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Home Affairs Committee

UK Border Controls

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Report, together with formal minutes

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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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1 Inquiry into the provision of UK Border Controls

Sequence of events

1. On Friday 4 November 2011, it was reported that Brodie Clark, the Head of the UK Border Force, had been suspended along with two other Border Force officials while claims that he had authorised the relaxation of border checks without ministerial approval were investigated. The Home Secretary made a statement to the House on Monday 7 November in which she suggested that Mr Clark had exceeded the terms of an agreed trial of a risk-based approach to entry controls. The Home Secretary stated:

On Wednesday, the head of the UK border force, Brodie Clark, confirmed to Mr [Rob] Whiteman that border controls had been relaxed without ministerial approval. First, biometric checks on EEA nationals and warnings index checks on EEA national children were abandoned on a regular basis, without ministerial approval. Biometric tests on non-EEA nationals are also thought to have been abandoned on occasions, again without ministerial approval. Secondly, adults were not checked against the warnings index at Calais, without ministerial approval. Thirdly, the verification of the fingerprints of non-EEA nationals from countries that require a visa was stopped, without ministerial approval. I did not give my consent or authorisation for any of these decisions. Indeed, I told officials explicitly that the pilot was to go no further than we had agreed.¹

She announced the establishment of three inquiries into the issue, two led by civil servants and one by the Chief Inspector of the UK Border Agency.² The following day, Mr Clark left the Home Office and announced that he would be pursuing a claim for constructive dismissal.

2. The precise facts of the case are disputed and the Home Office has denied us access to original documents that would have helped us to clarify the sequence of events and we shall consider this further below. The main sequence of events was as follows:

- In December 2010, the UK Border Force began work on devising a pilot of ‘risk and intelligence-led’ border checks, as a possible alternative to the process-based system in which every person is subject to the same checks at the border, depending on their nationality and visa status.³
- In July 2011, the scope of a trial was agreed by Ministers. Under the terms of the pilot, officers could use their judgement to decide whether to read the biometric chip, which contains a second photograph of the passport holder, in UK and EEA passports (where they had such a chip). They could also use their judgment to decide whether or not to

1 HC Deb, 7 November 2011, col.45

2 HC Deb, 7 November 2011, col. 45-46

3 The UK Border Force is a part of the UK Border Agency. During our report, we refer to the UK Border Agency as the Agency—we do this although it is an integral part of the Home Office and not a separate arms-length body.

check children travelling in school parties or with parents against the Home Office Warnings Index (a “watch list” of suspected terrorists), rather than being required to do so in all cases. A third proposal from the Border Agency, that checking the fingerprints of non-EEA nationals requiring visas (a process known as “Secure ID”) should no longer be done automatically in all cases, was not approved by Ministers.

- On 29 July, an Interim Operational Instruction was issued to UK Border Force staff setting out the agreed terms of the trial, to take effect from 29 July until mid-September.⁴
- On 14 September, the pilot was reviewed and it was agreed that it should be extended until 4 November on the basis of encouraging preliminary results.
- Between 26 September and 19 October, John Vine, the Independent Chief Inspector of the UK Border Agency, made an inspection at Heathrow Terminal 3, during which he says he raised concerns with Brodie Clark about the frequency with which Secure ID checks were being suspended.
- On 2 November 2011, Mr Vine met Rob Whiteman, Chief Executive of the UK Border Agency. During this meeting, Mr Vine referred to the suspension of Secure ID at Heathrow. It is not clear to us why there was a delay of several weeks between Mr Vine’s discovery and his decision to raise the issue with Mr Whiteman at a routine meeting.
- Following this meeting, Mr Whiteman held discussions with both Mr Clark and Jonathan Sedgwick, former acting Chief Executive of the UK Border Agency. He told us that Mr Sedgwick confirmed that Ministers had not consented to the suspension of Secure ID as part of the pilot. Mr Whiteman also said that Mr Clark admitted during the course of these discussions that he had gone beyond Ministerial authority, although Mr Clark denies that he made such an admission to Mr Whiteman during those discussions.
- On 3 November, Mr Clark was suspended pending an investigation. Home Office Ministers and the Permanent Secretary were informed of the situation.
- On 7 November, the Home Secretary made a statement to the House on UK Border Force.
- On 8 November the Home Secretary gave evidence to this Committee. In the evening of the same day, Brodie Clarke left the UK Border Agency, claiming constructive dismissal.
- On 15 November we took evidence from Brodie Clark and Rob Whiteman.
- On 22 November we took evidence from Helen Ghosh DCB, Permanent Secretary at the Home Office and Damian Green MP, Minister for Immigration.

4 UK Border Agency Interim Operational Instruction No. BF 01 29 11, dated 28 July 2011. Appended to this report.

- On 8 December we took evidence from Jonathan Sedgwick, International Group Director of the UK Border Agency, who was the acting Chief Executive of the UK Border Agency during the summer of 2011.

Our inquiry

3. On 8 November, the day after her statement to the House, the Home Secretary gave evidence to us and again repeated the assertion that Mr Clark had gone beyond Ministerial authority. That evening, Mr Clark issued a statement in which he said that the Home Secretary had made his position untenable. He announced that he had left the Home Office and would be making a claim for constructive dismissal in the light of the behaviour of the Home Office and comments made to Parliament by the Home Secretary:

Those statements are wrong and were made without the benefit of hearing my response to formal allegations. With the Home Secretary announcing and repeating her view that I am at fault, I cannot see how any process conducted by the Home Office or under its auspices, can be fair and balanced.⁵

4. There have been several high-profile failings for which the UK Border Agency has been responsible in the past and there are ongoing concerns about the Agency's performance. For this reason, we hold three sessions each year with the UK Border Agency Chief Executive and regularly produce a report on the workings of the Agency.⁶ We continue to monitor the work of the UK Border Agency closely, and as part of that process we decided to investigate this matter.

The pilot and the suspension of Mr Clark

5. Before the pilot was introduced, entrants to the UK were all supposed to be subject to a standard range of checks at the border, depending on whether they were EEA or non-EEA nationals and, in the case of non-EEA nationals, whether or not they held a visa. Border Force officers had no authority to waive checks, except under the Home Office Warnings Index ('HOWI') Guidance, described below. In late 2010, the UK Border Force started development on a pilot of 'risk-based' border checks, allowing the Border Force to use intelligence reports and officers' own judgement to target the passengers and luggage on flights that were considered to be high-risk. In its draft form, this pilot allowed three checks to be omitted at officers' discretion—opening the biometric chip in British and EEA passports, checking children against the Warnings Index, and checking the fingerprints of visa holders to confirm their identity (Secure ID). Only the first two of these measures were agreed to by Ministers. The third, which allowed the suspension of the automatic use of Secure ID in all cases, was not.

6. The biometric check consists of opening a second, electronic copy of the photograph of the passport holder, stored on a microchip, in order to ascertain that the original photo has not been tampered with. The Warnings Index is a database of terrorist suspects and others

5 www.fda.org.uk/Media/UK-Border-Force-chief-constructively-dismissed.aspx

6 These reports can be found at: www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/publications/

who are not to be admitted to the country. Finally, Secure ID is a fingerprint check. Foreign nationals applying for a visa must provide their fingerprints which are then checked against immigration and criminal databases. On arrival at a UK port, Secure ID is used to ascertain that the person carrying the visa is the person who was granted the visa.

7. According to the leaked interim operational instruction, the agreed pilot measures therefore were to be undertaken “for short periods at a time [...] (up to several hours)” in order to avoid having to use customs officers to staff passport control desks where there was a high risk associated with goods entering the country, or where delays at passport control could have a more serious or critical impact on the operations of the post, such as a risk to passengers’ health and safety, a “baggage crisis”, passengers being detained on aircraft or disruption to flight schedules.⁷ The pilot started at the beginning of August. It was initially due to finish in late September but was extended to 4 November.

8. In her statement to the House, the Home Secretary accused Mr Clark of taking the pilot further than had been agreed:

First, biometric checks on EEA nationals and warnings index checks on EEA national children were abandoned on a regular basis, without ministerial approval. Biometric tests on non-EEA nationals are also thought to have been abandoned on occasions, again without ministerial approval. Secondly, adults were not checked against the warnings index at Calais, without ministerial approval. Thirdly, the verification of the fingerprints of non-EEA nationals from countries that require a visa was stopped, without ministerial approval.⁸

When he appeared before us, Mr Clark initially denied that he had exceeded Ministerial authority. He did admit though that he had allowed the suspension of Secure ID to continue at Heathrow when he learnt of it in early 2011 and confirmed to the Committee that he had not sought specific Ministerial authority to do this despite suspension of Secure ID having not been approved when he proposed it as part of the pilot:⁹

Nicola Blackwood: If I could continue asking Mr Clark a little bit about the 2007 warning index guidance. I understand that it is a restricted document, so most of us haven’t seen it apart from you, so it is helpful to hear a little bit from you. When you decided that you thought it was sensible to expand the meaning of the warnings index to include fingerprints, did you seek any ministerial authority for that?

Brodie Clark: I didn’t expand the warnings index document to mean fingerprint matching.

Nicola Blackwood: Sorry, I thought that that was what you said in answer to my—

Brodie Clark: The suspensions at Heathrow were in order to preserve the watch list checking at Heathrow. The Home Office warnings index policy would have required us normally to suspend watch list checking. I would never do that, and would do

7 UK Border Agency Interim Operational Instruction No. BF 01 29 11, dated 28 July 2011. Appended to this report.

8 HC Deb 7 November 2011, col.45

9 Q18-23, Q83-86

everything I could to avoid doing that. Indeed, the management at Heathrow also took that view. I therefore approved that we suspended the fingerprint matching in order to preserve the watch list checking. I did it to preserve the safety of the UK, not to weaken it.

Nicola Blackwood: With no ministerial authority?

Brodie Clark: The matter was not raised with the Minister.

Nicola Blackwood: With no ministerial authority? Yes or no? Did you ask any Minister whether it was possible—

Brodie Clark: No. I did not raise it with any Minister.¹⁰

Mr Clark said that the suspension of the Warnings Index checks and Secure ID checks had been carried out not as an extension to the 2011 risk-based pilot but under a policy approved by Ministers in 2007, known as the Home Office Warnings Index (HOWI) Guidance,¹¹ although he later stated that the policy for suspension of Secure ID in health and safety emergencies had only been in place since 2010.¹² Indeed, it is not possible that the Home Office Warnings Index Guidance 2007, in its original form, could have expressly authorised the suspension of Secure ID as the check was not introduced until March 2010. Mr Clark has denied any knowledge of biometric checks on non-EEA nationals being abandoned¹³ and Rob Whiteman acknowledged to the Committee that Mr Clark had not admitted to authorising the suspension of biometric checks on non-EEA nationals to him at any point but that their conversations had focussed on the suspension of Secure ID and the use of HOWI Guidance for suspension of checks at Calais.¹⁴

Home Office Warnings Index Guidance

9. The Home Office has refused to provide us with a copy of the HOWI Guidance, a document we believe to be of importance as it has been discussed extensively in oral evidence to this Committee, as well as in the House itself. It is our understanding that it was developed to deal with health and safety situations in which it became necessary to downgrade border checks to respond to or avert a crisis such as a fire in the airport;¹⁵ a build-up of passengers in the arrivals hall that prevented passengers from disembarking from more recently landed aircraft and, in turn, preventing aircraft from landing;¹⁶ and, at Calais, queues of vehicles backed up to the motorway, presenting a road-safety risk.¹⁷

10 Q84-86

11 Q1, Q38

12 Q18

13 Q88

14 Q238

15 Q333

16 Q24

17 Q54

10. Mr Clark told us that the relaxation of Secure ID and of Warnings Index checks was carried out under these guidelines, not under the terms of the pilot.¹⁸ Secure ID was not introduced until 2010,¹⁹ several years after the HOWI Guidance was issued. However, Mr Clark's view was that the Secure ID check was less important than the Warnings Index check. It was one of nine checks that were carried out on visa entrants, and one of the least important in his view, whereas the Warnings Index check was the principal counter-terrorist check. His reasoning was that, if the circumstances warranted the suspension of the Warnings Index check, they must surely have warranted to suspension of the fingerprint check.²⁰ In oral evidence to the Committee, however, Rob Whiteman explained that he believed that the reason Ministers were opposed to any reduction of Secure ID checks was because they did not agree with Brodie Clark's assessment of them as 'secondary checks'²¹ due both to the deterrent effect of the check and because "of course, if somebody is found by that, it is actually quite a high-risk case—if somebody has gone to the position of forging the photograph in comparison with the photograph on the chip—so, although the number might be very low, Ministers were of the view that the risk value of an incident would be high."²²

11. We are shocked at the sheer number of times the HOWI guidelines have been invoked—almost 100 times at Calais alone.²³ Mr Clark told us that the guidelines had been used on at least 50 occasions between May and July 2011 and then on a further seven occasions between August and October 2011.²⁴ The Immigration Minister, when questioned about the number of times the guidelines had been implemented, confirmed that he expected to be informed every time a situation occurred which required the relaxation of border controls.

