

BORDERS, CITIZENSHIP AND IMMIGRATION BILL – HL BILL 15**HOUSE OF LORDS COMMITTEE****Clause 28**

LORD AVEBURY

LORD ROBERTS OF LLANDUDNO

Page 20, line 34, at end insert—

- "() Section 41 of the Police and Justice Act 2006 (c. 48) (immigration and asylum enforcement function: complaints and misconduct) is amended as follows.
- () In subsection (1)(b) after "asylum" insert "whether in the UK or overseas;
- (c) the provision of services by another person pursuant to arrangements which are made by the Secretary of State and relating to the discharge of a function within subsections (a) and (b).".

LORD WEST OF SPITHEAD

Page 20, line 37, after "functions)" insert "—

- (a) after subsection (1)(b) insert—

"(c) the provision of services pursuant to arrangements relating to the discharge of a function within paragraph (a) or (b).", and"

Purpose:

Both amendments would ensure that complaints can be made to the IPCC about the conduct not only of customs officials but also of immigration officials and their private contractors both within and outside the UK. The first amendment would allow the IPCC to entertain complaints about conduct outside the UK.

These amendments also provide an opportunity to understand the respective jurisdictions of the IPCC and the Prisons and Probation Ombudsman.

Briefing:

This clause amends section 41, Police and Justice Act 2006, which empowers the Home Secretary to confer jurisdiction upon the Independent Police Complaints Commission (IPCC) to investigate complaints of misconduct against immigration officers. Section 41 is reproduced as an appendix 2 to this briefing.

Both amendments would ensure that complaints can be made to the IPCC about the conduct not only of customs and immigration officials but also of their private contractors. ILPA is pleased to see that the Government has responded to the amendment in the names of Lord Avebury and Lord Roberts of Llandudno with its own amendment on this point.

The critical distinction between the amendment tabled by Lord Avebury and Lord Roberts of Llandudno and that tabled by the Government is the inclusion in the former of “*whether in the UK or overseas*”.

The importance of including “*whether in the UK or overseas*” is highlighted by the Cabinet Office report *Security in a Global Hub*, November 2007¹. Paragraph 4.49 of the report records that:

“The drive to push as much border control activity as possible overseas has been a key theme in the development of border management over the past decade.”

This has included the exercise of immigration powers by UK Border Agency immigration officers and private contractors overseas, including at juxtaposed controls (where UK officials and private contractors exercise immigration powers at EEA ports with the agreement of the relevant foreign government) in France and Belgium. As is indicated in the report, the exercise of immigration powers overseas has been significantly expanded since the introduction of a power for the Home Secretary to make provision for the exercise of immigration powers at European Economic Area (EEA) ports in January 2003². Immigration officers have exercised immigration control powers overseas prior to 2003 – e.g. at Prague Airport in 2001. There is also the use of Airline Liaison Officers overseas, who may stop people from boarding flights. However, the powers under the juxtaposed controls provisions are especially extensive, including powers of search, detention and fingerprinting, which may be exercised by immigration officers or private contractors. Private contractors also carry out immigration functions overseas, and may be used in escorting people who are being removed from the UK.

In ILPA’s briefing on amendments dealing with PACE powers in clause 22, we recall the concerns expressed by peers at Second Reading at harm caused to individuals in the course of immigration operations³. The recent dossier of allegations *Outsourcing Abuse*⁴, which is currently subject to an investigation by Dame Nuala

1

http://www.cabinetoffice.gov.uk/media/cabinetoffice/corp/assets/publications/reports/border_review.pdf

² Section 141, Nationality, Immigration and Asylum Act 2002 provides this power and was commenced by SI 2002/2811 on 8 January 2003.

³ See *Hansard*, HL 11 Feb 2009 : Column 1151-52 (Earl Sandwich), Column 1181 (Lord Ramsbotham) and Column 1194 (Lord Hylton)

⁴ Report produced by Birnberg Pierce and Partners, Medical Justice and the National Coalition of Anti-Deportation Campaigns, which is available at:
<http://www.medicaljustice.org.uk/images/stories/reports/outsourcing%20abuse.pdf>

O'Loan, includes assaults by private contractor escorts outside of the UK. Examples of allegations taken from that dossier are provided at appendix 1 to this briefing. The executive summary records that 3% of the allegations that those who had compiled the dossier had recorded were of assaults on an aeroplane after take-off from the UK; and it is reasonable to assume that assaults after a person has left the UK would be less likely to be recorded because of practical difficulties facing someone who has been removed. The executive summary records that:

“The authorities appear reluctant to investigate reported assaults which often happen behind closed doors, with no witnesses...”

