own services, they can ill afford the loss of one colleague committed to excellence in this area of law. Practice in immigration and asylum legal aid is difficult and demanding work and quality practitioners a precious resource that should not be squandered.

Training

ILPA has provided 75 training sessions since the last AGM across all areas of its work, most in London, but also outside, this year in Birmingham and Leeds. This compares with 74 sessions in the year to the last AGM. Courses were scheduled in Manchester and Bristol but did not go ahead due to insufficient bookings.

As predicted in last year's Annual Report, the accounts for the year to March 2010 show reduced income from training than over the year to March 2009, when the pace of change in the Points-Based System had resulted in an atypical rise. This has been a more usual year and training courses continue to contribute substantially to ILPA's income. Feedback testifies to the quality and diversity of courses on offer. The development of the programme has benefited from members' feedback and suggestions. New topics have been added to the programme in the course of year, for example, courses on the immigration implications of surrogacy arrangements, Indian immigration law, Schengen visas, solving family status problems and bringing cases in the public interest. The pressures of the legal aid tenders and reaccreditation united to lower attendance by publicly-funded practitioners but, in response to requests for members, ILPA put on a total of 10 courses for those preparing for reaccreditation. The popularity of these has grown as their reputation has spread by word of mouth.

ILPA continues to sell packs in response to requests where we identify that the pack works as a stand-alone resource and is suitable for self study and we have sold packs from six different courses this year.

The training market in which we are operating is getting more, rather than less, competitive as training is viewed as a direct or indirect source of income in straightened times. In this, as in previous, years it is the quality of ILPA training and its responsiveness to the needs and demands of practitioners that mean that it holds its own. We continue to urge firms, organisations and chambers to discuss with us how they can achieve their marketing goals by providing training in conjunction with ILPA that will also help to raise the revenue essential for the survival of the Association and the provision of the range of services we offer to members, as well as our influencing work. We appreciate the assistance of all those, be they course providers or individual tutors, who touch base with ILPA to avoid clashes with ILPA training and to look for opportunities to promote the value of ILPA membership at other training sessions they are doing. We are always happy to make membership leaflets and other information available to those who request

them and urge firms and chambers who regularly offer training or presentations to get in touch with the Secretariat us for a supply of these materials.

We say a huge thank you to all our trainers. They have invested many hours, for which they receive a very modest remuneration, in producing materials and courses of the highest quality. Their contribution to fulfilling ILPA's objectives of promoting excellence in immigration, asylum and nationality law practice is direct and immediate. We recognise the same commitment to best practice in those who attend the courses and share their ideas and insights with their peers and are grateful for their support for a training programme that is at the heart of ILPA's work.

The training subcommittee continues to support ILPA to evaluate and develop its training programme. We are grateful to Alison Stanley, Sally Thompson and Mandie Sewa who have met during the year and to all who provide suggestions and feedback. Emails, calls or notes on feedback forms with suggestions for training are always welcome and play an important role in our planning, so please keep them coming. The training subcommittee welcomes all members who are interested in contributing to overseeing the programme, please get in touch with Helen Williams.

Training Partners

ILPA and the AIRE Centre collaborated on the conference Asylum and the European Convention on Human Rights and on training for agencies working with homeless EEA nationals threatened with removal. ILPA and the Legal Aid Practitioners Group collaborated on training for practitioners on the immigration tender. ILPA and the UK Lesbian and Gay Immigration Group collaborated on training on the application of *HJ (Iran) and HT (Cameroon)*.

ILPA and HJT-Training continue their joint working to train MPs' researchers and the courses have received excellent feedback. ILPA provided in-house training for the NSPCC Child Trafficking Advice Line and for the Immigration Advisory Service.

Venues

This year ILPA training courses have been generously hosted by Baker & McKenzie, Bindmans LLP, No 5 Chambers, CMS Cameron McKenna LLP, Garden Court Chambers, Harrison Bunday Solicitors, Kingsley Napley Solicitors, Luqmani Thompson and Partners, Mitre House Chambers and Skadden, Arps, Salte, Meagher and Flom LLP. ILPA is always pleased to hear from firms and chambers who are willing to provide venues for ILPA training or assistance in copying materials.

ILPA/ILPA supported Seminars and Conferences

- Butterworth's Immigration Law Conference 27 January 2010
- ILPA annual seminar on the free movement of EEA nationals 9 June 2010
- ILPA/AIRE Centre "Asylum & the European Convention on Human Rights" 25 May 2010
- ILPA/UKLGIG A New Dawn – practical tools for the application of HJ (Iran) and HT (Cameroon) to LGBT and non-LGBT Asylum Claims

Speakers

Our thanks go to the following, who have delivered training for ILPA during the year (firms and organisations are as of the date when training was delivered):

Shalini Agwaral, ALMT Legal

Andrea Als, PricewaterhouseCoopers Legal
LLP

Naomi Angell, Osbornes Solicitors

Ali Bandegani, Refugee and Migrant Justice

Navtej Singh Ahluwalia, Toops Chambers

Tim Barnden, Wesley Gryk Solicitors

Sophie Barrett-Brown, Laura Devine Solicitors
Philip Barth, Penningtons Solicitors LLP
David Bickford, Penningtons Solicitors LLP
Steve Bravery, Refugee and Migrant Justice
Louise Carson, CMA Cameron McKenna LLP
Rebecca Chapman, Toops Chambers
S Chelvan, Mitre House Chambers
Azhar Chohan, Solicitor

Emma Cohen, Bindmans LLP
Kathryn Cronin, Garden Court Chambers
Graham Denholm, 1 Pump Court
Matthew Duncan, Kingsley Napley LLP
James Elliot, Wilson and Co Solicitors
Nadine Finch, Garden Court Chambers

Vanessa Ganguin, Laura Devine Solicitors
Elspeth Guild, Kingsley Napley LLP
Stephanie Harrison, Garden Court Chambers
Matthew Howgate, Consultant
David Jones, Garden Court Chambers
Kalvir Kaur, Immigration Advisory Service
Charlotte Kilroy, Doughty Street Chambers
Graeme Kirk, Gross and Co
Raggi Kotak, 1 Pump Court
John McCarthy, Desig. immigration judge
Sonali Naik, Garden Court Chambers
Muhunthan Paramesvaran, Wilson and Co

Jackie Pierce, Glazer Delmar
Mahmud Quayum, Camden Community
Law Centre
Nick Rollason, Kingsley Napley LLP

Mark Scott, Bhatt Murphy Solicitors
Shivendu Shah, PricewaterhouseCoopers
Legal Solicitors LLP

Alison Stanley, Bindmans LLP
Robert Sparks, Magrath LLP and Fisher
Meredith Solicitors
Richard Thomas, Doughty Street Chambers
Ronan Toal, Garden Court Chambers
Frances Weber, Barrister
Trevor Wornham, Wornham and Co.

Liz Barratt, Bindmans LLP
Adrian Berry, Garden Court Chambers
Julian Bild, Immigration Advisory Service
Gillian Brownlee, Kingsley Napley LLP
Nichola Carter, Penningtons Solicitors LLP
Natasha Chell, Laura Devine Solicitors
David Chirico, 1 Pump Court
Nicola Cockburn, Refugee and Migrant
Justice
Chris Cole, Cole Yousaf Solicitors
Tony Dalton, UK Border Agency
Kathryn Denyer, Newland Chase
Hazar El-Chamaa, Penningtons Solicitors LLP
Judith Farbey, Toops Chambers
Laurie Fransman QC, Garden Court
Chambers
Sonal Ghelani, Public Law Project
Tony Haque, Baker & McKenzie
Alison Harvey, ILPA
Alison Hunter, Wesley Gryk Solicitors
Peter Jorro, Garden Court Chambers
Tom Kerr, Baker & McKenzie
Jonathan Kingham, Kingsley Napley LLP
Samantha Knights, Matrix Chambers
Jawaid Luqmani, Luqmani Thompson
Nuala Mole, AIRE Centre
Barry O'Leary, Wesley Gryk Solicitors
James Perrott, PricewaterhouseCoopers Legal
LLP
Caron Pope, CMS Cameron McKenna LLP
Robert Robinson, Scott-Moncrieff, Harbour &
Sinclair
Linda Rowe, PricewaterhouseCoopers Legal
LLP
Mandie Sewa, Fisher Meredith
Arshoo Singh, Kingsley Napley LLP
Elisa Sofocli, PricewaterhouseCoopers Legal
LLP
Hugh Southey QC, Toops Chambers
Mark Symes, Garden Court Chambers
Steve Symonds, ILPA
Andrew Tingley, Kingsley Napley LLP
Solange Valdez, Sutovic and Hartigan
Sue Willman, Pierce Glynn Solicitors
Colin Yeo, Renaissance Chambers

ILPA Meetings

Subcommittee meetings

All ILPA subcommittees are open to all members. Convenors give generously of their time to facilitate members' activities in these specialist areas and the active members of the subcommittees are the driving forces behind each one, often contributing to consultation responses and representing ILPA at meetings. Members can participate in subcommittees whatever their level of expertise and whatever time they have to spare. Increasingly subcommittee members communicate by email, which helps to involve members in different parts of the country and those unable to attend meetings.

New subcommittee convenors have been appointed during the year and subcommittee email lists have grown, with more members getting more closely involved. This in turn yields a larger pool of members ready and able to represent ILPA at meetings, or to support those who are attending. Most of the email lists are now managed directly from the database in the Secretariat, helping to ensure that they are kept up to date. A number of subcommittees, including Family and General and European, have seen a rise in attendance at meetings during the year. ILPA Yorkshire and North East subcommittee and ILPA South West have both provided fora for members to communicate on matters relevant to particular regions and allowed members to meet with regional representatives of the UK Border Agency. The European subcommittee has benefited from considerable joint working with the AIRE centre. The Economic Migration subcommittee formed a working group to work on the cap on Tiers 1 and 2 which held a series of very well-attended meetings to share the load and enrich the work. The Children's subcommittee benefited from the links with the new Refugee Children's Project at a time when the closure of Refugee and Migrant Justice put it under particular pressure.

Monthly subcommittee reports to the Executive Committee are now circulated to all subcommittee convenors which has helped to ensure that cross-cutting topics are identified at an early stage and joint working facilitated.

Access to Justice	See members' meetings below
Detention and Asylum fast-track	0
European	10
Family & General	6
Economic Migration	9 (+ working group meetings on the cap)
Immigration Offences	0
Legal Aid	3
Training	1
Children	4
ILPA South West	1
ILPA Yorkshire and North East	2

Members' meetings

Subcommittees frequently hold themed meetings and efforts are made to ensure that wherever possible meetings for members take place under the auspices of the most appropriate subcommittee. Increasingly subcommittee meetings on special topics are publicised widely to all members. This approach helps to strengthen the subcommittees and increase involvement in them. Some topics are clearly cross-cutting. These have formed the subject of members' meetings:

- Members' meeting on consultation on OISC Guidance on Competence, 14 January 2010

- Members' meeting with Mr Justice Blake, President, Upper Tribunal, Immigration and Asylum Chamber 16 June 2010
- Members' meeting with Ian Robinson, UK Border Agency on the cap on migration cap, 18 August 2010

Membership

Despite our efforts during the year, membership has continued to fall, although less dramatically than last year. As of 18 November 2010 the total number of ILPA members was 892, a fall of 22 on last year's figure (as opposed to the fall of 64) last year. One hundred and sixty-seven members have joined since the last AGM, as compared to 124 the year before. Of the new members, 103 are individuals and 64 are organisations. Overall, 52% of members are organisations and 48% are individuals; last year 43% of members were organisations and 57% individuals.

The overall fall in membership numbers is a result of existing members who have lapsed. It continues to be the case that some firms have opted to replace the individual memberships of some individuals within the firm with organisational membership but overall the balance has shifted toward individual membership. Once again, very sadly, there have been those who have pulled out because they are ceasing to work in immigration or have closed down, as described elsewhere.

The Executive Committee has taken a particular interest in membership this year and a subcommittee of the Executive Committee looking exclusively at membership (Kahiye Alim and Adam Weiss, with Helen Williams and Zoe Marsden) has been formed. As a result of analysis, we have devoted strenuous efforts this year to following up all lapsing members to ascertain whether they have lapsed by accident or on purpose and this approach is starting to pay dividends. Last year's AGM saw the launch of payment of membership fees by Direct Debit and this has proved a solution for many. One hundred and fifteen members are now signed up for Direct Debit (representing some 12% of the membership). It makes our work much easier, freeing up time in the Secretariat, and ensures that members continue to receive mailings and emails where otherwise lapsing could lead to a gap. We urge all members who have not yet done so to sign up for Direct Debit.

We recognise that we stand or fall by the value that membership provides to members. We measure this in quality of training, information, support and assistance that the Secretariat and fellow members provide. We have put a lot of work this year into the project of upgrading our website and communications with the aim of ensuring a step change in the services we can provide, both in terms of making our archive available and freeing up staff time. We anticipate that a new website with a password protected members' area and riches behind will make membership all the more valued. Over and above all this, we offer members an unparalleled opportunity to work with fellow practitioners to promote a just and equitable immigration, asylum and nationality law practice, whether feeding into the big 'policy' questions or challenging operational shortcomings. The need for this work has never been more acute.

We shall continue our work in the Secretariat, with the full support of the Executive Committee, to promote the value of membership and to seek to retain and attract members. All members can help by urging colleagues, those instructing you or those referring cases to you, to join ILPA. Those speaking on public platforms or regularly hosting meetings are urged to get in touch with ILPA; we can supply you with information about membership for inclusion in conference packs or to distribute. We are always very happy to provide speakers to talk about ILPA and its work to other practitioner groups, networks or organisations – if you are involved in such groups and think

that they would benefit from this, please do not hesitate to ask. Last year I suggested that if each member could recruit just one person, that would swell our capacity to assist each other and, most importantly, our clients. I make the same suggestion this year and ask for your help.

Dissemination of information and communications

From December 2009 to November 2010 members have been sent 12 mailings and 448 numbered enclosures, an increase of 17 enclosures over last year. This has been supplemented by 61 documents/bundles of documents publicised through the mailing as documents available from ILPA, many of which are restricted documents and responses that we cannot put on our website and that are not available elsewhere. We are grateful to Unbound Philanthropy and the Diana, Princess of Wales Memorial Fund for their support for the mailing.

In addition to the mailing ILPA is circulated to members and to ILPA's subcommittees by email; by this means documents that will subsequently be available in the mailing can be sent immediately and documents of specialist interest only can be sent to the relevant subcommittees. Not only do members share individual communications they have received; they also draw each others' attention to important announcement and publications of interest. This year has seen an increase in the information shared by these means.