Chair: There is some criticism that you, as Immigration Minister, ought really to have been doing the heavy lifting on this, but at the end of the day, the Home Secretary has been very much to the forefront. Given what you have seen and what the Committee has seen over the last two weeks, hearing Dame Helen's evidence about the way in which the Border Agency is operating, and noting the fact that she talked about a culture at the highest levels of the border force, do you feel there was some responsibility on the part of Ministers to sort out what appears to be rather chaotic decision making in respect of what the Border Agency was doing?

Damian Green: I do not think it was chaotic at all; I would not characterise it like that. Clearly, what seems to have happened is that very relevant information was withheld from Ministers, and, as you say, it appears to be have been happening for a period of time. Of course, as Immigration Minister, I am informed of emergencies; that is what I find most disturbing. I have heard people say, "Shouldn't you have known if things were happening in an emergency situation?" Of course I am

18 Q1

19 Q18

20 Q41, Q78 & Q84

21 Q17 and Q228

22 Q282

23 Q225

24 Q26

informed about emergencies. There are emergencies in the immigration system from time to time, as everyone knows, and some of them are directly relevant to this type of thing. Since I have been Minister, for example, there has been a fire in one of the terminals at Gatwick, which required the evacuation of large numbers of people, some of whom were evacuated from air side to land side, so the agency had to chase after them and try to check them through retrospectively, as it were. Those kinds of things happen, and I, as Minister, would be informed of them. So if the 2007 guidelines were being used in an emergency, as they were meant to be, I would have expected to be informed.²⁵

However, when questioned on whether he thought that the HOWI Guidance was being used inappropriately Rob Whiteman told the Committee:

Nicola Blackwood: Could I ask whether you are of the opinion that the 2007 guidance has been used in an inappropriate way, given the evidence that you have received over the past few days?

Rob Whiteman: I would say that the guidance relates to significant health and safety problems. For instance, if at Calais traffic was backing up to the péage, the motorway, or if flights were in the air and, therefore, the operators felt that they could not operate a safe airport, I think that the use of those provisions 100 times is greater than is likely to have been caused by significant health and safety problems. Although, as I said, this is a matter that John Vine will investigate, I think that there was confusion on the ground about what provisions were being used in relation to different checks. I think that the health and safety provisions became used routinely, rather than being used only in those circumstances.²⁶

Either the number of staff at the border is inadequate to cope with passenger numbers, or senior staff have been too ready to authorise the suspension of Warnings Index checks, or some combination of the two. In either case, Ministers should have been made aware and, if they were not, this is serious failing on the part of senior Agency staff.

12. We are very concerned that the Home Office Warnings Index Guidance 2007 might be being used inappropriately at local level as a management tool instead of an emergency provision. We recommend the Agency conduct a full review of its use of the Guidance since its introduction, clarify to all ports the limits of authority which they have to implement it and ensure that robust reporting and monitoring mechanisms are in place for its continued use.

Brodie Clark's departure from the UK Border Agency

13. There are clear disagreements between Mr Clark, Mr Whiteman and Dame Helen about the sequence of events that led up to Mr Clark's departure. Mr Clark has indicated that he is bringing a claim for constructive dismissal against his former employer. These matters are, or might soon be, for consideration by an employment tribunal. We therefore make no comment about the circumstances of Mr Clark's departure from the UK Border

25 Q398

26 Q239

Agency, but we are grateful to him for coming to give evidence to us at a time when he was under a great deal of personal pressure, and for declining to speak to the media until he had done so.

Communications between the UK Border Agency and the Home Office

14. the UK Border Agency is described as “an executive agency of the Home Office” but it is in fact an integral part of the Department. While it has its own management and budgetary structure, the UK Border Agency is still under the aegis of the Home Office and it no longer formulates its own policy—that is the responsibility of Home Office Ministers, on the advice of Home Office and UK Border Agency officials. The Permanent Secretary has provided us with a detailed description of the various ways in which Home Office Ministers and officials exercise oversight of the UK Border Agency.²⁷

15. The oversight described by Dame Helen appears to be extensive at all levels. This, if nothing else, indicates that at some point there must have been a substantial and serious breakdown in communication. In evidence to us, the Permanent Secretary admitted that the nature of the discovery of these relaxations of border checks—by the Independent Inspector rather than one of the many boards which oversee the work of the UK Border Agency—indicated that the current methods of oversight were not effective.

Chair: Finally, before I ask colleagues to come in on the pilot, isn't it strange that, despite the fact that we have all these people working for UKBA and that you as permanent secretary have given us a list in your letters of all the boards and supervisory boards that exist, it took a chance visit from Mr Vine—presumably he has been visiting since he became the independent chief inspector—to discover this most extraordinary circumstance whereby thousands of people were allowed into the country without having their fingerprints checked? With all these people employed by UKBA and all these people sitting on boards, it was just a chance visit.

Dame Helen Ghosh: As I said in my opening remarks, I think it gives us cause to consider the chain of management information and our process for checking it. I think it also raises cultural issues around the leadership of Border Force.²⁸

It may be that this confusion has been compounded by the number of changes that have taken place in the past year – the appointment of a new Permanent Secretary at the same time as the departure of the Agency Chief Executive in January, the interregnum of nine months before Mr Whiteman was appointed in September, and the transfer of the policy arm of the Agency to the Home Office in August but it is not acceptable for a communications system to be so dependent on individual officials as this would suggest.

16. There are a number of areas where communication appears to have broken down. The Permanent Secretary informed us that the Home Secretary had not been told when the pilot was introduced in July 2011 of the previous HOWI guidance agreed to by her

27 Letter from Dame Helen Ghosh DCB 30 November 2011

28 Q299

predecessors.²⁹ Border Agency officials, including Mr Clark, appear to have acted on the assumption that she would have been. Indeed when questioned, Mr Clark said that he “would be surprised if they [the Home Secretary and the Immigration Minister] did not know of these policies or understand them.”³⁰ Even after Mr Clark’s suspension, there was disagreement over the application of the pilot and the HOWI Guidance and the Home Secretary did not refer to the HOWI Guidance when she made her statement to the House. The Independent Chief Inspector of the UKBA has highlighted differing views among front line staff at Heathrow about which checks were supposed to be implemented, under which circumstances. It would seem that concerns highlighted by Mr Sedgwick about the risk of the pilot being over-interpreted did not result in measures which might have avoided later recriminations.³¹

17. Brodie Clark maintains that he informed the Agency strategy board in December 2010 of his use of HOWI guidelines to address the issues arising from overwhelming numbers of passengers. He has stated that both Lin Homer, the then Chief Executive (currently Chief Executive at HMRC) and Dave Wood, the board member who has been asked by the Home Secretary to carry out an inquiry into Mr Clark’s conduct, were present at this meeting and no objections were raised to his implementation of this guidance.³² If this was the case then the entire board would share collective responsibility for not ensuring that the Home Secretary was briefed on the matter. It would also seriously undermine the credibility of the inquiry being carried out by Mr Wood.

18. However, Mr Sedgwick disputed this claim, although he had not been present at the meeting. He told us that the point had been made in passing, in the context of a wider discussion on aviation security:

It was a very minor sub-point in a very detailed slide that was probably, as these things often are, circulated at the meeting itself. I was not there, so I cannot recall. We have a very clear process in place if a member of the board wishes to make something clear to the board. This was not discussed with the board.³³

We have requested a copy of the slide presentation from the Home Office, which again has been refused. Without access to the slide, we are unable to comment on either assertion. It is surprising, that even a passing reference to the suspension of Secure ID and Warnings Index checks did not ring alarm bells for such senior staff and that they did not, even at that stage, alert Ministers to the issue.

19. It is clear to us that there were problems in communicating the remit of the pilot to Agency staff. In evidence to us, the Independent Chief Inspector of the UKBA, John Vine, described the inconsistency of passport checks at Heathrow Terminal 3. He also “noted a

29 Q324

30 Q53

31 Q543

32 Letter from Brodie Clark 24 November 2011

33 Q482

degree of confusion amongst both immigration officers and more senior management about what was permitted under [the pilot], resulting in inconsistent implementation”.³⁴

20. Mr Sedgwick also described how, following the first weekly report on the pilot, he had raised concerns with Brodie Clark that it appeared that the pilot measures were being used too routinely at Heathrow. He said that following this discussion, Mr Clark spoke to staff at Heathrow and changes were made.³⁵ However, when Mr Vine and his inspection team visited Heathrow between 26 September and 19 October, he was informed by staff that the pilot was in operation between the hours of 6am to 9am and 6pm to 9pm as a matter of daily routine. This indicates that Mr Sedgwick’s fears about over-interpretation of the pilot might have been well-founded, but that there was no effective intervention by Mr Sedgwick or his staff to deal with the issue. This was despite Mr Clark’s apparent instructions following both Mr Sedgwick’s and, later, Mr Vine’s comments on the issue.³⁶

Memo from Brodie Clark to Graham Kyle (dated 11 October 2011)

I had a conversation with John Vine recently - part of which was an update on his current review of aspects of the work at Heathrow.

In passing, he mentioned the occasional and temporary cessation of fingerprint verification. I explained that this was rare - it did not surprise me that it had been invoked during the early September period, given the substantial influx of students. I confirmed that under circumstances where the port infrastructure was at risk of collapse or where there was an imminent likelihood of the police or the port operator requiring us to ‘open our gates’ on the basis of order and control problems or health and safety risks, then I had accepted the authority through my Duty Director to approve a temporary relaxation on one aspect of our checking process (in favour of retaining the rest of them).

This is the agreement we had reached and I know that you have taken it seriously and cautiously. Nevertheless, I would be grateful if you could follow up his observation and confirm that the particular measure is not being deployed more than is absolutely necessary for the safety and security of the port.

21. It would appear that senior officials had been made aware of the suspension of Secure ID and that there was potential for the pilot to become routine activity yet both situations carried on unchecked. Officials ought to be in constant communication and the effectiveness of the departments of the UK Border Agency ought to be the responsibility of all senior staff, not just the department heads.

22. In evidence sessions when we questioned the failures of communication which allowed this issue to arise, our witnesses maintained that it was not possible for Ministers or senior staff to be aware of the situation. Indeed the Immigration Minister referred to “a Rumsfeldian world of unknown unknowns.”³⁷ However, we firmly believe that this should not be normal practice for any part of Government. If we are to accept the version of events

34 Letter from John Vine 1 Decmber 2011

35 Q494

36 Memo from Brodie Clark to Graham Kyle 11/10/11 (reproduced in text)

37 Q403

as recounted by Ministers and senior Home Office staff then it creates the impression that Mr Clark was running the UK Border Force without effective checks or balances from either his superiors or immediate colleagues despite the fact that the Border Force is not a separate organisation, nor even part of an independent agency, but is part of the mainstream responsibility of the Home Office and comes directly under the responsibility of the Permanent Secretary and the Board of the Department. There ought to be a much closer working relationship between the various parts of the UK Border Agency. Mr Whiteman described the Agency as being more silo-based³⁸ than his previous work and it would appear that the Agency's use of this model has enabled a situation where there was at best a single line of communication between the Border Force and Ministers. As a result there was a lack of oversight when this line of communication failed.

