



SKILLED WORKER JUSTICE ALLIANCE

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Legislative Scrutiny Memorandum

Earned Settlement and the Public-Law Boundary of Settlement Reform

Ooi, HSMP Forum and Transitional Protection for Existing Skilled Worker Settlement Pathways

Technical Addendum to Written Evidence SCI0610

Topic: Addressing CP 1448 “Earned Settlement”

Category: Core Papers

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1. This memorandum supplements House of Lords Justice and Home Affairs Committee-published written evidence [SCI0610](#) [M1]. It addresses a single public-law and legislative-scrutiny question arising from the [earned settlement proposals in CP1448](#) [M2]: whether settlement reforms, if applied to existing Skilled Worker participants without transitional protection, would remain within the policy-adjustment principles recognised in [R \(Ooi and others\) v Secretary of State for the Home Department \[2007\] EWHC 3221 \(Admin\)](#) [M3], or approach the boundary identified in [R \(HSMP Forum Ltd\) v Secretary of State for the Home Department \[2008\] EWHC 664 \(Admin\)](#) [M4]. The Secretary of State for the Home Department is referred to below as the "SSHD". The point is not to contest the lawfulness of prospective reform. It is to identify the avoidable public-law risk of unprotected mid-pathway alteration.

Executive Summary

2. SCI0610 is already before the Committee as evidence on transitional fairness in existing Skilled Worker pathways; this memorandum is a technical addendum on the public-law boundary.
3. *Ooi* protects policy flexibility, but not an unlimited authority to alter a settlement pathway irrespective of representation, reliance and practical effect.
4. *HSMP Forum* shows that public-law risk rises where an official route, clear route-specific representation, long-term reliance and inadequate transition coincide.
5. CP1448's application to the existing Skilled Worker cohort therefore calls for Parliament to address grandfathering expressly. Transitional protection is a legal-risk control issue, not an objection to prospective reform.



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The Doctrinal Boundary

6. *Ooi* is the starting point because it states the orthodox public-law caution in this field. The claimants were work-permit holders affected by an increase in the settlement qualifying period from four to five years, and by a knowledge requirement [M3]. By the time of judgment, all but one had obtained indefinite leave to remain; the remaining claimant's precarious position arose from a work-permit extension problem specific to his employment: at [4] [M3]. The case was therefore not one in which a whole existing route had been made incapable of completion. It was a challenge to generally applicable changes before any accrued right to indefinite leave had crystallised.

7. The legitimate-expectation reasoning in *Ooi* rested on three linked propositions. First, there was no "explicit or unequivocal statement"; the work-permit endorsement said that a person could apply after four years, but did not say the application would be granted or that the Rules would remain unchanged: at [51] [M3]. Secondly, a person with fuller legal knowledge would have understood that the Immigration Rules "could be changed": at [52] [M3]. Thirdly, the Court located the changes in a field of broad policy affecting many people, where democratic and institutional considerations required judicial restraint: at [53] [M3]. The decision is therefore authority for a real proposition, but a limited one: a person cannot ordinarily convert the existence of current Immigration Rules into a guarantee that the Rules will never change before settlement.

8. The Article 8 and proportionality reasoning in *Ooi* was also tightly fact-bound. The Court accepted that some claimants had family life in the United Kingdom, but found no interference because they were "not required to leave" and needed only to "wait one more year" and satisfy the knowledge requirement: at [74]-[75] [M3]. That reasoning matters because it shows what *Ooi* did not decide. It did not address a five-year settlement pathway being converted into a ten-year, or potentially fifteen-year, pathway under the proposed framework [M2]. It did not address the loss of the practical means to remain compliant on route. Nor did it address a structured skilled-migration scheme in which state communications, employer dependence and family or financial arrangements had operated together over a multi-year period.

