Moving the Goalposts, Then Replacing the Referee: Earned Settlement, the IIAA, and the Skilled Workers Caught in Between

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1. On 30 June 2026, the Government introduced the Immigration and Asylum Bill and announced its centrepiece under a headline that repays careful reading: "New independent appeals body to speed up removals."[1] The two halves of that sentence do not sit easily together. An adjudicative body is either independent of the outcomes it produces, or institutionally orientated towards producing particular outcomes. It cannot comfortably be both. The Government's own press notice resolves the tension candidly enough: decisions will be "fully independent", but the new Independent Immigration Appeals Authority (IIAA) will be "integrated into the immigration system" so that unsuccessful cases "flow through quickly to removal".[1]

2. Much has already been written about what this means for asylum seekers, and written well.[2] The Immigration Law Practitioners' Association has warned[3] that a body embedded in a system whose stated objectives are reducing arrivals and increasing removals raises serious questions of institutional independence. This article approaches the Bill from a different direction: the position of the existing Skilled Worker visa holders and their families who are simultaneously facing the proposed retrospective application of "Earned Settlement". For that cohort, the two reforms are not parallel developments. They are a pincer. One materially increases the probability that lawful, compliant residents may require judicial protection if retrospective application proceeds without transitional arrangements; the other dismantles the forum in which that protection would be sought. Whatever else this is, it is a reallocation of risk — from the state that changed the rules to the individuals who relied on them. The term is not used loosely. In written evidence published by the House of Lords inquiry[4], the Skilled Worker Justice Alliance demonstrated that because those already progressing on the route form a closed or semi-closed cohort, lengthening the qualifying period cannot shrink that cohort or remove the projected settlement exposure; it can only redistribute the fiscal, administrative and compliance risks of earlier policy choices onto the individuals who organised their lives around the published framework — whose foreseeable outcomes it maps as endurance, exit, or limbo. That analysis concerned the substantive rules. The argument of this article is that the Bill completes the same operation on the procedural side: having shifted the risk, the state now thins the remedy.

The cohort nobody is watching

3. Under the Earned Settlement proposals consulted upon following the November 2025 White Paper, the published five-year route to settlement for Skilled Workers would be extended to a ten-year baseline, with some facing longer, and with additional conditionality layered across the framework. The scale is the Home Office's own: a central estimate of around 1.6 million settlement grants between 2026 and 2030[5], driven principally by recent entry cohorts including the Skilled Worker route, with independent analysis[6] putting the number of children already in the UK who could be left waiting at more than 300,000. The House of Lords Justice and Home Affairs Committee has now concluded[7] that applying longer qualifying periods to people already here would be "manifestly unfair" and may be unlawful; and a matrix of less intrusive transitional options — saving provisions, cut-off dates, capped extensions, transitional credits — has been mapped in detail on these pages[8], each row carrying a question the Government has yet to answer. If those substantive questions go unanswered, what follows compounds them. The concern here is narrower and procedural: what happens to those who fall out of the route if retrospectivity prevails?

4. The answer exposes a gap in the public debate. A refusal of settlement carries no statutory right of appeal. The remedies are administrative review — reconsideration by the same department — and judicial review, which tests legality, not merits. For a family five or more years into lawful residence, with children in school, a mortgage, and careers embedded in British institutions, the principal merits-based route through which the substance of their circumstances can be examined is likely to be an Article 8 claim. And it is precisely human rights appeals — not merely asylum — that the Bill transfers from the First-tier Tribunal to the IIAA.[9]

5. The syllogism is short. Retrospective application of Earned Settlement without transitional protection is likely to produce a cohort of refused long-residents. In practice, Article 8 will often become the only forum in which the proportionality of the family's circumstances can be examined on the merits. Their Article 8 appeals will be decided by a body whose founding press notice promises to speed up removals. SWJA's third predicted outcome — limbo — is no abstraction here: people who fall out of a lengthened pathway do not vanish from the system; embedded lives resurface as human rights claims — that is, as the IIAA's caseload. Nothing in what follows depends on attributing bad faith to anyone. It depends only on reading the Bill's architecture and asking the question the common law has asked for four centuries.