23. The chain of communication from Ministers, to senior management, to front-line staff of the UK Border Agency is a long and convoluted one, and it seems to have become seriously fragmented. We recommend that the Chief Inspector of the UKBA carry out a thematic review of the Agency's internal communications and report to Ministers as a matter of urgency.

24. It is difficult to understand how this situation could have arisen, given that the Border Force is not a separate organisation, external to and independent of the Home Office. Nor is it a part of an independent agency, although the way the Border Agency is described in terms of its title, its discrete budget and the plethora of systems for accountability gives an impression of independence and separate accountability. Even the description given to the committee by the Permanent Secretary demonstrated a muddle at the heart of this major Department. **We recommend that systems of accountability, responsibility and communications be clarified and that the use of words such as "Agency" in the title of an organisation be only used in future when that organisation is institutionally separate from the Department.**

Provision of information to this Committee

25. The Home Secretary has established three separate inquiries into these events. As mentioned above, Dave Wood, the head of the Agency enforcement and crime group and a former Metropolitan police officer, will carry out an investigation into exactly how, when and where the suspension of checks might have taken place. Mike Anderson, the Director General of Immigration at the Home Office, is looking at the actions of the wider team working for Brodie Clark. John Vine, the Chief Inspector, is conducting a review to find out exactly what happened with the checks across the Agency (including ministerial decisions), how the chain of command in the Border Force operates and whether the system needs to be changed in future.

26. In order for us to reach a definitive conclusion on these issues, we need access to three key documents:

- a) Instructions from the Home Secretary's private office to Agency officials about the terms of the risk-based pilot. We were denied access to this on the basis that the Home

Secretary would be providing copies of all relevant documentation to the inquiries being carried out by the Home Office.³⁹

- b) The Home Office Warnings Index Guidance issued in 2007. We were denied access to this on the basis that the Home Office does not release copies of operational instructions as to do so could have a detrimental impact on the operational effectiveness of border controls.⁴⁰
- c) The periodic updates on the progress of the pilot which were provided to Ministers by the Agency. We were denied access to these on the basis that the Home Secretary would be providing copies of all relevant documentation to the inquiries being carried out by the Home Office.⁴¹

27. Despite agreeing to make both the Home Office Warnings Index Guidelines⁴² and the periodic updates⁴³ available to us when she came before us on 8 November, the Home Secretary has since refused to provide us with these documents. Instead she has referred to the fact that she has appointed two civil servants and the Chief Inspector of the UKBA to inquire into the matter and provided the documents to them.⁴⁴ It is not unusual for a Minister of any Government to task civil servants with holding inquiries into events which have caused concern amongst the general public. However, notwithstanding any internal departmental investigations, these documents would have assisted our inquiry in confirming witness accounts and we would normally expect a Government of any party to acquiesce to such a request from a Select Committee. **We recommend that the Home Secretary deposit copies of all the documents that have been made available to the three internal investigations in the Library of this House. This will allow this Committee to reach an informed conclusion of our own and would be consistent with the Government's commitment to transparency and accountability.**

The risk-based pilot

28. Early data indicate that the pilot has been a success. According to figures used by the Prime Minister, there was a 100% increase in the seizures of firearms, a 10% increase in arrests of illegal immigrants and a 48% increase in the detection of forged documents during the period of the pilot.⁴⁵ However, the Permanent Secretary conceded that the pilot would have to be re-evaluated to take in to account the relaxation of other border checks.⁴⁶ The findings cited by Ministers are preliminary findings and it is not clear how much weight they carry. We await the publication of a detailed analysis of the evidence provided by the pilot. It is important that an evidence-based evaluation of the pilot—and the opportunity to learn important lessons—are not abandoned because of a controversy that

39 Letter from the Home Secretary 21 November 2011

40 Letter from the Home Secretary 14 November 2011

41 Letter from the Home Secretary 21 November 2011

42 Q22, Home Office Agencies, HC 1631-i

43 Q47, Home Office Agencies, HC 1631-i

44 Letter from the Home Secretary, 14 November 2011

45 HC Deb 9 Nov 2011 col.278

46 Q302

is to do with failures of management and communication rather than the pilot itself. Objective and evidence-based policy-making is too important to be brushed aside and we urge Ministers to have the confidence to make sure that this does not happen.

29. The risk-based pilot was intended to introduce an intelligence-led approach to border security. By minimising the time that staff spent on checking those unlikely to be a serious threat to the UK (such as a school party of EEA children) they were able to focus staffing resources on arrivals from areas which are known to be a source of smuggled goods and illegal immigrants. We fully support the policy intention of Ministers to ensure that staff are being used as efficiently and effectively as possible. The roll out of the pilot is especially important in the context of staffing reduction at the border. It is vital that we do not expect fewer staff to perform at the same levels without any mistakes being made—there has to be a degree of flexibility in the system.

30. The UK Border Agency, in common with the rest of the public sector, must learn to deliver its services with fewer resources. Making “smarter” use of its own staff, giving officers on the ground the freedom to make their own judgements, is part of this and the risk-based pilot could be a promising framework for a new approach. Ministers must ensure that this episode does not discourage staff from using their own initiative consistent with the Government’s policies and Ministers are informed within a reasonable period of time.

31. The risk-based pilot must not be scrapped because of this controversy. We recommend that the findings and analysis of the pilot be published in full, with a clear commitment to further action if the initial findings suggest that it indeed has been a success.

Appendix

UK Border Agency—Interim Operational Instruction—Issue No: BF 01 29 11

Date: 28 July 2011

Subject: Trial of risk-based processes at the border

Action: Managers' Cascade

Distribution: BF

Instruction to Staff:

Border Force operational managers should brief their staff and cascade the enclosed guidance to staff to support implementation of a trial that will enable port managers to deploy their resources more effectively and opportunity to meet the demands of peak summer traffic pressures whilst continuing to focus on other high harm/high risk threats at the border. The trial will commence with effective [sic] from 29 July and operate until mid September. The guidance will support staff in exercising discretion and professional judgement in operating this process. Managers should ensure their familiarise themselves with this guidance in accordance with regional plans.

The escalation options available to managers are set out below and can be implanted for short periods at a time where:

- Redeployment of staff from other port activity, to manage the PCP in the face of lengthy queues, is not in the interest of dealing with the higher harm/risk threat. So, where for example there are targeted goods activities; there are high risk flights with specific goods issues or where the [sic] are other activities with the balance of risk pointing to a deployment of staff to a secondary activity and not to deploying at the PCP, under these circumstances level two is perfectly appropriate. It is anticipated that level two, in support of the PCP, would be invoked for periods of time (up to several hours), but would be entirely dependent on the risk and balance of activity.

And / or where,

- A period at level two will avert a more serious or critical impact in the port infrastructure arising from excessive queries i.e. a baggage crisis: risk to passenger health and safety or good order in the arrival hall, disruption to flight schedules and the passengers being held on the aircraft.

We will:

- Check all arriving passengers (other than as described below) against the Warnings Index and take appropriate action.
- Only endorse the document and question visa holders, where there is perceived to be a risk.

- Ensure maximum use of e-gates.
- ... targeted and/or intelligence led, specific TC tasked operations or required mandatory EU checks.
- Maintain *essential* secondary casework. We will exercise discretion with a particular focus on the high risk.
- Maintain freight searching at the priority juxtaposed locations through increased use of existing contractors and our French partners in order to prevent any influx of clandestines.

We will cease:

- Routinely opening the chip with EEA passports.
- Routinely checking all EEA nationals under 18 years against the Warnings Index where they are travelling in clear family units or as part of a school party unless the individual border officer perceives there to be a risk.
- Secondary (customs) activity based upon general profiling.

This discretion may be exercised at CIO/HO/SO/HMI level. If, for whatever reason, it is considered necessary to take **further measures**, beyond those listed above, local managers **must escalate to the Border Force Duty Director** to seek authority for their proposed action.

Background:

We believe that adapting our approach to passenger clearance in this way will allow for more effective deployment of staff, maintain border security and improve our customer service, particularly during the peak summer period. A risk-based approach places more emphasis on the discretion and professional judgement of our officers, giving them more time to focus their attention on identifying those seeking to cause the greatest harm to the UK. This guidance, together with current and future intelligence briefings encompassing a range of intelligence products at national and local level, will inform officer's decision making.

New measures are also being introduced to ensure that we test and validate our assessment of risk on a continuing basis, including 'randomised' checks (on which further guidance will follow shortly) and structured risk testing. For assurance purposes we have also included risk-led decisions within our Border Force assurance standards, a new version of which will be published shortly.

Conclusions and recommendations

1. We are very concerned that the Home Office Warnings Index Guidance 2007 might be being used inappropriately at local level as a management tool instead of an emergency provision. We recommend the Agency conduct a full review of its use of the Guidance since its introduction, clarify to all ports the limits of authority which they have to implement it and ensure that robust reporting and monitoring mechanisms are in place for its continued use. (Paragraph 12)
2. It would appear that senior officials had been made aware of the suspension of Secure ID and that there was potential for the pilot to become routine activity yet both situations carried on unchecked. Officials ought to be in constant communication and the effectiveness of the departments of the UK Border Agency ought to be the responsibility of all senior staff, not just the department heads. (Paragraph 21)
3. The chain of communication from Ministers, to senior management, to front-line staff of the UK Border Agency is a long and convoluted one, and it seems to have become seriously fragmented. We recommend that the Chief Inspector of the UKBA carry out a thematic review of the Agency's internal communications and report to Ministers as a matter of urgency. (Paragraph 23)
4. We recommend that systems of accountability, responsibility and communications be clarified and that the use of words such as "Agency" in the title of an organisation be only used in future when that organisation is institutionally separate from the Department. (Paragraph 24)
5. We recommend that the Home Secretary deposit copies of all the documents that have been made available to the three internal investigations in the Library of this House. This will allow this Committee to reach an informed conclusion of our own and would be consistent with the Government's commitment to transparency and accountability. (Paragraph 27)
6. The UK Border Agency, in common with the rest of the public sector, must learn to deliver its services with fewer resources. Making "smarter" use of its own staff, giving officers on the ground the freedom to make their own judgements, is part of this and the risk-based pilot could be a promising framework for a new approach. Ministers must ensure that this episode does not discourage staff from using their own initiative consistent with the Government's policies and Ministers are informed within a reasonable period of time. (Paragraph 30)
7. The risk-based pilot must not be scrapped because of this controversy. We recommend that the findings and analysis of the pilot be published in full, with a clear commitment to further action if the initial findings suggest that it indeed has been a success. (Paragraph 31)

Formal Minutes

Tuesday 17 December 2002

Members present:

Rt Hon Keith Vaz, in the Chair

Nicola Blackwood	Steve McCabe
James Clappison	Alun Michael
Michael Ellis	Bridget Phillipson
Lorraine Fullbrook	Mark Reckless
Dr Julian Huppert	Mr David Winnick

Draft Report (*UK Border Controls*), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 31 read and agreed to.

A Paper was appended to the Report as Appendix 1.

Motion made, and Question put, That the Report be the Seventeenth Report of the Committee to the House.

The Committee divided.