Information Service Project

The Information Service is part of the work led by the Legal Officer that is supported by funding from the Joseph Rowntree Charitable Trust (with some additional support in respect of information sheets relating to refugee children from the Diana, Princess of Wales, Diana Memorial Fund). Since the last AGM, the information service has produced eight Updates and twenty-nine Information Sheets as well as three notes from seminars and workshops. The Information Sheets cover topics including *Age Disputes and Age Assessment, Detention, Detention of Children, Economic Migration Cap, European Free Movement, Immigration Appeals, Immigration Fees, Lesbian and Gay Asylum-Seekers, Permission to Work, Refugees and Family Reunion, Removals and Judicial Review, Students and Third Party Support.*

Notes from workshops provide updates relating to students, settlement and citizenship, asylum law and policy and immigration bail hearings. All of these publications are available in the Info Service section of the website. Many of these and other workshops are described in the section on liaison with other organisations below. In addition, the Legal Officer provides considerable one-to-one support to non-lawyers in these organisations keen to check their understanding of the existing system and proposals for change in the context of their influencing work.

Information Technology and Website Project

The overarching reason for embarking on this up-grade is to improve and expand access to the immigration law materials available from ILPA's archive and ensure that ILPA is able to take advantage of technological advances in information management both now and in the future. The end result will be a new ILPA website with a members' log-in area holding a rich archive of documents. However this public face is the end product of a complete, and long overdue, overhaul of ILPA IT and communication systems. A server was installed in August and all machines and software either replaced or up-graded. An on-going contract for maintenance with Oakland Associates will ensure that our systems remain up to date and functioning well.

The project has benefited from the suggestions and advice of members. ILPA conducted its first electronic survey of members to test some of the ideas for the new website. One hundred and

twenty-three members responded and all their suggestions and ideas have informed work on the project. 67% respondents identified an on-line searchable archive of ILPA mailing as an extremely useful resource. Responses told us how members currently use ILPA's website, mailing and the information we disseminate and helped to identify gaps in provision. Twenty face-to-face and telephone interviews with members from different parts of the country and in different areas of practice were conducted to secure further in-depth information to inform the specification. The survey also indicated a need to prioritise the ability to book training on-line, up-date directory entries and sign up for e-mail up-dates. We are particularly grateful to Bernard Hibbs for his assistance. This had led us to produce a very detailed and exacting specification and considerable research has gone into finding website and database companies who can design a system to meet ILPA's needs within our budget, with attention paid to ongoing costs.

The current membership database is to be replaced by the not-for-profit version of the Salesforce Customer Relationship Management database. This will replace completely manual processes for course booking, membership renewals, sending group e-mails etc., giving us greater facilities to manage communications with subcommittees and working groups and freeing up staff time. As well as making much more of our information available the website is intended to make information and services easier to find and to use.

Other Publications and Projects

The *Journal of Immigration, Asylum and Nationality Law*, ILPA's peer review journal is now published by Bloomsbury Publishing. This year Dr Prakash Shah of Queen Mary College has stepped down as Managing Editor. We are delighted that he continues as a member of the Editorial Board, and in the role of Book Review Editor. We are grateful to Prakash for all the work he has done as Managing Editor to promote and support our prestigious journal, which continues to offer articles of a very high quality that are pertinent both to academics and practitioners. The new Managing Editors are Helena Wray, Senior Lecturer in the Department of Law at Middlesex University and Gina Clayton, formerly the Book Reviews Editor of the Journal, who is a Visiting Lecturer at Middlesex University as well as a trustee of City of Sanctuary and the Chair of ASSIST in Sheffield. Both have worked closely with ILPA over many years and we look forward to working with them, alongside Bloomsbury, which is very supportive of the Journal.

ILPA's *European Update* has maintained its very high standards during the year with extensive coverage of developments at European level.

Alison Harvey and Steve Symonds have worked to update the Community Legal Service leaflets on removal and deportation and on asylum.

The Anti-Trafficking Monitoring Group, of which ILPA was a member, produced its report *Wrong kind of victim? One year on: an analysis of UK measures to protect trafficked persons* in June 2010.

Vicky Guedalla represented ILPA on the Steering Group for the Information Centre for Asylum Seekers and Refugees research, commissioned by Refugee and Migrant Justice, the Immigration Advisory Service and Asylum Aid, which produced a series of publications culminating in the report *Justice at Risk: quality and value for money in asylum legal aid* in June 2010.

ILPA receives many requests for assistance with research, far more than we can ever accede to. This year ILPA representatives have worked, *inter alia*, with Dr Khatidja Chandler of the University of Manchester to identify possible research around raising the age for spouses and their

sponsors and with Sara Godfrey of the London School of Economics who is examining the policy background to section 55 of the Borders, Citizenship and Immigration Act 2009.

Refugee Children's Project

The project, funded by the Diana, Princess of Wales Memorial Fund, aims to raise the quality of legal representation of refugee children through training, information provision, publications including best practice guidance and holding annual conferences.

The project will run for two years and seven months, ending in December 2012 and is being coordinated by Natasha Tsangarides. An advisory group has been set up to guide and overseeing project work. We are grateful for the commitment of the members of the Advisory Group:

Liz Barratt, Bindmans LLP	Heaven Crawley, University of Swansea
Judith Dennis, Refugee Council and Co-convenor of ILPA Children's subcommittee	Kamena Dorling, Children's Legal Centre
Nadine Finch, Garden Court Chambers	Fiona Hannan, Legal Services Commission
Catriona Jarvis, Senior immigration judge	Kalvir Kaur, Immigration Advisory Service
Adrian Matthews, Office of the Children's Commissioner	Denise McDowell, Greater Manchester Immigration Aid Unit
Baljeet Sanhdu Islington Law Centre and Co- Convenor of ILPA's children's subcommittee	Sheona York, Immigration Advisory Service

ILPA will provide a series of free training sessions across the UK relating to all aspects of refugee children law, covering both substantive and procedural issues. Training will be for both immigration practitioners and practitioners in fields such as family, community care and crime who come across matters related to immigration status in their work, with both entry level and advanced specialist courses offered. The training programme for the first year will run from February to April 2011, with the first session taking place in London on February 9th. In May 2011, ILPA will publish good practice guidance on working with refugee children, which will be launched at a conference that month. We shall also publish an online resources guide for legal representatives detailing legal and policy instruments and good practice guidance.

Children seeking international protection need the best possible representation within a system that is not adequately designed for, nor safeguards, their well-being. Through enhanced information provision and improved advice and representation, we hope that this project will assist legal representatives in promoting the rights and entitlements of refugee children. In addition, information and insights from the training sessions will inform ILPA's influencing work.

Litigation

In addition to the on-going support that ILPA provides to members bringing cases, including 'test' and strategic cases, ILPA intervened in the *CMX* litigation brought in connection with the closure of Refugee and Migrant Justice. ILPA is grateful to Bindmans LLP, Samantha Knights and Helen Mountfield QC, who represented ILPA *pro bono* and without whose assistance the intervention would not have been possible. ILPA had also been granted permission to intervene in a challenge to the UK Border Agency practice of forcing applicants to go to Liverpool to make further submissions in person, represented *pro bono* by Birnberg Peirce and Samantha Knights. The case was resolved before it came to court. In addition ILPA has provided witness statements in the *R (Medical Justice) v SSHD* [2010] EWHC 1925 (Admin) on removals without notice; for a challenge to decision-making in 'legacy' cases; for a challenge to decision-making on New Asylum Model cases and for judicial reviews of the Legal Services Commission's tender process.

Liaison with government and other organisations

Government departments, despite our protests repeated at every possible opportunity, now refer to us as ‘partners’. We do not miss the awful ‘stakeholder’ terminology, but consider its replacement inappropriate, and shudder to think what titles they might impose upon us in future without our consent. The general election, and the ‘purdah’ that surrounds it, interrupted the flow of meetings with Government during the year, with some departments and agencies, such as the Legal Services Commission, appearing to opt for a ‘purdah’ far deeper than that required by the applicable Cabinet Office guidance. ILPA continues to be represented at many meetings with Government departments and independent agencies, as well as many other networks, endeavouring to support other organisations working with migrants and refugees as much as we can.

It is always a challenge to capture this work in our annual report. Members are actively involved with and in a range of networks and organisations and while our lists record those who represented ILPA at meetings, other members are often also there with other hats on. It is not uncommon for most of those around a table to identify themselves as ILPA members and that they have dealt with the matter in their ILPA capacity in the past. Also, to the lists below must be added ILPA’s training sessions and members’ meetings at which external speakers were present. Once again, the volume and frequency of meetings makes it inevitable that some must be covered by staff of the Secretariat and that they must step in from time to time to assist with others (happily, usually supported by information and briefings from members) but the list below record an impressive number of members generously giving up their time to represent ILPA not only at one-off meetings but at series of bilateral meetings. We are very grateful to them. Active members of subcommittees, those who have worked on consultation responses for ILPA and those with specialist expertise and knowledge of ILPA’s work are always needed to represent the views of ILPA members at meetings and to report back to members on what took place there. Our liaison and influencing work has been supported during the year by the grants from the Joseph Rowntree Charitable Trust and the Diana, Princess of Wales Memorial Fund.

Home Office liaison

The formal groups and the ILPA representatives who attended during the year are:

- Child Trafficking Advice Line Advisory Group: Alison Harvey
- UK Border Agency Detention User Group: Steve Symonds
- UK Border Agency Earned Citizenship Strategic Advisory Group (now disbanded): Adrian Berry
- UK Border Agency Employers’ Task Force (and Intra-Company Transfer subcommittee) Nichola Carter, Philip Barth, Philip Trott
- UK Border Agency National Asylum Stakeholder Forum and its subcommittees (Case Resolution; Children; Operations; European) (and specific workshops): Steve Symonds, Liz Barratt, Alison Pickup, Solange Valdez, Colin Yeo. There were irregular meetings of an enforcement group held under the auspices of this forum, although ranging more widely, which was attended by Nichola Carter and Steve Symonds. The National Asylum Stakeholder Forum meetings included sessions attended by Phil Woolas MP and Damian Green MP, successive Ministers for Immigration
- UK Border Agency International Group/ Visa Services Directorate User Panel; Nichola Carter, Alison Harvey
- UK Border Agency Corporate Stakeholders’ Group: Alison Harvey

In addition to these regular, formal meetings, there were series of bilateral and multi-lateral meetings with the UK Border Agency as follows:

- with representatives of the Public Enquiry Office in Croydon: Sophie Barrett-Brown, Philip Barth, Gillian Brownlee, Marion Dixon, Maria Fernandes, Wesley Gryk, Alison Harvey, Nicholas Rollason and Linda Rowe
- with Bill Brandon and Ian Cheeseman of the UK Border Agency about the Asylum Process Instruction on survivors of torture; Russell Blakely, Alison Harvey, Mark Housby, Sonia Routledge, Jo Swaney, Steve Symonds (with Sonia Sceats of the Medical Foundation and Tarnjit Birdi of the Helen Bamber Foundation there on behalf of those organisations)
- with Eddy Montgomery, Director of Operations North West Region, UK Border Agency Sophie Barrett-Brown, Alison Harvey, Alison Hunter, Nick Rollason
- Refugee Children's Consortium meetings with the UK Border Agency (covering the detention of children and related matters; screening and age assessment): Nadine Finch, Natasha Tsangarides, Alison Harvey, Steve Symonds
- Other meetings with the UK Border Agency on the detention of children and related matters: Steve Symonds, Natasha Tsangarides

There were one-off meetings as follows:

- UK Border Agency Litigation Strategy Board, 10 Dec 2009; Alison Harvey, Steve Symonds
- UK Border Agency consultation event on asylum support 15 December 2009; Alison Pickup
- ILPA meeting with Ian Robinson, UK Border Agency (Julie Lovell of the Law Society in attendance) re Tier 1 15 December 2009; Kahiye Alim, Philip Barth, Emily Brodie, Margaret Burton, Nichola Carter, Kathryn Denyer, Marian Dixon, Tracey Evoglidis, Kerry Garcia, Antonia Grant, Alison Harvey, Emily King, William Lamb, Dominic Magne, Linda Rowe, Karen Sturtivant, Ann Symonds, Carl Thomas, Andrew Tingley, Philip Trott and Kerry Whiter
- UK Border Agency Points-Based System workshop to look at the resident labour market test and JobCentre Plus, 22 December 2009 and 8 February 2010; Nichola Carter
- ILPA meeting with Dee Bourke, Director of Central Operations and Performance re no notice of removals 7 January 2010; Steve Bravery, Nicola Cockburn, Mark Henderson Alison Harvey and Steve Symonds
- Meg Hillier MP, Parliamentary Under Secretary of State, Home Office 23 February 2010; Steve Symonds
- UK Border Agency Enforcement meeting 3 March 2010; Steve Symonds
- Minister for Immigration, 'Immigration and skills in a time of economic growth' 31 March 2010; Philip Barth
- ILPA meeting with Jackie Luetchford, Director of the Case Resolution Directorate 7 May 2010; Alison Harvey, Jackie Peirce, Sonia Routledge, Steve Symonds, Solange Valdez
- COMPASS (Commercial Operational Managers Procuring Asylum Support Services) UK Border Agency, Stakeholder meeting on separated children 25 May 2010; Alison Harvey
- National Referral Mechanism 12 month review workshop 22 June 2010; Sophie Freeman
- ILPA meeting with Glyn Williams, Director of Visa Services re implementation of allowed appeals 28 June 2010; Maria Fernandes, Barry O'Leary, Sue Shutter
- Meeting with Hugh Ind UK Border Agency to discuss legal representation of persons seeking asylum 29 June 2010; Steve Symonds
- Meeting with Minister for Immigration and David Wood, Strategic Director, Criminality and Detention Group to discuss current review into ending the detention of children for immigration purposes 30 June 2010; Steve Symonds
- Meeting with Hugh Ind on age disputed case in detention 6 July 2010; Steve Symonds
- UK Border Agency and Employability Forum event on refugee settlement applications 20 July 2010; Steve Symonds

- Ian Robinson UK Border Agency on the interim cap on migration 11 August 2010; chaired by Sophie Barrett Brown with over 80 ILPA members in attendance
- UK Border Agency meeting with Women's Asylum Charter on Gender asylum instruction 20 September 2010; Steve Symonds
- UK Border Agency event on Asylum Improvement Project 28 October 2010; Steve Symonds
- Speech on immigration by Home Secretary Theresa May 5 November 2010; Alison Harvey
- Meeting with Mark Walmsley of UK Border Agency International Group re the future of the UK Border Agency Use Panel/Customer Forum 10 November 2010; Alison Harvey

In addition, Sophie Barrett-Brown and Alison Harvey represented ILPA at UK Border Agency receptions hosted by successive Home Secretaries.