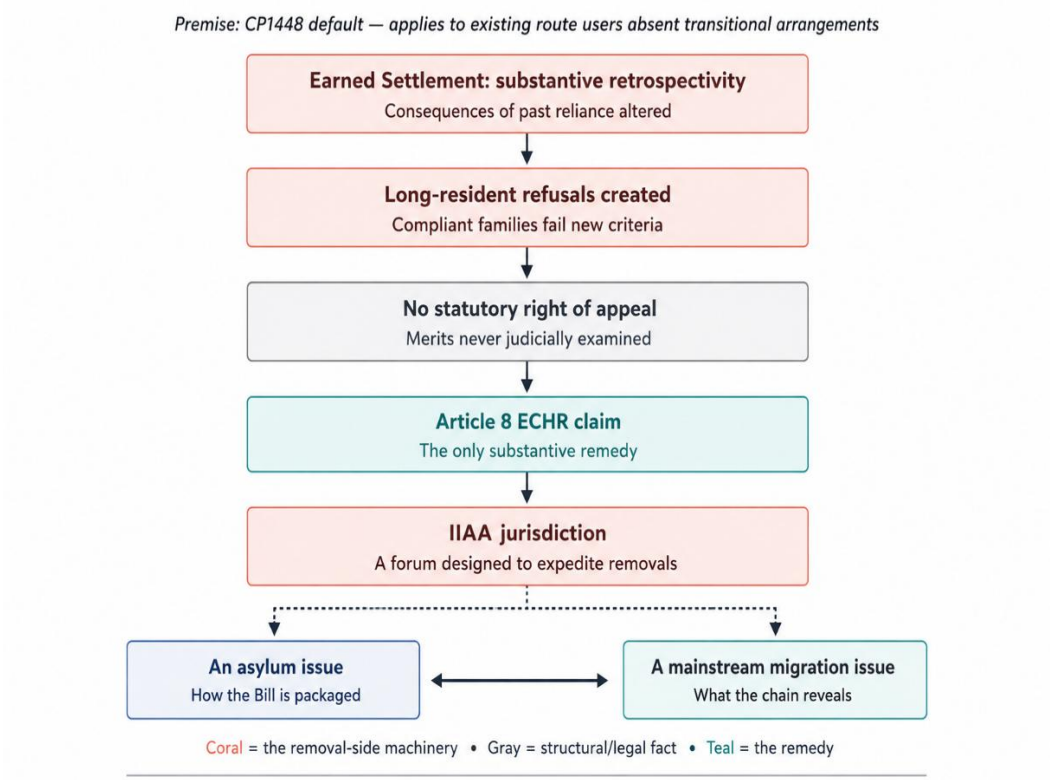

Figure 1. The Article 8 bridge: how the substantive retrospectivity of Earned Settlement feeds the IIAA's human rights caseload. The chain assumes CP1448's stated default — application to existing route users absent transitional arrangements.

A judge in its own cause

6. *Nemo iudex in causa sua* — no one may be a judge in their own cause — is among the oldest maxims of natural justice. The Secretary of State or her officials will be the respondent in virtually every appeal the IIAA hears. Candour requires a concession: executive appointment, standing alone, would not condemn this scheme. Strasbourg has long accepted that adjudicators may be appointed by the very minister whose decisions they review, provided they are free from influence in the adjudicative role[10] So the appointments architecture — the Secretary of State appoints the Authority's Chair and its first Chief Executive, and the Chief Executive, who need hold no legal qualification, then appoints the adjudicators[11] — together with the power to fund the Authority on conditions,[12] frames the independence question without settling it. Appointment and funding are the kindling.
7. Clause 9 is the match. It empowers the Secretary of State — a party to the proceedings — to request that the Authority decide a given appeal by a specified date, and to make regulations prescribing how such expedition requests are to be processed.[13] Nor does the lever stand alone: clause 8 separately permits the Secretary of State to prescribe, by regulations, the time periods within which the IIAA must decide its cases.[13] This is different in kind, not merely in degree: not patronage at the threshold, but statutory influence over the pace of live proceedings, vested in one litigant. And the Court of Appeal has been here before. In *Detention Action*[14] it held the 2014

fast-track rules ultra vires precisely because the timetable was structurally loaded in the Secretary of State's favour, insisting that justice and fairness are not to be sacrificed to speed. Clause 9 does not merely load the timetable; it hands the lever to the litigant.