9. *HSMP Forum* marks the other side of the boundary. The Highly Skilled Migrant Programme was not analysed as a bare permission-to-enter rule. It was an official scheme designed to attract a particular class of migrants to the United Kingdom, with



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staged progression from entry, to extension, to settlement: *HSMP Forum*, at [1]-[3], [8] and [28] [M4]. The Court rejected the attempt to reduce the scheme to a first-entry commitment only. The real question was what commitment the Government had made about the continuing implementation of the scheme after migrants had entered it: at [28] [M4].

10. The answer in *HSMP Forum* turned on the structure and purpose of the scheme. The Court treated it as a set of interlocking provisions, not severable fragments; participation was described as a path to settlement, and those who had embarked on it carried an expectation of attaining settlement if they met the scheme conditions: at [52] [M4]. The Court accepted that the stages leading to settlement were of acute significance to applicants: at [53] [M4]. Importantly, the expectation was not that settlement was guaranteed regardless of compliance. It was that the state should not, without sufficient justification and transition, alter the conditions governing the continuation of the pathway after admitting people into a scheme designed to lead to settlement: at [28] and [52]-[53] [M4].

11. Reliance was central in *HSMP Forum*, and it was treated in concrete rather than abstract terms. The Court accepted the Joint Committee material concerning relocation, family transfer, employment decisions, mortgages, business arrangements and long-term economic planning by persons who had made the United Kingdom their main home: at [21]-[22] and [29] [M4]. The Court also rejected the adequacy of the work-permit alternative. That alternative depended on the employer, was tied to particular employment, and could expose the migrant to disruption for reasons outside the migrant's control: at [33] [M4]. Those features are legally important because they show that a nominal alternative route does not necessarily answer unfairness where the alternative changes the character, security and practical attainability of the original settlement pathway.

12. The remedy in *HSMP Forum* is equally important. The Court did not deny the Government's power to reform skilled migration policy prospectively. It restrained the impact of the changes on persons already admitted under the original scheme because the public interest relied upon did not outweigh the unfairness to that existing cohort: at [61] [M4]. The case is therefore not an anti-reform authority. It is an authority about transitional integrity: where a route has been designed and communicated as a progression to settlement, and where individuals have embarked on it in reliance on that



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structure, fair public administration may require the original pathway to be honoured for the existing cohort.

13. The question for Parliament is accordingly not whether *Ooi* or *HSMP Forum* is the correct authority in the abstract. The boundary is more precise. *Ooi* is strongest where the claimant relies on general rules, the change is modest, no accrued settlement right exists, and the affected person is not required to leave the United Kingdom. *HSMP Forum* is strongest where the executive has created a targeted skilled-migration route, communicated staged progression, induced main-home and economic reliance, and then altered the conditions of settlement after participants have embarked on the route. Existing Skilled Worker participants need not show that their position is identical to HSMP participants. The legislative-risk question is whether their route contains enough of the same features, namely an official settlement pathway, sponsorship dependency, family and financial reliance, and mid-pathway alteration, to require express transitional drafting.

Official Digital Representations

Evidentiary Facts

14. The official GOV.UK materials provide the evidential foundation for this point. Appendix Skilled Worker states that the Skilled Worker route is a "route to settlement" (Home Office, 2026a) [M5]. The GOV.UK Skilled Worker overview says that after five years a person may apply to settle permanently, if the other requirements are met (Home Office, 2026b) [M6]. The route-specific settlement guidance states that applicants must have lived and worked in the UK for five years, and may apply 28 days before completion (Home Office, 2026c) [M7]. The archived Continuous residence guidance also identifies Skilled Worker or Tier 2 (General) as a route with a five-year qualifying period of continuous residence for settlement, subject to the route-specific requirements set out in Appendix Skilled Worker and related provisions (Home Office, 2025) [M22]. The GOV.UK visa-checker output for a Chinese national seeking to work in the UK for longer than six months presents the Skilled Worker visa with "Can settle: Yes - after 5 years" (Home Office, 2026d; Perma.cc, 2025) [M8; M9]. For scrutiny purposes, that is capable of being characterised as a clear and unambiguous official representation of the route's published five-year settlement horizon. Taken together, these materials form part of the official digital representation of the published Skilled Worker settlement pathway.