Liaison with courts and tribunals

- Administrative Courts User Group; Mark Henderson, Jawaid Luqmani,
- Asylum and Immigration Tribunal Stakeholders' Group, subsequently Presidents' Stakeholder Meeting); Mark Henderson
- Asylum Support Tribunal User Group: Alison Pickup, Steve Symonds
- Administrative Appeals Chamber of the Upper Tribunal User Group; Adrian Berry

See also the members' meetings above.

Legal Services Commission

The regular meetings are:

- Civil Contracts Consultative Group: Matthew Davies, Alison Harvey, Jackie Peirce
- Civil Contracts Consultative Group, Immigration Representative bodies meeting: Alison Harvey, Sonia Routledge, Solange Valdez
- Legal Services Commission Stakeholder Group: Alison Harvey

In addition the following meetings were held

- Meeting with Lord Bach, Minister in the Ministry of Justice, and officials to discuss legal aid funding and in particular work in progress 2 December 2009; Alison Harvey
- Meeting with the Legal Services Commission re Refugee and Migrant Justice cases 6 July 2010; Alison Harvey, Sonia Routledge
- Meeting on Financial Stewardship – Relationship Management Guidance 7 July 2010; Michael Hanley

International Organisations

Inter-Governmental and Governmental

- UNHCR launch of Improving Asylum Procedure: Comparative Analysis and Recommendations for Law and Practice 30 March 2010; Steve Symonds
- UNICEF/Garden Court Chambers Levelling the Playing Field launch 9 June 2010; Natasha Tsangarides
- European Commission conference 'EU Citizens' Rights – The way forward' 1 and 2 July 2010; Adam Weiss (speaker)
- Ukraine Country of Origin Information Unit at the Ukrainian government asylum authorities, the State Committee for Nationalities and Religions.Meeting (at ILPA),30 July 2010; Alison Harvey, Steve Symonds and Natasha Tsangarides (with CORI)

- European Council Ministerial Conference on Asylum Brussels 13-14 September 2010 and pre-meeting with non-Governmental organisations 12 September 2010; Steve Symonds (speaker)
- Antonio Gutierrez, United Nations High Commissioner for Refugees, Refugee Studies Programme 2010 Harrell-Bond lecture 13 October 2010; Philip Turpin.
- UNHCR/Institute seminar series on International Refugee Law, seminar on detention; November 2010 Alison Harvey
- Centre for Migration Law Radboud University Nijmegen, The Netherlands and European Commission European Network on Free Movement within the European Union Annual Conference on Free Movement of Workers, 25 & 26 November 2010; Adrian Berry, Kahiye Alim, Kathryn Denyer and Catherine Maclay.

In addition, Alison Harvey joined the Advisory Group for the UNHCR/Asylum Aid project on statelessness during the year.

Non-Governmental

- Open Society Institute Expert Seminar to prepare a draft protocol on citizenship to the African Charter on Human and People's rights 4 November 2010; Alison Harvey (with Laurie Fransman QC and Adrian Berry)
- International Organisation for Migration event on Assisted Voluntary Returns; 12 October 2010; Steve Symonds

Other Government Departments

- Department for Business, Innovation and Skills stakeholder event – employment and skills future better regulation 17 February 2010; Emily King
- Ministry of Justice Courts & Tribunals Integration Programme 8 Sept 2010; Alison Harvey
- Director of Public Prosecutions – criminalisation of child victims of trafficking in cannabis factories 8 November 2010; Richard Thomas
- Ministry of Justice meeting with Minister Jonathan Djanogly MP re legal aid green paper 16 November 2010; Alison Harvey

Other official bodies

Regular meetings:

- Office of the Children's Commissioner for England and Wales Advisory Group (refugee children): Steve Symonds.
- Chief Inspector of the UK Border Agency Refugee and Asylum Forum: Colin Yeo, Tim Lawrence; Charlene Stakemire
- Meeting on regional protocol on citizenship in Africa 4 November 2010; Alison Harvey

Other meetings were held as follows:

- Mayor of London's launch of refugee integration strategy 10 Dec 2009; Steve Symonds
- UK Border Agency Chief Inspector's Asylum Seekers and Refugee Forum 19 January 2010; Timothy Lawrence
- Roundtable with Director of Public Prosecutions, trafficking 15 Mar 2010; Alison Harvey
- Meeting with the Chief Inspector of the UK Border Agency 19 May 2010; Alison Harvey, Alasdair Mackenzie, Steve Symonds, Colin Yeo
- UK Human Trafficking Centre (UKHTC) NGO Stakeholders' meeting re concept of operations 24 May 2010; Catherine Robinson

- ILPA meeting with OISC re report on consultation on guidance on competence 26 May 2010; Julian Bild, Alison Harvey, Steve Symonds, Mike Tarnoky, Solange Valdez (+ teleconference with independent consultant working on this, Alison Harvey)
- OISC annual conference 19 November 2010; Steve Symonds

Parliament

For the first time in years, no bill on immigration, asylum and nationality! In addition, an election interrupted the day to day work of parliament. There has however been no shortage of secondary legislation and ILPA succeeded in securing debates on no less than three statements of changes in immigration rules.

ILPA representatives attended meetings of the All Party Parliamentary Groups on Legal Aid (Alison Harvey), Migration (Sophie Barrett-Brown and Hilary Belchak), and Refugees (Steve Symonds). In addition ILPA representatives attended the following:

- Parliamentary (Refugee Council/TUC) reception on permission to work 7 December 2009; Steve Symonds
- The Anti-Trafficking Monitoring Group parliamentary launch of 'One year on: an analysis of UK measures to protect victims of trafficking' 16 June 2010; Alison Harvey
- Presentation on Points-Based System to Home Affairs Committee in closed session 20 July 2010; Alison Harvey and Nick Rollason
- Oral Evidence to the Home Affairs Committee enquiry into the Points-Based system: Sophie Barrett-Brown, Nick Rollason; 14 September 2010
- Meeting with Heidi Alexander MP re quality of legal representation 17 November 2010; Alison Harvey

As well as sharing information with parliamentarians and committees, providing individual MPs, peers and researchers with briefings and information, ILPA provided evidence and published parliamentary briefings as follows:

- Briefing for House of Lords Debate on the UK Opt-in to the draft EU Asylum Procedures and Qualifications Directives; 12 January 2010
- Briefing for House of Lords Regret Motion: Statement of Changes in immigration rules HC 367; 6 April 2010
- Identity Documents Bill (Bill 1) House of Commons Second Reading; June 2010
- For Westminster Hall debate on the detention of children under immigration act powers re asylum legal aid; 17 June 2009
- Points Based System for Home Affairs Committee; 20 July 2010
- Response to Merits Committee call for evidence re HC 59 Statement of Changes in the Immigration Rules; July 2010
- Submission to the Home Affairs Committee inquiry into the cap on non-EU migration; August 2010
- For the House of Lords Motion to disapprove Statement of Changes Cm7944 (English Language Tests and Refugee Family Reunion); 25 October 2010
- For the House of Lords Motion to disapprove Statements of Changes HC59 and HC96 (Economic Migration Cap); 25 October 2010
- Response to Joint Committee on Human Rights call for evidence in relation to Remedial Order repealing Certificate of Approval scheme; October 2010
- For the Joint Committee on Human Rights for its evidence session with Rt Hon Kenneth Clarke QC MP and the Lord McNally; 16 November 2010

- Briefing to the Justice Committee for its evidence session with the Legal Services Commission; 19 November 2010 (session will be on 30 November 2010)
- Briefing for House of Commons backbench debate on immigration; 19 November 2010

Non-governmental organisations, networks and others

The leading non-governmental organisations in the field are ILPA members, and non-governmental organisations are represented among the convenors of ILPA subcommittees. ILPA members are active in many networks and, even more than is the case with official bodies, it is difficult to reflect the breadth and depth of engagement with non-governmental organisations. Those with a specific mandate to represent ILPA are named, but ILPA members' attendance and engagement goes much wider. ILPA strives to provide continuity, support and the broader immigration law perspective to these networks. What follows can only be as a sample of our work in this field. See also the training section for work in partnership with non-governmental organisations and networks for training.

Regular meetings and representation on groups include:

- Anti Trafficking Legal Project (ATLeP): Alison Harvey
- Anti-Trafficking Monitoring Project: Alison Harvey
- Asylum Rights Campaign: Steve Symonds
- Diana, Princess of Wales Memorial Fund Refugee and Asylum-seekers initiative: Alison Harvey, Natasha Tsangarides
- Foreign National Prisoners Network: ILPA Immigration Offences subcommittee (convenors Jawaid Luqmani and Richard Thomas) has worked through and with the Foreign National Prisoners Network during the year
- Housing and Immigration Group: Sheona York, Alison Harvey, Steve Symonds
- The Law Society: Stefan Vnuk represents ILPA on The Law Society's Immigration Committee (Steve Symonds also attended one of the Committee meetings) and Jackie Peirce on the Law Society's Specialist Practitioner Group. Sophie Barrett-Brown and Alison Harvey have represented ILPA at meetings of the Society's Migrant Lawyers Network; Alison Harvey, Timothy Lawrence and Sonia Routledge represented ILPA at meetings around the Society's Access to Justice review and Alison Harvey represented ILPA at the Society's meeting the legal aid tenders
- Children's Rights Alliance for England, Legal Advocacy for the Rights of Children seminars: Alison Harvey; Natasha Tsangarides, Steve Symonds
- Information Centre for Asylum Seekers and Refugees Advisory Group: Alison Harvey
- Medical Justice: Alison Harvey and Steve Symonds
- Refugee Children's Consortium: Nadine Finch, Alison Harvey, Steve Symonds, Natasha Tsangarides
- Still Human Still Here: Steve Symonds
- Trafficking Law and Policy Network: Alison Harvey

The Asylum and Access to Justice, Detention and Asylum Fast Track subcommittees, the Legal Officer and the General Secretary use the Refugee Legal Group (RLG) to ensure the dissemination of information of interest to its users.

ILPA representatives attended meetings and discussed developments with a wide range of organisations (some of them ILPA members) as part of a wider programme involving ILPA members spanning influencing work, training and support. These included the AIRE Centre, Alliance for Legal Aid, Amnesty International, Anti Trafficking Legal Project (ATLeP), Anti-Trafficking Monitoring Group, Asylum Aid, Asylum Support Appeals Project, Association of

Visitors to Immigration Detainees, Bail for Immigration Detainees, Barrow Cadbury Trust, Birkbeck College, British Refugee Council, Children's Legal Centre, The Children's Society, Children's Rights Alliance for England, Churches Refugee Network, Country of Origin Research and Information (CORI), Diana Princess of Wales Memorial Fund, ECPAT UK, Electronic Immigration Network (EIN), European Council on Refugees and Exiles, Human Rights Watch, Immigration Advisory Service, Information Centre for Asylum Seekers and Refugees, Institute of Psychoanalysis, Justice, Joint Council for the Welfare of Immigrants, Joseph Rowntree Charitable Trust Justice, Kalayaan, Kanlungan, London Advice Services Alliance, LawWorks, Legal Aid Practitioners' Group, London Detainee Support Group, London Refugee Churches Network, London Refugee Voice, London School of Economics Migration Studies Group, Manchester Refugee Forum, Medical Foundation for the Care of Victims of Torture, Migrants Resource Centre, Migrants Rights Network, Praxis, Public Law Project, Refugee Studies Centre, University of Oxford, Refugee Youth, Reprieve, Rights of Women, Royal Colleges (of General Practitioners; Paediatrics and Child Health and Psychiatrists, re detention of children) Scottish Refugee Council, Social Market Foundation, Society of Legal Scholars, Stonewall, Student Action for Refugees, Stonewall, The Childrens Society, The Law Society, University of Central London, UKGLIG Westminster Legal Policy Forum, and Unite. Alison Harvey also met with Tameem Ebrahim in connection with his work on British Nationals (Overseas) from Hong Kong.

In addition to the conferences described in the training section above, ILPA representatives were speakers at the following conferences, again, often as part of a wider programme of work:

- Migrants' Resource Centre 25th Anniversary 25 November 2009; Steve Symonds
- Rights of Women launch of *Seeking Refuge? A handbook for asylum-seeking women* 26 November 2009; Alison Harvey
- Praxis: presentation on fresh claims, legacy and Zimbabwe asylum cases 18 December 2010; Steve Symonds
- Presentation 'New Londoners' (The Children Society project for young asylum-seekers) 16 January 2010; Steve Symonds
- Speech at performance of *The Uninvited* at Rich Mix 20 January 2010; Alison Harvey
- Parliamentary launch of *Fast-Tracked Unfairness: detention and denial of women asylum seekers in the UK* Human Rights Watch discussion –10 March 2010; Alison Harvey
- Presentation to Kanlungan on topical issues 20 March 2010; Steve Symonds
- Churches Refugee Network conference 5 June 2010; Steve Symonds
- Rights of Women 35 Anniversary Conference, Workshop 22 June 2010; Alison Harvey
- Immigration Advisory Service conference 21 July 2010; Alison Harvey
- London School of Economics, London Detainee Support Group and Student Action for Refugees conference on Indefinite Immigration Detention Conference (LSE/LDSG/STAR) 6 November 2010 Alison Harvey
- Workshop at Association of Visitors to Immigration Detainees AGM (Birmingham) 12 November 2010; Steve Symonds
- Workshop at Legal Action Group *Social Welfare Law Matters* conference 12 November 2010; Alison Harvey
- Inside Government UK Migration Policy Forum 16 November 2010, Ian Macdonald QC

Responses and submissions

In addition to the parliamentary briefings described above and the information disseminated through the Information Service, ILPA wrote 102 responses, submissions and letters this year, an increase of 35 on last year. Departmental 'purdah' did not slow us down, rather it allowed us to

progress proactive work, and follow up on cases in the courts and developments in practice. A letter is not necessarily a lesser piece of work than a submission; the European subcommittee's project of critiquing UK Border Agency EEA forms by reference to Directive 2004/6 is one example of a letter as the culmination of an enormous piece of work. Meanwhile, the Economic Migration subcommittee convened a separate working group to deal with consultations on the cap on migration. The responses that flowed from this group, like a number of other responses listed below, were the length of a published report.