Ayes, 9	Noes, 1
Nicola Blackwood	Mr David Winnick
James Clappison	
Michael Ellis	
Lorraine Fullbrook	
Dr Julian Huppert	
Steve McCabe	
Alun Michael	
Bridget Phillipson	
Mark Reckless	

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 24 January at 10.40 am

Witnesses

Tuesday 15 November 2011

Brodie Clark CBE , former Head of the UK Border Force	Ev 1
Rob Whiteman , Chief Executive, UK Border Agency	Ev 14

Tuesday 22 November 2011

Dame Helen Ghosh DCB , Permanent Secretary, Home Office	Ev 25
Damian Green MP , Minister of State for Immigration	Ev 35

Thursday 8 December 2011

Jonathan Sedgwick , International Group Director, UK Border Agency	Ev 42
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List of correspondence and written evidence

(published in Volume II on the Committee's website www.parliament.uk/homeaffairscom)

- 1 Correspondence from the Chair to the Home Secretary, 9 November 2011
- 2 Correspondence from the Home Secretary to the Chair, 14 November 2011
- 3 Correspondence from the Chair to Dame Helen Ghosh DCB, 9 November 2011
- 4 Correspondence from Dame Helen Ghosh DCB to the Chair, 14 November 2011
- 5 Correspondence from Rob Whiteman to the Committee, 11 November 2011
- 6 Correspondence from the Chair to Rob Whiteman, 14 November 2011
- 7 Correspondence from the Chair to the Home Secretary, 16 November 2011
- 8 Correspondence from the Home Secretary to the Chair, 21 November 2011
- 9 Mr Brodie Clark
- 10 Correspondence from the Chair to Dame Helen Ghosh DCB, 23 November 2011
- 11 Correspondence from Dame Helen Ghosh DCB to the Chair, 7 December 2011
- 12 Mr Brodie Clark
- 13 Correspondence from the Independent Chief Inspector of the UKBA, 1 December 2011
- 14 Correspondence from Jonathan Sedgewick, 2 December 2011
- 15 Correspondence from the Chair to R thon Alan Johnson MP, 29 November 2011
- 16 Correspondence from the R thon Alan Johnson MP, 12 December
- 17 John Rippon

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
Ninth Report	The work of the UK Border Agency (November 2010-March 2011)	HC 929
Tenth Report	Implications for the Justice and Home Affairs area of the accession of Turkey to the European Union	HC 789
Eleventh Report	Student Visas – follow up	HC 1445
Twelfth Report	Home Office – Work of the Permanent Secretary	HC 928
Thirteenth Report	Unauthorised tapping into or hacking of mobile communications	HC 907
Fourteenth Report	New Landscape of Policing	HC 939
Fifteenth Report	The work of the UK Border Agency (April-July 2011)	HC 1497
Sixteenth Report	Policing large scale disorder	HC 1456

Oral evidence

Taken before the Home Affairs Committee

on Tuesday 15 November 2011

Members present:

Keith Vaz (Chair)

Nicola Blackwood
Mr James Clappison
Michael Ellis
Lorraine Fullbrook
Dr Julian Huppert

Steve McCabe
Alun Michael
Bridget Phillipson
Mark Reckless
Mr David Winnick

Examination of Witness

Witness: **Brodie Clark CBE**, former Head of the UK Border Force, gave evidence.

Q1 Chair: Mr Clark, thank you very much for coming to give evidence to us today. I wrote to you last week to invite you to give evidence, in view of recent events that have occurred concerning the UKBA and indeed your position there. I want to thank you on behalf of the Committee for not giving a series of television, radio and newspaper articles, but coming to the House first and responding to the questions that members of the Committee have.

The way in which I wish to handle this session is that the Committee will want to ask you first about the original pilot and the extension of the pilot, and indeed the unauthorised extension of the pilot, which is what the Home Secretary told the Committee last week. We then wish to discuss the circumstances of your suspension, in the broadest possible terms. We know that you have resigned and we also know that you are seeking a constructive dismissal case against the Government, so we will be cautious in putting those points to you. And finally, there are a number of other issues concerning border checks that have come out of the weekend press, which we will put to you as well. That is the way that I wish to handle the session.

Would you like to start by saying anything to this Committee?

Brodie Clark: Thank you for the opportunity to come and lay forth my side of the story. I have a statement, Mr Chairman, which I wondered if I might make. Let me say at the outset—

Chair: Mr Clark, I am sorry but you will need to speak up a little bit, so that all members of the Committee can hear you.

Brodie Clark: Let me say at the outset that I introduced no additions to the Home Secretary's trial; neither did I extend it or alter it in any way whatsoever. I was meticulous in ensuring that my top operational team and my senior port managers had complete clarity on the Home Secretary's requirements. I briefed them personally. Over the first month of the trial, I reported weekly to the Home Secretary, as she had required, and with each briefing I offered a follow-up meeting. Aside from teething issues, the trial delivered into the border business exactly as she had wished. I did not enlarge, extend or redefine the scope in any way. I have not wilfully

or knowingly sanctioned an alteration to border checks that has contravened existing Home Office policy. And on queues, despite the pressure from port operators, carriers and others, I have never sanctioned that the high-quality checking arrangement at our border should be adjusted to speed flow.

The discussion has been confused by a conflation of two things: first, our long-standing Home Office policy and practices on dealing with critical health and safety issues at ports; and secondly, the Home Secretary's recently introduced pilot on risk-based activity to improve performance. They are quite simply separate: one, a pre-existing policy and set of practices for the management of high-risk safety issues; the other, a more improved approach to deploying staff skills to the highest-risk activities. Eight million occasions of checking children against a security watch list produced only one spurious hit. I would rather our staff were doing more productive work.

Our border operation is going through a constant change. We merged front-line immigration and customs activity 18 months ago. We were required to reduce our head count by 900 staff over the past year in order to deliver the Government's saving requirements. Passenger volumes at Heathrow have risen by 9% and the demand for better customer service continues unabated. Against that the Border Force continues to deliver improved security results with a five-year record in volumes of cocaine and heroin and a three-year record in terms of tobacco seized at the border. Equally, it continues to improve its record of catching clandestines and refusing the harmful.

I have, as I always have over 40 years, delivered within the Government parameters. And I have done so with an absolute determination to strengthen the UK border. We have built a very strong agenda of getting the best from our staff, exploiting the most from our technology and focusing strongest on the real harm and threat to the UK. We have come a long way in three years and it is by no accident that we now rank as one of the most secure border operations in the world. Mr Chairman, I am no rogue officer. Nothing could be further from the truth.

Q2 Chair: Thank you, Mr Clark. Much of what you said just now is in flat contradiction to the evidence given to this Committee by the Home Secretary last week and to the House. It also contradicts what Robert Whiteman has said in statements. We will be speaking to Mr Whiteman after we speak to you. I want to take you back to the original pilot. Is it correct that the Immigration Minister and the Security Minister, Lady Neville-Jones, agreed with the original pilot, along with the Home Secretary or was there any disagreement? I want to concentrate on where you all agree—on the first pilot.

Brodie Clark: I presented the case on three elements of the pilot to the Immigration Minister and the Security Minister in January of this year. Both Ministers agreed—

Q3 Chair: Could you tell us who they are?

Brodie Clark: That was Damian Green and Pauline Neville-Jones. Both Ministers agreed that we should proceed with the pilot which comprised three elements. One was the discretionary checking of EEA children who were part of families or supervised groups. One was the discretionary opening of the biometric chip of EEA nationals and the third element was discretionary checking of the fingerprint matching process for visa nationals.

Q4 Chair: This was your idea that you put to them?

Brodie Clark: This indeed was. We had within UKBA been formulating a much more risk-based approach to delivering our business. I firmly believe that is far more productive in terms of outcomes and results. Indeed, in August this year, as two elements of that trial went forward, the evidence was clear to support that contention.

Q5 Chair: But the Home Secretary did not accept that, did she? She asked for further work to be done. She has made it very clear to the House that she did. Even though Mr Green accepted it and Lady Neville-Jones accepted it, the Home Secretary wanted additional work done.

Brodie Clark: Indeed. Damian Green asked me to proceed with these three elements but I chose at that stage to approach the Home Secretary and ensure that she understood what the plan was to introduce these three elements into our business.

Q6 Chair: Why did you do that? Why did you go over the head of the Immigration Minister straight to the Home Secretary?

Brodie Clark: I was just concerned that everybody needed to know and I wanted to be clear and transparent on what was happening across the border business.

Q7 Chair: What was her reaction?

Brodie Clark: She was very keen to stop the work at that stage for a closer and more careful examination around the three elements and a much broader discussion around the border strategy encompassing a whole range of activities outside of that trial.

Q8 Chair: When did you get final sign-off? So, two Ministers signed it off. The Home Secretary then intervened and said she wanted further work. When did you get the final pilot?

Brodie Clark: In July, the Home Secretary signed off two elements of the three, which were the chips and the children at that stage, and she caveated that by a number of protections around ensuring that it was properly monitored and properly managed and for discrete periods of time, where the redeployment of the staff from those activities could be put to better use within the business. We pulled that together and we briefed the business, and the trial, which was for just over one month, commenced at the beginning of August.

Q9 Chair: And you are telling this Committee that you gave weekly briefings to Ministers about what was going on.

Brodie Clark: The Home Secretary had asked for a weekly briefing. I provided her with a two-to-three-page update, region by region, around my Border Force operation, identifying how frequently the trigger had been played for the trials and identifying what sort of outcomes we had achieved in terms of the redeployment and the discretionary judgments that we were giving to staff in these circumstances.

Q10 Chair: And it was after that that you, in the words of others, went rogue. You then decided that you wanted to extend it beyond the original pilot.

Brodie Clark: Mr Chairman, I never went rogue, and I never extended without the Home Secretary's authority that initial trial for a further period of September through to November. It was the Home Secretary who clearly, at request and on advice from me, agreed that the trial could continue for a longer period in order to evidence the benefits that it was delivering.

Q11 Chair: But, Mr Clark, do you understand what you are saying to the Committee? You are saying that you had authority to do what you were doing and that the Home Secretary knew what you were doing and that is completely in contradiction to what she said to the House and to this Committee.

Brodie Clark: I just do not understand why she has said that. The continuation or extension of the trial was something that we reported on not on the same weekly basis that we had previously been, but we had incorporated it into the chief executive's weekly note to the Immigration Minister as an update on how things were going.

Q12 Chair: Did anyone—any senior official—ring you up from the Home Office and tell you, "Goodness. This is in addition to what we originally agreed"? Did you receive an e-mail from the Home Secretary explicitly telling you not to go beyond the original pilot?

Brodie Clark: That never happened. I received instruction from the Home Secretary's office that the trial was to be extended from September through to November.

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Q13 Alun Michael: Mr Whiteman says that you admitted going beyond what the Home Secretary agreed. Did you make such an admission?

Brodie Clark: I met with Mr Whiteman on 2 November and that was in response to information that I had provided to him in previous weeks about checks and adjustments we had had to make at the border over the past two years. It was part of the briefing that I had been providing to Mr Whiteman given that he had only been in the organisation for four to five weeks. The meeting on 2 November was at my instigation, and it was in response to a grid of figures.

Chair: Can I just stop you there? Could you concentrate your answer on Mr Michael's question, not the meeting, because we will come to that later? Answer specifically on whether you went beyond the original pilot. Did you say that to anybody?

Alun Michael: Did you make the admission that Mr Whiteman has said publicly that you had made?

Brodie Clark: And that is?

Alun Michael: That you had admitted to having gone beyond the terms of the pilot agreed by the Home Secretary.

Brodie Clark: I at no stage told Mr Whiteman that I had gone beyond the terms of the pilot that the Home Secretary had initiated.

Q14 Alun Michael: You also said that you reported weekly to the Home Secretary, as she required. I take it that that was a written report. Did she comment at any stage on any of those weekly reports?

Brodie Clark: No.

Q15 Alun Michael: Did you have any feedback whatsoever on the weekly reports that you made?

Brodie Clark: No.

Q16 Alun Michael: Are you surprised then that this controversy has blown up in this way?

Brodie Clark: Absolutely surprised. I do not understand it. I can only imagine that it has been through a conflation of two different things: policy and practice that has existed in the Border Force for the past two years, and the trial.

Q17 Alun Michael: In your statement you say: "I have not wilfully or knowingly sanctioned an alteration to border checks that contravened existing Home Office policy." In retrospect, do you believe that you unknowingly contravened existing Home Office policy?