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Legal Implications of Modern Digital Governance

15. These statements should not be overstated. They do not, without more, conclusively create a substantive legitimate expectation that settlement rules are immutable. They are, however, material to any legitimate expectation analysis: official, route-specific, repeated, digital representations directed to applicants making long-term relocation, employment, family and financial decisions. The point is not private-law estoppel or legal immutability; it is the public-law significance of the state communicating a settlement horizon by reference to which the route was publicly understood. Modern digital government portals should not be treated as legally weightless. Where the executive uses official digital interfaces to communicate route-specific settlement eligibility, Parliament may wish to scrutinise whether those representations carry public-law consequences after multi-year reliance.

Digital Preservation

16. For legislative and potential public-law scrutiny, relevant official digital materials should be preserved through independent third-party archives. A Perma.cc capture is not advanced as conclusive proof of the representation; it is a provenance-bearing contemporaneous electronic record, capable in principle of being exhibited and assessed under the ordinary rules of civil evidence in England and Wales: CPR r.31.4 defines a document as anything in which information of any description is recorded, and Practice Direction 31B addresses disclosure and preservation of electronic documents and metadata [M10]; CPR r.32.1 provides the framework for judicial control of evidence [M11]; and the Civil Evidence Act 1995 supplies the civil admissibility framework for hearsay and documentary statements [M12]. Subsequent amendment or withdrawal would not, without more, answer whether existing participants previously relied on wording in official circulation. The practical question is whether the SSHD can identify the affected cohort and justify any departure from the published five-year settlement horizon.



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Comparative Matrix

Issue	Ooi	HSMP Forum	CP1448 scrutiny question
Route	Work permit route	Integrated skilled migration programme	Is Skilled Worker functionally presented as a settlement pathway?
Representation	Ability to apply; no promise rules unchanged	Route-specific staged progression	Do GOV.UK materials create a published five-year horizon?
Reliance	Insufficient on facts	Main-home, family and financial reliance	Have existing workers organised decisions around that horizon?
Change	One additional year plus knowledge requirement	New adverse criteria for existing participants	Would extending the qualifying period from 5-to-10 years, or to 15 years in some cases, alter an existing completion horizon?
Public-law issue	Judicial restraint	Transitional fairness	Is grandfathering required to mitigate avoidable risk?

17. *Ooi* remains relevant because it protects policy flexibility. *HSMP Forum* remains relevant because it identifies the circumstances in which policy flexibility must be reconciled with reliance, legal certainty and transitional fairness.

Existing Cohort: Exposure and Transitional Risk

18. Existing Skilled Worker participants are analytically different from future applicants. They entered or remained under a published settlement pathway linking sponsorship, compliance and residence to a five-year settlement horizon (Home Office, 2026b; Home Office, 2026c; Home Office, 2026d) [M6; M7; M8]. SWJACP01 and SWJACP02 describe that route as a structured progression framework with a defined completion horizon, rather than a loose invitation to remain indefinitely in temporary status [M1; M13]. The projected settlement pressure is therefore not an unforeseen external event. It is the



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foreseeable consequence of prior policy design, cohort admissions and the published pathway.

19. The legal risk is not merely that five years becomes ten years, or potentially longer for some workers. The sharper point is that such a change may push an existing cohort outside the completion horizon around which the route was previously structured, while extending the period during which individuals remain exposed to sponsor dependency, Immigration Health Surcharge and visa fees, occupational eligibility rules, renewal requirements, and Article 8-relevant private and family life consequences. SWJACP03 is relevant only insofar as it demonstrates that prolonged conditionality is not neutral: it extends exposure to direct immigration costs, employment dependency and private/family-life instability [M14]. In that respect, the proposed change resembles the concern in *HSMP Forum*: not the denial of any power to reform, but the alteration of the conditions of progression after individuals have already embarked on a state-designed pathway to settlement.

