



House of Commons
Home Affairs Committee

The work of the UK Border Agency (November 2010– March 2011)

Ninth Report of Session 2010–12

*Volume I: Report, together with formal
minutes, oral and written evidence*

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The Home Affairs Committee

The Home Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Home Office and its associated public bodies.

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Background

1. This is the second in a series of reports which we intend to make into various aspects of the work of the UK Border Agency, based on the regular updates we receive from the Agency in the form of letters and subsequent evidence sessions.¹ The Home Affairs Committee has received such updates since 2006, and in the past these have focused on issues such as the deportation of foreign national prisoners and the historic backlog in asylum cases. A number of these issues are now nearing completion, and we take the opportunity in this report of flagging up other areas of interest on which we expect the Agency to keep us informed in its regular letters. In light of the fact that a number of the new areas of interest are likely to be long-term concerns and not matters that can be resolved swiftly, we have decided to request that the frequency of the updates be reduced from quarterly to three times a year, to enable—we hope—more substantive progress to be reported. We would like the updates to be provided by the Agency early in November, March and July each year.

2. We publish with this report the latest quarterly letter (dated 2 March 2011) and oral evidence from the Acting Chief Executive of the UK Border Agency, Mr Jonathan Sedgwick, the oral evidence from the Independent Chief Inspector of the UK Border Agency, Mr John Vine, a further letter from Mr Sedgwick (dated 1 March 2011) about the restructuring of the Agency and a supplementary letter (dated 9 May 2011) sent by Mr Sedgwick after the evidence session with him.

Asylum cases

UK Border Agency's legacy cases

3. During the late 1990s and early 2000s the Home Office built up a backlog of between 400,000 and 450,000 unresolved asylum cases. The UK Border Agency's target for clearing this backlog is the summer of 2011, and it has made huge efforts to meet this deadline, including employing contract staff to perform basic administrative tasks in relation to the applications, thus freeing the Agency's own caseworkers to concentrate on the substance of decision-making. It seems likely that the UK Border Agency will be able effectively to meet that target, although there are likely to be a few cases still open in July because the applicants are awaiting removal, are awaiting prosecution or are engaged in litigation to try to remain in the UK.² As reported on 2 March 2011, the situation with the backlog was as follows:

1 Our first such report was our Fourth Report of Session 2010–11, *The Work of the UK Border Agency*, HC 587, published on 11 January 2011—hereafter referred to as 'Fourth Report'. The Government's response was published as our Eighth Special Report of Session 2010–11, HC 1027, on 16 May 2011 (hereafter 'Government Response to Fourth Report').

2 Ev 17, paragraph 9

	<i>Total number concluded</i>
Removals	38,000 (9%)
Grants	161,000 (40%)
Others*	205,500 (51%)
Total	403,500

Conclusions by main applicant and dependents (rounded to nearest 500.)

This compares with the situation as of 1 November 2010 (the date of the previous update letter from the Agency):³

	<i>Total number concluded</i>
Removals	35,000 (11%)
Grants	139,000 (42%)
Others*	160,500 (48%)
Total	334,500

Conclusions by main applicant and dependents (rounded to nearest 500.)

However, the target seems to have been achieved largely through increasing resort to grants of permission to stay (during the course of the legacy operation, Ministers approved revised guidance allowing caseworkers to consider granting permission to stay to applicants who had been in the UK for 6–8 years, rather than the 10–12 years that applied at the start of the backlog-clearing process)⁴ or the parking of cases in a controlled archive, signifying that the applicant cannot be found and the Agency has no idea whether or not the applicant remains in the UK, legally or otherwise.⁵ Cases are checked against watchlists for a period of six months before they are filed as ‘concluded’ in the controlled archive.

4. As we noted in our Fourth Report, a large number of cases—we estimated at least 61,000—had reached or would shortly reach the six months deadline and would be reported as having been concluded. This calculation was based on the fact that 18,000 cases were already classified as concluded in the controlled archive while another 43,000 were still in the six month waiting period.⁶ Our estimate now appears to have been conservative: Mr Sedgwick has told us that 40,500 cases have already been so concluded, and up to

3 See Fourth Report, paragraph 4

4 Report of the Independent Chief Inspector of the UK Border Agency, *Asylum: Getting the balance right? A Thematic Inspection: July–November 2009*, para 1.35 (February 2010)

5 See Fourth Report, paragraphs 5 and 7

6 *Ibid.*, paragraph 7

34,000 others are waiting for the six months to elapse.⁷ Assuming that most of the 34,000 cases will eventually be placed in the controlled archive, in **about 74,500 of the 400–450,000 cases—approximately one in six—the UK Border Agency has been completely unable to trace what has happened to the applicant. We consider this indefensible. Moreover, public confidence in immigration controls is severely undermined by such situations. A robust immigration system requires those administering it to have an appropriate system in place that will mean applicants are not lost or untraceable.**

5. It appears likely that the programme to clear the historic backlog of asylum cases will in essence be completed within five years, as originally intended. However, this will have been achieved as the result of a major redeployment of permanent staff and after the incurring of significant extra expenditure on temporary staff. When the UK Border Agency produces its next letter for us, which should be the final report on this legacy, we expect the Agency to have made an estimate of the total cost of this programme. Moreover, fewer than one in ten of the cases will have resulted in the removal of the applicant from the UK. To a certain extent, this is not surprising: some of the cases date back nearly 20 years, and the longer a case is left uncompleted, the more likely it is that the applicant will have married or had children born in the UK, leading to a greater probability that settlement will be allowed for family reasons. We understand that Ministers would have been unwilling to announce an amnesty for the applicants caught up in this backlog, not least because this might be interpreted as meaning that the UK was prepared more generally to relax its approach towards migration; but we consider that in practice an amnesty has taken place, at considerable cost to the taxpayer.

New asylum cases

6. *The Economist* reported in June 2009 that another backlog of asylum cases was forming: “the backlog of new cases (excluding the old ‘legacy’ lump) more than doubled in 12 months, to nearly 9,000 by last summer (2008)”.⁸ More recent media reports cite the figure of 25,345 new asylum cases submitted since 2008 which are awaiting conclusion.⁹ On the other hand, the quarterly digest of immigration statistics published by the Home Office shows that, as of December 2010, 11,625 of the asylum cases submitted since April 2006 were still pending, 5,980 of which were awaiting an initial decision and 3,415 of these were more than six months old.¹⁰ **The Independent Chief Inspector of the UK Border Agency confirmed to us that there was a new backlog, the size of which was not clear. He suggested we should ask the new head of the Agency, once appointed, for firm information about the size of the backlog.**¹¹ We shall, and we expect a full breakdown of these figures in the next tri-annual letter.

7 Ev 18, para 10

8 *After the backlog, a backlog*, *The Economist* (June 18 2009): www.economist.com

9 See, for example, ‘New asylum cases backlog builds up’, *Daily Telegraph*, 26 April 2011, p14

10 *Control of Immigration: Quarterly Statistical Summary, Quarter 4 2010 (October–December)*, page 5, published 24 February 2011 on www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/control-immigration-q4-2010

11 Q 97

7. In February 2010 the Independent Chief Inspector of the UK Border Agency was of the view that the Agency would not, and could not, meet the target for completing 90% of asylum cases within six months, the deadline for which was December 2011.¹² We concluded in our last report that there was a real danger that cases that could not be completed within six months would accumulate and form a new backlog as officials struggling to meet the target abandoned these for the new cases constantly coming in.¹³ The Government's response to our report states that the 90% target is being abandoned in favour of measurement against a basket of indicators, comprising:

- Intake
- Decisions taken within 30 days
- Quality of decision
- Grant rate
- Percentage of decisions overturned at appeal
- Conclusions at six, 12, 18 and 36 months
- Cases removed by 12 months
- Number and age profile of the outstanding caseload
- Asylum support costs
- Productivity (conclusion per caseowner FTE) and
- Unit cost.¹⁴

8. **As we pointed out in our last report on the Agency, the main aim of its managers should be to improve the quality of initial decision-making as this would avoid the substantial delays, financial costs and human suffering that occur now.¹⁵ We welcome the move away from a single target for asylum caseworkers, as this carries the risk of distorting priorities. However, a 'basket' of eleven indicators may lead to excessive bureaucracy and reporting requirements and/or a degree of confusion amongst staff as to how they are supposed to determine priorities. However output is measured and accounted for, the key is quality control by those managing the caseworkers on a day-to-day basis. In a number of his reports the Independent Chief Inspector of the UK Border Agency has praised the hard work and dedication of caseworker staff, but has noted inconsistency in the quality of decision-making and administration between different offices. Ultimately, whether or not the 'basket' approach succeeds will depend on better training for line managers, in particular improving their awareness of best practice, and then trusting them to exercise their discretion appropriately.**

12 *Asylum: Getting the balance right? A Thematic Inspection: July–November 2009*, para 1.40–1.41

13 Fourth Report, paragraph 9

14 Government Response to Fourth Report, pp5–6

15 Fourth Report, paragraph 10

9. We note that the UK Border Agency intends to publish information about every stage of the asylum process, from the number submitting applications for asylum through the speed and quality (as measured by robustness) of initial decisions to the outcome of appeals and tribunals.¹⁶ We look forward to receiving this information and we intend to keep the issues relating to the processing of asylum claims under review.

Immigration

Immigration statistics

10. The Government is using a modified Points-Based System in order to control migration from outside the European Economic Area to the UK. It has set as its aim the reduction of net annual immigration to the ‘tens of thousands’. We have undertaken several inquiries into aspects of the Points-Based System, starting with Tiers 1 (highly skilled migrants) and 2 (skilled employees) in the autumn of 2010 and Tier 4 (student visas) earlier this year.¹⁷ In both reports, we noted that it was not clear whether the modifications proposed by the Government would reduce net immigration to the tens of thousands. The latest annual figure published is net immigration of 242,000 in the year to September 2010 (this and the 226,000 figure to June 2010 are provisional at present). These figures include UK citizens and those from within the EEA as well as non-EEA citizens.¹⁸ Since we published our reports, the Home Secretary has stated her confidence that the changes in relation to Tier 4, though not a cap on student numbers, will have the effect of reducing the number of students by 70,000 to 80,000 pa.¹⁹ **Given that this reduction in student numbers is central to the Government’s immigration policy, we will monitor progress in achieving it and the overall net immigration figure. At present it is unclear how the reduction will be made.**

11. We have already reported our view that it is a mistake to include students as ‘migrants’ unless or until the student makes an application or demonstrates the intention to wish to settle.²⁰ The official reason for including students in migration numbers is that this is the way that numbers are measured by the United Nations. We understand this reasoning, but regard it as flawed. The Government has indicated an intention to reduce migration numbers to tens of thousands rather than hundreds of thousands, and it is clear that their target in terms of that commitment relates to settlement rather than those who come to the UK to study and have every intention of leaving after the completion of their studies. Including student visas in the measurement places undue political pressure on the Government and its agencies, risks having a consequent and damaging impact on colleges, universities and local economies and is not part of a fair assessment of the Government’s success or otherwise in meeting its stated intentions. The same applies to genuine cases in which people

16 Qq 59 and 60

17 First Report of the Committee, Session 2010–11, *Immigration Cap*, HC 361, and Seventh Report of the Committee, Session 2010–11, *Student Visas*, HC 773

18 These figures are taken from the latest in the series of Long-Term International Migration (LTIM) data published by National Statistics, which is the Government’s preferred measure: see our First Report, paragraph 11

19 HC Deb, 22 March 2011, col 858

20 *Student Visas*, Seventh Report of Session 2010–11, paragraph 100

come to the UK to contribute to the work of specific companies, with no intention of permanent settlement. It is our contention that the government success in reducing migration numbers should be measured net of the figures of the genuine student and expert employment that are properly granted. Clarifying these issues will be helpful to Parliament in holding the Government to account, will be helpful to the Agency in improving its reporting systems and would be fairer to Government than a slavish adherence to the UN definition for the purposes of accounting. It is of course the case that the UN definition will have to be used in providing returns for the UN's own purposes of international comparison of migration flows.

Enforcement of Points-based system: Tier 2 (skilled employees)

12. In his February 2011 report on implementation of Tier 2 of the Points-Based System, the Independent Chief Inspector of the UK Border Agency was very critical of the standard of decision-making on applications and the capacity of the Agency to ensure that neither sponsors nor visa-holders breached the terms of the visa.²¹ In particular he noted:

- inconsistent approaches to the decision making process on Tier 2 cases which meant that some applications were refused because of minor omissions of evidence or information whereas others were given additional time to supply the missing information;
- applicants were having to make and pay for subsequent applications because of minor omissions which could have been addressed with minimal effort by the Agency;
- as a result of subsequent applications, the Agency was having to use additional resources to make further assessments and decisions;
- there was no evidence of a systematic approach to ensure that post-licensing visits were carried out on sponsors retrospectively; and
- the Agency did not routinely take the required action to curtail Tier 2 migrants' leave to remain in the UK when they had stopped working for their sponsor.

However, this was less a criticism of the staff, whom he found to be professional, enthusiastic and committed, than of inadequate guidance, quality control and management, and—in relation to inspecting employers and taking action against migrants who had breached their visas or overstayed—grossly inadequate resources.

13. As already highlighted in this report, the Chief Inspector's findings on inconsistency in decision-making and managerial failings are not unique to this area of the Agency's business. We wish to focus here on the issue of enforcement, comprising the elements of ensuring that sponsors are not abusing the system and that individuals with no right to remain in the UK are removed. The Chief Inspector reported that, while database checks had been made on all sponsors:

21 *A Thematic Inspection of the Points-Based System: Tier 2 (Skilled Workers), July-August 2010*

as a result of around 6,000 sponsor applications being received only a few weeks prior to the Agency's 'go-live' date in November 2008, a significant number of sponsors were placed on the register without adequate checks being made on them first. For example pre-licensing visits had not been carried out in all cases that warranted them. When we asked for confirmation as to how many cases fell into this category, the UK Border Agency were unable to provide this as this information was not collected.

The Chief Inspector was told that the Agency planned to carry out post-licensing visits on those sponsors when resources allowed, and that it intended to prioritise visits to those sponsors considered to pose more of a risk than others. In practice, the main priority was to provide assurance on Tier 4 sponsors (educational institutions sponsoring students) as these were perceived to pose a much higher risk than Tier 2 sponsors, although no one had tested this assumption. **We find it unacceptable that the Agency can operate on untested assumptions in this way.** Moreover, there were too few Visiting Officers to carry out inspections, particularly in the Midlands and London which held high concentrations of sponsors, with the result that in some places there was a wait of about four to six weeks for a visit to be carried out. The Chief Inspector reported concerns about variations in the quality of Visiting Officers in relation to the standards of their reports, their training and professional standards, and a particular concern about a lack of clarity around the role of Visiting Officer: "Visiting Officers have both a customer service function where they assist sponsors, and an enforcement and compliance role. These are two completely different functions which are not necessarily complementary."²² The Chief Inspector said that staff, managers and even some sponsors considered that these shortcomings undermined the rigour of the Points-Based System as a system of migration control.²³

14. We asked Mr Sedgwick about the lack of checks on sponsors, and he replied:

We don't accept that people have been put on the register without proper checks being made. All Tier 4 sponsors receive a visit before they go on to the register. In relation to Tier 2 and Tier 5 sponsors, we take a number of factors into account: how well we know the company, its sector, its age, its size, and we take a decision about whether on a risk basis we need to visit that company or not. No one is put on the sponsor register without us being confident and sure that they are a fit and proper company to be a sponsor.²⁴

The Chief Inspector, however, said he believed that the Agency should completely review the database of sponsors, carry out any necessary checks and ensure that the system was kept up-to-date as sponsors changed and as more information about existing sponsors became available. He acknowledged this would not be easy with the current pressures on resources, but he thought it would be achievable if the Agency 'worked smarter'.²⁵ We recommend that this is done.