8. The legal test is not whether bias will in fact occur. It is whether a fair-minded and informed observer[15], apprised of these arrangements, would conclude that there was a real possibility of it. Each strand alone might survive that scrutiny; it is the cumulative effect of these arrangements that becomes more difficult to reconcile with the appearance of independence, and Clause 9 that tips the scale. An observer who might forgive executive appointment, and even conditional funding, may reasonably struggle to describe as independent a tribunal whose pace may be influenced, through statutory expedition requests, by the party appearing before it. Justice, as Lord Hewart CJ insisted a century ago, must not merely be done but must manifestly be seen to be done.[16]

9. The Government's answer is that executive appointment is standard practice for arm's-length bodies.[17] It rebuts the weakest charge and leaves the strongest untouched. Nor is it supplied by the Bill's own declaration that every Minister must uphold the IIAA's independence and must not seek to influence particular decisions:[18] that provision answers *influence*; it does not answer *structure*. And whatever Strasbourg tolerates, the direction of domestic travel has run consistently away from departmental entanglement — the Constitutional Reform Act 2005[19] created an independent Judicial Appointments Commission, and the Tribunals, Courts and Enforcement Act 2007[20] implemented the Leggatt Report's central recommendation[21] of structural separation between tribunals and the departments whose decisions they review. The Bill marks a significant departure from that twenty-year trajectory while continuing to describe the resulting body as independent.

10. One phrase in the press notice deserves particular attention. The new body, we are told, will "dynamically scale up and down"[1] its adjudicators according to demand. This is offered as a virtue. To a lawyer it reads as an admission. Security of tenure exists precisely so that judges are insulated from executive pressure over the continuation of their office. As Lord Phillips observed[22], a judge who depends on the executive to obtain or keep office may incline, even unconsciously, towards the interests of the executive. An adjudicator who knows that continued engagement turns on "demand" — demand defined, measured and funded by the respondent department — operates under an incentive structure that is incompatible with independent adjudication, however honest the individual.

Counting the public interest twice

11. The Bill requires the Authority to have regard to the public interest, including the fact that it forms part of the immigration and asylum system.[23] The vice

of this provision has, it is suggested, been understated. It is not merely that it tilts the forum. It is that the public interest is *already in the scales*.

12. Parliament legislated for exactly this in Part 5A of the Nationality, Immigration and Asylum Act 2002. Sections 117A and 117B oblige every court and tribunal determining an Article 8 claim to treat the maintenance of effective immigration control as in the public interest, and to weigh economic contribution, English language ability and the precariousness of a person's status within the proportionality balance. That is where Parliament placed the weight, and appellate courts have spent a decade calibrating it. To impose a second, institutional-level public interest duty on the decision-making body itself is to weigh the same consideration twice — once in the substantive law, and again in the disposition of the adjudicator applying it. The result is not a system that takes the public interest more seriously, but one that distorts the balance Parliament itself struck, to the systematic disadvantage of one party.

Proportionality is a craft, not a checklist

13. Who will conduct that balance? The Bill's answer is adjudicators appointed "much like a magistrate",[1] with broadened eligibility: senior adjudicators require two years' experience, and executive adjudicators none at all[24] — against the minimum five years' post-qualification experience[25], and merit-based appointment by an independent commission, required of a tribunal judge.

14. Consider what a Skilled Worker family's Article 8 appeal actually demands of its decision-maker. It requires the structured five-stage analysis mandated by the House of Lords in *Razgar*.[26] It requires correct application of the statutory factors in section 117B, including the nuanced treatment of "precarious" status settled by the Supreme Court in *Rhuppiah*.[27] It may require evaluation of "insurmountable obstacles" and "unjustifiably harsh consequences" within the framework the Supreme Court laid down in *Agyarko*.[28] This is not form-filling. It is structured legal reasoning of a kind that practitioners spend years learning to do properly, and on which judges are trained, appraised and corrected on appeal. To hand it to adjudicators with no legal qualification is not to streamline the exercise; it is to guarantee its miscarriage in a proportion of cases, with consequences that are, in this jurisdiction above all, grave and often irreversible.