1. Response to Senior President's Office consultation on Draft Practice Statements and Practice Direction of the Asylum and Immigration Chambers of the First-Tier Tribunal and the Upper Tribunal; November 2009
2. Response to UK Border Agency Consultation on charging for immigration and visa applications; November 2009
3. Comments on the Law Society questions re a re-accreditation scheme ; November 2009
4. ILPA/AIRE centre response to European Commission (Viviane Reding) re Communication from the Commission on guidance for better transposition and application of Directive 2004/38/EC; 9 December 2009
5. Letter to UK Border Agency re removals without notice; 16 December 2009
6. Response to UK Border Agency consultation on the Tier 4 Review; December 2009
7. ILPA and the AIRE Centre comments to the UK Border Agency on the re-case Procedures and Qualifications Directives; December 2009
8. Submission to Joint Committee on Human Rights re legislative scrutiny priorities for 2010 – asylum rights; January 2010
9. Letter to Matthew Coats, UK Border Agency re ILPA notes of meetings; 16 January 2010
10. Letter to Sonia Dower, UK Border Agency re Tier 2 biometric appointments at the Public Enquiry Office; 26 January 2010
11. To Law Society re reaccreditation; 28 January 2010
12. Comments on UK Border Agency Assessing Age Asylum Process Guidance v 5; January 2010
13. Response to OISC consultation on guidance on competence; January 2010
14. To Lin Homer, Chief Executive UK Border Agency re UK Border Agency and Legal representatives; 11 February 2010
15. To UK Border Agency re further submissions and getting in touch with Liverpool further submissions Unit; 11 February 2010
16. To Eddy Montgomery, UK Border Agency re EEA cases; 17 February 2010
17. To Lin Homer, Chief Executive UK Border Agency re refugee family reunion; 25 Feb 2010
18. Response to UK Border Agency consultation Simplifying Immigration Law: a new framework for Immigration Rules; February 2010
19. Response to UK Border Agency consultation Reforming Asylum Support: Effective Support for those with Protection Needs; February 2010
20. Response to Legal Aid: Refocusing on Priority Cases – Consultation on Draft Regulations, Funding Code Changes and Lord Chancellor's Authorisations ; February 2010
21. To Dee Bourke, UK Border Agency re removals without notice; 2 March 2010
22. To Tribunal Procedure Rules Committee re rule 17(2) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230) (L.1) as amended; 11 March 2010
23. To Matthew Coats UK Border Agency re *Asylum Getting the Balance Right? A Thematic Inspection*; 15 March 2010
24. To Chief Inspector UK Border Agency re *Asylum: Getting the Balance Right? A Thematic Inspection*; 15 March 2010
25. To Neil Hughes, UK Border Agency re domestic workers; 18 March 2010
26. To Legal Services Commission, freedom of information request re 'mini audits'; 24 Mar 2010

27. To Bill Brandon UK Border Agency re referrals to the Medical Foundation for the Care of Victims of Torture and the Helen Bamber Foundation; 25 March 2010
28. To Desmond Hudson, Chief Executive of The Law Society re reaccreditation; 31 March 2010
29. Response to Administrative Court Office User Group consultation – Proposed Changes to Administrative Court Procedures; March 2010
30. Comments on UK Border Agency Draft Detention Services Order – visits by registered medical practitioners and dentists to detainees; March 2010
31. ILPA comments on the UK Border Agency proposed Asylum Instruction on Handling Claims Involving Allegations of Torture ; March 2010
32. To Viviane Reding, Vice-President, Commission for Justice, Fundamental Rights and Citizenship, European Commission re homeless EEA nationals; 21 April 2010
33. To Fiona Hannan, Legal Services Commission, re Devon Law Centre Asylum Appellate Project; 21 April 2010
34. To the Rt Hon John Denham MP, Secretary of State for Communities and Local Government re Removal of EU Migrants under Regulation 19(3)(a) of the Immigration (European Economic Area) 2006 Regulations; 21 April 2010
35. To the UK Human Trafficking Centre, freedom of information request re detention of trafficked persons; 21 April 2010
36. To UK Border Agency International Group re implementation of allowed appeals; 24 April 2010.
37. To Editor of the Sunday Times re reporting on absence of Presenting Officers at Home Office appeals; 28 April 2010
38. To Fiona Hannan, Legal Services Commission, freedom of information request re immigration tenders; 30 April 2010
39. Response to Home Office consultation on publication of monthly asylum application statistical data; April 2010
40. To Lin Homer UK Border Agency re case of *Abdillaahi Muuse v Secretary of State for the Home Department* [2010] EWCA Civ 453; 4 May 2010
41. To Legal Services Commission re delay in announcing immigration tender results; 5 May 2010
42. To Eddy Montgomery UK Border Agency re: Application forms and processing of applications made under European law; 12 May 2010
43. To Katie Sheen, Reaccreditation Unit, The Law Society re reaccreditation; 12 May 2010
44. ILPA & Legal Aid Practitioners' Group to Law Society Immigration Technical Board & Fiona Hannan, Legal Services Commission, proposal for reaccreditation by CPD Plus; 19 May 2010
45. To Katie Sheen, Law Society Reaccreditation Unit re examinations; 26 May 2010
46. Response to Isle of Man Government Consultation – Moves to include Island inside UK e-border; May 2010
47. To Katie Sheen, Law Society Reaccreditation Unit, re reaccreditation; 3 June 2010
48. Request to UK Border Agency for information under the Freedom of Information Act 2000: EEA damages and legal costs; 4 June 2010
49. To Damian Green MP, Minister for Immigration, re implementation of C-127/08 *Metock v Ireland* and need to amend SI 2006/1003; 4 June 2010
50. To Jonathan Sedgwick, Deputy Chief Executive UK Border Agency re Credit Industry Fraud Avoidance System (CIFAS); 4 June 2010
51. To Damian Green MP, Minister for Immigration re re Credit Industry Fraud Avoidance System (CIFAS); 4 June 2010
52. To the Rt Hon the Lord McNally, Minister of State, Ministry of Justice, re re Credit Industry Fraud Avoidance System (CIFAS); 4 June 2010
53. To the Rt Hon Kenneth Clarke QC MP, Secretary of State for Justice, re immigration and asylum legal aid; 4 June 2010

54. To Glynn Williams, Director of Visa Services UK Border Agency International Group re *Playing by the Rules in the UK, a guide for international travelers*; 8 June 2010
55. To Treasury Solicitors re charter flight to Baghdad; 8 June 2010
56. To Hugh Ind, UK Border Agency, re Out of Services Standards Teams; 11 June 2010
57. To Secretary of State for Justice re immigration and asylum legal aid; 15 June 2010
58. To Maureen Miller, the Law Society, re reaccreditation exams; 15 June 2010
59. To Secretary of State for Justice re immigration and asylum legal aid, 18 June 2010
60. To Lord Justice Carnwath, Senior President of Tribunals, re implications of threatened closure of Refugee and Migrant Justice, 21 June 2010
61. To Matthew Coats UK Border Agency re consultation on a cap on immigration; 30 June 2010
62. Response to UK Border Agency review of first twelve months of operation of the National Referral Mechanism; June 2010
63. ILPA and AIRE Centre response to the European Commission's consultation on *EU Citizens' Rights – The Way Forward*; June 2010
64. Comments to the Legal Services Commission on Immigration Coding & Guidance; June 2010
65. Comments to the Legal Services Commission on Relationship Management Assurance Process – Guidance for Relationship Manager visits Version 4; June 2010
66. Response to UK Border Agency consultation: Refusing Entry or Stay to NHS Debtors; June 2010
67. Response to Department of Health consultation: Review of Access to the NHS for Foreign Nationals; June 2010
68. ILPA response to The Law Society consultation Access to Justice Review; June 2010
69. To Lin Homer UK Border Agency re *CMX et ors*; 8 July 2010
70. Freedom of Information request to UK Border Agency re use of credit checks; 13 July 2010
71. Response to UK Border Agency Review into ending the detention of children for immigration purposes; July 2010
72. Comments to Legal Services Commission re former Refugee and Migrant Justice clients and capacity of immigration firms – information for providers ; July 2010
73. Response to UK Border Agency revised draft of Asylum process guidance on *Processing an Asylum Application from a Child*; July 2010
74. Response to Solicitors Regulation Authority consultation on outcomes-focused regulation; July 2010
75. Response to Upper Tribunal, Immigration and Asylum Chamber; Anonymity in Determinations; July 2010
76. To Carolyn Downs, Chief Executive Legal Services Commission re legal aid; 28 July 2010
77. To John Sidocar, Legal Services Commission re Refugee and Migrant Justice; 28 July 2010
78. To Damien Green MP, Minister of State for Immigration re Asylum Review and related matters; 4 August 2010
79. To the Presidents of the Immigration and Asylum Chambers in the Upper Tier and First Tier Tribunals re implementation of allowed entry clearance appeals; 10 August 2010
80. To Ian Robinson UK Border Agency re interim cap on migration; 12 August 2010
81. ILPA, AIRE Centre and Migrants Rights Network to Mr Espinera, Department of Communities and Local Government re EEA nationals; 12 August 2010
82. To Eddy Montgomery UK Border Agency re permanent residence; 20 August 2010
83. To Jonathan Sedgwick, Deputy Director UK Border Agency re *ZO (Somalia)*; 27 August 2010
84. Comments on Visa Services Customer Forum draft terms of reference; August 2010
85. Response to Biometric Residence Permits Questionnaire; August 2010
86. ILPA response to the Migration Advisory Committee's Consultation on the level of an annual limit on economic migration to the UK; September 2010

87. To Paul Roach, UK Border Agency re Immigration & Nationality Enquiry Bureau; 16 September 2010
88. To Damian Green MP, Minister of State for immigration, re citizenship provisions of the Borders, Citizenship and Immigration Act 2010; 22 September 2010
89. Response to the UK Border Agency's consultation on limits on non-EU economic migration; September 2010
90. Response to Her Majesty's Inspectorate of Prisons' consultation on potential topics for thematic reports; September 2010
91. Comments on Commission Proposal for a Directive of the European Parliament and the Council on minimum standards in Member States for granting and withdrawing international protection (Recast) Com (2009) 554; September 2010
92. Comments on UK Border Agency Asylum Instruction on *Sexual Orientation and Gender Identity in the Asylum Claim*; September 2010
93. Submission to Independent Review of the Office of the Children's Commissioner ; Oct 2010
94. ILPA and JCWI to Damian Green MP, Minister of State for Immigration re new English language requirement for migrant spouses/partners/fiancé(e)s; 1 October 2010
95. To Damian Green Minister of State for Immigration, re refugee family reunion; 6 Oct 2010
96. To Dee Bourke, UK Border Agency re Chapter 55 of the Enforcement Instructions and Guidance; 11 October 2010
97. To Steph Hutchinson-Hudson UK Border Agency re Effect and implementation of *HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department* [2010] UKSC 31
98. Response to consultation on Law Commission's 11th Programme of Law Reform; Oct 2010
Response to National Audit Office study on the Points-Based System; October 2010
99. Submission to the Joint Committee on Human Rights - Review of the Government's response to judgments identifying breaches of human rights in the UK; October 2010
100. ILPA and Anti-Trafficking Legal Project (ATLeP) joint response to Crown Prosecution Service consultation on prosecuting and trafficking; October 2010
101. Response to UK Border Agency consultation on guidance for dispersing asylum seekers and failed asylum seekers with healthcare issues; November 2010
102. To Jonathan Sedgwick Deputy Chief Executive UK Border Agency, Dame Lesley Strathie, Chief Executive and Permanent Secretary, Sir Leigh Lewis KCB, Permanent Secretary, Department of Work and Pensions, re recourse to public funds; 23 November 2010.

This list does not include many more informal emails chasing responses to letters written, or picking up discrete points raised in meetings. It is supplemented also by the information that members share with each other through the mailing and email lists. It is thanks to the tireless work of subcommittees, their convenors, the Legal Officer and other active members that we have been able to achieve this exceptional output. The Chair sees all communications, but, learning from our experience of having an Acting Chair last year, and to cope with the volume of material, we have now moved to a system of sharing responsibility for sign-off across the Executive Committee, with communications restating existing ILPA positions being sent from Secretariat following scrutiny by at least one representative of the Committee.

Summary

Last year I identified five aims for the year. I summarise this report on each of them below

- **To enable the Secretariat step up to the work associated with the new grants and to realise the benefits that these offer for all members**

As detailed in this report, these projects are progressing well and we have been fortunate indeed in our recruitment of staff to lead them and in the work members have put into them.

- **To build ILPA's membership and bed in the Direct Debit system for membership payments**

I am pleased with the uptake of Direct Debits, on which we hope to build in the coming year and implementation of this system has gone smoothly. I urge all members to consider moving to direct debits. We are also now in the final stages of completing work to ensure that we can take payments by credit card, which we hope will be similarly beneficial. We are working to ensure that our new website, with the members' database that will lie behind it, will offer a step change in the level of service and the resources we are able to offer to members. The work has already caused us to scrutinise and improve the way we run our existing communications, for example integrating subcommittee email lists into our existing members' database.

I am disappointed that overall membership numbers have continued to fall, although toward the end of the year there have been signs that work to address lapsing by accident is beginning to bear fruit, and ILPA continues to attract new members. The tenders, the problems with reaccreditation and now the proposals to cut legal aid have all led some non- and lapsed members to beat a path to ILPA's door and the quality of the assistance that they have received, plus the glimpse of how much more would be available if they joined ILPA, has been reflected in applications from them for membership. However, we do not think that we have yet seen the full toll that will be taken by the legal aid tenders and the pressures of current practice, while the medium and longer term effects of Government's work to reduce net migration on the range of practitioners doing this work, remains difficult to predict.

- **With the Executive Committee to take forward work on charitable status for ILPA**

Once again this has fallen victim to the pressures of work over the course of the year. Once again, it remains my intention to take forward this work with the new Executive Committee.

- **With the Executive Committee to take forward work to strengthen ILPA's subcommittee structure and associated representation at meetings and contributions to consultations.**

I am pleased with the progress that has been made, as detailed in this report. Levels of member involvement have been high and, as subcommittee groups enlarge, the pool of members up to speed on specialist topics on whom we can call enlarges. This also ensures that the workload of the convenors can be shared. Some subcommittees have progressed faster than others and there is still work to be done in ensuring that all subcommittees report monthly to the Executive Committee, to ensure that cross-cutting themes are identified and that meetings are timetabled to facilitate integration with other work. I hope that developing the role of EC members as liaising with particular subcommittees will support convenors in taking forward this work.