22 *Ibid.*, paras 5.106-5.108, 5.110 and 5.115

23 *Ibid.*, paras 5.116-5.118

24 Q 20

25 Qq 79–80

15. Sponsors have a responsibility to inform the UK Border Agency if a sponsored migrant ceases working for them. If someone holding a Tier 2 visa reaches the end of their contract or leaves their job while there is still more than six months before their leave to remain in the UK expires, the leave to remain should be curtailed to 60 days, during which they are expected to leave the United Kingdom: if they do not leave, they remain in the country illegally. The Chief Inspector reported:

We were concerned to find that the UK Border Agency does not routinely take action to curtail the leave to remain of migrants who stop working. When we were onsite, we were unable to ascertain from the Agency how many migrants had been reported as having ceased working and should have their leave curtailed. The Agency subsequently provided us with figures taken from their systems on 22 December 2010 which were as follows:

150 Tier 2 cases identified as requiring curtailment action were outstanding;
and

Approximately 3000 sponsor notifications were outstanding, an unquantified proportion of which would require curtailment action.²⁶

The report added: “We were consistently told by managers and staff that the Agency does not have sufficient resources to take the required curtailment action.”²⁷ The Chief Inspector was told that the system would be automated under the changes to be made to the Agency’s IT systems in the summer of 2011.²⁸

16. Again, inspections by the Chief Inspector have demonstrated that failures to act upon intelligence of possible illegality are not confined to the area of enforcement of Tier 2 visas. A recent inquiry into preventing and detecting customs and immigration offences revealed that the Agency receives more than 100,000 allegations a year from members of the public, many of which relate to suspected illegal entry into or continued residence in the UK. However, the Agency could not provide the Chief Inspector with information about the proportion of allegations that had led to enforcement action, let alone the number that had led to the prevention or detection of crime.²⁹ The Chief Inspector told us that in general the Agency needed to focus far more on outcomes rather than processes. He also was of the view that, although co-operation between and co-ordination with the police in the form of the Serious Organised Crime Agency was improving, the UK Border Agency needed to improve its relationships with sponsors such as colleges and with its own caseworkers.³⁰

17. The Points-Based System can function effectively only if there is confidence that sponsors will not abuse the system and that anyone who no longer qualifies for leave to

26 *A Thematic Inspection of the Points-Based System: Tier 2 (Skilled Workers), July-August 2010*, paras 5.119-5.121 In his subsequent evidence to us, the Chief Inspector said he believed the total of outstanding sponsor notifications was now estimated to be 4,000: Q 78.

27 *Ibid.*, para 5.122

28 *Ibid.*, para 5.123

29 Independent Chief Inspector of the UK Border Agency, *Preventing and detecting immigration and customs offences: A thematic inspection of how the UK Border Agency receives and uses intelligence, October–December 2010*, Chapter 5

30 Q 81

remain is compelled to leave the UK. While Mr Sedgwick affirmed the Agency's belief in the integrity of all sponsors, we note that even among the more rigorously inspected Tier 4 sponsors, bogus institutions and failures in control continue to be discovered. The lighter inspection regime for Tier 2 sponsors may be justified, but, given that the Agency does not even know how many sponsors were not visited before registration and given the backlog of post-registration visits, we cannot share Mr Sedgwick's confidence in the robustness of the system.

18. We are also concerned about the lack of effective action to ensure the removal of those who no longer have a right to remain in the UK. Media discussion of illegal immigrants often concentrates on those who enter the UK illegally—those smuggled in or who enter the UK clandestinely—but those who work with such migrants consider it possible if not probable that most illegal immigrants entered the country legally but then overstayed or broke the terms of their visas. In this context, we note the recent work of the National Audit Office indicating that anything up to 181,000 people could have overstayed their visas (work, student or family reunion) in the last four years—though, given the lack of checks leaving the UK, this is at best a rough estimate.³¹ We do not underestimate the difficulty of tracking down those who wish to remain in this country illegally, but with some Tier 2 migrants the Agency has the advantage of being alerted by the sponsor to the change in the migrant's status. Of course, even if the Agency does move to curtail leave to remain, it often takes no direct action to ensure that the migrant leaves the UK; however, presumably none of the methods used to deter illegal migrants—checks on employers, scrutiny of the benefits and NHS databases—are engaged until the Agency records the fact that the Tier 2 permission has expired, and the longer the delay in initiating these checks, the more likely it is that those wishing to stay illegally can 'disappear'.

19. We are also very concerned about the Chief Inspector's findings that the Agency is inconsistent in the way it handles allegations from members of the public of illegal entry or overstaying and—in particular—about the confusion he found among the Agency's own caseworkers about when and how to report suspicions about applicants to the Agency's intelligence units.³² The concerns of the public and information given by them needs to be acted upon speedily and those who report these matters should be kept informed of what happens to this information.

20. In the Agency's next update letter, we would like to be informed what action has been taken to close these gaps in the system of immigration controls.

Enforcement of Points-Based System: Tier 4 (students)

Student visas

21. In March 2011 the Government announced a number of changes to Tier 4 (Students) and Tier 1 (Post Study Work) of the Points-Based System. The first round of implementation came into effect on 21 April 2011. Further changes will take effect in

31 National Audit Office, *Immigration: the Points Based System—Work Routes*, HC 819 of Session 2010–11 (15 March 2011)

32 Q 81 and *Preventing and detecting immigration and customs offences*, Chapter 5

summer 2011, in April 2012 and by the end of 2012.³³ We intend to monitor the situation in order to scrutinise the effect of these changes. However, because the changes are both complex and being implemented over a period of time, we will need a range of information in order to analyse the results effectively.

22. We expect the UK Border Agency to provide the following information in its tri-annual letter:

- **how many applications for Tier 4 (General) visas have been granted in that period;**
- **how many applications for Tier 4 (General) visas have been refused and the reasons for these refusals in that period;**
- **how many applications for Tier 4 (Student Visitor) visas have been granted in that period;**
- **how many applications for Tier 4 (Student Visitor) visas have been refused and the reasons for these refusals in that period;**
- **how many applications for Tier 4 visas have been refused on the basis of fraudulent evidence at UK-based processing centres in that period;**
- **how many applications for Tier 4 visas have been refused on the basis of fraudulent evidence at overseas processing centres in that period;**
- **a graph showing processing times for Tier 4 visas, differentiating between UK-based and overseas processing posts in that period;**
- **a graph showing the number of Tier 4 sponsors who are highly trusted sponsors, A rated sponsors and B rated sponsors;**
- **the number of first time visits to Tier 4 sponsors in that period;**
- **the number of follow up visits to Tier 4 sponsors in that period;**
- **the number of ‘gifted student’ exemptions from language requirements a) applied for and b) granted in that period;**
- **the number of Post Study Work visas a) applied for and b) granted in that period;**
- **the number of Student Entrepreneur visas a) applied for and b) granted in that period, and**
- **the number of students required to leave and/or deported for breaking the terms of their visas in that period.**

33 Home Office, *Student Visas: Statement of intent and transitional measures*, March 2011, p2

Bogus Colleges

23. During the evidence session on 5 April, Mr Sedgwick emphasised that all “Tier 4 sponsors receive a visit before they go on to the register”, adding “every new case goes on the register and we have visited every existing case. Of course, it may be possible that not every visit results in the identification of problems in a particular college but, as you know, we currently have very substantial numbers.” He said: “We have been increasing the productivity of our visit staff. We have been collecting more and better information about this.”³⁴ At the time of the evidence session 70 out of a total of 2,372 colleges were suspended.

24. **In order to scrutinise the Agency’s management of the sponsor lists, we expect the UK Border Agency to provide the following information in its tri-annual letter:**

- **how many bogus colleges have been closed in that period;**
- **how many bogus colleges have been removed from the register in that period;**
- **how many other sponsors have had their licences revoked in that period;**
- **how many sponsors have had their licences suspended in that period;**
- **how many sponsors have been fined for misuse of their licence in that period;**
- **how many sponsors have been prosecuted for misuse of their licence in that period;**
- **what other sanctions have been used against sponsors who misused their licence in that period, and**
- **a list of the colleges suspended in that period, indicating which remain suspended, which have been reinstated and which have been permanently removed from the register.**

Family reunions

25. We note the Government’s confirmation that it intends to make proposals in relation to the family reunion immigration route later this year. In the meantime, a variety of developments are taking place in relation to marriages involving a partner from outside the EEA. As our most recent report shows,³⁵ we continue to be concerned about the incidence of forced marriages: we intend to keep this issue under review. We are also concerned that the number of sham marriages contracted solely for immigration purposes may increase as a result of the withdrawal of the Home Office’s certificate of approval scheme following a judicial ruling that it was incompatible with Human Rights law. **We wish to be informed what impact the Government expects the withdrawal of the certificate of approval scheme to have, and what other measures, if any, the Government intends to take to deter sham marriages.**

34 Qq 20, 63 and 64

35 *Forced Marriage*, Eighth Report of Session 2010–12, HC 880

Child detention

26. In our last report on the Agency, we noted the Government’s announcement that the detention of children for immigration purposes was to end as of 11 May 2011,³⁶ and that the Yarl’s Wood family unit had now closed. We added: “We hope not to have to return to this issue in the future.”³⁷ Unfortunately, the situation has proved less clear-cut in practice, with, amongst other things, questions about the use of alternative accommodation for families awaiting removal from the UK. **The next update letter from the Agency should contain an account of how many children have been detained for immigration purposes, for how long, where and in what circumstances since the 11 May deadline.**

Immigration Tribunals

27. In recent years the UK Border Agency has been frequently criticised for perceived failings in relation to asylum and immigration cases appealed to immigration tribunals. This criticism takes two forms: that the Agency often is not even represented at tribunal hearings, and that too many Agency decisions are overturned on appeal. The Chief Inspector recently stated:

Staff and managers highlighted that the UK Border Agency was not able to provide Presenting Officers for every appeal due to limited resources. PBS [Points-Based System] cases were regarded by the Agency as generally a lower priority than cases of foreign national prisoners or asylum cases. This was clearly a source of some frustration but managers told us that they were working with the regional Presenting Officers’ Units to try to improve the situation and to be clear on the types of cases when it was vital to have representation. The lack of a clear approach to providing representation at appeal was also highlighted in our inspection of Asylum in 2009. This is an issue we expect the Agency to resolve.³⁸

Mr Sedgwick told us that the Agency is represented at 83% of tribunal hearings,³⁹ adding that some of the remaining hearings are low-risk as the Agency knows that the appellant is not going to attend and the judge will be able, on the basis of the evidence before him or her, to “come to a proper decision.”⁴⁰ However, in our oral evidence session it was not clear whether such decisions based on written representations were counted among the 17% of ‘non-appearances’.⁴¹ Mr Sedgwick has subsequently confirmed that, where the Agency has received notice that the case is to be decided on the basis of written representations only, these are not counted as ‘non-appearances’.⁴² As far as losing cases is concerned, the quarterly immigration statistics for September–December 2010 show that about 27% of asylum appeals were allowed (ie the Agency lost the case), 67% were dismissed and 6%

36 Home Office Press Release of 16 December 2010, ‘New compassionate approach to family returns’

37 Fourth Report, paragraph 13

38 *A Thematic Inspection of the Points Based System: Tier 2*, para 5.55

39 84% between August 2010 and January 2011, according to Mr Sedgwick’s supplementary written evidence: Ev 20

40 Qq 29–31

41 Q 32

42 Ev 20

were withdrawn.⁴³ Overall, including immigration appeals also, in the same three months, 39% were allowed (14,800 cases), 42% dismissed (15,700) and 19% withdrawn (7,300).⁴⁴

28. We sought more detailed information about the reasons why cases were lost or the Agency was not represented. Mr Sedgwick told us that the Agency does not routinely record either the reason for non-attendance at an appeal by a presenting officer or the reason why an appeal was allowed. However, he said, sampling had shown that for some types of case (especially in-country Points Based System and entry clearance appeals) the most commonly cited reason for an appeal being allowed was that new evidence had been produced which had not been available at the time of the original decision. As for non-appearances by presenting officers, Mr Sedgwick said:

We may take pragmatic decisions not to attend in some cases, instead relying on written submissions to the court where a case is strong or the appellant has indicated they will not be in attendance, thus preventing cross examination, or where the witnesses' credibility is not in question.⁴⁵

The Chief Inspector told us that when the New Asylum Model system was first introduced, it was intended that there would be no presenting officers but that the relevant caseworker would represent the Agency at any appeal. This had been found impractical as it took up too much of the time of caseworkers, hindering their core work of making initial decisions.⁴⁶

29. It appears that the Agency is more likely to lose immigration than asylum appeals. The Agency indicates that this is largely owing to immigration applicants failing to provide information, but it is not clear whether the applicants do so deliberately (in the hope that by slowing down the process they may increase the chance of being allowed to remain in the UK) or because they were given insufficient or inaccurate information about what was required when they first applied.

30. We note the actions the Agency is taking to improve both the quality of decision-making and the efficiency and effectiveness of its response to the appeals process.⁴⁷ However, it is unacceptable for applicants to arrive at a tribunal having waited years for a decision only to find the Home Office is not represented. We believe this undermines the credibility of the appeals system. If the Agency does not intend to defend its decision it should inform the other party in order to save court time and taxpayers' money, and to ensure there is a fair, proper and compassionate process.

31. Media reports have referred to the Government considering abolishing the right of appeal for those refused entry clearance to visit family members.⁴⁸ We trust there is no

43 *Control of Immigration: Quarterly Statistical Summary, Quarter 4 2010 (October–December)* published 24 February 2011 on www.homeoffice.gov.uk/pulications/science-research-statistics/research-statistics/immigration-asylum-research/control-immigration-q4-2010

44 Table 1e in Ministry of Justice, *Quarterly Statistics for the Tribunals Service, Third Quarter 2010–11, October to December 2010*, at www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/quarterly-statistics-tribunals-q3.pdf

45 Ev 20

46 Q 89

47 Ev 20

48 Qq 90-91

such intention, and it would not be appropriate for the authorities to be judge and jury when refusals occur, and the matter is pursued by solicitors or MPs making representations on behalf of the sponsors. It is far better to retain the present appeal system, be rigorous in deciding on applications and, moreover, have in place an effective control system to deal promptly, and we emphasise promptly, with anyone who stays any time at all beyond the authorisation given.

E-Borders

32. The e-Borders programme provides for electronic collection and analysis of information on all passengers entering or leaving the UK from carriers (including airlines, ferries and rail companies). On its website in June 2009, the UK Border Agency claimed to be “working closely with the travel industries, whose support is crucial to the programme’s success.” This was not the finding of our predecessor Committee, which noted a number of significant practical problems—in IT, in logistics and financial—faced by transport operators in adhering to the requirements laid down by the Agency and its contractor, Raytheon.⁴⁹ Neither the Agency nor Raytheon appeared to be addressing the industry’s concerns.