20. That is also why the risk-allocation point matters. For an already-present cohort, extending qualifying periods does not remove the cohort; it reallocates fiscal, administrative and compliance risk from the framework to individuals [M1; M13]. If the policy relies on behavioural assumptions, such as settlement uptake, departure patterns or downstream fiscal effects, to justify structural modification to an existing lawful pathway, those assumptions should be clearly articulated. Parliament may expect a rational connection between the forecast risk, the evidence base and the chosen transitional design.

Legislative Risk Assessment and Drafting Option

21. Legislative Risk and Operability Assessment. (a) *Legal risk.* If CP1448 were implemented without clear transitional protection for existing Skilled Worker participants, it may generate avoidable litigation exposure under legitimate expectation, abuse of power, procedural fairness, proportionality and Article 8-related grounds. It may also produce implementation uncertainty and inconsistent caseworking. The point is not that each such ground would necessarily succeed. It is that the absence of express transitional drafting would leave a foreseeable and avoidable public-law risk to be worked out through individual disputes rather than through clear legislative design.

(b) *Administrative operability.* The evidence before the Committee reinforces the need for



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express transitional drafting, without requiring this memorandum to prove that CP1448's wider economic modelling is unsound. At Q107, the Chair, Lord Foster of Bath, adopted David Goodhart's phrase that the Committee was "in a fog" and said it did "not have enough information to make decisions" on cost, net numbers and visa-evasion follow-up [M15]. The ONS evidence, Home Office ministerial evidence and NAO/former Home Office evidence point, in different ways, to data limitations, non-final impact assessment, and the need for clear eligibility criteria, evidence requirements and operational modelling before implementation [M16; M17; M18]. Consistently with Framework Note 01 (SWJACP02), a legally administrable scheme would identify the protected cohort, the cut-off date, the treatment of dependants and the status of ordinary events such as sponsor change, redundancy, illness or parental leave [M13]. Home Office evidence from Mike Tapp MP and Dan Hobbs also treated transitional provisions, exemptions and dependants as live design questions rather than settled answers [M17]. Its administrability would therefore need to fit with existing Skilled Worker, settlement and continuous residence guidance used in route operation and caseworking [M19; M20; M21]. The proposed "continuously compliant" condition would not require a bespoke concessionary regime: it can be assessed by reference to existing Skilled Worker requirements, the requirements applicable to dependants of Skilled Workers under the Immigration Rules, and the Appendix Continuous Residence framework governing continuity, absences and route completion [M21].

22. An illustrative two-tier grandfathering provision, preserving a broad protection line while retaining the 11 April 2024 line as a minimum fallback, could provide:

- (1) Nothing in these amendments shall apply to extend the qualifying period for settlement for any person who held valid permission as a Skilled Worker, or as the dependant of a Skilled Worker, before the date on which the relevant Statement of Changes giving effect to CP1448 settlement reforms was laid before Parliament.
- (2) Without prejudice to sub-paragraph (1), the same protection shall in any event apply to any person who was assigned a Certificate of Sponsorship for a Skilled Worker application before 11 April 2024, and to any person who holds or has held permission as the dependant of such a Skilled Worker.
- (3) Such persons shall remain eligible to apply for settlement by reference to the qualifying period and route conditions applicable to the Skilled Worker route immediately before the commencement of these amendments, provided that they:



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- (a) remain continuously compliant with the requirements applicable to them either as a Skilled Worker or as the dependant of a Skilled Worker under the relevant provisions of the Immigration Rules; and
- (b) satisfy the continuous residence requirements applicable to settlement under Appendix Continuous Residence.

23. That formulation preserves SWJACP02's minimum protection line while recognising that CP1448 raises a broader existing-cohort issue. If the SSHD adopts a narrower cohort, the rationale for that line should be stated expressly and be capable of consistent application by caseworkers.

