

Liam Byrne MP  
Minister of State  
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21 December 2006

Dear Minister

**THE FIRST STEP TOWARDS THE POINTS BASED SYSTEM**

Thank you for your letter dated 24 November.

You will no doubt be aware from your officials who were present at last Wednesday's Home Office stakeholder event in London (charging consultation for the banking and finance sector), which was attended by representatives from many of the UK's leading financial institutions, that the business community has started to voice its concerns about the manner in which your department chose to implement the changes to the HSMP scheme, with no notice, warning or consultation.

ILPA's members have reported their business clients' surprise at such departmental behaviour and concern that it will be repeated as the Points Based System is designed and rolled out.

The practical disadvantages, including work-force effects, resulting from the changes are also becoming more obvious to the business community as a whole since the new scheme has become operational this month.

Businesses and employers remain sceptical as to why your department asked them to rate, in consultation, the main attributes they seek in potential employees and highly skilled individuals, only to completely ignore what they said in the architecture of the new HSMP/tier 1 scheme. They are also unconvinced by your explanation as to why it was considered necessary to change the HSMP scheme without any notice at all.

They are becoming increasingly apprehensive as to the level of notice they will be given by your department when tier 2 is rolled out, and they remain concerned that details of their obligations and responsibilities under that tier have still not been advanced to the business and employment sector at large since PBS was first announced. They are frustrated that the information emanating from your department about PBS lacks real definition and clarity and often changes slant when challenged or scrutinised.

They are also becoming increasingly wary that your department is in fact seeking to design PBS solely around operational simplicity and ease, rather than the actual needs of the UK economy.

Sadly your letter dated 24 November does little to alleviate these concerns.

**Architecture of PBS**

In your letter you state that the Home Office believes 'that the best judge of whether an applicant has the appropriate experience to succeed in the labour market is an employer, rather than an immigration official.' Why then has your department chosen to ignore the information provided by those employers responding to the consultation on these matters?

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You state that 'the consultation covered both tier 1 and tier 2, and the emphasis on the importance of work experience as opposed to salary is likely to be more in relation to tier 2,' and that this was 'the impression my officials gained from their analysis.'

Firstly, it is extremely concerning that your officials would base any new scheme, which is going to affect thousands of highly skilled individuals, businesses, employers and the UK economy generally, on their 'impressions' rather than on factual information.

Secondly, the material published by your department upon which employers were consulted did not state that certain elements of the consultation, such as the importance of work experience as opposed to salary, related more to one tier than to another. In fact, your letter contains the very first reference to any such tier distinction.

The employment and business sector was told that it was being consulted about the labour market needs in relation to both tiers 1 and 2, and this makes sense. Employees under tier 2 and highly skilled individuals under tier 1 who choose to enter the UK labour market, either as employees or as self employed persons, are equally important to the employment and business sector. Many highly skilled individuals contract with and consult for UK businesses and others are employed directly by UK businesses; some undertake a combination of salaried employment and self employment, as they are permitted to do under the HSMP scheme.

There is no better placed sector for your department to consult on tier 1 than the employment and business sector.

Your assertion therefore that businesses and employers would have been consulted 'more in relation to tier 2' than tier 1 makes no sense and your explanation lacks credibility.

We suggest that, in fact, your officials did intend that the business and employment sector would be consulted in relation to tiers 1 and 2 and that the business and employment sector understood that it was being consulted in relation to tiers 1 and 2. Quite simply, when the findings of the consultation did not fit your department's 'operational simplicity' test they were discarded. We submit that you are now attempting to justify this action by seeking to distort the facts and mislead those who responded in consultation by asserting, falsely, that they were being consulted 'more in relation to tier 2'.

You also state in your letter that; 'we have emphasised the degree requirement because we are satisfied that those applicants with degrees are likely to be those who best meet the aims of the HSMP.'

How can your department be so satisfied, when the information provided to you in consultation from employers and businesses in the labour market clearly states otherwise? The Home Office asked employers which attributes out of skills, past earnings, work experience and age were most important to succeed in the labour market. They rated skills and work experience as the most important. At no point did your department define 'skills' purely in terms of possessing a degree.

Since many talented and exceptional migrants chose HSMP status because it confers flexibility and mobility in the labour market, which also makes it very attractive to businesses and employers, it would have made more sense if the attributes rated by those you consulted as most important to succeed in the labour market, rather than your officials' impressions, had formed the basis for tier 1 and tier 2 (and for the HSMP changes, in order that they could be tested).

We are sceptical that you are now seeking to emphasise the degree requirement, not because you are satisfied that those applicants with degrees are likely to be those who best meet the aims of the HSMP, a stance which is not supported by those you consulted, but because it is simply operationally easier for you to check whether or not an applicant has a degree or equivalent, rather than skills. We are concerned that your department is placing its desire to achieve operational simplicity over the needs of the UK economy.