33. When our predecessor Committee began to inquire into the programme in the summer of 2009, the timetable for implementing the e-Borders programme was:

- 2009: the e-Borders operations centre, the National Border Targeting Centre (NBTC) starts operating;
- December 2009: e-Borders aims to collect details of 60% of all international passengers and crews from a range of carriers and to check that 60% against lists of people who are of interest to authorities;
- December 2010: e-Borders aims to collect details of 95% of passengers and crews;
- April 2011: UK Border Agency starts to “activate modernised entry methods” at UK ports;
- July 2012: improvements including an ability to give clearance to passengers who are already on a train;
- March 2014: e-Borders is fully operational, covering all international travellers using all UK ports, including matching passengers’ arrivals to their departures.

As of April 2011, the e-borders system was collecting details of about 55% of passengers and crew on airlines, although this rose to 90% of passengers and crew for journeys outside the EU.⁵⁰ There was no coverage of ferries or trains. All deadlines other than the first were missed.

49 Home Affairs Committee, *The E-Borders Programme*, Third Report of Session 2009-10, HC 170; and Home Affairs Committee, *UK Border Agency: Follow-up on Asylum Cases and E-Borders Programme*, Twelfth Report of Session 2009-10, HC 406

50 Qq 42-43

34. After our predecessor Committee’s highly critical report on the programme, it was announced that the Home Office had suspended and then—in July 2010—dismissed the contractor. The Home Office became involved in litigation with Raytheon, leading (by the time Mr Sedgwick appeared before us) to a process of binding arbitration. During the period of the contract, Raytheon had been paid £188 million.⁵¹ The Home Office began the process of moving support for the programme to two new contractors: in November 2010, IBM took over the running of the basic database; and in April 2011 Serco took over provision of the Carrier Gateway (the interface between carriers and the Agency) and the National Border Targeting Centre (which provides the checking of passenger names and other details against watchlists). These were existing services: the Home Office had yet to move onto the question of who was to provide new services, such as those needed in relation to the London Olympic Games in 2012.⁵² Excluding the cost of third party licences and utilities, Serco is to be paid £29.7 million over two years and IBM just over £5 million a year for an unspecified time.⁵³

35. Moreover, as our predecessors reported, there have been considerable concerns about whether the requirements for carriers to gather data on passengers entering the UK are compatible with the data protection laws of a number of EU Member States. Over three years since this issue was first raised by carriers with the Agency, Mr Sedgwick told us: “we are continuing to work with a number of EU Member States to ensure that their data protection authorities are satisfied with the way that the system is working.”⁵⁴ Despite the delays, Mr Sedgwick assured us that exit checks will be fully implemented by 2015: this is not, however, the same as an assurance that the whole e-Borders programme will be in place by 2015, and, indeed, for the reasons set out by our predecessors, it is difficult to see how the scheme could be applied to all rail and sea passengers within this timetable given that even air passengers are not yet fully covered.

36. As we noted in our report on student visas, flawed evidence inhibits effective policy-making. Counting people in and out of the country is vital to understanding immigration and formulating sound, practical immigration policy; and the UK needs robust systems to protect its borders. When the Government decided to end Raytheon’s contract, after the payment of £188 million, it anticipated that a new contractor would be in place by November 2010. After a substantial delay, IBM and Serco have been issued with new contracts and taken over existing operations. We remain deeply concerned about the e-Borders programme, given its history, the lack of clarity about the final shape of the scheme and the high (but still unquantifiable) cost of the e-Borders programme both to the taxpayer and to carriers. We will expect rapid progress to be made in this programme by the time of the next tri-annual letter, in July 2011.

Asylum and immigration contracts

37. We raised with Mr Sedgwick the issue of contracts with outside bodies for the provision of housing to asylum seekers, as questions about the appropriateness of some

51 Q 45

52 Q 38

53 Ev 21

54 Q 52

contracts had been drawn to our attention. In general we have some concerns about procurement by the Home Office, its agencies and police forces, some of which we will address in relation to our concurrent inquiry into the ‘New landscape of policing’. Mr Sedgwick has subsequently told us that the cost of housing asylum seekers is currently about £140 million pa.⁵⁵ We have noted that the judge in the Andrew Waldron case said he found it “lamentable” that the Agency had for four years failed to carry out checks on Mr Waldron that would have revealed he had made false claims about his qualifications and had a criminal conviction, which would have cast doubt on whether he was a fit and proper person to be a contractor to the Agency.⁵⁶ **The taxpayer expects value for money and for contracts to be awarded in a transparent and fair way. We seek reassurance that this is in fact what happens and we intend to keep the area of procurement under review.**

Remuneration of Home Office and UK Border Agency officials

38. We welcome the fact that the Home Office has accepted our previous recommendation to reduce the salary of the head of the UK Border Agency. However, we note that the reason given by the Home Office for the high salary paid to the previous head of the Agency was that it was necessary to ensure strong leadership and continuity. Both this Committee and the Independent Chief Inspector have stated on a number of occasions that many of the problems we have observed result from the Agency lacking continuity and good management. The sudden departure of the previous Chief Executive, and the fact that there is still no permanent successor nearly five months after she left, undermine the rationale for the high salary given by officials. We look forward to meeting the new head of the Agency, once appointed.

39. We reiterate our view that it would be inappropriate for senior officials in the Home Office and its agencies to receive any bonuses this year, in light of the economic climate.

Correspondence with Members of Parliament

40. In our last report on the UK Border Agency we stated: “When Members write to Ministers, it is expected that the reply will at least be signed by the Minister. It is therefore unacceptable that the head of an agency should delegate this task to junior officials”.⁵⁷ The Government’s response acknowledges that “the Minister has authorised the Chief Executive, or their (sic) deputy, to reply.” However, it does not acknowledge that Members in doing so have the reasonable expectation of a reply from the Chief Executive in normal circumstances and the Deputy only in the absence of the Chief Executive.⁵⁸ It also states that Members of Parliament are encouraged to write direct to the Agency, but while this is adequate in some cases, sometimes the flow of information becomes bogged down in bureaucracy, which is normally when the Member writes to the Chief Executive (or, in frustration, to the Minister). We therefore reiterate that we expect a response signed by the head of the Agency when we write to

55 Ev 21

56 Transcript of Judge Orme’s judgment in the case of Regina v Andrew Waldron at Birmingham Crown Court, 22 December 2010

57 Fourth Report, paragraph 15

58 Government Response, p9

him/her, and we give notice that we intend to seek views from other Members during the coming months to see whether concerns remain or whether the Agency has significantly improved the service given to MPs in representing their constituents.

Formal Minutes

Tuesday 24 May 2011

Members present:

Rt. Hon Keith Vaz, in the Chair

James Clappison
Dr Julian Huppert
Michael Ellis
Steve McCabe

Rt Hon Alun Michael
Bridget Phillipson
Mark Reckless
Mr David Winnick

Draft Report (*The work of the UK Border Agency (November 2010–March 2011)*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 40 read and agreed to.

Resolved, That the Report be the Ninth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 14 June at 10.30 am

Witnesses

Tuesday 5 April 2011

Page

Jonathan Sedgwick, Chief Executive, UK Border Agency

Ev 1

Tuesday 17 May 2011

Mr John Vine, CBE QPM, Independent Chief Inspector of the UK Border Agency

Ev 9

List of printed written evidence

1	UK Border Agency (letter of 2 March)	Ev 15
2	UK Border Agency (letter of 1 March)	Ev 19
3	UK Border Agency (letter of 9 May)	Ev 19

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2010–12

First Report	Immigration Cap	HC 361
Second Report	Policing: Police and Crime Commissioners	HC 511
Third Report	Firearms Control	HC 447
Fourth Report	The work of the UK Border Agency	HC 587
Fifth Report	Police use of Tasers	HC 646
Sixth Report	Police Finances	HC 695
Seventh Report	Student Visas	HC 773
Eighth Report	Forced marriage	HC 880

Oral evidence

Taken before the Home Affairs Committee

on Tuesday 5 April 2011

Members present:

Keith Vaz (Chair)

Mr James Clappison
Dr Julian Huppert
Steve McCabe
Alun Michael

Bridget Phillipson
Mark Reckless
Mr David Winnick

Examination of Witness

Witness: **Jonathan Sedgwick**, Chief Executive UK Border Agency, gave evidence.

Q1 Chair: I call the Committee to order and ask all those present to note the Register of Members' Interests. I declare a particular interest: my wife is an immigration solicitor and a part-time judge. Are there any other interests to declare?

Our witness today is the Acting Chief Executive of the UK Border Agency, Jonathan Sedgwick. Mr Sedgwick, thank you very much for coming to give evidence. As you know, this is a session that the Select Committee holds after receiving your letter or the letter from the Chief Executive setting out a number of issues that the Committee is concerned about.

I begin by thanking you for changing the format of the letter. The Committee has been trying with your predecessor to make the letter more readable and we are most grateful. You made it very clear and you put in some graphs and pie charts, which means the public can understand the letter, rather than the great block of texts that we have had from the UK Border Agency in the past.

In praising you for the quality of your letter rather than the substance, which we will come on to later, morale must be pretty low in the UKBA with the very large number of staff that are about to be made either redundant or relocated. What is it like running an agency that is going to lose so many members of staff?

Jonathan Sedgwick: Of course people are concerned about their futures. That is only natural. That of course is why we are getting on with the task of our restructuring process. We are working very hard in all parts of the Agency, being transparent with staff about what our plans are, supporting them, engaging with them, and we have also been running a number of voluntary exit schemes, as I think you know, because it is very important to us to do everything we can to avoid compulsory redundancy. Of course people are concerned but there is, and there always has been in the Border Agency, a tremendous sense of commitment to our work to securing the border, to controlling migration. That is absolutely still there. I can assure you I experience it every time I do a visit, either to a port or to a case-working team. People want us to get on with this and to move beyond this process of restructuring and get to a point where everyone is absolutely clear what the future is going to be. We

have a good management team and that is the process that we are embarked on together.

Q2 Chair: I think the concern of the Committee is that this remains a key priority for the Government and a priority for this Committee, which is why we have the regular letters from you. At this moment, when we want to tackle illegal immigration and to make sure that the Agency is fit for purpose, is this the right time to restructure, and basically get rid of people, when we should be focusing on making the Border Agency fit for purpose to deal with the ambitious plans that the Government has to deal with illegal immigration?

Jonathan Sedgwick: Of course it is a priority, and in fact if you look at the relative reductions that the Border Agency is taking in its resources, it is very much in line, for example, with the police. The thing I suppose that gives me the greatest confidence in our ability to deliver the Government's ambitious immigration programme, which, as you say, is of vital importance both to it and to the public—

Chair: And to Parliament.

Jonathan Sedgwick:—and to Parliament and to this Committee, forgive me, absolutely—is that we have conducted a very careful line-by-line scrutiny of our plans in every area of the Agency. We have looked very hard at where there are opportunities for increased productivity; we have looked at where work is coming to an end naturally; we have looked at where there are particular cost pressures and, out of all of that, we have produced a balanced set of plans that we are very confident can deliver the Government's commitment.

Q3 Chair: We will come on to the impact on the service in a moment. Can I take you to paragraph 10 of your letter? Obviously this Committee is delighted that you are going to meet your own target of July for the end of the backlog, as far as asylum cases are concerned, though we asked you to complete this by autumn of last year. You stuck by July and you are going to complete by July. However, if you look at paragraph 10, it seems that 74,500 of these cases are people who have, in effect, gone missing. You do not know where they are and you have put them in this special room—not the people but the files—called

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“the Concluded Controlled Archive”. Although you have cleared your backlog, basically you have done two things, it seems to us: you have taken 74,500 of these cases and stuck them in the Controlled Archive room and then you granted indefinite leave to 40% of the 400,000. How is that clearing the backlog and achieving the Government’s target of reducing immigration, if you are granting indefinite leave to 40% of the people who are originally on the list?

Jonathan Sedgwick: Perhaps I can deal with that in two parts. First, in relation to the Controlled Archive, it is absolutely not the case that we have simply put these cases into a room and closed the door and forgotten about them. Each of those cases has been the subject of the most exhaustive checks and scrutiny, both with the voluntary sector—often people have come to light and been traced through their contact with MPs, for example. We have also checked every single one of them against 19 databases—Government, Home Office, private sector databases. As a result of that, and that is not—

Q4 Chair: We basically can’t find 74,500 people?

Jonathan Sedgwick: There is no trace of them. One conclusion from that might be that they have left the country, perhaps some of them died, but we have done the most exhaustive things we possibly can, that we reasonably and responsibly can. We have run those checks on a number of occasions in a period before we transferred them into the Controlled Archive.

Q5 Chair: Yes. What I can’t understand is, if you have done all this work and you can’t find these people, why do we still have the files kept? If you are reducing your number of staff, who is going to monitor whether or not these people, in effect, come to life again?

Jonathan Sedgwick: I was going to come on to that. We have now completed the work of reviewing all the cases so we are disbanding the team that was responsible for that task of review, and we are establishing a new team of around 100 staff in Liverpool that will be responsible for overseeing this Controlled Archive. We do think it is right that we should keep checking those databases against any individuals in the Controlled Archive. If any individual comes to light, it is very important to us that we can demonstrate that we can very quickly pull that information.

Q6 Chair: This will have to be proactive; somebody will have to come and say, “I found this person”?

Jonathan Sedgwick: No, we will continue to check against all—

Q7 Chair: How many members of staff are involved in looking at the Controlled Archive?

Jonathan Sedgwick: That whole list of 19 databases that I mentioned to you, we will continue to—

Chair: How many members of staff are involved in the process of trying to find 74,000 people?

Jonathan Sedgwick: The overall team for the new unit will be just under 100 staff but they will have other responsibilities. Obviously this is also a well established automated process.

Q8 Chair: The final question from me is: 40% of the 403,000 cases have been given indefinite leave. Do you think that is what the Government has in mind when it talks about reducing immigration—net migration? If 40% have been given the leave to remain here, it is almost 200,000, isn’t it? Only 9% were removed.

Jonathan Sedgwick: Numbers of removals were obviously much higher earlier on in the programme, because we were obviously focusing at an early stage on those who were the most harmful, those cases we could conclude most quickly and most easily. As I reported to you, we have removed 9% of the total. Given the passage of time for those cases where, as you will know, individuals accrue rights—they accrue family and human rights, and so on, under Article 8—I think my predecessor always made it clear that, particularly as we move towards the end of these cases, there would be a number of individuals who, because of the sheer passage of time, would have accumulated legal rights and we would have no option but to make those grants.

Q9 Dr Huppert: I agree with what was just said. Indeed, I think this Committee made a recommendation along those lines—paragraph 6 of our last report in this area—that there is an argument in favour of granting the applicant leave to remain in cases where there have been severe delays in decision making as a result of the Government’s fault.

I want to talk about something more positive. I happened to meet somebody who had worked briefly for UKBA looking at customer service, and I had a meeting yesterday with a couple of people from the Customer Services Directorate, particularly Michelle Meyrick, who was the contact. I was very heartened to hear that there was a sense, at least from her, that the UKBA understood that it had a role dealing with people not as enemies, not as people to be controlled, but as customers, whether they are applying for asylum, immigration, visas, all sorts of other things. That was very heartening. How embedded would you say it is within the whole structure of UKBA?