Brodie Clark: No.

Q18 Lorraine Fullbrook: The Home Secretary said on Wednesday that she rejected your request to suspend automatic fingerprint checks on visa nationals. Can you tell the Committee whether you have ever authorised the suspension of automatic fingerprint checks of visa nationals?

Brodie Clark: The secure ID programme, which—

Lorraine Fullbrook: Can we just have a "yes" or a "no"?

Brodie Clark: The secure ID programme, which lays out the fingerprint matching process, was introduced

in March 2010. Since March 2010, in response to emergency, urgent health and safety contingency arrangements at ports there has been an authority to suspend the fingerprint matching process for the period of those emergencies. That has been in place since 2010. It had nothing whatsoever to do with the trial.

Q19 Lorraine Fullbrook: So you did authorise a suspension of automatic fingerprint checks?

Brodie Clark: The fingerprint checking arrangements, which had been in place since 2010, had been pulled in place by the head of Heathrow airport. I learnt about it in the early part of this year. I accepted it as a very sensible thing to do, and if I may explain, Mr Chairman, I would like to do so.

Chair: Just one second. If you allow Lorraine Fullbrook just to ask her question.

Q20 Lorraine Fullbrook: So you did authorise a suspension. Did you do so before or after the Home Secretary's rejection of your request, or both?

Brodie Clark: I learned of the suspension under particular circumstances, where there was a risk to passengers at ports, in the early part of 2011.

Q21 Lorraine Fullbrook: Was that before, during or after the Home Secretary's rejection of your request?

Brodie Clark: I think it was before.

Q22 Lorraine Fullbrook: So you suspended fingerprint checks before you asked the Home Secretary. Is that correct?

Brodie Clark: I asked the Home Secretary on the fingerprint issue in respect of discretionary judgments by front-line staff on fingerprint matching for non-visa holders coming to the UK. That is an entirely different set of circumstances, where we have chosen to suspend fingerprint matching when there are health and safety problems, when there is a risk to people and when something had to change in order to comply with the safety requirements at ports.

Q23 Lorraine Fullbrook: So you did suspend them before your request to the Home Secretary. My understanding is that the capacity for automatic fingerprint checks for visa nationals has become generally available only since 2010. If you abandoned those checks, and if Ministers did not give you authorisation or permission to do so, how can guidance from before 2010 give you permission not to carry them out?

Brodie Clark: I never, as a matter of course, suspended fingerprint matching on visa nationals. This was done under exceptional circumstances within a policy—the Home Office warnings index policy. Within the context of that policy, I agreed, and allowed the lead official at Heathrow to do what was an extremely sensible thing.

Q24 Dr Huppert: You have referred a few times to these health and safety emergencies, and when I looked at the operational instructions it was not clear exactly what they related to. Could you give us a sense of what would constitute a health and safety

emergency in this sense? How serious does something have to be for this long-standing process of relaxation to kick in?

Brodie Clark: I think at Heathrow you would be in a position whereby a port manager would be approaching my staff and saying that they were now in a critical position, where there were lengthy queues out the back of the hall, there were either passengers being kept on planes or about to be kept on planes, and there were planes in the sky that were still looking for somewhere to land. That is the kind of set of circumstances that would prompt the head of Heathrow to make the judgment that, for that particular period, the suspension of fingerprint matching should take place.

Q25 Dr Huppert: That is quite an extreme situation, where you have planes unable to land and people being kept on them. How come that happened so frequently?

Brodie Clark: I think that it is not such an extreme and rare occasion. Heathrow is an incredibly busy airport. The combination of the range of checks we carry out now on passengers coming through, the length of queues and the sheer volume—the 9% increase in volume—of passengers coming to Heathrow made June, July, August and September very, very busy times, when this frequently happened.

Q26 Chair: Just for the convenience of the Committee, how many times did it happen?

Brodie Clark: Well, for June, July and August—

Chair: Of this year?

Brodie Clark: Of this year. It happened 50 times, or just over 50 times. Sorry, for May, June, July it happened just over 50 times. For August, September and October it reduced to about seven occasions.

Q27 Chair: And this happened last year as well?

Brodie Clark: This happened during 2010 as well.

Q28 Chair: Would Ministers have known when this had happened?

Brodie Clark: I would have fully expected Ministers to understand these pressures. The Home Secretary has visited Heathrow on two occasions. Other Ministers have visited Heathrow. They speak with front-line staff. They make a point of doing that. I would expect Ministers to know that.

Q29 Dr Huppert: I am amazed that things are getting so critical so regularly, and I can see the attractions of an intelligence-led pilot. You spoke about time being spent inefficiently. Are you in agreement with the comments of the Home Secretary that the pilot was a success, other than, of course, for the ending of it? How would you measure that success?

Brodie Clark: I believe the pilot was a success, and I would measure success by the outcomes in terms of seizures of illegal and dangerous goods and the stoppages of dangerous and harmful people to the UK. Actually, through the month of August, the results were astounding. They were exceptional. There was about a 60% increase in class A drugs being detected

as a consequence of this. There were increased numbers of clandestines being detected as a consequence of this. I believe it was a success. I firmly, personally, believe that that is the progress that the organisation needs to make. It needs to move away from process-driven activity, for which one is easily accountable, to a much more outcome-focused activity—on results, on delivery, on risk and managing threat and harm to the UK.

Q30 Chair: So, Mr Clark, you are in agreement with the Home Secretary and the Prime Minister on one thing, that the pilot, which was apparently your original idea, on which you made a submission to Ministers earlier this year, was a success in respect of what it achieved?

Brodie Clark: Absolutely.

Q31 Chair: So are you surprised that it has now been suspended?

Brodie Clark: I am hugely disappointed that it has now been suspended. I think the record of the success speaks for itself, and I see us now going back to process-driven activity, which I think is wrong. May I give—?

Q32 Chair: What would be helpful is if you just gave us some figures. Some figures were given to the House—I know this is from memory—showing that the number of illegal immigrants detected had gone up by 10%. Do you know what the base figure was? We have been given percentages. Does somebody in the Home Office or the Border Force have those figures if we ask them?

Brodie Clark: Those figures will be available, Mr Chairman. I do not have those, and I would not wish to make a guess.

Q33 Chair: Of course, but there are figures that we can get. Nobody seems to be able to give us these figures.

Brodie Clark: Indeed, there will be figures that you can get.

Chair: Thank you.

Q34 Mr Clappison: Do you agree that after July adults were not checked against the warnings index at Calais?

Brodie Clark: I don't know, is the answer to that. After July, as a matter of course, adults coming through Calais, of course, would be checked. The only occasion when that would be waived would be if there were a health and safety issue, problem or concern. That is the only reason why people in Calais have any authority whatsoever to suspend checking.

Q35 Mr Clappison: Did such suspension take place, to your knowledge?

Brodie Clark: I do not have information on that.

Q36 Mr Clappison: You do not have information on that. The Home Secretary told the House that “adults were not checked against the warnings index at Calais, without ministerial approval.”

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Brodie Clark: The Home Office policy, which has been signed off by Ministers, is very clear that, under exceptional circumstances, there is a clear provision—indeed, requirement—in the interests of health and safety, in a systematic and risk-based fashion, to suspend certain of the checking arrangements for people coming through Calais. The trigger for that is, invariably, the French police. We have to understand that we are working on foreign soil. It is a unique set of circumstances. The success of our work in France is enormous. In 2010, 25,000 clandestines were stopped from coming into the UK.

Q37 Mr Clappison: I understand that, but the warnings index is important as well, isn't it, because it checks people who are suspected criminals, suspected terrorists and people who have been excluded from the UK? That is an important step in itself, isn't it?

Brodie Clark: And, of course, the policy defines the suspension arrangement in terms of the threat and the risk of groups coming to the UK, to ensure that it is done in a regulated and safe way.

Q38 Mr Clappison: Do you agree that, if it happened, it was not part of the pilot? As you have told us, the pilot was very carefully worked out, with the approval of the Home Secretary, and involved only discretionary checking of EEA children against the watch list.

Brodie Clark: It was not part of the pilot; it has been in place through the Home Office warnings index policy since June 2007. It is a piece of standard practice for the operation in particular times when health and safety begins to present a threat to people who are coming through the border.

Q39 Mr Clappison: Did you raise this with Ministers when you were discussing the pilot, or at any time after that?

Brodie Clark: I don't recollect that I did.

Q40 Mr Clappison: The discretionary checking of fingerprints on non-visa nationals is an important step as well, because it ensures that the person in possession of the visa is actually that person. That wasn't authorised by the pilot either, was it?

Brodie Clark: And it wasn't part of the pilot either.

Q41 Mr Clappison: No, but it did take place at Heathrow, as you have told us, even though it wasn't part of the pilot.

Brodie Clark: The secure ID fingerprint-matching check is the lowest level check that we have in the suite of nine checks that take place on visa nationals arriving in the UK. Those checks begin overseas. The major high-level checks are biometric checks against criminal and terrorist watch lists, and the warnings index check equally against that criminal and terrorist watch list.

Q42 Mr Clappison: That may be so, but was it part of the pilot that that should be dropped?

Brodie Clark: And it wasn't incorporated into the pilot.

Q43 Chair: I think what Mr Clappison is trying to get from you, Mr Clark, is that it wasn't part of the pilot, but it happened. You have been very clear to this Committee that you did not go beyond the pilot and that you didn't reject any explicit instruction from the Home Secretary, so what he is getting at is, if it wasn't part of the pilot and it happened, why did it happen?

Brodie Clark: My response is that it has been part of the policy arrangements that have been in place since 2007, which lay out both policy and practical guidance as to how ports operate in terms of adjustments to their checking arrangements in the light of threat and risk to passengers.

Chair: So you are telling the Committee that this happened because it was an existing policy that had been going on until 2010.

Brodie Clark: Correct.

Q44 Mr Clappison: Did you know it was happening?

Brodie Clark: Yes, of course.

Q45 Mr Clappison: Did it occur to you to draw it to the attention of the Home Secretary?

Brodie Clark: I made no connection between the business as usual of our operation under these sorts of circumstances and the pilot. The pilot was a stand-alone piece of activity going forward and it was based on an entirely different premise from these contingency arrangements. The pilot is about a better use of staff for improved performance. The contingency arrangements were long standing and had been in place since 2007, to safeguard passenger and staff risks.

Q46 Chair: Sorry, but did you say 2007 or 2010?

Brodie Clark: 2007.

Q47 Mr Clappison: As you have told us, this was gone into carefully with Ministers and you went to the Home Secretary, so I find it slightly surprising that you had a carefully agreed pilot in place, but contrary to the pilot, different things were happening anyway and you did not draw this to the Home Secretary's attention. You had a situation where you were not sure you knew whether adults were going through against the warning checks at Calais, but people were coming into this country without their fingerprints being checked. You did not draw that to the attention of the Home Secretary. It looks as though there was a bit of a mix and match of policies that went beyond the pilot. The Home Secretary was thinking she had agreed the pilot, but what she had not agreed to was happening anyway on your watch.

Brodie Clark: I do not believe there was any mix and match of policies. I believe there was absolute clarity of the Home Office warnings index policy, which was signed off in 2007. Overlaid on that came the Home Secretary's pilot, which was entirely about a different thing, a different premise, a different set of arrangements for a different purpose.

Q48 Steve McCabe: It seems to me that this whole affair hinges on whether someone is lying or there has

been a monumental misunderstanding of the Home Secretary's instructions. She said in Parliament last Wednesday: "I stated explicitly in writing that officials were to go no further than what had been agreed in the pilot." Is there any possibility that you or anyone else could have misunderstood what was in the pilot, or what the Home Secretary intended in that written authorisation?

Brodie Clark: No.

Q49 Steve McCabe: Is there any possibility the Home Secretary herself did not entirely realise what the pilot covered?

Brodie Clark: I would find that hard to imagine.