- **To ensure that ILPA members' expertise can be at the forefront of work on new developments in law, policy and practice during the year to the benefit of all those striving for a just and equitable immigration law practice**

This report is a testimony to the extent to which we have been able to realise this aim, and we continue to strive to integrate our training, information dissemination and influencing work, and to integrate all these with the cases members are taken, so that no contributions are wasted. Challenges have come from the intensity of work required by particular events, such as the closure of Refugee and Migrant Justice and the related litigation and the enormous task of responding to multiple consultations on the cap on migration. The pressure on the Secretariat has been immense and inevitably there has not been the opportunity to pursue all topics as far as I should like and I continue to refuse to be resigned to that.

My main aims for the next year will be:

- **To ensure that ILPA members' expertise can be at the forefront of work on new developments in law, policy and practice during the year to the benefit of all those striving for a just and equitable immigration law practice, in particular in challenging proposals to cut legal aid; in supporting practitioners working with refugee children through the Refugee Children's Project and in testing the assumptions underlying the Government's commitment to reduce net migration**
- **The 'going live' of our communications and website and work to ensure that we exploit the new technology at our disposal to the full**
- **Work further to strengthen ILPA's Executive Committee and subcommittee structure and associated representation at meetings and contributions to consultations**
- **Charitable status for ILPA**

My thanks go to the staff and all those who have supported their fellow practitioners and others during a very difficult year: the Executive Committee, trainers, the convenors and members of the subcommittees, those who have represented ILPA at meetings, those who have been involved in drafting consultation responses or ILPA's many letters, those who have contributed documents and notes for mailings or shared information with others via the subcommittees and to our funders and those who have worked with us.

Alison Harvey
General Secretary

24 November 2010

ACCESS TO JUSTICE SUBCOMMITTEE REPORT

2010 saw the abolition of the Asylum and Immigration Tribunal and the transfer of asylum and immigration appeals to new Immigration and Asylum Chambers of the First-tier Tribunal and Upper Tribunal. There are moves currently underway to transfer age dispute judicial reviews to the Immigration and Asylum Chamber of the Upper Tribunal, although as yet no move to transfer fresh claim judicial reviews. The extent to which decisions of the Upper Tribunal can be judicially reviewed is now subject to conflicting decisions in England and Scotland and is likely to be resolved next year by the Supreme Court.

The appointment of Mr Justice Blake as President of the Upper Tribunal Immigration and Asylum Chamber meant that the most senior judicial post in the new structure for immigration and asylum was held by a former chair of ILPA. He addressed last year's AGM (the announcement of his appointment having been hastened so that he could do so) and addressed a member's meeting in June.

That meeting coincided with the tragic closure of Refugee Migrant Justice (RMJ) as a result of the fixed fee regime, the most damaging event of the year for access to justice for the most vulnerable asylum seekers and migrants (the current Coalition proposals are discussed below). Refugee and Migrant Justice had helped more than 110,000 people since beginning its work (as Refugee Legal Centre) in 1992. It will be remembered for its commitment to taking on complex and difficult cases involving some of the most vulnerable migrants in the UK. It ran test cases at all levels from the Tribunal to the Supreme Court and often succeeded to secure protection for clients failed by the system. Unfortunately, without large financial reserves and unable to secure bank loans, the payment structure implemented by the previous government meant that Refugee and Migrant Justice was saddled with a debt too large to bear. Leaders of charities including Amnesty International, Liberty, and Barnardo's joined faith leaders and senior legal and human rights experts in a written appeal to save Refugee and Migrant Justice from closure. Despite such efforts, which included protests outside Ministry of Justice and Refugee and Migrant Justice offices, its campaign to continue working for its clients was unsuccessful.

The closure of Refugee and Migrant Justice's 13 offices meant that around 10000 migrants, mostly individuals and families seeking protection in the UK from the risks of violence and conflict were left with no representation and 336 employees were made redundant. The procedure (or lack thereof) by which the Ministry of Justice and the Legal Services Commission proposed to 'wind down' Refugee and Migrant Justice meant thousands of cases were to be effectively deep-shelved in an Essex warehouse. This was subject to a legal challenge brought by Bhatt Murphy on behalf of a representative group of clients in which ILPA intervened. The judicial review forced the Legal Services Commission to concede an entitlement to continuity of representation on the part of all asylum seekers and forced the UK Border Agency to publicise special measures for former Refugee and Migrant Justice clients. Without such steps, access to justice would have been denied on a massive scale. In the end and during a wind down period of several weeks, a small team of Refugee and Migrant Justice staff helped reallocate files amongst other Non-Governmental Organisations and solicitor firms who responded with vigour, absorbing as many cases by transfer as permitted. Equally, the Tribunals acted fairly in most cases, adjourning hearings where appropriate. The Refugee and Migrant Justice closure was a major casualty of the current legal aid system and its demise remains a patent loss to the provision of quality advice and representation.

Further bad news on the legal aid front has of course followed in the form of the Coalition proposals which will be addressed elsewhere in the annual report and which if implemented will

have a devastating effect on access to justice.

The last month has seen a triple blow to access to justice from the Coalition, the legal aid proposes being accompanied by proposals to introduce fees for immigration and asylum appeals and the cherry picking of the Jackson proposals on civil costs.

In its recently published its paper: '*Introducing fee charges for appeals in the Immigration and Asylum chambers of the First Tier Tribunal and the Upper Tier*', the Ministry of Justice states that it is '*... reasonable to ask non-UK citizens appealing against some categories of Immigration and Asylum decisions to contribute to the costs of the administration of that appeal, where they are able to...*' and reasonable because two thirds of all appeal types are unsuccessful (although it is not clear what the breakdown is between the First Tier Tribunal and Upper Tier appeals, and in relation to the latter the difference, if any, between state and applicant initiated appeals).

It is proposed that fees be set either at (a) 25% of the total cost of the particular appeal type, then differentiated between paper and oral appeals - for example, the cost in an asylum appeal would break down as £262 (paper appeal) and £308 (oral appeal) - or (b) set at a flat rate of £65 for paper appeals and £125 for oral appeals. No fee will need to be paid, at First Tier Tribunal and/or Upper Tribunal levels, by those falling into one of the following categories: (i) those who are legally aided (subject to means and merits test - here the fee is paid as a disbursement); (ii) if in receipt of s95 asylum support; (iii) if in fast track detention, and otherwise; (iv) where the state initiates action against the individual on grounds of: (a) deportation; (b) revocation of citizenship or right of abode, or; (c) leave to remain.

No mechanism is proposed for remission or for the fee to be paid by the UK Border Agency if successful on appeal. Refunds will only be payable if the fee was paid in error. If an appeal is made out of time and arguably if, for some other procedural reason, an appeal is determined to be invalid, again, the fee will not be reimbursed. What is patently unfair is that this includes circumstances where the Secretary of State has chosen to withdraw her decision at First Tier Tribunal level where there is no provision that requires permission from the tribunal or for reasons to be given, unlike at UT level (See rule 17, The Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2698/2008), and *HM et ors (Article 15(c)) Iraq* CG [2010] UKUT. It is proposed that there is a discretionary power exceptionally for the fee to be waived where exceptional or compelling circumstances.

If the non-state appellant appeals to the Upper Tribunal (i.e. renews an appeal initially refused by the First Tier Tribunal and s/he does not fall within the exemption categories that will attract a total £250 fee: £50 for the application for permission, and a £200 for an oral hearing. It is proposed that all appeals against immigration decisions will now be lodged at the Tribunals Service. Where an appeal is brought by multiple family members it is proposed that a notice of decision will be made for one named person among the linked cases, but what is striking in such cases is that all members will be required to pay a fee. This is a 'when,' not a 'whether' proposal.

As to the Jackson report on civil costs, the Government issued its consultation at the same time as the legal aid consultation. It proposes accepting the recommendation that success fees in Conditional Fee Arrangement no longer be recoverable from the defendant while questioning Jackson's recommendation that qualified one way costs shifting be applied to judicial review. ILPA will be responding to all these consultations in the coming months.

There has been better news in caselaw. The *R (Medical Justice) v SSHD* [2010] EWHC 1925

(Admin) Judicial Review successfully challenged the UK Border Agency policy by which detainees faced removal without sufficient notice to obtain access to the Administrative Court to review their removal or even to obtain legal advice, a matter on which ILPA has been working for the last three years. *HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department* [2010] UKSC 31 finally established that LGBT asylum seekers could not be refused on the basis that they could avoid persecution by acting discretely. *Saeedi* established that the EU Charter of Fundamental Rights applied to the UK, notwithstanding the ‘opt out’ claimed by the previous Government. That means that asylum seekers can rely on the right to asylum under Article 18 and the right to a fair hearing under Article 47 (the equivalent of Article 6 of the European Convention on Human Rights equivalent). Facing further proceedings following the reference to the Court of Justice of the EU in *Saeedi*, the UK Border Agency conceded hundreds of judicial reviews and agreed not to use the Dublin Regulation in relation to Greece until further notice.

ILPA also continues to press members’ concerns at the stakeholders groups of the First Tier Tribunal, Upper Tribunal, and Administrative Court, and through written submissions.

Convenors: Mark Henderson, Ali Bandegani

CHILDREN'S SUBCOMMITTEE REPORT

Although no formal sub-committee meetings took place in the first three months of the year, committee members and ILPA staff have been very active on children's issues throughout 2010. The sub-committee met in April, June and September and has a further meeting scheduled for December. We continue to communicate with members via e-mail.

The closure of Refugee and Migrant Justice particularly affects children as the organisation represented about one third of all children-seeking asylum. The sad experience dominated members' thoughts and activities for a significant proportion of the year and we are still concerned about the effect on Refugee and Migrant Justice's child clients. ILPA provided three witness statements for the *CMX* litigation which flowed from the closure of Refugee and Migrant Justice in which the Children's Commissioner for England also intervened, with the consequences for refugee children represented by Refugee and Migrant Justice receiving particular attention. The subcommittee would like to thank all the lawyers involved in the *CMX* litigation, Bhatt Murphy solicitors, Bindman's LLP and Wilson's LLP, Manjit Gill QC, Mark Henderson, Samantha Knights, Helen Mountfield QC Edward Nicholson, Alison Pickup and Martin Westgate QC. While the *CMX* litigation failed to prevent the closure of Refugee and Migrant Justice, it drew from the UK Border Agency undertakings as to how the cases of children represented by Refugee and Migrant Justice would be handled and ILPA was quick to take up with the UK Border Agency, in meetings and correspondence, instances where the UK Border Agency had fallen short of these.

The subcommittee is also extremely concerned about the recent review on legal aid and the impact on children subject to immigration control and their access to legal representation. The subcommittee will be working closely with members to identify areas of concern and will be a major focus of our next meeting.

One of our co-convenors left the sector to become a Member of Parliament. We congratulate Lisa Nandy, who was elected as MP for Wigan in the general election and thank her for all the time and effort she gave to the sub-committee in particular and the refugee children's sector in general.

This year has seen a huge number of positive changes in ILPA's work and also in practice, policy and law impacting children.

ILPA warmly welcomes Judith Dennis, Policy Adviser for Unaccompanied Children at the Refugee Council, as the new co-convenor of the subcommittee. Judith has been an active sub-committee member since its inception.

The committee, as ever, is very grateful to ILPA staff for its support throughout the year, in particular Steve Symonds. It has also been very pleased to welcome Natasha Tsangarides, who ably provides the vital link between ILPA's new refugee children's project and its members with a particular focus on children's issues. We are also pleased with the recent grant of funding for a new Refugee Children's Rights Project to be hosted by Islington Law Centre and the Children's Legal Centre.

This year we have seen the emergence of the new Asylum Policy Guidance on *Processing an asylum application from a child*, and the Joint Presidential Guidance note No.2 of 2010 *Child, vulnerable adult and sensitive appellant guidance*, issued by the Presidents of the Immigration and Asylum Chambers in the First Tier and Upper Tier Tribunals, and also the 24 August statement from Thomas Hammarberg, the Council of Europe Commissioner for Human Rights, *Refugee*

children should have a genuine chance to seek asylum. In addition, on 27 July, the Chief Inspector of the UK Border Agency published a thematic report on family removals (based on an inspection earlier in the year) that identified ‘*significant weaknesses in current procedures*’.

Age assessments and Children in Local Authority care:

The children sub-committee accepted the invitation of the UK Border Agency to submit comments to its Asylum Process Guidance, *Assessing Age*. The Asylum Process Guidance had been published to coincide with the new duty to have regard to the need to safeguard and promote the welfare of children (the section 55 duty) but had not previously been seen in draft form. Following representations made at its children’s stakeholder meeting (sub-group of the National Asylum Stakeholder Forum) the UK Border Agency agreed to consider comments in its next revision. It was to be some months later that this exercise took place and at the time of writing, the written comments have been responded to in writing and the subject of one meeting. Some of our comments have been incorporated, some outstanding areas of disagreement remain and we shall continue our efforts. The main areas of disagreement concern the differential treatment afforded to those who are deemed adults on the basis of a visual inspection by the immigration officer at screening, and of the increasing practice of using information contained in local authority age assessment reports in Reasons for Refusal Letters.

On a more positive front, the case of *MSA v London Borough of Croydon* [2009] EWHC 2474 (Admin) in January 2010 clarified the position regarding who may act as an independent observer in age assessment interviews conducted by local authorities. The case concerned an individual who was representing the child’s legal representative and who had been denied involvement in the interview by the local authority. The judge ruled that as a professional independent of both the local authority and the UK Border Agency the fact that an individual works for the child’s legal representative is no reason not to allow them to act in this role, supporting the child and ensuring that the interview is conducted fairly.

ILPA has also been involved in meetings arising initially out of discussions at both the National Asylum Stakeholder Forum and the Detention User Group ILAP and others have attended two meetings to press for changes to policy and practice to ensure that age disputed young people are not detained, not least because a significant proportion of these young people are later assessed as children.

In August 2010, the Administrative Court dealt with the complicated situation where an immigration judge rules that an asylum-seeker, who claims to be a child, is an adult despite the decision of a local authority to accept the person to be a child and to support him accordingly. In *R (PM) v Hertfordshire* [2010] EWHC Civ 2056 (Admin) the local authority had responded to the decision of the immigration judge by simply terminating its support. The Administrative Court ruled that to be unlawful. The immigration judge’s decision did not bind the local authority, though it would be appropriate for a local authority to consider whether such a decision required it to reconsider its age assessment.

In October 2010, the Administrative Court and Court of Appeal gave judgment in separate cases concerning local authority support for children beyond their 18th birthday. *R (SO) v Barking and Dagenham & Anor* [2010] EWCA Civ 1101 concerned an unaccompanied child asylum-seeker and whether, on his turning 18, the Secretary of State became responsible for his accommodation and support (under section 4 of the Immigration and Asylum Act 1999) or whether the local authority’s obligations under leaving care provisions continued. The Court of Appeal found it was the latter. (*R (A) v Lambeth*) did not concern an asylum-seeker, but the Administrative Court’s

ruling on the inadequacy of the local authority's 'pathway plan' is as likely to be of importance to unaccompanied child asylum-seekers as any other child supported by a local authority.)