Jonathan Sedgwick: I think it is becoming more and more embedded. We have had a particular focus on our work to recognise that people, who come to us in a number of forms as you say, are customers. For example, I think staff have always been in a way delighted when they are able to grant somebody refugee status. That is seen by many of our staff as a very noble thing to do. Increasingly I think staff look at those who come to us for services for visas or companies who come to us as sponsors, if we relate to them as customers that enables us to understand them and their needs better. It enables us to improve the service and reduce our costs.

Q10 Bridget Phillipson: Mr Sedgwick, in your letter you say that posts are being shed as volumes of caseworkers are reducing and also that you are introducing an integrated casework management system that should also reduce the amount of work being done by the UKBA. Given that often your systems in the past have been slow, and that there have been concerns raised about the quality of initial

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decisions being made, are you confident that a significantly reduced workforce can continue to deliver a better system, with systems that aren't necessarily fully tested in terms of the new integrated casework management system?

Jonathan Sedgwick: The projections that we have made are not on the basis of numbers—well, they are on the basis of numbers that relate to improvements in productivity that we have already seen and trajectories that we are confident that we can maintain. The integrity system, the new immigration caseworking system, which we are rolling out, we are deliberating rolling out in a very different way from the way in which we tried to roll out systems in the past. We are doing it very incrementally, release-by-release, testing as we go, taking the resources out as the system is beginning to work. We are doing it deliberately in a very cautious way.

We are also doing an awful lot to improve our decision quality. I think, as my predecessor would have discussed on a number of occasions, we have been working very closely with the UNHCR through their quality initiative to improve the quality of our asylum decisions. We are looking very hard to learn lessons from our appeal success or failure rates, both in relation to countries, types of decision and the performance of individual teams. So there is a real drive to improve our decision quality. It is undoubtedly a challenging period ahead but I am confident that with that drive on productivity, as new IT systems come into play, and as we look much more at the performance of the system as a whole—that is a very important theme for us, as we go forward; we have had too many instances in the past where we have perhaps narrowly gone after a single target—looking at the balance and performance of the system that as a whole gives us an opportunity to maintain our performance and improve it in some areas, which is our commitment.

Q11 Bridget Phillipson: My concern for some time has been with the quality of initial decisions in asylum cases. I appreciate it is an important balance to strike between a speedy decision, which is in everyone's interest, including the British public's, but making sure that that decision is the right one. Certainly in some of the decisions I have seen, I am not confident that a member of the public would look and think, "That is a good quality decision that has been well thought out." As you will be aware, it is often very difficult to then overturn that decision.

Jonathan Sedgwick: I think of course a number of our asylum decisions are overturned at appeal, as you will know. I think that is the—

Chair: Mr Sedgwick, you will need to have briefer answers because your boss is about to come in after you.

Jonathan Sedgwick: In relation to the quality of our decisions, absolutely, we do need to improve those further. Our quality initiative work is continuing. We have had a number of themes where we are looking at particular kinds of decision, in relation to violence against women, for example, lesbian and gay asylum seekers, which we rolled out new training and guidance for in October. I think the other thing that I

would say is that we very much want to learn as we go and we are prepared to take longer, in the first instance, to get a higher quality decision. So our early legal advice pilot, which is to some extent slowing down some of that first decision-taking, is evaluating, will give us a—

Chair: Julian Huppert has a quick supplementary.

Q12 Dr Huppert: Following on from Bridget Phillipson's question, earlier this year, in response to pressure from this Committee, you published the audit of Rule 35, about torture allegations, based on evidence that you collected in November and December 2009, so it was very late. It showed that there were a number of cases where Rule 35, about how to deal with people alleging torture, wasn't complied with—a significant proportion. It was also very thin, in that it didn't talk about the people where it was complied with, whether actually the decision was made correctly. It noted simply that the rules were there and things proceeded. Will you be doing some further work on this and what should we read into the fact that it took, I think, 14 months for the report to be released?

Chair: A brief answer.

Jonathan Sedgwick: A brief answer. We were also disappointed with the findings of that sample, and we are going to run it again. We don't believe that any asylum seeker who had been a victim of torture was removed from this country without having that claim properly considered, but we don't think our response was fast enough and we don't think our processes worked well enough. To your point, we don't think that the quality evaluation of our decision making was properly explored in the sample. So both of those things we will be setting right in the new sample that we will do later on this year.

Dr Huppert: Which you will send to us soon, I hope.

Jonathan Sedgwick: Yes.

Q13 Mr Clappison: I am sorry for my late arrival, Mr Sedgwick.

Did the 160,000 who were granted leave to remain under this exercise, besides people whose cases had been administratively delayed and no conclusion had been reached, also include people whose asylum claims had been looked at and had been turned down and had been turned down on appeal?

Jonathan Sedgwick: It might well have included cases that had been looked at and appealed at a much earlier stage, and where further rights had accrued due to the passage of time if enforcement action hadn't been taken.

Q14 Mr Clappison: The actual asylum claim had been turned down originally?

Jonathan Sedgwick: In some cases the asylum claim may have been turned down originally and there may have been an appeal, and that appeal may have upheld our decision, but if no effective action was taken at the time years ago, then obviously further rights accrued.

Q15 Mr Clappison: This is something that members of the public would be very interested in, in relation to the efficiency and justice of the asylum system.

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Have you any record of how many such people there are?

Jonathan Sedgwick: I don't know whether we have a distinct breakdown of exactly what you are asking for, but I think it stands to reason in a way and I don't think we would deny that the fact that we had such a number of cases that we needed to deal with in this way was—

Q16 Mr Clappison: That is not quite an answer to the question. I think this is the third amnesty programme since 1997. It should be part of the design of the programme, I suggest to you, that people should not fall within it whose case has been decided and it has been decided that asylum should be refused to them, because it serves to encourage other people later on to stay on and try their luck as well.

Jonathan Sedgwick: I don't accept that it is an amnesty. We have removed very substantial numbers; 36,000 people have been removed from the United Kingdom as a result of this programme, but because of the passage of time legal rights accrue that we have to respect.

Q17 Mr Clappison: Can I ask you one other point on a separate subject? Absolutely, most asylum seekers are not involved in criminal offences, most of them are decent people, but members of the public would also be concerned if people who had committed criminal offences were given the right to remain in this country as part of this programme. Were people who had committed criminal offences able to stay in the country as a result of this programme? I am thinking particularly of serious criminal offences.

Jonathan Sedgwick: The issue of criminality is obviously one that we take extremely seriously, and we may talk about foreign national prisoners in a moment. Wherever somebody meets our criteria for deportation we will do everything we can to remove that individual.

Q18 Mr Clappison: This 160,000 figure, does that include people with criminal convictions?

Chair: Mr Clappison is looking for a "yes" or "no" answer.

Mr Clappison: Mr Sedgwick, just the facts please. Does the 160,000 figure include people who have criminal convictions accrued while they have been in this country?

Jonathan Sedgwick: There may be some individuals who have some criminal convictions—

Chair: The answer must be yes because it is in your letter, isn't it?

Jonathan Sedgwick:—but they will have accrued rights and courts would have determined that they don't meet the threshold.

Q19 Mr Clappison: How many?

Jonathan Sedgwick: I don't have that figure but I can—

Chair: It would be very helpful if we could have a note of how many.

Q20 Mark Reckless: Mr Sedgwick, John Vine, the Independent Chief Inspector of the UKBA, recently

gave a report on Tier 2 of the points-based system. I just wonder what response you had to a couple of his criticisms, in particular that a significant number of the sponsors, around November 2008, went on the register without adequate checks being made, and then post-check visits have been limited because of the lack of visiting officer resources, but also, it seems, because an assumption has been made that Tier 4 sponsors are the issue, rather than Tier 2 sponsors, without necessarily there being the evidence base behind that.

Jonathan Sedgwick: We don't accept that people have been put on the register without proper checks being made. All Tier 4 sponsors receive a visit before they go on to the register. In relation to Tier 2 and Tier 5 sponsors, we take a number of factors into account: how well we know the company, its sector, its age, its size, and we take a decision about whether on a risk basis we need to visit that company or not. No one is put on the sponsor register without us being confident and sure that they are a fit and proper company to be a sponsor.

Q21 Mark Reckless: Have you made that response previously to John Vine? Do you sort of report back what he says?

Jonathan Sedgwick: We have explained that to him on a number of occasions, yes.

Chair: Mr Vine will be coming to give evidence to us in April.

Q22 Mr Winnick: Arising from some of the earlier questions today, which you have been asked by the Chair and Mr Clappison, have you, as an organisation, any idea how many people are in Britain illegally?

Jonathan Sedgwick: The Government has been very clear that it is committed to reintroducing exit checks, because it wants to have proper systems in place so that it can count the numbers of those coming and the numbers of those going. At the moment we don't have those systems properly in place.

Q23 Mr Winnick: Say you had to give an estimated guess, which is always—

Jonathan Sedgwick: I don't think it is very sensible to make guesses. I don't think that would be particularly useful to the Committee.

Q24 Mr Winnick: I ask that, about an estimated guess, because the Mayor of London said—on what basis I don't know—according to him there are some half a million people in London alone, Greater London alone, who have no legal status in the United Kingdom. Was he talking sense or otherwise?

Jonathan Sedgwick: I don't know what the basis of that estimate was. As I say, I think the important thing is that the Government has said it is going to reintroduce exit checks because it wants a proper system so that it can be accountable for the numbers of those coming and going. I think that commitment for the future is the thing that is most important for this Committee at this stage.

Q25 Mr Winnick: Am I right in saying the crux of the matter is that UKBA as the Government, or the

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previous Government, as the case may be, and Governments before that, have no idea how many people are in this country illegally? It could be half a million in London alone, plus the rest of the country.

Jonathan Sedgwick: It is a fact that we don't have the systems that enable us to monitor coming and going. It is also important to be aware of how much we have done to make it, frankly, more difficult to function here without proper legal status. Our focus on employment checks for illegal working, the work we do scrutinising databases in relation to benefits and in relation to the NHS, is such to ensure that if people don't have the rights to be here it is not possible to do the ordinary things in life.

Q26 Mr Winnick: Yes, but would you accept the public have a right to be somewhat concerned, to put it mildly, that those in authority, UKBA in particular, don't have any knowledge whatsoever of anywhere near the numbers who are here without any authorisation whatsoever?

Jonathan Sedgwick: The Government is absolutely committed to transparency in this area. The Government feels it is very important that the public should know how many people are coming, how many people are going, the lengths and purposes of their stay.

Chair: I think the answer is no, you don't.

Jonathan Sedgwick: That is why we are improving the immigration statistics and that is why we are introducing these new systems.

Q27 Chair: Is the answer to Mr Winnick, no, you don't?

Jonathan Sedgwick: We don't have the systems in place at the moment to enable us to—

Q28 Mr Winnick: The last question: so what the Mayor said about London could be right?

Jonathan Sedgwick: I don't think it is sensible for me to speculate or comment or guess when we don't have the systems in place at this stage.

Q29 Alun Michael: Can we look at the Agency's record of success at Immigration Tribunals? It is rather bad. How much of that is due to faulty preliminary decisions? How much is due to bad case preparation? How much to a simple failure to turn up? Do you analyse those facts?

Jonathan Sedgwick: We do. You are pointing to an extremely important area of our work, an area that our new Minister has been focusing on very hard with us. In fact, in the period August 2010 to January this year we got our representation up to 83% of cases, but you are absolutely right, we need to—

Q30 Alun Michael: Sorry, you mean 83% is the percentage at which the Agency turned up?

Jonathan Sedgwick: Was represented, yes.

Alun Michael: Turned up.

Jonathan Sedgwick: Was represented, yes. There are a number of cases. Clearly we have to prioritise some of our resources. We have been doing a lot of work to train staff, to increase those representation rates, and they have very substantially increased, but you are

absolutely right that we need to focus on the quality of the initial decision, and—

Q31 Alun Michael: If you are not to going to turn up then surely the hearing should be cancelled, shouldn't it? They will believe you are throwing in the towel.

Jonathan Sedgwick: There may be low risk cases where, for example, we know that the other side isn't going to turn up and where the immigration judge is perfectly capable, on the basis of the evidence that he or she has in front of him or her, to come to a proper decision. We do have to take a judgment based on the reality of the case. Certainly whenever there are individuals who pose a risk, wherever there are—

Q32 Alun Michael: Sorry, but if it is being dealt with on written representations by both sides, surely that would not show up as a non-appearance?

Chair: Mr Michael is a Magistrate, so he knows about hearings and people not turning up.

Jonathan Sedgwick: Yes. Of course, we would like to be there for every single hearing. That is not always possible. We have been doing a great deal to improve our representation.

Q33 Alun Michael: So as not to take time, could you provide us with additional information on this and the direction it is going?

Jonathan Sedgwick: Of course.

Q34 Alun Michael: It seems a particularly important issue. We were told on a number of occasions how important the role of the head of the Agency was and that this is why your substantive predecessor was there and appointed and paid so much, yet she appears to have moved on without any successor planning. Has there been any planning of the risk that might be involved if you were to fall under a bus in the next day or two? It is not that I am wishing that on you, I want to make clear.

Jonathan Sedgwick: I am supported by a very experienced and talented team of colleagues on the UKBA Board. I am also accountable to Dame Helen Ghosh, who is about to appear in front of you, who has overall responsibility.

Q35 Alun Michael: So the role of the head isn't as important as it used to be?

Jonathan Sedgwick: The role of the head is extremely important, but—

Chair: It carries a salary of £175,000, so it is pretty important.

Q36 Steve McCabe: Can I just take you back for a second to exit checks. Can you tell us what is happening with eBorders? Do you have a new contractor yet or are you still in limbo?

Jonathan Sedgwick: We have been doing three things since the contract with Raytheon was terminated in the summer. We have been obviously pursuing the litigation and we are now embarked on a process of binding arbitration. We have been transitioning the existing services from Raytheon. We have done that in two phases. In November we novated the contract

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for the provision of Semaphore, which is the basic database—

Q37 Chair: Mr Sedgwick, can you start your answers with a factual response rather than the history. Mr McCabe says do you have a new contractor for eBorders?

Jonathan Sedgwick: I am just in the process of explaining that we have two new contractors for running our existing services.

Q38 Chair: Who are they?

Jonathan Sedgwick: IBM, to whom we have transitioned the basic database. We are about to transition to Serco the Carrier Gateway and the National Border Targeting Centre, which is where we do our watchlist checking. The third piece is then, of course, to look at the provision of new services. We have been focusing very hard on our priorities, particularly prior to the Olympics, the things that we most need to add.

Q39 Chair: Mr McCabe is coming on to that. You have now two new contractors who are undertaking eBorders—is that your answer to this Committee?

Jonathan Sedgwick: In fact we haven't completed the novation to Serco; that could happen today or in the next day or two.

Q40 Chair: So you don't have two contractors.

Jonathan Sedgwick: We have IBM in place. We are in the process of transitioning to Serco. It will be in place in the next few days.

Q41 Chair: You are in litigation with the previous contractor?

Jonathan Sedgwick: That is correct.

Chair: Excellent.

Q42 Steve McCabe: You are about two years behind schedule at the moment, that is right, isn't it? Where are we going to be next year? Will you be on track, or will you at least be up to the 60% figure?