## The HSMP Scheme

In your letter you state that the HSMP has had a 'brief lifetime'. This is misleading. The scheme has been running since January 2002. Thousands of individuals have chosen to transfer their exceptional skills and talent to the UK under the scheme, rather than to a competitor country. Many of these highly skilled people could have and would have chosen to move to other countries had they known that the scheme was not in fact offering any certainty at all and could be changed at any moment without notice or consultation, thereby severely disrupting many of their businesses and livelihoods, and UK businesses which have contractual relationships with contractors, consultants and employees who have HSMP status.

Your letter states that the scheme has been changed twice before and these changes are not 'different in kind'. This is also misleading. The two previous changes enabled *more* highly skilled people to enter the scheme because one change introduced the MBA provision, and the other reduced the points threshold from 75 to 65 and made it easier for those aged under 28 to benefit from the scheme. The recent changes *restrict* participation in the scheme for thousands of new applicants and prevent continuing participation for thousands of individuals who have already been accepted into the UK as highly skilled migrants. These changes are very different in kind.

We do not agree with your assertion that there would have been a rush of 'speculative' applications if the changes were announced beforehand. By using the word 'speculative' you are seeking to imply that applicants would have suddenly been driven to lodge unmeritorious applications. There is no evidence to support this.

You say that announcing the changes beforehand would have led to 'operational difficulties'. This is a more believable explanation for the lack of any notice at all. However, we do not accept that such significant operational difficulties would have arisen as to warrant the lack of any notice whatsoever. This is because each application submitted is accompanied by a fee of £315 which has been set by your department in order to cover the operational costs of processing the application.

If, despite the fact that each post-announcement application filed would have been accompanied by a fee, operational difficulties were foreseen to the extent that there was a risk that the scheme might become impossible to operate, as you appear to imply, then we submit that this would have been caused by maladministration, rather than a rush of 'speculative' applications.

None of your explanations provide any reasonable justification for the draconian measure of changing the scheme without any notice.

You accept that some applicants may be 'disadvantaged ...and may need to make further enquiries to obtain additional documents' as a result of the lack of notice. However, this ignores the problem relating to those applicants who have been previously accepted as Highly Skilled Individuals, who are due to extend their permission to remain under the scheme but who do not have a degree and do not fit the narrow transitional arrangement. They are unable to qualify for further leave to remain at all, regardless of what additional documents they obtain and you have completely failed to address these issues.

## Requirement to Make the UK the Main Home

You state that making the UK one's main home does not require the 'severing of all connections with the country of origin.' Your response is dismissive and fails to recognise, let alone address, the real issues. People who have transferred their main home to another country cannot simply up sticks and leave as you suggest. Nor should they be required to if the government required them to make the UK their main home.

Making the UK one's main home requires the applicant to take a number of fundamental and long term steps, such as transferring their career, financial arrangements, mortgages and family members to the UK. Children become settled into new schools and family members transfer their own careers to the UK.

Your statement shows complete disregard for the thousands of HSMP individuals and their families who have made the UK their main home in this manner and who have been and who will be affected by these changes.

These individuals have always been led by the government to believe that providing they make the UK their main home and remain economically active, they will be eligible to apply for Indefinite Leave to Remain after the prescribed period of time. It has never been suggested by the government that even if they did this, they may not be eligible to apply for ILR because the scheme may change and exclude them.

### **Transitional Arrangements**

You refer to 'extensive' transitional arrangements. This is another misleading statement. Only one transitional arrangement was announced on 7 November in relation to HSMP applicants and the terms are extremely restrictive.

The changes detrimentally affect thousands of highly skilled individuals, and businesses who work with them, who do not fall within the narrow terms of the transitional arrangement and who cannot extend their status.

Those who are in employment and whose employers will not sponsor them on work permits, such as doctors, will not qualify, nor will artists, sports-persons, authors, film makers (many of whom work on a few formal highly lucrative projects throughout the year, but then work informally, writing, creating, recording, training etc during the rest of the year). Neither will those who have established themselves in business but who have not been trading for four months or those who are trading but who do not have six months' worth of future contracts because of the nature of their business.

To imply that the arrangements are 'extensive' is wrong.

### **Conclusion**

We find it regrettable that you have declined our request to meet with you to discuss these changes and we urge you to reconsider this request. Our members have valuable insight from their clients in the business and employment sector and are witnessing the initial enthusiasm their clients displayed in relation to PBS consultation, change to scepticism and mistrust.

We remain hopeful that you will realise that these changes and the manner of their implementation not only affect highly skilled migrants in the UK, but the wider business and employment sector, and we urge you to reconsider the requests we set out in our letter to you of 16 November.

Our members are putting together a dossier of cases which illustrate the disadvantages wrought by the HSMP changes which we will forward to you for further consideration.

Yours sincerely

  
**CHRIS RANDALL**  
**CHAIR OF ILPA**

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