Returns and the Asylum Process Guidance on claims from children

Discussions about the UK Border Agency's proposals to establish reception conditions for refused child asylum seekers in Kabul had begun before this year, 2010 saw the escalation of discussions following the issuing of a tender document in March. ILPA, along with other stakeholders, were sent a draft copy of the revised Asylum Process Guidance, *Processing Asylum Claims from Children*; one of the key proposed changes being guidance on refusing a child's claim outright based on the existence of reception conditions. ILPA members and staff worked intensively in a very short period during which comments would be accepted, to produce comments not only on the sections of the instruction that dealt with this issue, but on the entire document. Our success was mixed. On the broad questions of how the best interests of the child are considered in the asylum claim, the timing of family tracing and the allocation of guardians to children in the asylum system, ILPA remains at odds with the UK Border Agency. However, on many other issues ILPA's comments have been incorporated into the revised instruction. The section of the guidance dealing with the interpretation of the UN Convention on the Rights of the Child is vastly improved. One small but significant victory relates to language; for many years ILPA has urged the UK Border Agency to desist from its use of the term 'UASC' to describe children, which it has done in this guidance. ILPA feels strongly that the tone and language used in UK Border Agency documents influences its actions and is heartened by this change. At the time of writing we have no information about the progress of arrangements in Kabul.

Review of Children in Detention

Following the announcement of the Coalition government in May the UK Border Agency conducted a six-week review of its family detention policy. ILPA submitted its views and has been involved in meetings with the UK Border Agency officials leading the review, discussing the alternative family removals projects that have been developing. We remain very concerned indeed that the policy of detaining families has not ended despite the raft of evidence as to its harmful effect on children.

In September 2010, the Administrative Court gave judgment in *R (MXL & Ors) v Secretary of State for the Home Department* [2010] EWHC 2397 (Admin). This case concerned the continued separation of a mother and her two children by reason of her being detained on completion of her criminal sentence of imprisonment. The failure of the UK Border Agency to give proper consideration to the welfare of her two children in its decision to detain, and to maintain detention of, the mother was a significant factor in the Court's ultimate ruling of unlawful detention.

The Application of the Dublin regulation to separated children

In July 2010, the Administrative Court gave judgment in *R (Medical Justice Network) v SSHD* [2010] EWHC 1925 (Admin) ruling that the UK Border Agency policy and practice of failing to give a minimum 72 hours notice prior to removing someone from the UK was unlawful. The judgment is of importance to unaccompanied children seeking asylum because they were among the groups habitually denied the minimum notice, and thereby denied proper access to legal representation and the courts in order to challenge and protect themselves against an unlawful removal. In the course of the hearing it was revealed that the UK Border Agency had suspended its policy on removing children without notice since the case of *R (MA/BT) v SSHD* (unreported) in March (a case brought by subcommittee member Liz Barratt, of Bindmans LLP) and had suspended it in all other children's case since April 2010, a policy change that had not previously been publicised. At the permission hearing of *R (MA/BT) v SSHD* in February, Mr Justice Collins

ordered that no notice removals of separated children must cease. The full hearing is due to be heard in December 2010.

In October 2010, the Administrative Court gave detailed consideration to the question of the application of the safeguarding and welfare duty imposed by section 55 of the Borders, Citizenship and Immigration Act 2009 in the context of a decision to return an unaccompanied child asylum-seeker to Belgium under the Dublin arrangements. The judgment in *R (TS) v Secretary of State for the Home Department & Anor* [2010] EWHC 2614 (Admin) may be the forerunner of judicial consideration of this duty and its application in such situations. The Court held that the UK Border Agency had not regard to this mandatory duty and quashed the decision to remove the child to Belgium.

Further developments in the law

In August 2010, the President of the Upper Tribunal handed down the decision in *LD (Article 8 – best interests of child) Zimbabwe* [2010] UKUT 278 (IAC), where the tribunal ruled that the UN Convention on the Rights of the Child (UN CRC) is highly relevant to consideration of the right to private and family life under Article 8 of the European Convention on Human Rights in immigration cases and stating that “*Although questions exist about the status of the UN Convention on the Rights of the Child in domestic law, we take the view that there can be little reason to doubt that the interests of the child should be a primary consideration in immigration cases. A failure to treat them as such will violate Article 8(2) as incorporated directly into domestic law.*”

Judgment is awaited in the case of *ZH (Tanzania) v Secretary of State for the Home Department* before the Supreme Court. This case concerns whether the British citizenship of the two children of a mother whose asylum claim has failed is a special or decisive factor in a challenge to removal on human rights grounds. The Court has heard arguments based on the UN Convention on the Rights of the Child.

There was also a hollow victory in *ZN (Afghanistan) and others v Entry Clearance Officer* [2010] UKSC 21, the Supreme Court ruled that family members who sought entry to the United Kingdom to join a sponsor who had been recognised as a refugee but had subsequently obtained British citizenship still had to satisfy the rules dealing with refugee family reunion and, therefore, they did not have to meet the maintenance and accommodation requirements imposed by the general rules relating to applications by family members. Unfortunately, very shortly after the ruling the Secretary of State brought forward changes to the Immigration Rules that had the effect of reversing the decision.

Convenors: Lisa Nandy (to April 2010), Baljeet Sandhu, Judith Dennis (from June 2010)

DETENTION AND ASYLUM FAST TRACK SUBCOMMITTEE REPORT

As the year 2010 comes to a close, the outcomes of some significant cases are awaited. These cases will impact upon the extent to which the courts will in future hold the UK Border Agency to account in matters relating to detention, including the UKBA's application of its own policies on detention, and indeed the extent to which immigration policy in general has the force of law.

The Supreme Court is deliberating its decision in *SK (Zimbabwe)* [2009] UKSC 0022, with an essential issue for members of the sub-committee being the extent to which the failure on the part of the Secretary of State to implement it is unlawful, specifically its failure to review detention (in the form of its monthly internal reviews) and to keep detainees informed of the reasons for their continued detention (by issuing monthly progress reports to detainees).

Alongside that case are the cases of *WL (Congo) and JM (Jamaica)* [2010] UKSC 0062&0063], where the Supreme Court is considering whether the failure to disclose a secret, blanket policy to detain foreign national ex-offenders is unlawful, and whether such a policy in turn renders detention unlawful.

The government has so far won before the Court of Appeal. The Court of Appeal has found that even where a policy or a failure to implement a policy may be unlawful; this does not necessarily cause the detention itself to be unlawful. It is not surprising, therefore, that a review of a UK Border Agency subject access file showed a UK Border Agency caseworker deciding, following the reasoning of the Court of Appeal in *SK*, that the failure to carry out a monthly review of detention as he was on holiday was not unlawful, since he now concluded that he would have in any case decided to maintain detention, had he conducted the missed review.

The court's view thus far, that UK Border Agency policy should not have the force of law, has the potential consequence that damages (which provide an essential safeguard against the abuse of authority) cannot be issued against the UK Border Agency when such breaches of policy occur.

Perhaps that is also why some UK Border Agency officials seem to be more willing to express sentiments in monthly reviews or monthly progress reports that suggest that immigration detention is being used as a means of encouraging detainees to leave the UK. Practitioners report Immigration Officers noting in bail summaries or in monthly reviews of detention that detainees may need to be moved from their place of detention as they have become too comfortable. Or that a person is unlikely to cooperate with the removal process if released. In other words, immigration detention is being used as a form of coercion.

In the case of *A (Somalia)* [ECtHR case no. 27770/08], pending a decision before the European Court of Human Rights (which may be delaying its decision, pending the decisions in the domestic courts in *SK* and *WL*), the court is considering, inter alia, whether it is lawful not only to implement a policy that assumes the detention of foreign national ex-offenders, but also whether it is reasonable to use immigration detention as a means of encouraging detainees to agree to their removal from the UK. Indeed, the judgements in the cases this year of *HY* [2010] EWHC 1678 (Admin) and that of *Mafoud* [2010] EWHC 2057 (Admin) and indeed, in *FR (Iran)* [2009] EWHC 2094 (QB) last year, make it clear that detention cannot be used indefinitely. In those cases the failure of the UK Border Agency to obtain a travel document because of a detainee's refusal to cooperate with the removal process, the risk of absconding, or the risk of a detainee committing an offence if released, do not justify indefinite detention, following *Hardial Singh* principles.

The coalition Government declared its intention in July of this year to end the detention of all children, although the policy now seems to be delayed until the spring of next year, while the UK Border Agency tries to determine the policies it intends to introduce. There has been a reduction in the number of children being detained, although this practice has not ended. The UK Border Agency is currently piloting projects aimed at encouraging families facing removal to leave the UK voluntarily; but it has thus far ignored evidence from other European countries where levels of voluntary return of families who have been refused permission to remain are significantly higher than in the UK. Experience in those countries has shown that a careful approach throughout the decision-making process, ensuring families' needs are met and that they are kept informed of their position by way of legal representation makes families far more likely to leave the UK voluntarily if permission to stay is refused. The suspicion therefore remains that the UK Border Agency is setting up alternatives that are bound to fail, ready to cite these in the future and return to detaining families with children.

Practitioners are also awaiting the decision of the High Court in the case of *Suppiah and others* (CO/2844/2010) which is considering the whether the UK Border Agency has properly been applying section 55 of the 2009 Borders Act, and therefore whether the detention of children in those circumstances has been lawful. The UK Border Agency seems to have been caught out by its failure to formulate and implement policies that give meaning to ensuring that the best interests of children are protected. That is an issue dealt with in the case of *MXL* [[2010] EWHC 2397 (Admin)], where the UK Border Agency, and indeed the Tribunal, were criticised for failing to give proper consideration to the welfare of children who were affected by the continued detention of their mother. A child's best interests need to be borne in mind not only when a policy is applied to a child, but also when it impacts upon a child indirectly. The principle applies applications for bail or release, as much as in relation to appeals or substantive applications to remain.

Cases of notable success have involved the release of individuals whose national authorities are unlikely to issue documents to enable them to be removed to their countries of origin. In the cases of *TT and MA [(Iran)]* [2010] EWHC 2350 (Admin), a delay of about a year in obtaining documents for Iranian nationals was found to be indicative that such persons were unlikely to be removed in foreseeable future, rendering their detentions unlawful. What is perturbing is the UK Border Agency's attempt (fortunately rejected by the court), to prevent the disclosure of statistical and other evidence that contributed to the court reaching the conclusions that it did. The UK Border Agency's attempts to prevent disclosure of the timetables for obtaining travel documents from various embassies, makes it very difficult for detainees and their advisors to assess whether or not removal is imminent, and therefore whether continued detention has become unlawful.

Other notable developments have included the UK Border Agency's review of Section 4 entitlements for applicants for bail who have a criminal conviction, with the introduction of a policy to refuse to provide accommodation in cases it defines as being the highest risk of re-offending, as such accommodation is considered by the UK Border Agency to be too expensive. A decision is awaited in the case of *Razai and others* (CO/5757/2010) which will aim to resolve the issues, including whether an asylum support appeal is the proper forum for deciding these cases, given that the main purpose of that appeal procedure is to assess destitution, and not level of risk of re-offending.

We continue to wait for the President of the Upper Tribunal's bail guidelines for Immigration Judges that was due to be published in October. In the absence of these, we have been circulating a copy of the President's speech to immigration judges of the 8 June, where he noted several

important points, many involving common sense issues e.g. proceeding with deciding bail in principle in the absence of accommodation and allowing for adjournments of hearings pending resolution of the accommodation issue.

The subcommittee was joined this year by a new co-convenor, Steve Bravery, and we are pleased to welcome back as co-convenor, Kay Everett. Thanks go to Jed Pennington for his excellent work on the UK Border Agency's changes to Chapter 55 and the way it deals with the issue of mental health. Our thanks also go out to the staff members at the ILPA office who have contributed to our work, notifying us of new developments, and responding substantively to many issues as they arise.

Convenors: Pierre Makhlouf, Kay Everett and Steve Bravery (from February 2010)

EUROPEAN SUBCOMMITTEE REPORT

The subcommittee met regularly on a monthly basis over the period. Below is a summary of the key things which the Sub Committee addressed this year:

Third country national family members of EEA nationals exercising Treaty rights in the United Kingdom and in particular their treatment by the UK Border Agency.

We continued to be concerned about the delay of UK Border Agency in dealing with the registration of EEA nationals and the issue of residence cards to their third country national family members. In particular, the use of the “pre sift” before an application is dealt with substantively raised concerns with our members. The matter was addressed with the European section at a seminar that the UKBA attended (see below) and at a meeting with representatives and we were told that the matter would be reviewed. We were also told that questionnaires were being developed for the caseworkers at pre sift which we would be able to review. As yet, they have not been sent to us.

We reviewed the new guidance in the European Casework Instructions on extended family members, including unmarried partners. The methodology to establish whether somebody is an extended family member seems incorrect and a letter is being drafted about this matter raising our concerns. As practitioners will be aware, the UK Border Agency has yet to amend the Immigration (European Economic Area) Regulations 2006, Regulation 12 to comply with *Metock* (Case C-127/081). Very early on after the change of government, Damian Green stated that he would be looking into this matter but as yet, despite repeated reminders, the regulations have not been changed.

We undertook a review of all the forms which the UK Border Agency issues for applications for residence cards and registration certificates. This was to see whether they were in line with the requirements of European law. Each question was looked at in this context and tables drawn up with comments about each question. This was then forwarded to the UK Border Agency. A similar exercise is being carried out on the entry clearance form for European nationals (both the paper and online version).

The issue of destitute EEA nationals.

EEA national homeless persons are being targeted by the UK Border Agency, given warnings to leave the United Kingdom within 28 days or else they will be removed. The legal basis is unclear given that they are not in receipt of any social assistance and therefore are not an unreasonable burden on the social assistance scheme. ILPA, working closely with the AIRE Centre, met with the local authorities and charities dealing with these homeless individuals to set out and explain the current law to them.

Other work

In July, Nick Rollason, Alison Harvey, Sophie Barrett-Brown and Alison Hunter attended a meeting with Eddy Montgomery of the UK Border Agency to highlight some of the issues for practitioners and the problems that they are having. Eddy stated that he thought there were definite improvements in the European Directorate under Tony Dalton and that we should be seeing further improvements shortly. In particular, he told us that he was considering having a Public Enquiry Office in Liverpool for all European applications. As yet, we have heard nothing further about this.