That observation closely mirrors the observations of Dr Ann Barker, Chair of the Complaints Audit Committee, which audited complaints against the UK Border Agency prior to the appointment of the Chief Inspector of the Agency, in oral evidence before the Home Affairs Select Committee in December 2005⁵ (Q5):

“...the main problem is that the investigations upon which the decisions are made are not conducted equitably. Complainants are not interviewed. The complainant's statement may be three lines and that is it and there is no attempt to discover more. There is no attempt to tests the evidence given by the person by whom the complaint has been made to the official about whom the complaint has been made and the consequence is that the complainant's side, as it were, is not properly investigated...”

Dr Barker went on to make clear that a substantial number of the complaints to which she was referring were allegations of assaults (Q17):

*“**Mr Clappison:** You have told us a little bit about the criteria which determine how seriously these are regarded. Can you give us any more specific examples of what sort of cases they are, the serious cases, the one third of cases which I think you said are about 200 or so?”*

*“**Dr Barker:** Those are mostly allegations of assault...”*

She went on to note the failure to routinely refer such complaints to the police (Q17); and the lack of audit trails in respect of any investigation of these complaints (Q18):

*“**Dr Barker:** ... They are not uniformly and universally referred to the police, which is an area we are also concerned about...”*

*“**Mr Clappison:** What has happened now to those serious complaints? Was each one of them investigated?”*

*“**Dr Barker:** Well, I do not know, is the answer. Some of them are referred to the police, but one of the problems is that there is no written audit trail, so all you see in a file is "Police NFA", and you have no idea of what they have investigated, why it did not meet the CPS prosecuting standards and, therefore, was not pursued and that whole information is lost also to the investigator...”*

In ILPA's briefing on clause 22, we highlight the Government's stated commitment to strong oversight, transparency and accountability of the UK Border Agency. The absence of jurisdiction for the IPCC to investigate complaints of misconduct by

⁵ <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmhaff/775/5121302.htm>

immigration officers and private contractors exercising immigration functions overseas is a significant omission. In that briefing, we explain why the Government's stated commitment requires the application of PACE Codes of Practice in this area. The application of powers of independent investigation and oversight, consistent with those in respect of the police, is no less necessary to ensure this commitment is met. If immigration officers and private contractors are not ready for such oversight, this merely demonstrates that they ought not to be exercising the powers they do.

The amendments to clause 28 also provide opportunity for peers to seek assurances from the Government that the jurisdiction of the Prisons and Probation Ombudsman will be placed on a statutory footing. Whereas the Ombuds' jurisdiction (like that of the IPCC) extends beyond immigration, the benefit of this step in the immigration field would be to clearly identify the respective roles of the IPCC and Ombuds in respect of persons transferred to, from and between Immigration Removal Centres and other places of immigration detention. Complaints of misconduct in the immigration detention estate may be referred to the Ombuds, who also is responsible for investigating deaths in that estate.

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APPENDIX 1

Case studies taken from *Outsourcing Report* (the dossier passed to the Home Secretary by Lord Ramsbotham and referred to at Second Reading) :

<http://www.medicaljustice.org.uk/images/stories/reports/outsourcing%20abuse.pdf>

Case A10

Mr. BM (Malawi) – Pinned to the floor face-up and kicked over his whole body.

Malawian, Mr. BM claims that on November 11th 2007 he was grabbed from his bed by two detention custody officers (DCOs) at Dungavel IRC who dragged him down to the office of the IRC Manager. He says there were about five more DCOs in the office “ready, waiting to beat me up”. Mr. BM says he was pinned to the floor face-up and kicked over his whole body, including his head. He put his arms up to protect himself. Mr. BM claims he was assaulted in the presence of the IRC Manager. He says that DCOs banged his head against a wall and his head also hit a coffee table.

Dr Charmian Goldwyn (an independent doctor) examined Mr. BM on November 13th 2007. She noted: “*There is broken skin and red marks in the hand cuff area of the wrists, typical of handcuff damage. He has limitation of movement of his neck and there is pain over both his sterno-mastoid muscles. This is highly consistent with his head being held and twisted as he describes. There are abrasions on his left elbow, which are highly consistent with someone hitting him while he holds his elbows up to protect his face. There are resolving bruises on his forehead, highly consistent with being kicked on the head. He has tenderness over his ribs and back, also highly consistent with being beaten. Mr. BM presents as a very anxious young man. He says that he is not suicidal, but that he is feeling very unconfident and frightened since his assault. In my opinion, the injuries that Mr. BM sustained are highly consistent with the assault as he describes. The damaged skin around the wrist is typical of hand cuff damage.*”

Case D3

Ms. HM (Rwanda / Ghana) – Child sex trafficking victim restrained, near naked.