Jonathan Sedgwick: In fact, of course, since July we have brought more carriers on to eBorders—four more carriers—and we have brought 300 new routes. We are now getting 55% of coverage on journeys, 90% outside the European Union.

Q43 Steve McCabe: By December last year you should have been at 95%, both passengers and crews. You are nowhere near that. Where are you?

Jonathan Sedgwick: We are now at 90% of journeys outside the EU, 55% within the EU. So we have continued to make progress since the contract came into force.

Q44 Steve McCabe: For somebody like me who wants to get it simple, I just want to know. You had this target; you are off it. Where are we going to end up? In a year's time will you be back on target or will you be saying, "Oh, I have a wee bit here and a wee bit there"? I just don't follow this. Just simple would make it easier for me.

Jonathan Sedgwick: Clearly the poor performance of Raytheon has been a setback to this programme. You wouldn't expect me in this situation to go into the details of that poor performance, so clearly there has been a setback.

Q45 Chair: No, but you can tell the Committee how much it has cost. How much did we pay Raytheon?

Jonathan Sedgwick: I think we have paid Raytheon £188 million to the termination of the contract.

Chair: £188 million.

Jonathan Sedgwick: Clearly that is the subject of the litigation because—

Q46 Chair: You paid them £188 million—

Jonathan Sedgwick: Over the period.

Chair:—but you still feel they have not done a good job?

Jonathan Sedgwick: The Government wouldn't have terminated the contract if it did not believe that the performance of Raytheon justified it.

Q47 Chair: How much are you paying IBM?

Jonathan Sedgwick: I don't have those figures to hand. I can certainly provide them to the Committee.

Q48 Chair: How much are you paying Serco?

Jonathan Sedgwick: Again, I would be very happy to provide those figures to the Committee.

Q49 Chair: That £188 million is lost, is it?

Jonathan Sedgwick: It is the subject of binding arbitration, which is the process that we are now embarked on.

Q50 Chair: We have already paid them £188 million?

Jonathan Sedgwick: We have paid them that money and—

Q51 Chair: Did the contract not include performance-related payments?

Jonathan Sedgwick: The contract did and that is all the subject of the arbitration.

Q52 Steve McCabe: One last question: I am not sure I am too clear about where we are in getting on track but, nonetheless, what about the data protection issue? That has been the other obstacle to you doing what you said you were going to do. Are you any nearer to resolving that?

Jonathan Sedgwick: Could I perhaps just try to answer your first question?

Steve McCabe: That would be useful, yes.

Jonathan Sedgwick: The Government is committed to fully implementing and introducing exit checks, as it set out in the Home Office Structural Reform Plan, by 2015. That is the point in which those checks would be completely in place, and we believe we are on track to meet that.

In relation to data protection, we have agreed with the European Commission how eBorders can work in a way that is compatible with data protection requirements, and we are continuing to work with a number of EU Member States to ensure that their data

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protection authorities are satisfied with the way that the system is working.

Q53 Steve McCabe: Can I ask on that, is it true that the data that you require is contrary to the data protection laws of many of the countries you need to deal with? Is that the problem?

Jonathan Sedgwick: The Commission are confident, as they have formally written to us, that eBorders is compatible with the overarching EU data protection framework.

Q54 Dr Huppert: We talked earlier about the existing asylum legacy cases. What proportion of new asylum cases have been concluded within your six-month deadline?

Jonathan Sedgwick: On the new asylum cases, we have recently refocused as a result of the new Government coming in and looking at the new asylum model. We have deliberately taken the decision to refocus away from a kind of narrow focus just on the six-month deadline—

Q55 Dr Huppert: Before you talk about refocusing, is that because you were completely failing to hit 90% within six months?

Jonathan Sedgwick: No. We have been improving our performance. We are now turning around in 60% of cases first decisions within 30 days. We are getting faster and faster but—

Q56 Dr Huppert: Before you talk about the new models, what is the current figure for concluding cases within six months, which was the old target that you were working to?

Jonathan Sedgwick: At the time when we decided that that would no longer be the target, it was bumping something in the 60%.

Dr Huppert: We have seen figures of 40% to 45% coming.

Jonathan Sedgwick: That is, in part, the impact of the early legal advice pilot that I was talking about a few moments ago. Because if you take more time up front to improve decision quality, that obviously impacts on the time taken to get to the end of the decision. One of the things that the Government is keen to enable us to focus on is a more balanced view of performance, so we should look at decision quality, we should look at the whole performance end-to-end of the system, right through to the conclusion in every case.

Q57 Dr Huppert: So having accepted that you failed to conclude within six months—it seems to me, that making the right decision early would lead to a faster process—what is the new collection of metrics that we should be measuring you on?

Jonathan Sedgwick: We are looking at every aspect of the process, so asylum intake—we have a 20-year record low asylum intake at the moment, and that is bucking the trend against the rest of the European Union. We certainly need to look—

Q58 Dr Huppert: Asylum intake is people applying, is it?

Jonathan Sedgwick: Indeed, yes.

Q59 Dr Huppert: Why is that something that UKBA can measure and influence?

Jonathan Sedgwick: Because there has been a great level of concern in the past, rightly, about numbers of those coming illegally to the UK, claiming asylum wrongly. That, of course, is something of the history that lies behind the legacy cases that we were discussing a few moments ago. Certainly, we think we should begin by looking at asylum intake. We should look at the quality of our decisions, therefore our success and our performance at appeal is very important. We should look at timing and we should look at removals. We should look at every stage of the process and, indeed, the unit cost of the whole decision process.

Q60 Dr Huppert: Will you be publishing targets on which we can hold you to account for each of these things? Or is it just by collecting enough different figures?

Jonathan Sedgwick: We will be publishing all of this information very transparently for Parliament and the public, so that the public can see how we are doing in every bit of the system.

Q61 Dr Huppert: Have you set targets for what you want to be achieved?

Jonathan Sedgwick: No, because the Government is very clear that it, in effect, drives perverse behaviour if you simply pick an individual target. The Government wants to see broad improvement across the whole system, and it will publish data that enables Parliament and the public to exercise a judgement about how effectively we are doing that.

Q62 Chair: Mr Sedgwick, I think you said in answer to James Clappison that nobody gets on the register until they are visited; is that right?

Jonathan Sedgwick: No, it is for a full sponsor.

Chair: Yes. Is that right?

Jonathan Sedgwick: It is.

Q63 Chair: How is it that we are still finding bogus colleges that have gone on the register and then subsequently found out to be bogus?

Jonathan Sedgwick: As I say, every new case goes on the register and we have visited every existing case. Of course, it may be possible that not every visit results in the identification of problems in a particular college but, as you know, we currently have very substantial numbers. We have revoked 65 sponsors in Tier 4 since the points-based system came into effect. We currently have—

Q64 Chair: How many years is that? Slow down, you revoked 65 sponsors in how many years?

Jonathan Sedgwick: We have been operating the system for student sponsorship for the past 2½ years.

Chair: So 65 in 2½ years.

Jonathan Sedgwick: With very much an intensification over the last period. We have been increasing the productivity of our visit staff. We have been collecting more and better information about this. The Committee may be interested to know we currently have 70 colleges suspended.

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Q65 Chair: Excellent. As far as the cost to the asylum system and housing asylum seekers, you are aware of the correspondence between myself and the Minister about the Andrew Waldron case?

Jonathan Sedgwick: I am, yes.

Q66 Chair: What is the current cost to the taxpayer of the asylum system—housing asylum seekers?

Jonathan Sedgwick: We currently spend around £400 million a year on asylum support. I don't have the precise figures to hand of what component of that is on housing, I will certainly very gladly provide that.

Q67 Chair: Thank you. I think the feeling of the Committee is they were most grateful to you for the letter that you provide on a regular basis, but we are concerned about the fact that, out of the 403,000 cases that form part of the initial backlog, only 9% of the people have been removed; and that you will have granted indefinite leave to 161,000 people, 129,000 were errors, and I think 19% are described as "others". That is 76,500, and there are still 74,500 people in your Controlled Archive. Although of course there have been improvements—in other words the backlog has gone—we are concerned as to where the backlog has disappeared to, some into a room called a Controlled Archive—

Jonathan Sedgwick: Which will be checked every six months against a list of 19 databases.

Q68 Chair: Of course. But 161,000 of whom have been given indefinite leave to remain. So one wonders, with the cost of the UK Border Agency—at the end of the day, you have only removed 9% of the 403,000—was it all worth it?

Jonathan Sedgwick: That is 36,000 people. We think it has resulted in savings to the taxpayer of around £260 million.

Q69 Chair: I understand that, but, Mr Sedgwick, as a proportion it is a very small proportion, isn't it? 9% out of 403,000, that is what concerns the Committee. The second concern is over eBorders—the fact that £188 million appears to have been, in effect, wasted on Raytheon.

Jonathan Sedgwick: It is the subject of litigation.

Q70 Chair: Of course, but we have spent this money. This is taxpayers' money that has been spent.

I think at the end of the day, although we are extremely grateful to you for all the information you provide, we will be writing to you with further information that we would like on a regular basis. We would like to examine you once a term, rather than four times a year, and produce perhaps a more comprehensive report. I think if you have more advance notice of what the Committee wants it will be easier for you to respond. We are in this together. Parliament is on the same side as the UKBA, and the

same side as the Government in trying to ensure that this whole system is done as efficiently and as effectively as possible.

Jonathan Sedgwick: Thank you. I think you will find that in our new business plan you have a very transparent set of information that will enable the Government to account for its performance very broadly.

Chair: So I will be writing to you. The next time we will examine you is in July. I think Ms Phillipson has a quick question.

Q71 Bridget Phillipson: Very finally, I appreciate the moves that are being made by the UKBA to have open dialogue with Members of Parliament where correspondence is ongoing, and I think it is welcomed that you can now contact directly, for example, an account manager and have that kind of conversation when seeking an update.

Q72 Jonathan Sedgwick: I had a very helpful session last week, indeed, with nearly 100 MP staff.

Q73 Bridget Phillipson: The one thing I would stress is: can we not move away from having written correspondence and written responses? I am concerned that it is not a substitute, because when constituents write to me they do expect a written response and, given the very technical nature and the sensitive nature of some of the issues that arise, it is not for me to paraphrase the UKBA's position, so why was telephone updates important?

Jonathan Sedgwick: We do understand that and, in relation to both telephones and the email account, while we can often answer the question in that way, we are very happy to follow it up with a letter, even if you have contacted us in that way. You simply have to say, because we entirely take the point that you make.

Q74 Chair: I think we would all like to re-emphasise what Ms Phillipson has said; we want written communication because that is what will satisfy the constituents, even though people may ring up. Obviously our case workers are extremely busy and that written confirmation is what the constituents always want.

Jonathan Sedgwick: You will no doubt be pleased that we are answering 88% of your letters within our target time.

Chair: We may sound ungrateful in not thanking you for this, but, yes, we are grateful, and I am grateful to you for the way in which you deal with your correspondence when you are written to, you do reply very promptly.

We are extremely grateful to you for that and for the quality of your letter, which has provided us with so much information with which to question you. Thank you very much, Mr Sedgwick.

Tuesday 17 May 2011

Members present:

Keith Vaz (Chair)

Mr James Clappison
Dr Julian Huppert
Steve McCabe
Alun Michael

Bridget Phillipson
Mark Reckless
Mr David Winnick

Examination of Witness

Witness: **Mr John Vine CBE QPM**, Independent Chief Inspector, UK Border Agency, gave evidence.

Q75 Chair: We now change topics for the purposes of a one-off review of the work of the Independent Chief Inspector of the UKBA. Mr Vine, thank you very much for coming today to give evidence. As you know, we like to, as a Committee, see the Independent Chief Inspector from time to time. Can I also place on record my thanks to you and your staff for the work that you do? I think that when you last appeared before us the Committee was perhaps concerned as to what your role was, whether it would be independent enough, whether you could combine the two previous roles that covered your area, but I think I can say that I have been very impressed with the work that you have done, both praising and criticising the Home Office—a very difficult feat sometimes—and I think that they have been very helpful. So thank you very much, and thank you for keeping this Committee informed on a regular basis as to what you do.

In a report last year, the Ombudsman alleged that many of the problems of the UKBA were caused by the sudden change of policy priorities. Do you think that the fact that policy decisions are now going to be taken in the Home Office itself rather than the UKBA is going to hinder the process of proper immigration control?

Mr Vine: Well, thank you for your opening remarks, Chairman. The question you pose is not something, of course, I have looked at as part of my inspection programme. What I am concerned to look at is the efficiency and effectiveness of the organisation in whatever format it is configured by policymakers, and I believe at the moment those changes haven't taken place; no new head of the organisation has been appointed. So I think it would be difficult for me to comment and perhaps wrong for me to speculate on whether that split of function would have an impact on the day-to-day operation of the agency.

Q76 Chair: The National Audit Office has today published a report through the auspices of the Committee of Public Accounts—I don't know whether you have seen this report—which estimates that 180,000 workers who are staying in the UK without permission because their leave has expired but they haven't renewed their right to be here.

Mr Vine: Yes.

Chair: You are aware of that figure? Is it a surprise to you?

Mr Vine: No, I am aware of the figure from the original report that the Committee received. Of course, I contributed to that debate with my own

report, the Tier 2 report, where I found there was an equal concern about the Border Agency's capability of identifying those people who remained in the UK who should have had their leave curtailed. At the time I did my report the Border Agency weren't able to tell me how many people were in that category. They subsequently told me there were 150, and there were 3,000—

Q77 Chair: So those are official figures, 150,000 people?

Mr Vine: No, 150.

Chair: People?

Mr Vine: People, and that was the figure I put in my report.

Chair: Right, okay. That is a bit different from 181,000.

Mr Vine: It is. Well, 181,000 of course covers—I think the PAC report covered the whole of the visa categories. I was looking specifically at Tier 2, but the same issue applies in that the agency couldn't tell me at the time of inspection how many people remained in the UK under Tier 2 and who should have had their leave curtailed. They then came up some months later with a figure of 150, plus a figure of 3,000 notifications that had been made by sponsoring employers to the organisation. I believe that figure has now gone up to 4,000 notifications, and that was in their response to my recommendations. I think it is unacceptable that the Border Agency is not able to provide an accurate figure, to know the figure and, indeed, have a systematic process of enforcing the curtailment of leave under Tier 2.

Chair: Indeed. I think you will find that the Committee will find that unsatisfactory as well, and we will certainly pursue that ourselves.

Q78 Mr Clappison: Just to take that slightly further, how do you explain, or how do they explain, the difference between the 4,000 figure and the 150, because in each case of the 4,000 there would be somebody who was working here and they should have their leave curtailed?

Mr Vine: Yes. Under the sponsorship system, the sponsor has a responsibility to notify the Border Agency of a change in circumstances. That may range from somebody coming to the end of their time under Tier 2 and then they have 60 days before their leave needs to be curtailed, but it could also mean that somebody has moved from that employer to another employer. So they have to go through that figure to

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discover out of that 4,000 figure how many then need to be curtailed, so that is the difference. It is the same with the Tier 4 sponsorship system. Where you have a system that relies on sponsorship, the agency still has a responsibility, I think, to have processes in place that can ensure that there is compliance with the system.

Q79 Mr Clappison: Yes, and also with the sponsors. Can I move on to the sponsors, because you also had things to say about enforcement in terms of inspection of sponsor employers.

