

## White Paper Business Immigration Conference: February 2018

### How do you approach novel scenarios which do not fit neatly with the sponsor guidance?

**The Goal:** a pragmatic, cost-effective solution.

#### **Three Potential Avenues:**

1. Can the clients take action that would enable them to achieve compliance with the sponsor regime?
2. If not, is there scope for negotiation with the Home Office?
3. Could litigation provide a solution?

(Bear in mind that a combination of 2, or even all 3 of those avenues, may provide the best chance of a positive outcome).

#### **Compliance**

Is the client on the sponsor register?

If not, could it become a registered sponsor?

How quickly? Could the Home Office expedite/assist?

Is there a parent company or associated business that could assist?

If the issue relates to the worker(s), could you take steps to resolve the problem: increase pay? Recruit EEA/settled workers?

## Negotiation

- Who should you approach:  
Home Office/GLD/trade organisations/MPs/other  
Government Departments?
- What can you realistically aim to achieve and what starting  
position should you take?
- Managing client expectations:

(Home Office may – provide slow/inadequate responses, fail to grapple with the issues, be reluctant to adopt novel, business friendly solutions and will generally not be afraid of litigation).

### Points you may consider making:

- How has the problem arisen?
- Can it be argued that the Home Office is in any way responsible?
- Look at matters such as:  
Previous Home Office practice  
Approach to analogous situations in the same sector or comparable sectors  
Impact on staff/project/business  
and  
Is there a wider impact (social, economic etc)?  
Can you argue Home Office position conflicts with wider Government policy?  
Might the issue attract media interest?  
Could the Home Office provide a solution without damaging the public interest:  
A concession (perhaps time limited)?  
An amendment to the sponsor guidance to address an anomaly?

## **Litigation**

Cause of action and forum:  
individual appeal/JR (and if so - UT or Admin Court)/civil proceedings.

What relief - Declaration? Quashing Order? Injunction?  
Damages?

Interim relief?

Evidence?

Sharp focus on litigation strategy - achieving a workable cost-effective solution.

### Managing client expectations

What are the prospects of success?

What are the likely costs (yours/home office)?

### Litigation in parallel with negotiation:

Keep Talking, and keep the pressure on!!!

Side letters/Part 36 Offers/mediation

Maintain pressure by lobbying/talking to trade bodies/MP/media etc