In the courts in the United Kingdom, the Sub Committee were pleased to see the outcome of *Muuse* [2010] EWCA Civ 453 and *MK (Algeria)* [2010] EWCA Civ 980 in which damages were

awarded to a Dutch national and an Algerian married to a Portuguese national respectively for the false imprisonment and unlawful detention of people exercising EU Treaty rights in the United Kingdom. The subcommittee also followed carefully the cases relating to returns to third countries in the United Kingdom under the Dublin Regulation and in particular returns to Greece (*R (Saeedi) v Secretary of State for the Home Department* [2010] EWHC 705 (Admin)). In relation to *OA (EEA retained rights* [2010] UKAIT 0003), the subcommittee raised the misleading head note which was subsequently amended to accurately reflect the determination.

Despite the fact that the United Kingdom will be opting out of both the revised Directive on Minimum Standards and Procedures within Member States for Granting and Withdrawing International Protection and the Asylum Procedures Directive, the Sub Committee drafted a detailed response to the proposal for the first directive. In conjunction with the AIRE Centre, ILPA also drafted a response to the Commission's consultation on EU citizens' rights. This followed a detailed commentary at the end of 2009 on the guidance for better transposition of Directive 2008/34. Despite its potential, this document was a disappointing document and in places arguably inconsistent with jurisprudence of the European Court of Justice.

The subcommittee welcomed the European Court of Justice's decision in *Ibrahim and Teixeira (C-310/08 and C-480/08)*. These joined ECJ cases clarified the rights of non EU national parents to remain in a host member state to care for their children in education when the EU national parent has left the country. The decisions show rights to reside which do not arise directly from Directive 2004/38. The other case of interest was *Lassal* (Case C-162/09), which clarified how permanent residence is obtained under Directive 2004/38.

On 17 November we received the welcome news that the Commission had decided formally to address the question of the Worker Registration scheme and the effects of the UK right to reside test on entitlement to social assistance and social security benefits and, having received a reply from the UK Government that it did not consider satisfactory, decided on 28 October 2010 to proceed to the next stage of the infringement procedure and to send a Reasoned Opinion to the United Kingdom, to which response must be received within two months.

As in previous years, the subcommittee organised a training session on the rights of workers in the United Kingdom with representatives of the European Commission, the Tribunal, the UK Border Agency and practitioners. Tony Dalton was present in his role as head of the UK Border Agency European Directorate. The subcommittee was also involved in providing training at basic and advanced levels of free movement law, on Schengen visas and on European free movement and welfare benefits law.

The subcommittee continued to produce the quarterly European updates for members which provide concise and clear information on the developments at EU level.

Many thanks to all those who have helped unstintingly this year with the activities of the Sub Committee.

Convenors: Elspeth Guild and Alison Hunter

ECONOMIC MIGRATION SUBCOMMITTEE REPORT

The Economic Migration Subcommittee has faced considerable challenges this year due to a change in government coupled with wide spread economic uncertainty. The new coalition government introduced interim measures to limit the number of economic migrants entering the UK in July 2010. This interim cap will remain in place until March 2011 when a more permanent measure to limit numbers will come into effect. The government's consultation period regarding the permanent limits closed in September 2010.

The subcommittee has continued to engage with external agencies concerning the permanent measures. This involved regular meetings and discussions with the UK Border Agency, providing oral evidence to the Home Office Affairs committee and written submissions to the Migration Advisory Committee and UK Border Agency.

A working group was set up to assist with the responses to the consultation on the limits. The group consisted of ILPA members volunteering their time to arrange meetings, collating information and preparing the responses. We would like to express our appreciation to all those who dedicated a huge amount of time to this task.

We would like to thank all individuals involved in assisting with ILPA's submissions and in particular to Sophie Barrett-Brown and Nick Rollason for giving oral evidence to the Home Affairs Committee.

The following are some examples of the specific matters which we have been involved with:

- Arranged a workshop with Ian Robinson (UK Border Agency) in November 2009 on the implementation of the changes to the increased points thresholds subsequently introduced in April 2010
- Established a good working relationship with the Public Enquiry Office on the implementation of bio-metric appointments to Tier 2 premium applications -- this included a tour of public enquiry office at Croydon.
- Introduced training sessions in line with consistently changing UK Border Agency guidance.
- Assisted with ILPA's briefing to the House of Lords to regret motion of HC367 - the restrictions on students studying English language course, limitations to hours of work students can undertake and dependants accompanying Tier 4 applicants.
- assisted with providing written evidence to the Merits committee on the limit of non EU economic migration
- Meeting arranged with Ian Robinson for ILPA members on the migration cap.

The subcommittee met throughout the year (every six weeks) and meetings are open to all ILPA members.

We would like to thank all ILPA members for their participation and support to the committee. A special thank you to Nichola Carter for the invaluable contribution made as a convener of the committee. Nichola stepped down as a convener in April this year, however she continues to provide valuable support to the committee.

Convenors: Philip Barth, Philip Trott, Nichola Carter (to April 2010) and Shazmeen Ali (from November 2010)

FAMILY & GENERAL IMMIGRATION SUBCOMMITTEE REPORT

This subcommittee has met six times during the year, one of our meetings being a joint meeting with the Economic Migration subcommittee. We were involved in ILPA's response to consultations on access to the National Health Service, the Points-Based System and interim cap and have also taken up issues relating to changes in the immigration rules on marriage, delays in entry clearance and delays in the implementation of allowed entry clearance appeals, the treatment of students and access to National Health Service treatment.

In March 2010 the subcommittee met together with the Economic Migration subcommittee to discuss Tier 4 of the Points-Based System and the problems it has created. Members acted in the *Pankina v SSHD* [2010] EWCA Civ 719 and *R (English UK) v SSHD* [2010] All ER (D) 86 (Jul) cases, resulting in a victory and then changes in the immigration rules to give effect to the judgments, but to ensure that the criteria challenged survived, along with UK Border Agency guidelines for dealing with students' cases affected by the judgment, on which it has frequently failed to act, thus allowing many appeals to go forwards where the initial decision should have been reversed. We also discussed such issues as immigration officers examining students on arrival at the UK airport, not being satisfied about their language ability and then pressing the college to withdraw its sponsorship, resulting in removal of the student with no right of appeal. The Points-Based System is creating unnecessary difficulties for students and for colleges. The meeting also discussed issues in relation to recourse to public funds by people with work permits or under the Points-Based System – when they are advised to claim child benefit, for example, and do not know that they should not do so and that this can be used against them when applying for an extension or for settlement – and wrote to the UK Border Agency on this issue.

The subcommittee has worked on the immigration rules on marriage. We have supported JCWI's case on the minimum age for marriage, which was heard in the Court of Appeal on 21 and 22 October, and the decision is awaited. We worked on the joint ILPA and JCWI representations to the UK Border Agency opposing the accelerated imposition of a language test for spouses and partners, just before the immigration rule change bringing it in was published, and supported ILPA's briefing for the House of Lords prayer against the change. We took up the issue of delays in providing Certificates of Approval for marriage; members were successful in judicially reviewing these delays and in securing costs. We welcomed the announcement on 27 July of the eventual abolition of Certificates of Approval and look forward to its implementation. We have also followed developments in the implementation of the domestic violence rules, and the extensions of the Sojourner project until March 2011 with a UK Border Agency commitment to continue some support.

Delays in entry clearance and in implementation of entry clearance appeals, particularly in Pakistan, appear to have increased during the year. The subcommittee wrote to the UK Border Agency International Group, and had a meeting with its then Director, Glyn Williams, to press for better processes, in particular notifying posts abroad by email, rather than by diplomatic bag, when an appeal is allowed. The UK Border Agency Appeals Section was receptive to this idea and we hope it will be implemented. We wrote to the Tribunals to press for this change. The report of the Chief Inspector into Pakistan entry clearance processes echoed our experience and gave some reasons for the woeful inefficiency in dealing with applications there; we await results from the UK Border Agency's response to it.

There have been consultations on migrants' access to the National Health Service and the possibility of changing the immigration rules to refuse people who have not paid NHS debts, and on the UK Border Agency guidance on access to medical treatment of dispersed asylum seekers and failed asylum seekers; subcommittee members have been involved in ILPA's responses to these consultations.

The subcommittee contributed to ILPA's detailed response on the cap for economic migrants, led by the Economic Migration subcommittee, as it is clear that all areas of non-EU migration are being considered. In most of the revisions of the PBS policy guidance notes the partners, and especially child dependents, of these categories are just tacked on as an afterthought (if considered at all) which can make family life very difficult in practical terms especially where one parent has to stay behind in a home country to earn a living and the children need to be with the parent in the UK.

We continue to oppose the increases in immigration fees.

Finally, the subcommittee was delighted to hear Theresa May state on 5 November that the Home Office will not be implementing the earned citizenship proposals.

The subcommittee will continue to work on these issues and whatever else comes up during the coming year – members would expect to be involved in ILPA's response to the proposal to charge fees for appealing against immigration decisions. Thanks to all those involved during this year - all members welcome to join us!

The subcommittee's co-coordinators were Sue Shutter, Jen Greenwood (until July 2010) and Pat Saini (from October 2010).

LEGAL AID SUBCOMMITTEE REPORT

This has been another busy year which was dominated by bidding for the 2010 contracts, the long wait for the announcement of the outcome and the shock of the results, as well as by Refugee and Migrant Justice entering administration, leaving 10,000 clients without legal representation.

The tender process and outcome

On 30th November 2009, only days after last year's AGM, the tender documents were published, the Legal Services Commission having stuck with its insistence on running the main immigration tender in advance of the Immigration Removal Centre tender and the tenders in all other civil categories. ILPA delivered helpful training in mid-December on how to get through the process with the maximum chance of success. Members began preparing their bids and attempting to get to grips with the 'e-tendering portal', which at least one of your subcommittee convenors found was a bit like trying to communicate with an elephant through a mouse-hole, only there were various mouse-holes, no way of knowing which one the elephant was sat behind, and the elephant had taken vows of silence in any event.

The selection criteria had been announced at the 11th hour. These were the criteria which would operate as tie breakers if there were eligible bids for more matter starts than were available once the essential criteria had been applied. One selection criterion was having an employee accredited at Level 3, the highest level on the Law Society's Immigration and Asylum Accreditation Scheme. In ILPA's response to the earlier consultation on the tender design we had suggested that firms with a Level 3 accredited employee **should be exempt from the minimum matter start requirement**. The minimum matter start requirement was reduced in any event, and the Legal Services Commission went on to decide to deploy Level 3 accreditation simply as a selection criterion. One point was available for submitting a Level 3 portfolio before the tender closed at the end of January 2010, so that point was in theory available to all, but only those who employed a Level 3 accredited caseworker by the tender closing date could obtain the full three marks. Within 48 hours of the tender documents being published the Law Society's Accreditation Unit had confirmed to ILPA that it would be unable to mark any Level 3 portfolios submitted during the tender process in time for the tender closing date. Thus, in effect, from the outset, it was impossible for those bidding to achieve the full marks on this selection criterion if they did not already employ a Level 3 accredited caseworker or if they did not recruit one by the closing date of 28th January 2010.

ILPA warned (as we had done throughout) that the selection criteria would in many cases leave large numbers of bids bunched on the same points, that as a result there would be overbidding to counteract pro rata bid reductions and that the posting of a Level 3 application would in very many cases be the deciding factor between competing bids. All this would come to pass.

The announcement of the outcome of the tender process was delayed three times. Results were supposed to be announced on 19th March, then 29th March and then 5th April, on which date the Legal Services Commission advised that the outcome could not be announced as the general election had been called. This stance appeared to be in accordance with Cabinet Office guidelines, but the Commission has never explained why it failed to factor into the timetable the fact that by the tender closing date at least it was clear that the general election would be called for early May 2010. The delay was particularly infuriating given the fact that the immigration tender had been brought forward quite significantly by comparison with all other civil categories, and one

consequence of the delay was that some practitioners found themselves once again in the position of having to prepare and take time out of work for the Level 2 reaccreditation exams (see below) without knowing whether after October 2010 their firm would have a contract and / or they would have a job. After the election ILPA pressed the LSC for clarity and certainty about a date for the announcement. We were told 'end of May' and then '4th June'. 4th June came and went without any announcement other than that due diligence checks were being made and it remained anybody's guess as to when the announcement would actually be made.

Finally on 28th June 2010 the awards were announced. As anticipated, a number of suppliers including long established practices and practitioners of great repute were not awarded contracts, or were not awarded contracts sufficient to make them viable. The reduction in the supplier base was not on a par with what would have happened in Family, had it not been for the successful challenge to the tender in that category (see below), but the reduction is nevertheless significant. Devon Law Centre is amongst those lost not in fact because of a failure to secure a contract in immigration, but because of a failure to secure a contract in social welfare law, which means that the Centre as a whole is no longer viable.

ILPA is aware that challenges have been brought or are intended to be brought both to the main immigration tender and at least one to the separate Immigration Removal Centre tender. ILPA's General Secretary has provided a witness statement to litigants and potential litigants setting out the facts about the tender consultation, in particular confirming there was no consultation on Level 3 accreditation being a selection criterion. In so doing ILPA seeks to ensure that the litigation is conducted on the basis of an objective and accurate record of what was discussed with the Legal Services Commission in meetings and in correspondence prior to the publication of the tender documents. On 8th November 2010 Lord Justice Keith (sitting in the High Court in Manchester) granted permission to the South Manchester Law Centre to proceed with a Judicial Review of the outcome of the tender in that procurement area. The challenge is based upon the deployment of the Level 3 accredited caseworker criterion and the inadequate notice given of the same.

The start date for the new contracts was twice delayed. By the time you are reading this report the new contracts will have started (15th November 2010). The exclusive contracts for the Immigration Removal Centres also commenced on this date, so that now detainees in the nine detention centres covered by the exclusive contracts may only be represented under Legal Help and Controlled Legal Representation by a provider which holds a contract for the specific detention centre the detainee is in. The reason for the delayed start date was that there were challenges afoot in other civil categories, most notably family. On 30th September 2010 the High Court gave judgement in the Law Society's Judicial Review of the family tender. The effect of the judgement was effectively to quash the contracts awarded in four distinct family sub-categories, as the High Court held that the Legal Services Commission's failure to give advance notice of the requirement of panel membership was unlawful.

Work in Progress / Refugee and Migrant Justice

ILPA continued throughout the year to raise with the Legal Services Commission the problem of un-billable work in progress, asking the Commission over and over again how it could operate on the basis of not actually knowing how much money it owed suppliers, and warning the Commission that it would have no choice but to find the money to pay up immediately if suppliers took the decision to close their businesses because they were no longer in a position to carry the Commission's debt to them.