Q50 Steve McCabe: Is there no chance that anyone was confused about existing practice—people referred to summer pressures, projects or the new national general aviation strategy? Is there any possibility that people at UKBA or at the Home Office confused those activities with the pilot?

Brodie Clark: I am absolutely clear that the operation of the Border Force had not made that confusion, and that they were clear in the terms of the pilot and the two areas that were to be taken forward during that piloting process, through to November. I am absolutely clear that is the basis on which I had instructed across my part of the organisation and on which they were operating. I do, however, think that in some of the debate away from that operational situation, that there has been conflation of those two issues. That has been unhelpful and has mixed two things unhelpfully in terms of seeing a way clear to what has been going on.

Q51 Steve McCabe: Do you mean that conflation has occurred since these events became public?

Brodie Clark: I sensed in my conversation with Rob Whiteman that there was a conflation happening there between previous policy and the new pilot going forward. I wrote to Rob Whiteman on the day after my meeting with him.

Q52 Chair: On 3 November you wrote to him.

Brodie Clark: I wrote to him before 7 o'clock in the morning on 3 November to say that these are different things. On the one hand, these are pre-existing policies from 2007, which are there to protect the safety of people under particular circumstances. That is different from a pilot that was triggered to commence in August of this year, which was there to improve, enhance and bolster the performance of our front-line staff.

Q53 Steve McCabe: Is there any possibility that the Immigration Minister or the Home Secretary could not have understood the detail of the pre-existing policies you referred to?

Brodie Clark: I would be surprised if they did not know of those policies or understand them.

Q54 Chair: Just in response to Mr Clappison: you mentioned the French. Not that we are looking for someone to blame, and we have decided to blame them. You said that one of the reasons why you

authorised the use of the health and safety requirements was because pressure was being put on by the French. When I visited the border with you and the MP for Dover, we recognised the fact that the French packed up and went home at 6 o'clock at night. There were no French officials at the border in Calais after 6 o'clock, so if you wanted to jump on a lorry and come over, you would just wait until the gendarmes went home and off you would go. Did anyone make representations to the French to explain that their pressure on us was causing difficulties in respect of people entering our country, or did we feel that we could not do this because they were letting us stay in their country and move our border to Calais?

Brodie Clark: I believe that the French will raise this issue of queues of traffic back out to main roads coming to the port and creating hazards and danger there, and that triggers them to ask us to adjust our controls accordingly. The contact with the French is regular at different levels, both political and official, and the conversations are almost constant. Damian Green was there three weeks ago, at the invitation of Eurotunnel, to talk specifically about queues and traffic-marshalling arrangements around the port of Calais and Coquelles. It is an ongoing conversation, which leads me again to say that I would be surprised if Ministers were not fully aware of these issues and what was happening in Calais.

Q55 Mr Winnick: In order to clarify the situation arising from the questions put by Mr Clappison, as far as your suspension was concerned, am I not right in saying that it was for one reason and one reason only, which is—the allegation being—that you went beyond what the Minister had asked you to do?

Brodie Clark: In truth, I was unclear of the basis for my suspension. I think it was because of the belief that I had extended the pilot in some way. I interpreted that from the conversation that Mr Whiteman had with me on the 3rd in the morning, and therefore I kind of understood that was probably what it was about.

Q56 Mr Winnick: This is what the Home Secretary told the House and the Committee, so we were quite clear that it is not over what happened previously or was alleged to have happened previously. Mr Clark, how long have you been a civil servant?

Brodie Clark: Thirty-eight years.

Q57 Mr Winnick: In those 38 years, how long would you say that you have been in senior positions?

Brodie Clark: Fifteen years.

Q58 Mr Winnick: I think it was last year that you were given a distinction, were you not?

Brodie Clark: Indeed I was—a CBE for services to border and border security issues.

Q59 Mr Winnick: During your career—in those 15 years as a very senior public servant—have you been the subject of disciplinary action of any kind?

Brodie Clark: Never. Absolutely never.

Q60 Mr Winnick: Would it not be the position that if you had been, it is most unlikely that you would

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have been appointed head of the UK Border Force in April 2008?

Brodie Clark: I agree.

Q61 Mr Winnick: Presumably, the same would apply to the CBE. What I want to ask you is this, Mr Clark: during the last week you have been very much in the news, to say the least. Your reputation has been tarnished; there is no doubt about it. The Home Secretary, one of the most senior people in the Government, has alleged that on your own initiative, without her authorisation, you extended the pilot scheme. To say the least, that is a very serious allegation, which you are challenging. What has been the effect on you and your family as a result of you being very much in the news?

Brodie Clark: I think you can only imagine the impact. It is something of a night—

Mr Winnick: You tell us.

Q62 Chair: Could you tell us briefly, because obviously your family is very important to you and to us in general, but apart from that, it is not pertinent to the issue?

Brodie Clark: It is something that has hugely taken over my life over this last 10 days. I cannot move outside of my house without reporters taking photographs and seeking interviews. I have had the newspapers phoning me, e-mailing me, texting me and standing outside my front door. I have had taxi drivers seeking to take my photograph because they know they knew me from somewhere. I have had a whole range of interventions in the absolute privacy of my life, which I can cope with, frankly, because I take that as part of the job that I do. I have always worked in high-risk, difficult, and often dangerous roles across government. I accept that for myself, but not for my family, where the intrusion is enormous.

Q63 Mr Winnick: I want to ask you one final question. Would you have had any reason—any incentive whatsoever—to go beyond what the Home Secretary sanctioned? Perhaps you felt that the queues were not being dealt with swiftly enough. Perhaps you took the view that you knew more than the Home Secretary knew—you were a very senior civil servant, and the rest. Was there, in effect, some reason or incentive to say to yourself, “I’m going beyond what the Home Secretary says because it is in the public interest”?

Brodie Clark: My absolute wish was for the pilot to be a success. I firmly believe in that nature of controls for the UK. I firmly believe that that creates a safer country. That is in my DNA in terms of the security of the country.

Q64 Mr Winnick: But would you want to go beyond that, as alleged?

Brodie Clark: No, I would not jeopardise the trial of the pilot for anything. I wanted that to be a success. I was determined that it would be, and I was meticulous in holding to the conditions and terms that the Home Secretary had put in place.

Mr Winnick: So you deny entirely what the Home Secretary has said?

Chair: Order. I think it is clear that Mr Clark has denied that.

Q65 Michael Ellis: Mr Clark, I have been listening to your evidence to the Committee and I have read your statement of 8 November. I would like to ask you a couple of questions in clarification. First, I want to go back to your meeting, which presumably had a disciplinary flavour, with the chief executive of the Border Agency, Robert Whiteman. I listened carefully to your answer to an earlier question of one of my colleagues on the nature of that conversation, and I think you said that at no point did you tell Mr Whiteman that you went beyond the pilot. But Mr Whiteman, in his statement, which he has made public, said, “Brodie Clark admitted to me on 2 November that on a number of occasions this year he authorised his staff to go further than Ministerial instruction.” So did you tell Mr Whiteman that you had gone further than ministerial instruction?

Brodie Clark: I was very clear with Mr Whiteman that I had not exceeded my authority, that I had not breached existing Home Office policy and that I had not exceeded the terms of the pilot.

Q66 Michael Ellis: Sir, please, you have been a civil servant for many years, would you just answer my question directly? Did you say that you did not go beyond ministerial authorisation—those words?

Brodie Clark: I do not remember the words I used in the conversation.

Q67 Michael Ellis: So it is possible you did say that you did not go beyond ministerial authorisation.

Brodie Clark: Can I finish the answer? In terms of authorisation for the pilot, I did not say to Rob Whiteman that I had exceeded and gone beyond that authorisation.

Q68 Michael Ellis: Were there other people present in the room at the time of that conversation?

Brodie Clark: There were two of Mr Whiteman’s note takers.

Q69 Michael Ellis: So a minute will have been made of that meeting?

Brodie Clark: He will have a minute of that meeting.

Q70 Michael Ellis: And those two officials were civil servants?

Brodie Clark: That is correct.

Q71 Michael Ellis: You have also confirmed to one of my colleagues, if not more than one, that you authorised the suspension of fingerprints before you sought ministerial authorisation. Is that correct? You confirmed that to Lorraine Fullbrook.

Brodie Clark: I said that I learned of the suspension of fingerprint matching exercise in the early part of this year and did not stop it. I approved of it continuing.

Q72 Michael Ellis: As far as fingerprints are concerned, I note that in some of your answers you have referred to the Home Office warnings index

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guidance of 2007. Where health and safety is an issue, extreme circumstances are cited in which, in extremis, certain checks can be avoided, but that warnings index of 2007 is silent on the subject of fingerprints, isn't it?

Brodie Clark: It is because fingerprint matching had not been introduced until 2009—

Michael Ellis: No. You said earlier in your evidence that fingerprint matching began—

Chair: Order. Sorry, Mr Ellis. Mr Clark, can you start your answer again because it is important?

Brodie Clark: Fingerprint matching had not been introduced anywhere in the business until 2009–10.

Q73 Michael Ellis: Earlier in your evidence you spoke about March 2010 for fingerprint matching in this country. Is that right?

Brodie Clark: That is when it was introduced into Heathrow.

Q74 Michael Ellis: So how can you rely on a 2007 document, which was silent on the subject of fingerprints, in answer to the point as to your explanation for the fingerprints matter?

Brodie Clark: Can I make a number of points on that?

Q75 Chair: Of course. You need to speak up as well. Sorry, Mr Clark.

Brodie Clark: The high-level check on people coming into the UK is the warnings index. That deals with counter-terrorism issues; that deals with crime issues; that deals with security and service issues. That is the principal check, the main check and the one that must never be missed in places like Heathrow.

Q76 Chair: And it has never been missed.

Brodie Clark: It has not been compromised at Heathrow, and it has not been compromised—

Q77 Michael Ellis: Forgive me, that is not the question. We are not talking about that. I am asking you about the fingerprint authorisation. You seem to be relying in your statement, including the statement that you gave to the Committee this morning—which we saw only five minutes before you came in—on the Home Office warnings index guidance from 2007. But you can't rely on that, as far as fingerprints are concerned, can you? It makes no reference to fingerprints.

Brodie Clark: Can I explain my actions?

Q78 Chair: If you can in the context of—

Brodie Clark: In the context of that question. The warnings index was the key document that we must never compromise, particularly at places like Heathrow. There are nine checks on visa nationals arriving into the UK. The fingerprint matching check is the most recent. It is the least reliable. It is the least effective in terms of delivering against our requirements.

It is a secondary and additional identity check against the face-to-document match, which is internationally accepted as the key identity checker. Therefore, in terms of the Home Office warnings index policy, which required me to suspend watch list checking at Heathrow under health and safety arrangements, the

management at Heathrow chose to suspend the fingerprint matching at a lower order check, and that is what I approved.

Q79 Michael Ellis: So are you saying that it is the management at Heathrow's responsibility?

Brodie Clark: No, I am not saying that. I said I knew of it, and I approved it because it was a very sensible thing.

Q80 Michael Ellis: And after the Home Secretary said "No" to the lifting of fingerprint checks. Well, she said "No" to the lifting of fingerprint checks, didn't she?

Brodie Clark: She said, in terms of the trial, which was a different use of the fingerprinting option, that it was a discretionary checking arrangement for officers on a case-by-case basis rather than as a contingency plan in order to allow us to safeguard the watch list checking at Heathrow.

Q81 Michael Ellis: So she did say "No". She said "No", and you were responsible. Did you make sure that it never happened?

Brodie Clark: She said "No" on the basis of the trial. She said "No" on the premise that it was being introduced to improve performance in that way. She said "No" as a discretionary piece of process. She never said "No" to it being part of a contingency arrangement where the risk and threat and the health and safety issues were prominent in ports.

Q82 Michael Ellis: Do you accept that you went outside ministerial authority in relation to fingerprints, after the Home Secretary had said "No", and it was your responsibility to ensure that her instructions were carried out?