Mr Vine: Yes.

Mr Clappison: What would be your view of what best practice would be and where improvements can be made?

Mr Vine: I made recommendations for the agency to go back to its register of sponsors and check that it was accurate and up to date, because I discovered in the inspection that at the time of the creation of Tier 2 at least 6,000 sponsors had been placed on the system without having a prelicensing visit. So, while all the mandatory checks, the police checks, had been made in relation to sponsors, there is a danger that there are sponsors on the system who haven't had a prelicensing check, and so I think the Border Agency should go back and relook at the sponsor database. That was the view of many of the staff who I interviewed when I was conducting the inspection. Furthermore, they should have a system in place to ensure that they keep that up to date.

Q80 Mr Clappison: Do you think the UKBA have the resources to do that?

Mr Vine: I am aware, of course, that as in every other Government Department, resources are going to be increasingly tight, but I think it places an obligation on the Border Agency to work smarter, to take more of an intelligence-led approach. I know it is a bit of jargon but I think it means that they have to work smarter to achieve the same result with fewer resources. So it almost places an obligation on them to do better.

Q81 Bridget Phillipson: We frequently hear anecdotal evidence about the police picking up individuals who are then identified as illegal immigrants, or individuals or colleges or other public bodies making reports to the UKBA about people they believe have overstayed and should no longer be in the UK, but the problem with that appears to be that that is not always followed up, or certainly they don't feel that they have confidence that those cases are followed up. If it is not the job for the UKBA, who should be doing it? If it is their job, why is there such a problem with public confidence around that area of enforcement?

Mr Vine: I reported last week. I published two reports, one on the use of intelligence by the Border Agency and a report, it was a short notice inspection of an enforcement visit, and I think they go to the heart of your question. Every year, over 100,000 pieces of information come in to the Border Agency from the public, from the police and other organisations. It averages out at about 2,000 a week. I found the Border

Agency had a process of analysing that information, but couldn't tell me what the outcome of any of it was. So they couldn't, for example, tell me as a result of the 100,000 pieces of information they got last year how many immigration offences had been detected, how many persons had been arrested, how many individuals had been deported as a result. I said it was unacceptable in the report; I stick by that comment. I think they need to be far more outcome-focused in their analysis of information and intelligence to ensure that the situation you describe improves dramatically and that people can see as a result of assisting the Border Agency in this way that something happens as a result: either immigration offences are detected or there is an outcome.

Clearly there is joint work required between the police and other agencies and the Border Agency. In my intelligence report, I did find that the agency were improving the ways in which they were working with other agencies, particularly with organisations like the Serious Organised Crime Agency and the police and others, but I did feel as though there was more intelligence that could be gleaned through partnerships with colleges, information perhaps that case workers who are interviewing applicants for asylum might give them. There is a whole range of information that I think could be tapped into.

Q82 Bridget Phillipson: During the course of our inquiry into forced marriage we received some evidence that in those cases where a victim of forced marriage may make reports to the UKBA that they didn't want that person brought into the country, it wasn't a marriage they wanted to support, it wasn't always possible for them to receive updated information from the UKBA. I appreciate that there are some difficulties around this, but whether the UKBA could look to make sure that where people have shared information, an action has been taken, that that person, particularly in the rather delicate situation of forced marriage, could receive information that could make them a lot safer.

Just to give one further example, when I managed a women's refuge we would make reports where we had it around the immigration status of perpetrators of domestic violence. Certainly I did that on a number of occasions where the woman was very clear that the person had overstayed. It was impossible to ever receive any update as to whether action had been taken, which would have put the victim at a reduced risk of harm and would have given real reassurance, and could have ultimately helped the police, helped other agencies.

Mr Vine: Yes, I entirely accept that, and I found that time and time again in a number of reports, for example when I looked at the removal of families who had no right to remain in the UK that was a feature, the fact that the Border Agency need to tailor much more their response to the needs of individual families. But you will be pleased to know that in my inspection plan for this year, I am proposing to look at sham marriages as a specific thematic inspection.

Q83 Chair: That is very helpful, but the point that Bridget Phillipson makes is echoed by the Committee.

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We are having this long running not dispute but discussion with the UK Border Agency over data protection issues. Exactly as she said, if somebody comes into this country as the spouse of a British citizen and that person has come here unlawfully and the British citizen complains to the UK Border Agency about their spouse, they are not even kept informed as to whether or not that person has been removed from the country. They hide behind data protection issues. We had the Information Commissioner here a few weeks ago, and he said that this should be looked at on a case-by-case basis. Where is the data protection issue where the person who is in this country is fraudulently here? Do you understand the point?

Mr Vine: Yes, I understand the point. It is not something I have looked at specifically, but it is something—

Q84 Chair: No, but could we ask you to look at it, and join us in our crusade to try and get to the bottom of this?

Mr Vine: I am always willing, Chair, as you know, to listen to anybody who wants to inform me about where I should prioritise my work, so yes, I will certainly take that on board.

Chair: Because obviously we are here to be helpful. If somebody is here unlawfully, they have abused their wives or their spouses and they should not be here, they may then get indefinite leave, because the system isn't perfect, and then bring another spouse into the country. How can that be helpful?

Mr Vine: Yes, I understand.

Q85 Mark Reckless: It may be that some of the problems that employers have found with Tier 2 visas have been under the temporary cap, but I wonder if there is a longer term issue, and perhaps as you have identified in your report. Do you think the issue can be dealt with satisfactorily by UKBA improving its guidance to employers?

Mr Vine: Yes, except I would say that when I have spoken to staff in relation to the Tier 2 inspection, invariably they say there is a tremendous amount of guidance and it changes very regularly. One of the problems that they feel that they have to cope with is an ever-changing landscape in terms of the guidance. So, yes, I think the guidance has improved and the agency has improved its guidance in a number of areas as a result of the recommendations that I have made, I am pleased to say. But I was talking to an entry clearance officer only the other day and one of the issues that they raised—in fact, they thrust into my hand the latest Tier 2 guidance that had just come from the Border Agency—and the point that they were making was, “We have just got used to the guidance. Sometimes the new guidance doesn't indicate where it has changed from the old guidance”. So it is not received with tracked changes, so it is difficult for the staff to know. So I think it could help, but I think there is an issue as well of overburdening staff with too many changes too frequently.

Q86 Mark Reckless: Could we deal with the issue of this great complexity of all the guidance and the

difficulty that sponsor employers have with it simply by auctioning the pool of Tier 2 visas so that firms can sort of bid and we just have a market clearing price for them?

Mr Vine: I think the conclusion I came to about the whole system—and it is endorsed, I think, by the PAC report—is that essentially it is a very fair and straightforward system if it is applied consistently, but what I often find, and I think employers find this as well, is that there is an inconsistency very often in the way that it is managed. A good example of that was when I looked at three locations where Tier 2 visas were issued. We looked at Sheffield, which is the UK hub, Manila and Mumbai. There is a tremendous disparity of practice between all three locations. For example, in Sheffield, case workers deal with five cases a day. In Manila, it is 35 to 40 a day. In Mumbai, it is between 45 and 55 a day. So there is an inconsistency in the approach to looking at the applications and granting the visas. I think there needs to be more consistency by the Border Agency across the piece in the way that it manages the process. That was a recommendation I made, and the Border Agency have accepted all the recommendations, so I think they acknowledge that that is an issue.

Q87 Chair: We understand that some of this work was outsourced and people came in to help with the case work, is that right, the legacy cases in particular?

Mr Vine: Yes, I think that is the case.

Q88 Mr Winnick: The latest quarterly figures, Mr Vine, show that on asylum—and I emphasise asylum cases—the situation is that some 27 cases, appeals, were allowed, 67 dismissed and six withdrawn. Do you think that is the right balance considering that over a quarter were allowed? In other words, the agency lost the case.

Mr Vine: I am concerned generally about the Border Agency's approach to appeals, and this is something that concerns me across the whole spectrum of work I look at, not just asylum. For example, the successful appeal rate at the moment, I think, in relation to visas is 47%, which is extremely high.

Mr Winnick: Indeed. Much higher clearly than asylum, which I have quoted as 27%.

Mr Vine: That is right. In Tier 2, just going back to the Tier 2 report, I think it was 36%. So it varies enormously and there seems to be a varying sort of approach, depending on which parts of the Border Agency I inspect, as to whether that is something that should be looked into. For example, it was a very positive aspect of the Tier 2 report that they were very concerned to look at their appeal rate and learn from it, although what they concluded from that was that they didn't have enough presenting officers in court and that is why they were losing the appeals, at least in part.

In relation to visas, when I had a look, for example, at the visa regime in Islamabad and Abu Dhabi, I was concerned to find that there seemed to be no willingness at all to look at the high appeal rate and the reasons why the Border Agency were losing so many cases. In fact, at the time I was there they were losing 52% of all their decisions. As a former chief

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constable, if I was losing that sort of number of cases at court I think I would be having quite a few senior officers around the table and asking a few difficult questions about whether we knew how to put evidence together in a court case. So I think I would like to see much more activity and urgency on the part of the Border Agency generally in attempting to get the decision right first time and reducing the number of appeals, perhaps by setting a target for the reduction of appeals from where it is across a range of categories at the moment.

Q89 Mr Winnick: The argument of the Home Office, the presenting officers, or at least the spin they put on this, is that the situation has changed and while the adjudicator, according to the immigration rules, should consider the case as it was when the application was made and refused, he or she—the adjudicator, or rather the immigration judge nowadays—takes into consideration as well the present circumstances. Do you think there is any substance to that argument?

Mr Vine: Yes, there is some substance to that, but I don't think it accounts for the high appeal rate generally. I think there is some substance to that, but I am publishing a report on Friday in relation to a presenting officers unit in Scotland, which will give more information. Clearly, I can't talk about that at the moment. I think part of the problem as well is that when the new asylum model was brought in to create a new approach to deciding asylum cases, what was brought in with it was a concept of there being no presenting officers but the case workers going to the tribunal and presenting their own cases. I think what the Border Agency has found is that in practical terms this has not always worked, because it would mean that many of the case workers would be leaving to travel some distance in some cases to the court, and obviously not being there to carry on and deal with their case workload. So what we have is a mixed approach at the moment. Some parts of the UKBA have a presenting officers unit still; other parts of the Border Agency use case workers who go along in accordance with the theory of the new asylum model.

Q90 Mr Winnick: Mr Vine, there is speculation around—or perhaps more than a speculation, though no official statement has been made—that the Government is considering abolishing the right of appeal for visitors, which of course at the moment is restricted, and has been since it was reintroduced, to family visitors. In that case, if it did come about, the Government or the appropriate agency, the UKBA, would be judge and jury in their own case, wouldn't they?

Mr Vine: I go back to the point I made, that when I have examined these cases, I would like to see a much better appeal rate than currently exists, and I think the Border Agency should concentrate on getting the decision right much more frequently than it does.

Q91 Mr Winnick: But if there is no appeal, there will be no incentive to do that.

Mr Vine: Well, yes, if that were the case, but as far as I am aware, that is not policy, that has been a leaked

report to the newspaper and it is not something, I don't think, I can comment on at the present time.

Mr Winnick: It wouldn't have been in the newspapers unless it had been well leaked but, as you say, that is not your responsibility at the moment.

Q92 Bridget Phillipson: Just to return to the issue of asylum cases, obviously there is an important balance to strike between the time taken to reach a decision and the quality of that decision, and my concern is that sometimes speed is given precedence over the quality, which then stores up problems for the UKBA in the long run, because you end up in a long-running system of an appeal and a tribunal, which ultimately costs more money. Is pressure being put too much on staff to reach decisions quickly and therefore the decisions are not of sufficient quality, and how far are we being dogged by the mistakes of the past, where decisions took a long time but we shouldn't necessarily allow that to cloud what is happening now?

Mr Vine: I absolutely agree with the premise that you pose. I think there should be far more emphasis on quality rather than trying to get through a particular figure. What I have found in my inspection is that very often there doesn't seem to be any rationale for the performance targets that I find are in place. So when I ask staff if they have had any input, for example, into them, if anybody has asked them whether they think they can deliver what is being asked of them, invariably they say no. I have commented in many reports on this. For example, when I went to Islamabad and looked at visas there, I think the target on the day I was there was 60 cases per entry clearance officer. When I had a focus group with staff, they said, "Well, unless you are particularly experienced, it is unlikely you can get through 60 cases a day, and if you come across a difficult case then obviously a complex matter takes longer to consider". I think that worked out at about four minutes per case. So I agree with you. I think that sometimes somewhat arbitrary performance targets have been selected without a clear rationale for them being selected, and that does mitigate against quality of decision-making, which I think comes round in terms of extra cost incurred, not just through appeals but dealing with administrative reviews and also dealing with reapplications, because some clients won't trust the administrative review process and they will just advise applicants to reapply, pay another fee. That adds to the workload that the UK Border Agency had in the first place.

Q93 Mr Clappison: Just very briefly coming back to the point you made a few moments ago about having, I think you said, a target for the number of appeals that arose in asylum cases. I understand the point that you have been making about this, about quality decision-making, but the decision-maker can't control whether or not the person decides to make an appeal or not. Surely there must be a danger if you put that target on them of encouraging the decision-taker to grant positive outcomes in order to reduce the number of appeals.

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Mr Vine: Yes, that is a very good point. What I would say is that I would like to see more effort by the Border Agency in addressing the issue. It is really not for me to come up with, I suppose, solutions for them; they can come up with their own solutions. But my recommendations have been around—what has concerned me is that sometimes the Border Agency has not shown any willingness to look at the reasons why they are losing so many, and I think that is—

Mr Clappison: Yes. A presenting officer's case, if a presenting officer doesn't turn up, I mean that probably tells the tribunal all they need to know.

Mr Vine: That is true, that is true.

Q94 Chair: We have drawn attention to the fact that I was at York House a few weeks ago and there is a whole court that consists of just applicants. There are no presentation officers there, which was bizarre.

Mr Vine: I will be able to comment more fully after Friday, Chairman.

Chair: Indeed.

Q95 Dr Huppert: Can I first pick up David Winnick's very important point about economic and family migration appeals? The figures we have been given are that appeals were successful in 54% of occasions, those figures from UKBA, and I am sure we would all agree that if you are losing most of your appeals there is something wrong. Would you agree with me that as long as there is such a high error rate being made by UKBA it shows that it is essential to have that appeal route as an exit?

Mr Vine: The point that was being made by Mr Winnick was, of course, immigration judges can decide on the same facts to come to a different conclusion from an entry clearance officer or from a case worker. So I don't think that figure of itself indicates that the Border Agency is making so many errors. They obviously have a very high appeal rate and that should concern them. There are other factors in place. My concern is that they should reduce that and provide a better quality of service to the customer. At the end of the day they have a customer strategy but I think I would be fair in saying that, in my view, based on the evidence I have looked at so far, they have some way to go to making that more of an everyday reality.

Q96 Dr Huppert: Indeed, and I think your evidence has been quite devastating. There is a lot of work for whoever takes over running UKBA to do. I think in Canada, if I am correct, the appeal rate is something like 0.5%, more like 1%, so it shows what can be done.

Just because we are running against time, can I quickly move on to the backlog of asylum cases, the legacy programme? Are you comfortable that that will clear soon? Do you think it has been a good use of public money to clear it and are we at risk of building up another backlog to clear in the near future?