Ms. HM's date of birth is unknown but an age assessment by Dr. C. Michie (an independent doctor) states that Ms. HM's age is about 16 years old. On January 13th 2007 Ms. HM claims she was moved from one part of Yarl's Wood IRC to another two days before her proposed removal, although the removal was cancelled due to Judicial Review proceedings. She says that Global Solutions Ltd. male officers were employed to control and restrain her as they removed her from the shower area while she was almost naked. She was handcuffed from behind and carried to another cell, wearing only underpants and holding a blanket, and suffered bruising from the officers' actions. She stayed there for 2 days, with no food for 24 hours.

There was no note of Ms. HM's injuries in the Yarl's Wood IRC healthcare centre records.

Medico-legal reports by Dr. L. Kralj (independent nurse specialist with the Helen Bamber Foundation) and Dr. Charlotte Harrison (independent psychiatrist) state that there had been exacerbation of Ms. HM's post traumatic stress disorder.

The alleged assault was reported to Greyfriars police station in Bedford on 16th January 2007 and no further action was taken by the police. A police officer, when attending Ms HM to take details of her complaint told her that Yarl's Wood "is not a holiday camp".

A complaint was made to the Home Office. The allegation of assault was not upheld, although there was some criticism of the use of men handling a near naked female detainee. The complaint was also reported to the Ombudsman who made some further criticisms of use of Segregation and the lack of clothing afford to Ms. HM. Ms. HM is claimed to be a victim of sex trafficking.

Case F3

Ms. SK (Cameroon) – Handcuffed in hospital right up until wheeled into operating theatre.

32 year old Cameroonian, Ms. SK was moved from Dungavel IRC by Premier Detention Services guards to Haremyres Hospital in Glasgow on three occasions in May and June 2004 for treatment and subsequently surgery in relation to a lump on her breast. On each occasion Ms. SK alleges that she was handcuffed throughout the period of stay in hospital, with guards remaining present throughout consultations and right up until she was unconscious and wheeled into theatre for operation.

Ms. SK claims she is a torture victim and had been held in detention for 8 months at Yarl's Wood, Dungavel and Tinsely House IRCs.

Dr Charlotte Harrison (independent doctor) wrote a psychiatric report, mainly dealing with the effects of prolonged and unlawful detention of Ms. SK. A civil action claim for unlawful detention against the Home Office and against Premier Detention Services for violation of Article 3 regarding handcuffing whilst at hospital was settled out of court with both defendants.

APPENDIX 2

Section 41 of the Police and Justice Act 2006 (as enacted) reads as follows:

41 Immigration and asylum enforcement functions: complaints and misconduct

- (1) The Secretary of State may make regulations conferring functions on the Independent Police Complaints Commission in relation to—
- (a) the exercise by immigration officers of specified enforcement functions;
 - (b) the exercise by officials of the Secretary of State of specified enforcement functions relating to immigration or asylum.
- (2) In subsection (1) the reference to enforcement functions includes, in particular, reference to—
- (a) powers of entry,
 - (b) powers to search persons or property,
 - (c) powers to seize or detain property,
 - (d) powers to arrest persons,
 - (e) powers to detain persons,
 - (f) powers to examine persons or otherwise to obtain information (including powers to take fingerprints or to acquire other personal data), and
 - (g) powers in connection with the removal of persons from the United Kingdom.

(3) Regulations under subsection (1) may not confer functions on the Independent Police Complaints Commission in relation to the exercise by any person of a function conferred on him by or under Part 8 of the Immigration and Asylum Act 1999 (c. 33).

(4) Regulations under subsection (1)—

- (a) may apply (with or without modification) or make provision similar to any provision of or made under Part 2 of the Police Reform Act 2002 (c. 30) (complaints);
- (b) may make provision for payment by the Secretary of State to or in respect of the Independent Police Complaints Commission.

(5) The Independent Police Complaints Commission and the Parliamentary Commissioner for Administration may disclose information to each other for the purposes of the exercise of a function—

- (a) by virtue of this section, or
- (b) under the Parliamentary Commissioner Act 1967 (c. 13).

(6) The Independent Police Complaints Commission and the Parliamentary Commissioner for Administration may jointly investigate a matter in relation to which—

- (a) the Independent Police Complaints Commission has functions by virtue of this section, and
- (b) the Parliamentary Commissioner for Administration has functions by virtue of the Parliamentary Commissioner Act 1967 (c. 13).

(7) Regulations under subsection (1) shall relate only to the exercise of functions in or in relation to England and Wales.

(8) In this section “immigration officer” means a person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971 (c. 77).