Brodie Clark: The Home Secretary said "No" to that element being in the trial. The Home Secretary did not say "No" to using fingerprint-matching suspension as a means of coping with the health and safety problem at a port.

Chair: Thank you. That is clear. Nicola Blackwood.

Q83 Nicola Blackwood: If I could continue asking Mr Clark a little bit about the 2007 warning index guidance. I understand that it is a restricted document, so most of us haven't seen it apart from you, so it is helpful to hear a little bit from you. When you decided that you thought it was sensible to expand the meaning of the warnings index to include fingerprints, did you seek any ministerial authority for that?

Brodie Clark: I didn't expand the warnings index document to mean fingerprint matching.

Q84 Nicola Blackwood: Sorry, I thought that that was what you said in answer to my—

Chair: Mr Clark, you are going very soft again. Please could you speak up.

Brodie Clark: The suspensions at Heathrow were in order to preserve the watch list checking at Heathrow. The Home Office warnings index policy would have required us normally to suspend watch list checking. I would never do that, and would do everything I could to avoid doing that. Indeed, the management at

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Heathrow also took that view. I therefore approved that we suspended the fingerprint matching in order to preserve the watch list checking. I did it to preserve the safety of the UK, not to weaken it.

Q85 Nicola Blackwood: With no ministerial authority?

Brodie Clark: The matter was not raised with the Minister.

Q86 Nicola Blackwood: With no ministerial authority? Yes or no? Did you ask any Minister whether it was possible—

Brodie Clark: No. I did not raise it with any Minister.

Q87 Nicola Blackwood: Okay. That was all I was asking. Secondly, could I ask whether the warnings index guidance allows you to suspend warnings index checks for non-EEA nationals?

Brodie Clark: No it doesn't.

Q88 Nicola Blackwood: Because some of the allegations are that you authorised the verification of fingerprints of non-EEA nationals to be stopped on regular occasions and also checks on the second photograph in the biometric chip of passports for non-EEA nationals to be regularly stopped. Those are not warnings index checks, but obviously they are checks on non-EEA nationals, so I am wondering what source of authorisation you might claim for those checks to be lifted.

Brodie Clark: I never authorised the suspension of opening the biometric chip in the travel documents of non-EEA nationals.

Q89 Nicola Blackwood: So can you explain how those checks were lifted?

Brodie Clark: I have never sanctioned the lifting of those checks.

Q90 Nicola Blackwood: Okay. And what about the other checks of non-EEA nationals? That was part of the 2010 decision that went ahead without ministerial authority.

Brodie Clark: This is the fingerprint matching check?

Nicola Blackwood: Yes.

Brodie Clark: We have covered that, I think. The fingerprint matching check was suspended on exceptional circumstances to allow us to preserve the warnings index check.

Q91 Nicola Blackwood: Lastly, in the 2007 warnings index, those checks must be suspended at whose request? Is it at the request of a Border Agency official on site? Is it at the request of BAA officials, as has been claimed by some whistleblowers? Is it at the request of the emergency services? Whose request comes forward to make the statement that there is a health and safety emergency, calling for this situation to require a suspension of border checks, on so many occasions, it appears?

Brodie Clark: The initiation of the request invariably comes from a port operator or an emergency service and that is raised with my senior team at the port and a decision is made at that stage to suspend the check.

Q92 Nicola Blackwood: So do you deny the allegations from whistleblowers that BAA officials and other individuals working within ports have been requesting that these checks be lifted for purposes of queue management?

Brodie Clark: I am not aware of those allegations.

Q93 Nicola Blackwood: I didn't ask that. I said do you deny that that has ever happened?

Brodie Clark: That the checks have simply been raised—

Q94 Nicola Blackwood: For purposes of queue management at the request of persons other than emergency services or officials within the Border Agency.

Brodie Clark: Well, I have not sanctioned that.

Q95 Nicola Blackwood: And you would consider that to be an inappropriate use of the guidance?

Brodie Clark: Unless the queues present in themselves a health and safety case, in which case it falls perfectly within the guidance.

Q96 Mark Reckless: Mr Clark, in the 28 July memo promulgating the pilot to Border Force managers, there is a paragraph that states: "If, for whatever reason, it is considered necessary to take further measures, beyond those listed above, local managers must escalate the Border Force Duty Director to seek authority for their proposed action." Could you explain that paragraph and put that in context for us please?

Brodie Clark: I think that reflects the conversation we have been having about the Home Office warnings index policy and indicating in that instruction that if there is cause for that to be triggered in any way, it has to be done in that way.

Q97 Mark Reckless: Okay, thank you. You may not have seen this letter, but the Home Secretary wrote to the Committee yesterday. She stated to us that between November last year and June of this year she met with you on average at least monthly but since June she has had only one meeting with you. Can you explain to us why those meetings with the Home Secretary stopped?

Brodie Clark: No, not at all. I was keen to meet with the Home Secretary to update her on this particular set of issues. This was important to her and it was important to me. Thus, in the updates I provided for her on a weekly basis, it was always followed with a, "Very happy to come and meet and talk through this and discuss this in more detail". I cannot explain why those invitations were not taken up.

Q98 Mark Reckless: The Permanent Secretary also wrote to us yesterday, and she explained that around August there was a change in structure, such that some policy work that previously went on within the Border Force, or at least UKBA, moved to a special directorate in the Home Office. Could that be one reason why the meetings ceased with the Home Secretary?

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Brodie Clark: I would have thought the Home Secretary would want to have continued an interest in the operation of the business.

Q99 Mark Reckless: This issue, at least through the media, is being presented significantly as an issue between you and the Home Secretary, but it was Mr Whiteman who suspended you. The Home Secretary and her Permanent Secretary said yesterday that that was a decision taken by Mr Whiteman without reference to them, and they were only informed of it afterwards. While you told us that Mr Whiteman had conflated these two things that you say were separate; he had only been in the job for five weeks. Would you suggest that it is Mr Whiteman's actions that are inappropriate?

Brodie Clark: I am just very conscious that over 40 years I have built up a reputation and over two days that reputation has been destroyed. I believe that that has been largely from the contributions made by the Home Secretary.

Q100 Bridget Phillipson: Mr Clark, the Home Secretary has said that the pilot was not introduced to deal with reductions in staffing, and you said it was about effective use of staff resources. Is it the case that it is nothing to do with staffing pressures and everything to do with use of staff time more effectively?

Brodie Clark: I think the introduction of a risk-led approach provides a number of benefits. One of those benefits is an improved performance, one of those is that you can actually deliver more with less, and one of those, in the instance of places like Heathrow, is that it will produce a better passenger set of services.

Q101 Bridget Phillipson: Obviously, the UK Border Force, and the UK Border Agency more generally, are facing a large budget cut and the prospect of losing thousands of staff. Do you anticipate that that will have a negative impact on protecting our borders in the future? Are these kinds of problems inevitable in the future?

Brodie Clark: I think this is very, very difficult stuff and I think the impact of the loss of 900 staff over the past 12 months is considerable. That is why I believe we have to do things in a different way. That is why we have to introduce different methods and approaches to how we deliver our business at the border. That is why, for me, a much more focused, risk-led approach stands greater chance of success than simply falling back to do everything to everybody, and slavishly follow process.

Q102 Chair: I want to move on. Colleagues will have points to clarify, at the end of this session, about the circumstances of your suspension. Now, this only came to light because John Vine, the independent chief inspector, was visiting Heathrow and discovered what he regarded as being an extension of the pilot. He was not involved in any of the pilot negotiations, was he? Mr Vine would not be aware of the pilot, would he?

Brodie Clark: He was doing an inspection of Heathrow. He will have heard about the pilot, but he

was never involved in any of the discussion and the planning and the programming and the conversations with the Home Secretary about the pilot.

Q103 Chair: And when did he discover that there was a problem?

Brodie Clark: I met John Vine at Heathrow. It was in—

Q104 Chair: You were there at the time of his visit, were you?

Brodie Clark: I made a point of seeing John when he was coming to the end of his visit at Heathrow.

Q105 Chair: Right. Can you just tell the Committee the date?

Brodie Clark: I can furnish the Committee with that date; I have not got it at the moment. It is was in late September, early October. I met with John at Heathrow. He made two comments. The principal comment he made was that he had a concern about the frequency with which the suspension of the fingerprint matching was happening. He did not seem to me to be contentious on the issue of that it should happen. He seemed to me to be raising the issue of that it was happening more frequently than he imagined it might. I took that and I went back and saw Graeme Kyle, the head of Heathrow, and really laid it out very clearly with him that he must only suspend these arrangements under the kind of circumstances that he and I had previously, earlier in the year, discussed.

Q106 Chair: Right. This was at the end of September or the beginning of October.

Brodie Clark: October. I think that is right

Q107 Chair: Okay. When did you hear about it after that?

Brodie Clark: I heard nothing until the 2 November meeting with Mr Whiteman. In fact, I did not even hear from Rob Whiteman. I simply heard that Rob had met with John Vine and Mike Anderson earlier in that day.

Q108 Chair: And Mike Anderson is?

Brodie Clark: Mike Anderson leads the new policy and strategy department in the Home Office.

Q109 Chair: So from the time that John Vine first met you to 2 November, there was no further activity. Nobody expressed concern. No e-mails were sent.

Brodie Clark: I was not aware of anything during that time.

Q110 Chair: Did Mr Whiteman call you to his office or did the conversation take place on the phone?

Brodie Clark: On 2 November, I instigated the conversation with Mr Whiteman.

Q111 Chair: You instigated the conversation?

Brodie Clark: I did, but it was following up information that I had been providing Mr Whiteman with as part of the ongoing briefing and understanding of the border business as he became familiar with the working of UKBA.

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Q112 Chair: Had he visited the border from the time that he had been appointed until the meeting on 2 November?

Brodie Clark: He had visited a number of places at the border over that time, and indeed even in advance of his taking up post.

Q113 Chair: He had presumably visited Heathrow.

Brodie Clark: At that point, he had not visited Heathrow, but he had visited Calais.

Q114 Chair: So you instigated a conversation with Rob Whiteman at about what time on 2 November?

Brodie Clark: I think it was about 5 o'clock.

Q115 Chair: Why did you instigate that conversation?

Brodie Clark: I wanted to bring clarity to the figures that he had had for about a week on issues of checks at the border.

Q116 Chair: Had that been part of your normal weekly submission to Ministers as well?

Brodie Clark: We have submitted to Ministers on occasion where something unplanned happens at the border that causes a reduction in checking. A missed flight, volcanic ash and weather conditions are the kinds of things that we would obviously quickly submit to Ministers on.

Q117 Chair: So you saw him on 2 November. For how long did the meeting last?

Brodie Clark: Between 15 and 20 minutes.

Q118 Chair: Where was it?

Brodie Clark: It was in his office.

Q119 Chair: In Lunar House in Croydon?

Brodie Clark: In Marsham Street in London.

Q120 Chair: Was it then that you were suspended?

Brodie Clark: No. We had a conversation around the figures, and we had a conversation around the risks and the issues that were within the border business. At the end of the meeting, we reflected that we should meet again tomorrow morning to discuss some concerns that he was having in respect of whether this was part of the Home Secretary's agenda now that would be seen to have been flouted.

Q121 Chair: Then you sent him an e-mail at 7 o'clock in the morning, as you have just told the Committee.

Brodie Clark: I had been concerned about the conflation of the two issues. I sent him—

Q122 Chair: You mean that you felt people did not understand it. You use the word conflation.

Brodie Clark: I thought he had mixed the two issues up in terms of pre-existing policy and practice and the trial or pilot that the Home Secretary was taking forward.

Q123 Chair: So you sent him an e-mail.

Brodie Clark: I sent him an e-mail before 7 o'clock in the morning of 3 November.

Q124 Chair: Would you let the Committee have a copy of this e-mail?

Brodie Clark: I do not have it, and I have no access to it.

Q125 Chair: Is this because it is on a Home Office computer?

Brodie Clark: Correct.

Q126 Chair: What happened after you sent the e-mail?