Mr Vine: When I looked at this in 2009 and published my report in 2010, I was of the view that I was really concerned about a new backlog emerging under the new asylum model. At the time, I found that there were 30,000 cases in a new queue and out of service

standard teams were being put together hastily to try and deal with them, and I think that is where the emphasis must lie really now. When I looked at the backlog of cases, we looked at the criteria that were being used and we found the Border Agency were applying the criteria, bearing in mind that I did put in the report that Ministers had changed the criteria to allow the grant of asylum to those who were in the country for between six and eight years as opposed to eight and 12 years. So the criteria had been changed but the Border Agency, to all intents and purposes, were applying those criteria in accordance with policy. The concern I also had was that there should be something put in place at the end of this process, which I believe is being put in place by the Border Agency, to capture the cases that have not yet been resolved.

One thing that did concern me in that report, and it is an increasing concern of mine, is that in some cases it was difficult to see what rationale the Border Agency had used to grant asylum. In some cases, if you looked at the free text that was on the file it was difficult there to see why asylum had been granted. I remember publishing in my report a particular case study where an individual had applied fraudulently for asylum under a different name. He had been refused under his original name, applied fraudulently, asylum was granted but it was not possible from the casework to discover the rationale behind why asylum had been granted. That is an increasing problem I find in looking at grants of visas and other issues. The audit trail needs to be there in order to safeguard the agency and to safeguard individuals.

Q97 Dr Huppert: Is this a product of trying to mop up the mess that was left by the legacy programme getting so big? Can I also pin you down on your concerns about the current growth in the backlog? How big do you think it is now and are we likely to see similarly poor decision-making with this new backlog?

Mr Vine: I noted from the last report that the Chief Executive had given this Committee that that backlog was not in that update. You would have to ask him what the state of that is now. I couldn't really comment on the first part of your question about whether this was a mess going back. This post wasn't created then and I don't have any information from inspection in relation to that.

Q98 Mr Clappison: Can I very briefly comment on that point you are making about the fraud that you uncovered? Can you just tell us which programme did you find that fraud in? You told us about a case where an asylum seeker had—not an asylum seeker, somebody had applied fraudulently for asylum under a false name and had been granted it.

Mr Vine: That was case study 4 in the report I published in 2009 on asylum, and what I was pointing out was I had concerns that it was difficult for an inspector to look at particular cases and discover the rationale why a decision had been made in that particular case. I think it is really important from the agency's point of view that they have systems and

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procedures that ensure that somebody inquiring into a case can easily see why a decision was made.

Q99 Mr Clappison: Has that improved since 2009?

Mr Vine: I would say not on the basis of my inspection of visas and other parts of the agency. It is becoming an increasing concern of mine that in, for example looking at visas that are granted, for example in my report on Oman that I published two or three weeks ago, of the 50 cases I looked at where there was a grant of visa, I felt that in 17 of those cases the decision was made not in accordance with the evidence.

Q100 Mr Clappison: You are only looking at a sample of these cases, so could it be possible that this is much more widespread than just these few cases?

Mr Vine: When I conduct, for example, a visa inspection, we look at a sample of 350 to 400 cases out of whatever the post manages. In Oman, it is around 25,000 cases a year so I wouldn't wish to speculate; I simply would like to say that is what I had in the report.

Q101 Chair: In effect, an amnesty has been granted to the people on the legacy programme, because only 9% of the people have been removed.

Mr Vine: Is that a question then, Chair?

Chair: I am asking you, is that—

Mr Vine: I know it is only 9%. I know that the figures show that only 9% have been removed from the backlog.

Chair: Exactly. There has been a huge amount of public expenditure, the policy changed, and only 9% were removed of the 400,000 cases.

Mr Vine: As I said, when I looked specifically at the issue, I found what I have already described to you.

Chair: Indeed.

Q102 Alun Michael: I think it is just a little bit difficult to get at the process and improvement issues that you are talking about, the sort of experience that many of us have of dealing with individual cases and the feeling sometimes that there are unfairnesses that are difficult for those working within the system to cope with. Standing back a little bit from the examination of specific arrangements, I wonder if you have any wider suggestions of how the whole system could be improved, given the experience you have had now of looking at a whole series of individual circumstances?

Mr Vine: That is a very good question. I have made over 160 recommendations to date, I think, and since I last appeared before this Committee I have published

21 reports. I said this last week when I published one of my reports, when I was a chief constable it was very easy for people to understand what I did. The Border Agency covers such a breadth and depth of work that is not encountered by many ordinary people that I think it is very difficult for them to convey the extent of the responsibility that they have. I also think that they have had an awful lot of change and they are still a very young organisation. So for example, the merger of the Immigration and Customs cultures is still something that they wrestle with in terms of joint working at ports and so on. So it is an organisation that has undergone tremendous change, probably too much change, I might say, at the moment. They are probably wrestling with an awful lot of change that any other organisation perhaps might not be embracing all at once.

Q103 Chair: Are you planning to do any work on diplomatic passports and the extension of the rights of the visas of diplomats coming here? Has that ever come to your attention?

Mr Vine: That is not an issue that has come to my attention, Chair, no.

Q104 Chair: I may send you details on that. Finally, if you were giving marks out of 10, John Reid famously said that the Home Office was not fit for purpose. You were then appointed to do a proper inspection.

Mr Winnick: Arising from that remark?

Chair: How would you rate the Home Office now, marks out 10?

Mr Vine: I don't think it would be very helpful if I gave a mark. I would give different marks out of 10 depending on the scrutiny that I had under way at a particular time.

Q105 Chair: But do you think that they are fit for purpose?

Mr Vine: I think it is a variable picture. I can see improvements in many aspects of the work, for example handling of professional standards, nationality and parts of the Tier 2 report were very good for them as well. So I think it is a very variable picture. I think slow improvements.

Chair: We all look forward to the appointment of the next head of the UK Border Agency. You are not applying?

Mr Vine: I have not applied, no, Chair.

Chair: Mr Vine, thank you very much for coming today to give evidence. Thank you for all your good work.

Written evidence

Correspondence from the UK Border Agency to the Committee

I am writing to provide the Committee with information on our progress with deporting foreign criminals and our conclusion of the caseload of historic asylum cases (legacy cases) since Lin Homer's letter of 1 November 2010.

The information provided here is subject to revisions for the same reasons Lin Homer has set out to the Committee before regarding data quality.

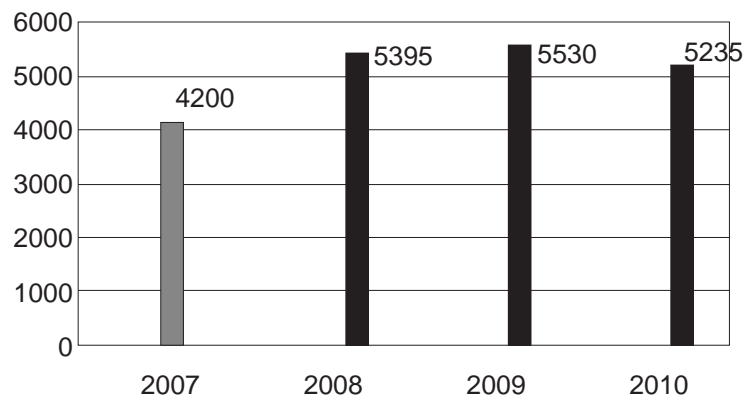
DEPORTATION OF FOREIGN NATIONAL PRISONERS (FNPs)

1. We have greatly improved the way we deal with foreign nationals who commit crimes in this country and have deported or removed over 22,500 foreign national prisoners from the UK since 2006.

2. We have published information which shows that we removed or deported 5,235¹ foreign national prisoners in 2010. This included over 60 individuals found guilty of murder, attempted murder or causing death, over 350 sex offenders, and over 1,650 drug offenders. Of the drug offenders removed, more than 1,000 had been convicted of the production or supply of drugs, around 250 convicted of possession with intent to supply drugs, and almost 400 had been convicted for the importation of drugs.

3. Our performance over the last four years demonstrates our effectiveness in removing foreign national prisoners (see Figure 1). Though we expect to continue to remove similar levels of foreign national prisoners per year, it is unlikely that we will see any further significant jumps in performance given the ongoing challenges, including the international picture. We are working hard to sustain our performance and continue to work with the prisons, courts and police to build on our capability to gather intelligence information on nationality at an early stage.

Fig.1 Foreign national prisoners removed/deported by calendar year

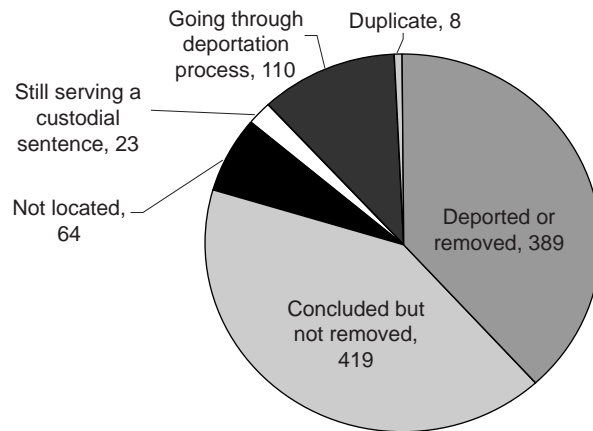


¹ Quarter 1—1,340, Quarter 2—1,260, Quarter 3—1,410. Source: Control of Immigration: Quarterly Statistical Summary. United Kingdom (after data cleansing). Quarter 4—1,225—subject to data cleansing

THE 1,013 CASES OF FNPs RELEASED WITHOUT CONSIDERATION FOR DEPORTATION

4. The progress and outcome of the 1,013 cases released without consideration before 2006 as at 7 February 2011 is summarised in Figure 2.

Fig.2: FNPs released without consideration for deportation

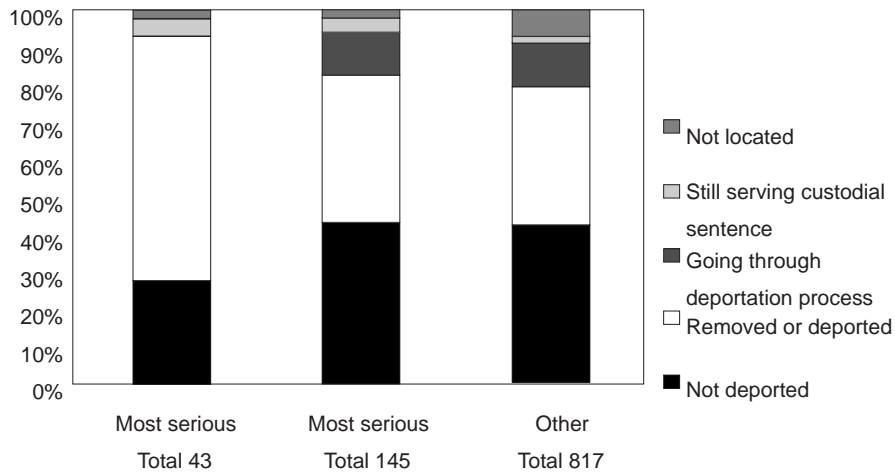


5. We continue to make steady progress with these cases despite their age and complexity and we have removed a further six cases since the last update in November, including four drug offenders and an individual with a conviction for possession of a firearm. In addition, we have traced six more foreign national prisoners who had been at large.

6. The outcomes broken down by seriousness of offence are illustrated in Figure 3. It shows, for instance, that of the 43 most serious cases, deportation was the outcome in two-thirds of cases. Among the “more” serious cases and those in the “other” category of offenders, non-deportations were higher than deportations.

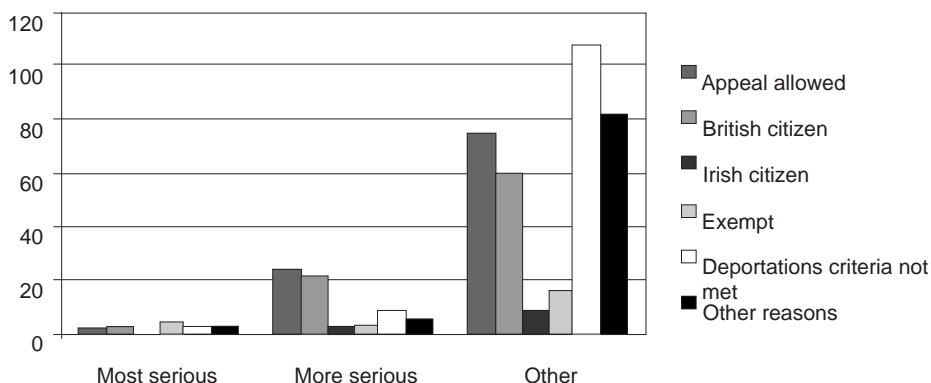
7. A higher proportion of the “most” serious cases have been concluded (93%) than the “more” serious (83%) and “other” (79%).

Fig.3: FNPs released without consideration for deportation by seriousness of offence (excluding 8 duplicate record)



8. Figure 4 below sets out details by seriousness of offence of the 419 concluded cases that did not result in removal or deportation.

Fig.4 Reasons for concluded cases not removed or deported



9. The UK Border Agency continues to work hard to clear the backlog of older asylum cases and had concluded over 403,000 cases at 31 January 2011. Of these cases, 40% were grants, 9% were removals and 51% were cases concluded for another reason (eg duplicate records or controlled archive)—see Figure 5. Figure 6 shows the number of cases remaining in the legacy programme between July 2006 and January 2011. I am confident that we remain on track to complete the programme by summer 2011. However, as Lin Homer has previously stated, there are some cases that we will struggle to conclude before the end of the programme, for example, because they are awaiting removal, have impending prosecutions or ongoing litigation.