15. Nor is the experiment novel. Australia recruited adjudicators without adequate legal expertise into its immigration review bodies; documented[29] concerns regarding decision quality, consistency and institutional performance formed part of the broader critique that preceded the abolition of both the Immigration Assessment Authority and the Administrative Appeals Tribunal. Unlawful decisions do not disappear from a system. They resurface as onward appeals,

judicial reviews and further litigation — the very congestion the reform purports to cure.

Abolishing the feedback loop

16. The Government's diagnosis is that the backlog — more than 150,000 pending appeals, with average disposal at 61 weeks[1] — is the product of a "merry-go-round" of repeat and vexatious claims. The evidence points elsewhere. Parliamentary committees have long located the system's real flaws at the stage of initial decision-making, not appeal, and ILPA's analysis[3] is that poor Home Office decisions and the collapse of immigration legal aid remain the principal drivers. The proportion of appeals that *succeed* before the First-tier Tribunal — consistently substantial — in the most recent published quarter, 36% of protection appeals and 42% of human rights appeals were allowed[30] — is not a symptom of abuse. It is a measurement of upstream error.

17. Seen in that light, the appeal system is the principal external accountability mechanism the initial decision-maker faces. The Bill's design — a single appeal route; adjudicators appointed under the respondent's aegis; judicial review of case-management decisions ousted; some hearings capable of being ordered without notice to one party[31] — does not eliminate error. It eliminates the *measurement* of error. In any other regulatory context we would call this moral hazard: the department whose mistakes generate the caseload acquires influence over the body responsible for identifying them.

We have been here before

18. None of this is untested. In 2004 the Government attempted a single-tier appeal structure with an ouster clause excluding judicial review; the ouster was withdrawn in the face of near-unanimous opposition from the senior judiciary and the professions. The single-tier Asylum and Immigration Tribunal that survived began work in 2005 and was abolished in 2010, its reconsideration model having generated more delay and more High Court traffic, not less — whereupon its jurisdiction was folded into the very two-tier chamber system this Bill would now dismantle.[32] The authors of an earlier commentary on these pages likened the Bill to a broken time machine.[2] The homelier point may be this: the Government does not need a time machine. It needs to read its own archives.
19. The fiscal logic fares no better. The press notice itself records that sitting days in the First-tier Tribunal are increasing by 19% this year[1] — incremental capacity is, evidently, deliverable. Against that, the Bill proposes an indeterminate period in which two appellate systems run in parallel, with new recruitment, training, estates and contracts built from nothing, at a cost the Impact Assessment[33] cannot presently quantify. If the problem were truly capacity, the rational purchase would be more of the proven system. Choosing instead to build a new one, on these terms, suggests that what is being purchased is not capacity but control.

The canary in the coal mine

20. Translate the arrangement into commercial terms and its character is unmistakable. One party to a contract unilaterally extends the term from five years to ten, applies the variation to counterparties already halfway through performance, and simultaneously rewrites the dispute-resolution clause so that the arbitrators are appointed under its aegis, funded on its conditions, and subject to its timetabling requests. No solicitor would let a client sign it. Skilled Workers were never asked to.

21. Dicey's orthodoxy holds that everyone, whatever their rank or condition, answers to the ordinary law before the ordinary tribunals.[34] The IIAA creates a distinct appellate architecture for one class of person. The political packaging insists the class comprises foreign criminals and failed asylum seekers, and much of the public will look away on that basis. The Skilled Worker cohort demonstrates why they should not. If Earned Settlement applies retrospectively, those entering this removal-orientated forum will include families who came lawfully, paid the fees, passed every compliance check, and did precisely what the published rules asked of them — until the rules changed mid-journey.

22. Immigration exceptionalism has always operated as a ratchet: each derogation from ordinary justice is piloted on the least sympathetic cohort and then extends. The 2004 ouster, the fast-track rules struck down in *Detention Action*,[14] and now this. The Skilled Workers are the canary in this particular coal mine — and the air is already thin. Move the goalposts if Parliament must; that is a political choice, answerable politically. But a state that moves the goalposts and then replaces the referee with a forum structurally integrated into the system whose decisions it reviews should not be surprised when the fair-minded observer declines to call the result justice.

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