Conclusion

24. *Ooi* protects lawful policy flexibility. *HSMP Forum* protects legal certainty where official representations, structured progression and reliance interests are sufficiently strong. The application of CP1448 to existing Skilled Worker participants therefore calls for explicit legislative scrutiny. The cleaner legislative solution is prospective application for new entrants and grandfathering for existing participants. Express statutory grandfathering would preserve the Government's ability to reform settlement policy prospectively while reducing avoidable public-law risk for a cohort that entered or remained under a published five-year settlement framework.

Appendix A: Formally Logged GOV.UK Digital Representation

25. Captured on 26 November 2025 from the official UK Visas and Immigration / GOV.UK digital portal. Preserved via [Perma.cc](#) [M9]. The same route-specific output is also preserved in the supplied Home Office/GOV.UK PDF evidence bundle, Appendix H1.10, "Can settle: Yes - after 5 years", printed 24 February 2026 [M8].

Materials Considered

[M1] Skilled Worker Justice Alliance (2026) *Written Evidence 01: On Substantive Retrospectivity, Transitional Integrity and Policy Risk Allocation in the Proposed Settlement Reforms* (SWJACP01/SCI0610). House of Lords Justice and Home Affairs Committee. Available at: <https://swja.uk/publications/transitional-fairness-skilled-worker-pathways/> (Accessed: 1 June 2026).



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- [M2] Home Office (2025) *A Fairer Pathway to Settlement: Statement and Accompanying Consultation on Earned Settlement* (CP 1448). London: Home Office. Available at: <https://www.gov.uk/government/consultations/earned-settlement/a-fairer-pathway-to-settlement-statement-and-accompanying-consultation-on-earned-settlement-accessible> (Accessed: 1 June 2026).
- [M3] *R (Ooi and others) v Secretary of State for the Home Department* [2007] EWHC 3221 (Admin). Available at: <https://www.bailii.org/ew/cases/EWHC/Admin/2007/3221.html> (Accessed: 1 June 2026).
- [M4] *R (HSMP Forum Ltd) v Secretary of State for the Home Department* [2008] EWHC 664 (Admin). Available at: <https://www.bailii.org/ew/cases/EWHC/Admin/2008/664.html> (Accessed: 1 June 2026).
- [M5] Home Office (2026a) *Immigration Rules: Appendix Skilled Worker*. GOV.UK, updated 8 January 2026. Available at: <https://swja.uk/documents/pdfs/home-office-appendix-skilled-worker-rules.pdf> (Accessed: 1 June 2026).
- [M6] Home Office (2026b) *Skilled Worker visa*. GOV.UK guidance, printed 24 February 2026. Available at: <https://swja.uk/documents/pdfs/home-office-skilled-worker-visa-guidance-print.pdf> (Accessed: 1 June 2026).
- [M7] Home Office (2026c) *Indefinite leave to remain if you have a Skilled Worker, Health and Care Worker, T2 or Tier 2 visa*. GOV.UK guidance, printed 24 February 2026. Available at: <https://swja.uk/documents/pdfs/home-office-skilled-worker-ilr-guidance-print.pdf> (Accessed: 1 June 2026).
- [M8] Home Office (2026d) *Check if you need a UK visa: "Can settle: Yes - after 5 years"*. GOV.UK digital eligibility output, printed 24 February 2026. Available at: <https://swja.uk/documents/pdfs/home-office-check-uk-visa-skilled-worker-settlement-output.pdf> (Accessed: 1 June 2026).
- [M9] Perma.cc (2025) *Check if you need a UK visa: "Can settle: Yes - after 5 years"*. Archived GOV.UK digital eligibility output, captured 26 November 2025. Available at: <https://perma.cc/A9SX-TWEJ>. Backup archive: <https://perma.cc/W8GH-7QDQ> (Accessed: 1 June 2026).
- [M10] *Civil Procedure Rule Committee (2026a) Civil Procedure Rules, Part 31: Disclosure and Inspection of Documents; Practice Direction 31B: Disclosure of Electronic Documents*. Available at: <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part31> (Accessed: 1 June 2026).
- [M11] *Civil Procedure Rule Committee (2026b) Civil Procedure Rules, Part 32: Evidence*. Available at: <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part32> (Accessed: 1 June 2026).