Fig 5. Outcome of cases dealt with under 'legacy' backlog to end January 2011

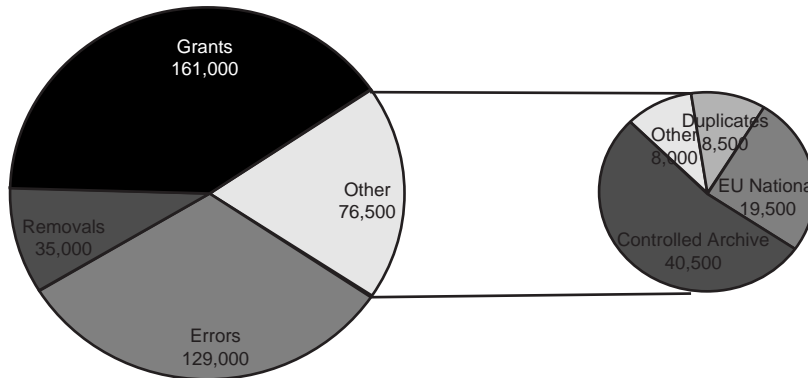
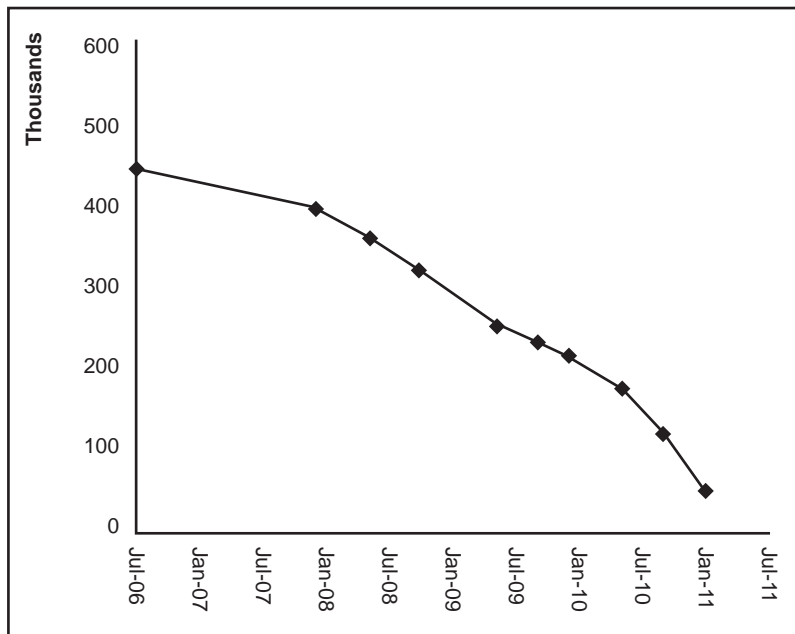


Fig.6: Estimated size of asylum 'legacy' backlog since July 2006

10. As Lin Homer has previously explained to the Committee, inevitably, there will be people that we struggle to trace, including those who have left the UK voluntarily. The agency makes every effort to trace such cases, checking a number of internal and external databases. If this tracing fails, the case is placed into the controlled archive. Once a case has been in the controlled archive for six months it is included in conclusions statistics. The agency has now placed 40,500 cases into the concluded controlled archive. This means that they have been in the controlled archive for more than six months and have "matured". There are currently another 34,000 cases that have been waiting in the controlled archive for less than six months and these will mature in the coming months. We do expect to have some cases in the controlled archive at the end of the programme that have been commissioned but not concluded. Plans are in place to continue to manage these cases which I will explain shortly.

11. The agency remains determined to remove support for those who are not entitled to it, delivering savings for the agency and the taxpayer. In the life of the programme so far, we estimate that our Case Resolution Directorate (CRD) has saved £260 million through ceasing asylum support.

12. Our work with Serco, our delivery partner, has now finished as almost all cases have now passed through the "front end" of the process.

13. We are already undertaking transitional work to prepare for the end of the programme. This includes plans for a small Case Assurance and Audit Unit (CAAU) which will be responsible for residual work on the CRD controlled archive and cases that have been reviewed but not fully concluded. This team will continue to monitor the controlled archive pool and will take forward strategic targeting of potentially traceable cases. Due to the length of time cases will spend in the controlled archive and the low rate of re-emergence, from 1 April we are planning to reduce the frequency of checks we undertake to once every six months. Should a case come to light, we will still take it out of the archive and casework it to a conclusion. As we have previously stated, cases with significant criminality will not be placed in the controlled archive. We plan to begin the transition of work to CAAU on 1 April.

OUTSTANDING MIGRATION CASES

14. We have now concluded around 3,000 outstanding migration cases which breaks down as 800 grants and 2,100 other conclusions.² This work was completed by a small team in Manchester who has focussed on demand-led cases so that those with more exceptional circumstances have been prioritised.

15. Work to clear the non-asylum archive will increase as the work to clear the asylum backlog draws to a close. I remain confident that we will clear the outstanding migration cases by summer 2011. We have now completed work to fix the cohort which stands at 40,000 cases and contains 32,000 cases that have no outstanding applications. We are checking these cases against databases that will inform us whether they have left the country as the age and nature of the applications makes this scenario very likely.

² Figures may not sum due to rounding

Minister of State for Immigration, Damian Green, will place a copy of this letter in the House.

March 2011

Further correspondence from the UK Border Agency to the Committee

I want to make you aware of two announcements that we have made to staff in the UK Border Agency today.

As we near the end of work to clear the asylum legacy cases, introduce a limit on migration, and with certain areas of work coming to an end this year, volumes of casework coming into the Agency are reducing. At the same time, introduction of the new integrated caseworking (ICW) system will speed up processes and reduce the amount of work involved in migration applications later this year. All of this, coupled with implementation of the spending review, will lead to a considerable reduction in posts. We are proposing managing the reduced volumes of casework in fewer locations, consolidating the work into Liverpool and Sheffield as the centres for permanent and temporary migration respectively.

Croydon is the single largest centre of the Agency's operations, with 5,000 staff based there, including most of the case resolution directorate (CRD), whose work ends shortly. The proposal to consolidate migration work in two regions will also bring that work to an end in Croydon. The need to begin now, to manage these changes, is therefore most pressing in Croydon. That is why senior managers have today informed 1,450 caseworking staff (in 1,300 full-time equivalent (FTE) posts) there that they are being included in a unit of redundancy. This means that those staff will be able to apply for 540 long-term posts in caseworking. By August, when we plan to have completed the selection process, there will be 760 fewer long-term posts in Croydon. We expect to recruit to a number of temporary posts at the same time that will provide people with substantive work through into 2012. We will also give all of the staff affected the opportunity to apply for voluntary redundancy terms. We want to do everything we can to avoid the need for compulsory redundancies.

Caseworkers and caseworking staff in the following areas of the business are affected: CRD, who are clearing the asylum legacy; the criminal casework directorate (CCD), who deport foreign national prisoners; permanent and temporary migration caseworkers in Croydon; and the immigration group's judicial review unit (JRU), who casework applications for judicial review. Frontline enforcement teams, in-country and at the border, are not affected by this proposal. Announcement today begins three months of formal consultation with staff and trade unions.

I also wanted to inform you that the Home Office will announce, on Tuesday 1 March, the transfer of responsibility for policy on immigration and borders issues, to an existing Home Office Director General. This will create a stronger policy group who will also be responsible for strategy, identity, and international business for the Home Office as a whole. A competition to appoint the new Director General will commence shortly.

As a result of this change a number of teams within the UK Border Agency's existing Policy and Strategy Group will transfer into the core Home Office. The change will create a stronger centre for strategic policy at the heart of the Home Office, able to work flexibly across thematic boundaries to support the full breadth of the Home Secretary's agenda. At the same time, it will enable the new Chief Executive of the Agency and his or her senior team to provide continued focussed operational leadership at a time of great financial, performance and managerial challenge. This change will take effect upon the appointment of either the new Chief Executive or the Director General, whichever is the sooner.

March 2011

Supplementary written evidence submitted by the UK Border Agency

I am writing to follow up a number of issues raised by your Committee at my evidence session on 5 April.

LEGACY ASYLUM CASES

The Committee requested information about the numbers of people who had committed serious criminal offences and were able to stay in the country as a result of the legacy programme. The Committee will be aware from previous correspondence that in summer 2009, the responsibility for dealing with those cases within the legacy cohort which involved serious criminals, was transferred to the agency's Criminal Casework Directorate (CCD), with the intention that those who posed a serious risk to the public would be deported, where possible. Serious criminals are defined by those that cross the CCD threshold of either: a court recommended deportation; non EEA nationals that are given a prison sentence in excess of 12 months or EEA nationals that are given a prison sentence in excess of 24 months.

CCD has processed these cases as part of their overall caseload and as such it would not be possible to provide a breakdown for the number which previously had been part of the legacy programme.

Of course, it is the case, as with other legacy cases that the passage of time means that some will have strong claims under Article 8 of the European Convention on Human Rights (ECHR). Every case is judged on its own merits and in some cases the strength of the Article 8 claim will outweigh that of the public interest

in deportation. In cases of serious criminality we will rigorously pursue deportation, but where the courts determine in favour of the Article 8 claim we must comply with their ruling. In such cases, applicants would not have received a grant of Indefinite Leave to Remain but a shorter period of Discretionary Leave.

Cases that are below the CCD threshold will similarly have been considered on their own merits—including the extent to which the applicant might have accrued certain rights under the ECHR—and may have received a grant of indefinite leave.

PERFORMANCE AT IMMIGRATION TRIBUNAL

The Committee requested further information about our analysis of UK Border Agency performance at Immigration Tribunals. In 2009/10, HM Courts and Tribunals Service Immigration and Asylum disposed of 197,500 appeals. Of those, 38% were allowed, 54% dismissed and 8% withdrawn. Management information for July–December 2010 indicates the following split of allowed appeals across migration groups:

<i>Category</i>	<i>% allowed</i>
Asylum	27%
Deportation	25%
Economic and Family Migration	54%
International Group	36%

We are committed to embedding a right first time every time approach to decision making and we use the information we learn from appeals heard to improve our processes. A programme of work is underway to improve performance on appeals with a particular focus on reducing the number of appeals in the system, improving representation and organisation, and working in partnership with HM Courts and Tribunals Service. A monthly statistical analysis of appeals performance is produced, allowing actions to be focused on areas to improve performance and assessing the impact of completed projects. For example, we have introduced Entry Clearance Manager reviews pre-appeal which saw the withdrawal of visa decisions increased from 15 to 20% over the last six months, preventing unnecessary appeals.

We are also committed to ensuring high quality representation at court and are increasing representation rates through a number of initiatives. These include: training asylum case owners to present other types of appeal; disseminating regional best practice to ensure high productivity; and managing, and seeking to reduce, the flow of appeals into the system in areas such as out of time or invalid appeals. For example, training case owners in London so that they can present all appeal types has resulted in an 18% increase in representation over the last three months.

As I mentioned at my evidence session, our records show that between August 2010 and January 2011 there were just over 83 000 hearings, at which the UK Border Agency was represented at 84%.

The Case Information Database does not record the reason for non-attendance at an appeal by a presenting officer nor does it record reasons for an allowed appeal. The system simply records whether the UK Border Agency was present and whether the appeal was allowed or dismissed. It is therefore not possible to provide the breakdown requested of reason for non-appearance compared to the reason for an allowed appeal from centrally compiled records.

However, sampling of cases where an appeal has been allowed shows that for some categories of cases, notably in-country Points Based System (PBS) and entry clearance appeals, the greatest proportion of appeals are allowed because new evidence is brought to the appeal which was not available at the time of the original decision to refuse: for example, our sampling shows that 63% of PBS allowed appeals are allowed for this reason. Such cases are a waste of both judicial and UK Border Agency resources. We believe that it is not right that the taxpayer should foot the administrative and appeals bill where someone could have put forward information at an earlier stage or made another application and we are looking at what can be done to tackle this. Changing behaviour in these cases will enable the limited resources we have for presenting officers to be better deployed in cases where representation is a priority such as hearings involving vulnerable appellants or those who may cause harm in the UK. In addition, we always ensure that asylum cases in the detained fast track and any cases that go on to the Upper Tribunal are represented, consistently achieving 100% representation in these cases.

The decision about whether or not to proceed with a hearing is a judicial matter, and nonappearance by either party will not routinely lead to a cancellation of the hearing. The UK Border Agency's representation records are compiled on the basis of our appearance at hearings rather than appearance by the appellant. However, where we know that the appellant has opted for their appeal to be dealt with 'on papers' in advance and consequently a hearing does not take place, the agency does not include such cases in the representation figures.

We may take pragmatic decisions not to attend in some cases, instead relying on written submissions to the court where a case is strong or the appellant has indicated they will not be in attendance, thus preventing cross examination, or where the witnesses' credibility is not in question.

The Asylum Improvement Project continues to work with the UNHCR to improve quality of decision-making and is piloting ways to reduce allowed appeal rates. We are also working with partners, including the Legal Services Commission, to ensure legal advice is provided early on in the asylum process and give case owners more information to assist in decision making.

E-BORDERS

The Committee also requested details of the cost of our contracts with IBM and Serco. Further to my evidence to the Committee, I am pleased to be able to confirm that we completed the novation of the contract for RP1 (Carrier Gateway) on 15 April. The value of the two year contract we have awarded to Serco, to manage the RP1 interface and National Border Targeting Centre (NBTC), is £29.7 million for core services contract, and an additional £5 million for Oracle licences and support plus utility charges. Of the £29.7 million the first year component is £15.3 million and the second year is £14.4 million.

Prior to novation, e-Borders paid Serco for rent and rates at the NBTC, totalling £160k per quarter.

We novated the contract for Semaphore with IBM on 25 November 2010, the annual contract costs are £5,012,188 and associated third party licences are £1,931,483.

ASYLUM COSTS

The Committee requested information on the amount spent by the UK Border Agency on housing asylum seekers. The agency provides support to asylum seekers who would otherwise be destitute from the time they arrive in the UK until their claim is decided, and any appeal rights are exhausted. When it has been finally determined that an asylum seeker does not need international protection, support is discontinued.

Support is also provided to failed asylum seekers whose claims have been rejected by us and the courts but who face a temporary barrier to return, and there are additional safeguards for families with dependent children under 18 when they become appeal rights exhausted who continue receiving support until they leave the UK. Therefore, no asylum seeker or failed asylum seeker need be destitute while they have a valid reason to be here.

The agency also provides payments to Local Authorities for Unaccompanied Asylum Seeking Children and for those then Leaving Care and grants to Voluntary Organisations to support asylum seekers and failed asylum seekers including support to those granted refugee status.

We have taken a number of steps since 2002—when asylum support costs peaked at £1 billion that have reduced the number of people we support, and the length of time we support them. These include bringing intake under control; speeding up decision-making and concluding newer cases; concluding the legacy caseload; and reforming the further submissions process.

The table at Annex A shows the audited support spend by type over the last five years. Provisional figures for 2010–11 show that expenditure is expected to be £400 million with approximately £145 million of this spent on accommodation.

May 2011

APPENDIX A

ASYLUM SUPPORT COSTS

<i>SUPPORT COSTS</i>	<i>2005–06</i>	<i>2006–07</i>	<i>2007–08</i>	<i>2008–09</i>	<i>2009–10</i>	<i>2010–11¹</i>
	<i>£m's</i>	<i>£m's</i>	<i>£m's</i>	<i>£m's</i>	<i>£m's</i>	<i>£m's</i>
Dispersed Accommodation	183	155	181	128	123	100
Initial Accommodation ²	37	31	26	19	16	8
Cash Support	103	100	99	69	68	56
S4—Payments to destitute Failed Asylum Seekers—Accommodation ³	41	50	51	64	71	39
S4—Payments to destitute Failed Asylum Seekers—Subsistence	18	21	22	27	31	17
Local Authorities ⁴	69	4	1			
UASCs ⁵	151	144	85	142	158	115
Leaving Care	31	14	20			
AS Travel	4	3	5	6	6	5
Grants ⁶	18	11	12	21	33	41
Special Projects	2	5	3	4	4	
Total Asylum Support Payments	626	524	485	511	524	401

Notes:

¹ Forecast outturn subject to audit

² Includes provision for wraparound services such as medical and other professional support.

³ Includes approx 30% of subsistence payments previously in the form of vouchers now through a payment card the remainder is accommodation.

⁴ Payments to LA's for support provided by LA's on behalf of UKBA (cash and accommodation not accounted separately).

⁵ Payments to local authorities for support to UASCs (cash and accommodation not accounted separately). 07/08 reduction in spend represents the results an audit of payments to LA's. The 08/09 payment includes catch up payments for unpaid special circumstances claims from prior years.

⁶ Grants to voluntary sector organisations to support asylum seekers through the application and dispersal. From 09/10 grants also include Gateway grants to DWP (and some voluntary organisations) for targeted refugee programmes and Integration service provided by voluntary sector to support integration of those granted leave to remain in UK.

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