In late 2010 the General Secretary attended a meeting with Lord Bach (the then Legal Aid Minister). The only ground the Minister was willing (able?) to give was an indication that the periodic billing of disbursements on Controlled Work files might be permitted under the new contract. Such provision is available under the new contract, but 'too little, too late' warned ILPA, and so it proved to be. On 15th June 2010 Refugee and Migrant Justice, (formerly the Refugee Legal Centre), went into administration, with debts of almost £2,000,000. ILPA provided witness statements in connection with the Judicial Review challenge to the closure of RMJ. Again this was done with a view to ensuring the litigation was conducted on the basis of detailed and accurate information about the history of the payment arrangements in immigration and asylum cases, the history and on-going problem of un-billable work in progress and ILPA's lobbying of the Legal Services Commission which has taken place on this issue, the specific impact of the introduction of graduated fixed fees and arrangements regarding the orderly transfer of files in immigration and asylum cases.

As we have reminded the Legal Services Commission *ad nauseam*, work in progress is properly to be understood as money owed by the Commission to the supplier for the work undertaken by that supplier and it is the Commission's unfair and punitive arrangements for billing and payment which were sooner or later bound to result in disaster of this kind. 10,000 clients lost their legal representatives. 340 committed quality employees of Refugee and Migrant Justice lost their jobs. They were not the only ones in the market for new jobs. Two months earlier, on 3rd March 2010, as Ministers announced that the Legal Services Commission was to become an Executive Agency of the Ministry of Justice, Carolyn Regan, the Commission's Chief Executive, resigned with immediate effect.

ILPA met with the Legal Services Commission in July 2010, trying to ensure that the process by which Refugee and Migrant Justice's clients would obtain new representatives was as fair and transparent, for clients and providers alike, as could be. The thorny issue of client choice versus which providers had unused matter starts was very much the crux of the debate. ILPA emphasized that the 8000 unused matter starts which Refugee and Migrant Justice held at the point of entering administration were supposed to be for *new* clients between June and October 2010. That demand would still be there. New matter starts therefore had to be awarded to cover the transfer cases. In the end the Legal Services Commission made new matter starts available to those who needed them in order to take on Refugee and Migrant Justice cases although we wait to see whether there was a net loss of funded new cases resulting from the closure.

Reaccreditation

Hard on the heels of bids being submitted, in early 2010 the Law Society finally announced the two years overdue Level 2 reaccreditation process, mandatory for those wishing to undertake publicly funded work in the immigration category. This time there was a more truncated examination process, but overall the Level 2 reaccreditation has not been without its annoyances and controversies, both in terms of process / administration and the content of the exams. The Law Society and Central Law Training initially simply decided that those who required reaccreditation would be allocated an examination date. The dates were allocated on the basis of alphabetical order of potential candidates' surnames and were said to be non-negotiable other than in the event of exceptional circumstances. ILPA protested at this, not least on the grounds that on the timetable specified a significant number of candidates would be sitting the examination before the announcement of the tender outcome, thus not knowing whether their firm would have a contract and / or they would have a job under the new contracts. The Law Society and CLT relented and offered a range of dates over an approximately eight month period. To begin with it looked as though the problem of sitting exams before the tender announcement was made had been resolved,

but as the Legal Services Commission's delay in making the announcement became more protracted many who had signed up for the earlier exam sessions were once again left not knowing whether in the end there would be much point to the time out of work they had to take to prepare for and sit the exam.

Those who achieve reaccreditation this time around will remain accredited for five years.

ILPA and the Legal Aid Practitioners' Group have submitted a detailed proposal to the Law Society and the Legal Services Commission for a future, non-exam based form of reaccreditation. The proposal is essentially for compulsory attendance at specified courses, for which candidates would be required to prepare in advance (receiving course materials in advance) and at which active participation would be mandatory. Thanks to those involved, particularly Matthew Davies, for the work done on this issue. We await the responses of the Legal Services Commission and the Law Society to our proposal.

The future

At the time of writing the Government's green paper on Legal Aid has literally *just* been published. How right we were to feel little cause for optimism. It has been clear to date that the new Legal Aid Minister, Mr Djanogly, is to say the least unlikely to be an ally. He is a great advocate of *pro bono* and seems unconcerned by how close that description comes to the basis on which those who try to sustain a business based on publicly funded work are compelled to operate. The context of the debate is very much 'how much' to cut from Legal Aid, as opposed to 'whether' to cut from Legal Aid. The figure envisaged to be cut is £350,000,000 from a total budget of approximately £2.2 billion. The Green Paper indicates that in the immigration category the Government proposes to remove 'all Legal Help and Controlled Legal Representation for immigration matters other than for persons seeking release from detention or proceedings before SIAC'. This includes (but is not limited to):

- Grant / variation of leave to remain applications;
 - Entry clearance applications;
 - Applications based on European Community law;
 - Citizenship and travel document applications;
 - Applications under concessions or policy outside the Immigration Rules;
- Asylum work remains within scope but non-Special Immigration Appeals Commission deportation and Article 8 appear to be out of scope.

ILPA's position is that the Legal Aid budget is not the place to seek cuts and that the Government would do better to look at how the Legal Aid budget might be reduced through better decision making on the part of other relevant Government departments, not least of which the UK Border Agency, as well as through a reduction in ill conceived and badly drafted legislation, some of which ultimately causes individuals to have recourse to Legal Aid. In the comprehensive spending review the Government stated that it would 'consult on major reforms to the Legal Aid system to deliver access to justice at lower cost to the tax payer'. This, the Government says, will involve 'taking tough choices about the types of case that should receive public funding, and focusing support on those who need it most. The reforms will also increase competition in the market and reform remuneration for providers to ensure the legal aid system is effective and affordable'. The Green Paper is in effect a consultation document and the deadline for response is 14th February 2011. Members are strongly encouraged to get involved with ILPA's work on the response and there is still time for lobbying to fight our clients' corner. The findings of Legal Action Group's recent survey assessing public support for Legal Aid are encouraging, with more than eight out of ten people believing that civil legal advice should be free for those on average earnings or below.

Other news from the subcommittee

We must again express our gratitude to the General Secretary for her tireless and devoted work on Legal Aid matters for ILPA. There are so many meetings to attend in addition to the usual business of drafting consultation responses and so on. Without Alison's highly effective input ILPA simply would not be represented at many of these meetings and policy fora. The legal aid emergencies in the year, particularly the Refugee and Migrant Justice closure and tender fallout have mainly fallen on Alison's shoulders and ILPA's ability to react has been due to her huge efforts (greatly assisted by other staff members).

We also take this opportunity to wish the very happiest of retirements to Vicky Guedalla, who retired from practice this autumn. Members will be aware of Vicky's tireless and committed efforts on behalf of this subcommittee to preserve access to justice for the clients we serve by fighting to safeguard access to quality Legal Aid provision. It is not putting it too highly, indeed it is probably an understatement, to say that the quality of Vicky's work for ILPA has been legendary. Though the Legal Services Commission may not miss being called to account by Vicky, we will greatly miss her contribution. Never was a happy and peaceful retirement more richly deserved.

This year's consultation responses included a response to proposals by the Ministry of Justice concerning capping experts' fees and a response to the shocking 'Refocusing Priorities' consultation, which appeared to advocate 'no Legal Aid for foreigners'. In relation to the former the Government concluded it did not have enough data on the basis of which to make concrete proposals about reducing experts' fees. Instead it announced it would set up a working group consisting of experts and representative bodies. In relation to the latter, the Government published its response to the consultation responses in February 2010. That response is available at: <http://www.justice.gov.uk/consultations/docs/legal-aid-refocusing-final-response-web.pdf> .

The executive summary indicates that the focus of any reform will be on matters such as closer scrutiny of financial eligibility and restricting funding for low value damages claims. The Ministry of Justice is now consulting on introducing fees for appeals to the Upper Tribunal and First Tier Tribunal. This is not a consultation on 'whether' but 'how' to go about this. The fees will be an allowable disbursement for those in receipt of Legal Aid, but this is an extremely worrying prospect for the many whose income is just above the financial eligibility limit for Controlled Legal Representation funding, especially as the fees will not be refunded in the event of a successful appeal and there is still no mechanism in the Tribunal for the losing party to pay the successful party's costs.

Convenors: Sonia Routledge & Jackie Peirce

IMMIGRATION OFFENCES SUBCOMMITTEE REPORT

The sub-committee work has focused on two areas:

Section 31/Article 31

The law appears to have settled down at little following *R v Asfaw* [2008] UKHL 31. The beginning of the year saw the Crown Prosecution Service helpfully update their guidance on section 31 of the Immigration and Asylum Act 1999 following representations made by a coalition of Asylum Aid, ILPA and RMJ.

Section 31(2) remains uncertain in its scope: the Court of Appeal in *R v Mohamed and others* [2010] EWCA 2400 neglected to use the opportunity of four conjoined hearings (all addressing the question of a refugee who has stopped en route to the UK) to give guidance on the meaning of “stop” and “could not reasonably have expected to be given protection” in the third country. Nonetheless, that judgment did highlight the importance of representatives properly advising their clients on the defence in section 31 and “named and shamed” the solicitors and barristers who had given less than satisfactory advice. The case was widely publicised on Crimeline and hopefully will give rise to better representation for refugees arrested for using false documents. A number of ILPA members (young and not so young) were involved in the case.

That case has highlighted the fact that unfortunately many duty solicitors are still unaware of the protections available to refugees using false documents. Immigration solicitors are becoming much more aware of the issue and are alert, when considering immigration appeals, to potential miscarriages of justice having arisen during the criminal proceedings. An ILPA training session on this topic was well attended. The sub-committee needs (and plans), however, to reach out to criminal solicitors to ensure there is proper representation in the first place.

Trafficking

The sub-committee responded to the Crown Prosecution Service Consultation on the Prosecution of Trafficking in a joint response with the Anti-Trafficking Legal Project. The thrust of the representations were that it is necessary first to properly identify and protect victims of trafficking before it is possible to successfully prosecute the perpetrators. ILPA was also represented at the Roundtable on Trafficked Children and Cannabis Factories along with representatives from ECPAT UK, the Child Exploitation and Online Protection Centre, Association of Chief Police Officers, the Crown Prosecution Service and the Refugee Council. The Court of Appeal Criminal Division and the Administrative Court have seen a number of cases this year addressing the safety of convictions where the Crown Prosecution Service, defence representative and the court have all failed to follow the procedures in place designed to protect the victims of trafficking (e.g. *R v LM and others* [2010] EWCA 2327).

Convenors: Richard Thomas and Jawaid Luqmani

ILPA SOUTHWEST SUBCOMMITTEE REPORT

ILPA South West was established in the autumn of 2008. Its aim was to develop a two-way system of information dissemination, support and feedback, as well as to hold training events and meetings for ILPA members distributed over this large geographical region. Practitioners in the South West and their clients can face particular issues arising from their geographical location and are sometimes working in fairly isolated settings. The ILPA South West region encompasses the area from Southampton and Bournemouth in the east, to Exeter, Plymouth, and locations in Cornwall in the west and also encompassing Bristol, Gloucester and Cheltenham, as well as Newport, Cardiff and Swansea in Wales.

The work started in 2008/2009 has been developed further with the following being achieved in the last year:

- A direct line of communication with the UK Border Agency has been established which operates between the co-convenors of the group, Natasha Gya Williams and Rosie Brennan of ILPA and senior named individuals in the UK border Agency. This followed a meeting in July 2010 between Natasha and Rosie and the Operational Director and her Deputy of the SouthWest Region. Members were canvassed for issues of concern prior to the meeting and minutes of the meeting were then circulated. Some of the issues discussed were communication with representatives, legacy cases in the South West, dispersal procedures, operational plans and the Points Based System. This line of communication has enabled both policy and a number of particular case matters to be raised directly with UK Border Agency and a response to be elicited and forwarded quickly.
- Natasha Gya Williams has undertaken a considerable amount of work on issues arising from Points-Based System /new government policy and its impact on employers and the commercial sector in the South West. Issues were raised at the July 2010 meeting with UKBA which were fed back to members. It is proposed to hold a training session on Points-Based System related matters combined with a question and answer session which a member of the UK Border Agency Points-Based system policy team will attend in January 2011.
- Rosie Brennan has undertaken a considerable amount of work in relation to the effects of the Legal Services Commission tendering process in the South West. This has had particularly devastating impact in Plymouth (an asylum dispersal city). The issues have been raised via ILPA nationally and a response from the Legal Services Commission response is awaited at the time of writing. Liaison has taken place with ILPA South-West members and a sense of the effects of the tendering process across the region has been sought.
- A members meeting was held in May 2010
- An accurate database of ILPA South-West members has been created enabling contact to be maintained through email and by telephone. Natasha has done particular work in identifying the business immigration practitioners in the region.

Convenors: Rosie Brennan and Natasha Gya Williams

ILPA YORKSHIRE AND NORTH-EAST SUBCOMMITTEE REPORT

The Yorkshire & the North East subcommittee has had a relatively quiet year in terms of formal meetings, but has, as always, been active in the region.

The subcommittee has had two formal meetings: one in March and one in July 2010.

The meeting in March was attended by a Senior Case Worker from the UK Border Agency Asylum Team in Leeds. This meeting involved a very open and frank exchange of views and information and hopefully these constructive meetings with the UK Border Agency will become a regular occurrence.

The meeting in July focussed on the outcome of the Legal Services Commission Tender and also the very sad news of the demise of Refugee and Migrant Justice. Both of these were going to have a very grave effect on the access to justice for asylum-seekers in our region and so the meeting was designed to discuss these issues and try to formulate a response. The meeting was attended by Alison Harvey, for which we were very grateful. This was an exceptionally lively meeting with a huge amount of concern regarding access to justice issues and the poor handling of the tender process by the Legal Services Commission.

It is hoped that a further meeting can be arranged before the end of the year in order to discuss the new Legal Services Commission contracts, the on-going judicial reviews against the Legal Services Commission tender process and also the proposed cuts to legal aid.

The subcommittee has arranged for training to be undertaken in our region which was very well received. In March there was training on Tier 4, in May there was re-accreditation training and in December there is going to be Tier 1 training.

The subcommittee continues to receive and circulate monthly UK Border Agency Stakeholder Updates and is also represented in local stakeholder groups such as the Asylum Impacts Group and also in relation to Local Immigration Teams.

Best Wishes,
Christopher Cole

Convenor: Christopher Cole