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- [M12] UK Parliament (1995) *Civil Evidence Act 1995*. Available at: https://www.legislation.gov.uk/ukpga/1995/38/pdfs/ukpga_19950038_en.pdf (Accessed: 1 June 2026).
- [M13] Skilled Worker Justice Alliance (2026) *Framework Note 01: Structural Integrity and Transitional Consistency in the Skilled Worker Settlement Framework: Application to Existing Pathways* (SWJACP02). Available at: <https://swja.uk/publications/skilled-worker-settlement-transitional-consistency/> (Accessed: 1 June 2026).
- [M14] Skilled Worker Justice Alliance (2026) *Written Evidence 02: Earned Settlement and Existing Skilled Worker Pathways: Poverty Exposure within an Established Framework* (SWJACP03). Available at: <https://swja.uk/publications/earned-settlement-poverty-exposure/> (Accessed: 1 June 2026).
- [M15] House of Lords Justice and Home Affairs Committee (2026a) *Uncorrected oral evidence: Settlement, citizenship and integration, 20 January 2026, Evidence Session No. 7, Q107, David Goodhart and the Chair, Lord Foster of Bath*. Available at: <https://committees.parliament.uk/oralevidence/17081/html/> (Accessed: 1 June 2026).
- [M16] House of Lords Justice and Home Affairs Committee (2026b) *Corrected oral evidence: Settlement, citizenship and integration, 27 January 2026, Evidence Session No. 9, Q119-Q129, Mary Gregory, Office for National Statistics*. Available at: <https://committees.parliament.uk/oralevidence/17152/html/> (Accessed: 1 June 2026).
- [M17] House of Lords Justice and Home Affairs Committee (2026c) *Uncorrected oral evidence: Settlement, citizenship and integration, 10 March 2026, Evidence Session No. 11, Q152-Q173, Mike Tapp MP and Dan Hobbs*. Available at: <https://committees.parliament.uk/oralevidence/17300/html/> (Accessed: 1 June 2026).
- [M18] House of Lords Justice and Home Affairs Committee (2026d) *Uncorrected oral evidence: Settlement, citizenship and integration, 3 February 2026, evidence on Skilled Worker policy, impact assessment and caseworking*. Available at: <https://committees.parliament.uk/oralevidence/17153/html/> (Accessed: 1 June 2026).
- [M19] Home Office (2026e) *Skilled Worker caseworker guidance, version 17.0*. London: Home Office. Available at: <https://swja.uk/documents/pdfs/home-office-skilled-worker-caseworker-guidance-version-17.pdf> (Accessed: 1 June 2026).
- [M20] Home Office (2026f) *Check if you can get indefinite leave to remain*. GOV.UK guidance, printed 24 February 2026. Available at: <https://swja.uk/documents/pdfs/home-office-check-indefinite-leave-to-remain-guidance.pdf> (Accessed: 1 June 2026).
- [M21] Home Office (2026g) *Immigration Rules: Appendix Continuous Residence*. GOV.UK, updated 8 January 2026. Available at: <https://swja.uk/documents/pdfs/home-office->



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[appendix-continuous-residence-rules.pdf](#) (Accessed: 1 June 2026).

[M22] Home Office (2025) *Continuous residence guidance (accessible version)*. GOV.UK guidance, archived by Perma.cc on 1 June 2025. Available at: <https://perma.cc/2XFM-LE4X> (Accessed: 1 June 2026).

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