Brodie Clark: He invited me to see him at about 9.30 and I asked whether he had received the e-mail. He said that he had, but he still thought it was too close to where the Home Secretary would have a difficulty and therefore I was, at that stage, suspended pending an investigation.

Q127 Chair: Is it correct that you were offered retirement from your post at that time?

Brodie Clark: He put it to me that I would be suspended and that an investigation would commence. He said that I could take retirement.

Q128 Chair: At the same meeting as saying you were suspended, he offered you retirement?

Brodie Clark: And he advised that I should take it.

Q129 Chair: So he offered you retirement from the service, and he suggested that you retire.

Brodie Clark: And he asked that I speak with Joe Dugdale of our HR department to look at the terms and arrangements for that retirement.

Q130 Chair: Were you surprised at being suspended and offered retirement in the same meeting?

Brodie Clark: I was just shattered about either of those options as a consequence of the conversation that had happened until that point.

Q131 Chair: Who was present in the room?

Brodie Clark: I do not recollect. I think there was another person in that room.

Q132 Chair: And you then went away, presumably. You could not do anything about the suspension. Was it a verbal suspension, or were you handed a letter?

Brodie Clark: I had no letter. It was a verbal suspension. I was advised on that. Rob Whiteman said he would advise me to retire, there would be a package and he would provide me with a good reference.

Q133 Chair: What package was he offering you?

Brodie Clark: I had to discuss that with the head of HR.

Q134 Chair: And he was going to give you a good reference?

Brodie Clark: He said.

Q135 Chair: Those were his exact words?

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Brodie Clark: They were.

Q136 Chair: And what happened to this reference in the package?

Brodie Clark: Well, I saw the head of HR. I came back and saw Rob Whiteman.

Q137 Chair: Where was the head of HR? In Croydon or in Marsham street?

Brodie Clark: In Marsham street. Sorry, I apologise: he was in Croydon, and we spoke on the phone.

Q138 Chair: This is Joe Dugdale.

Brodie Clark: It is. I went back and saw Rob Whiteman at about 3 o'clock.

Q139 Chair: What did you say to the head of personnel? Did you say you were accepting the retirement?

Brodie Clark: I asked what the package might be. He told me. With that knowledge, I went back and saw Rob Whiteman.

Q140 Chair: At 3 o'clock.

Brodie Clark: Around 3 o'clock.

Q141 Chair: And what happened at that meeting?

Brodie Clark: I said I would accept retirement.

Q142 Chair: Right. And then?

Brodie Clark: I cleared things up and I left.

Q143 Chair: Right. And he accepted what you said?

Brodie Clark: He did. He said that it was the right decision. He said he had discussed it with the UKBA board in the afternoon, and it also concurred with that view.

Q144 Chair: That you should accept retirement—your package—and he would write you a good reference?

Brodie Clark: Yes.

Q145 Chair: Did he have the reference letter ready?

Brodie Clark: No.

Q146 Chair: When was that coming?

Brodie Clark: I was advised that would be sent to me with the details of the package.

Q147 Chair: So you cleared your desk?

Brodie Clark: Yes.

Q148 Chair: And went home?

Brodie Clark: Yes.

Q149 Chair: And what happened next?

Brodie Clark: I got a phone call at lunchtime on Friday the 4th from Joe Dugdale, who said, "There's been a change of mind. The offer has been withdrawn. There is no package. The investigation will proceed."

Q150 Chair: Were you surprised at this extraordinary change of events?

Brodie Clark: Yes.

Q151 Chair: And what was your reaction?

Brodie Clark: I was surprised, I was confused. I wrote to Rob Whiteman asking for an explanation; I got no reply. I then started to work with my trade union to find a way through this.

Q152 Chair: At any time did you consider approaching the Immigration Minister or the Home Secretary.

Brodie Clark: No, I didn't see it as their business.

Q153 Chair: It was the business of UK Border Force?

Brodie Clark: I thought this was the business of the UK Border Force or the Permanent Secretary. I have no idea who Rob Whiteman had spoken to during these three days, but this felt like the business of the UKBA.

Q154 Chair: Thank you. Could I have any questions on this series of events before we go on to final clarification questions?

Q155 Mark Reckless: Mr Clark, you said that this retirement package had been offered to you and that you had accepted it. How could it then be withdrawn?

Brodie Clark: Well, there was nothing in writing, and I would imagine that until a contract has been put in writing, it can be withdrawn in that way.

Q156 Mark Reckless: You had a verbal agreement?

Brodie Clark: I did.

Q157 Mark Reckless: Can you tell us what that package was that had been offered and accepted?

Brodie Clark: It was a package of nine months' pay—that was it.

Q158 Mark Reckless: Can I just return to the subject of meetings? You have given us a time line. It does not mention any meetings at all after July, whereas the Home Secretary has told us that you had one. Could I just clarify your section on July 2011? You say, "Revised proposal to the Immigration Minister and Home Secretary." Was that actually a meeting, or was it just written proposals?

Brodie Clark: I think that was a written proposal.

Q159 Mark Reckless: So when the Home Secretary tells us that she met with you nine times between November last year and June this year and once since then, are you saying that is not the case and you have had no meeting with her since 19 May?

Brodie Clark: I cannot recollect whether I have had one meeting or no meetings since that time. I have had meetings with the Home Secretary since then—not on this issue, but on issues around the National Crime Agency and the border policing command. You sort of reflect that meetings are myself and the Home Secretary. Those meetings with the Home Secretary have generally been round a large table, with a number of people discussing a particular issue or element of the forward look of the Home Office. Increasingly, recently, it had been around the National Crime Agency, nothing to do with checks at the

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border. I am involved in those kinds of discussions with the Home Secretary.

Q160 Mark Reckless: Have you instead been having discussions with the Immigration Minister around these border checks issues?

Brodie Clark: No, I haven't, and again the invitation has always been there for a discussion.

Q161 Mark Reckless: Finally, I think you mentioned earlier you recalled two note takers present at the 3 November meeting you had with Rob Whiteman. Have you approved any minute of that meeting?

Brodie Clark: I have seen no minute of any meeting that's been had with me. I have to say, my reaction, Mr Chairman, in terms of the retirement offer and acceptance, the truth is, with 40 years of service in difficult posts across Government, I had become very, very pragmatic, and it was clear to me that there was no place for me in Rob Whiteman's forward-going UKBA. I also believed that the appointment of Dave Wood to carry out the investigation was improper, given that he was a colleague who sits round the board table and, indeed, conceivably may have been involved in some degree in some of the issues that had been alleged of me. I'm pragmatic. That's why I accepted the package.

Q162 Chair: And indeed Mr Vine, who is carrying out the investigation, was the person who discovered all this was happening, so in a sense he's one of the witnesses, isn't he?

Brodie Clark: I would have thought so, Mr Chairman.

Chair: We now have questions from Mr McCabe and Mr Michael. Then Lorraine Fullbrook has a final supplementary question.

Q163 Steve McCabe: Can I go back to your meeting with Mr Whiteman—I think this is the 3 November meeting—after you had sent him the e-mail? You said to him that you thought he was conflating the Home Secretary's trial or pilot with existing Government policy and this was the source of his confusion. Did he deny that?

Brodie Clark: I did not say that to him. I believe that is what was happening and as—

Q164 Steve McCabe: Well, you put it to him when you sent him the e-mail. Is that right?

Brodie Clark: I put it to him in the e-mail and I put it to him the following day, when I asked if he had received the e-mail, that I believed these were two entirely separate issues.

Q165 Steve McCabe: Did he deny that they were separate issues?

Brodie Clark: As I recollect his words, he acknowledged he had received my e-mail and he said they were still close enough for it to affect the Home Secretary.

Q166 Steve McCabe: So what you were doing was too close to something that the Home Secretary had objected to, as far as Mr Whiteman was concerned?

Brodie Clark: I understood that to be what he meant.

Chair: Alun Michael. Can we make these questions very brief, colleagues?

Q167 Alun Michael: You referred to being told that you were being suspended and then at the same meeting being offered retirement. Can you tell us a little about the conversation between the first and the second?

Brodie Clark: There was little gap between the first and the second—

Q168 Alun Michael: So he moved straight from telling you or almost straight from telling you that you'd been suspended and that there would be an investigation to making the offer of retirement?

Brodie Clark: That's correct. At some stage in the meeting, he asked the minute taker or takers to leave the room. That's the point at which he said that I should consider retirement now and that, if I did so, there would be an offer and so on.

Q169 Alun Michael: So the offer of retirement was made in the absence of the minute takers?

Brodie Clark: I think that is correct.

Q170 Alun Michael: What was the implication of what would be the case if you were not to accept that offer of retirement?

Brodie Clark: I don't think I heard any explicit implication. If I did not take the retirement, I would be the subject of an investigation; he would announce my suspension from duty and Dave Wood would progress the inquiry.

Q171 Alun Michael: You said that you accepted the offer of retirement because you felt or understood that there was no place for you in the organisation. Is there anything other than this question whether, in the views of Mr Whiteman, you had gone beyond what the Home Secretary has authorised, or was that the only element of any discussion that suggested there was no longer a place for you in the organisation?

Brodie Clark: It is difficult to read things in, having gone through the experience of the past seven to 10 days. I know that Rob Whiteman and I had started to disagree on one or two issues in respect of the business. That ought to be the basis of a good relationship going forward rather than a problem. We had discussed a port—Harwich—and his wish to move that into inland immigration for its governance arrangements. I found that odd; Harwich is essentially staffed by Customs officers; it is that kind of port. I could see no value in Customs officers adding to the complement of enforcement staff inland. I expressed that view. Rob Whiteman was very keen, nevertheless, to do it, and therefore I accepted that it should happen and did so in good grace.

Q172 Alun Michael: My final question is whether there was any reason given for the withdrawal of the offer of retirement.

Chair: Right, yes, that is a pertinent question.

Brodie Clark: I was simply told there had been a change of mind.

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Q173 Alun Michael: Not by whom there had been a change of mind?

Brodie Clark: No. I asked the question, "By whom?" and Joe Dugdale did not respond.

Chair: We have some very quick supplementaries on policy issues from Mrs Fullbrook.

Q174 Lorraine Fullbrook: Mr Clark, I should like to go back to the crux of this matter. Did you ever authorise the relaxation of any checks at any port or airport in any circumstances, other than the emergency services of port operators advising you to do for health and safety reasons?

Brodie Clark: I did not.

Q175 Nicola Blackwood: Mr Clark, can I take you back to the beginning of the sequence you were telling us about? When John Vine first raised concerns, having made his inspections of the ports, did he come to you or Rob Whiteman first?

Brodie Clark: Apart from the meeting I had with John Vine at Heathrow at the end of the review he had done, his only further contact was with John Vine. I think he may have met at some stage with Helen Ghosh, but it was certainly not with me. I had not seen John Vine subsequent to that meeting at Heathrow.

Q176 Nicola Blackwood: Subsequent to that meeting and the further meetings that you have had, do you believe that the 2007 guidance and the guidance that you have been using since 2010, which you authorised to lift fingerprint checks, has been used in circumstances other than health and safety emergencies in practice, even if that was not policy you had authorised?

Brodie Clark: I don't think it has. People are aware of the policy. I have not witnessed it being misused. I cannot say that I have seen that happening around my business.

Q177 Nicola Blackwood: Is that not the substance of what John Vine has alleged?

Brodie Clark: He was saying to me that he believed that it was being used more than he would think necessary. I raised that with Graeme Kyle and said you must be reminded to use this only when absolutely necessary.

Q178 Nicola Blackwood: Do you think it possible that officials at the ports are using this guidance more widely than you were aware of?

Brodie Clark: I don't know and I don't believe so. I think the guidance is extremely clear and links closely with a very clear policy on the Home Office warnings index.

Q179 Chair: Mr Clark, I am going to have to bring this session to an end. You were due to give evidence for half an hour and you have been here beyond an hour and a half. Thank you very much for giving evidence today. You have been very clear in what you have said. There may be follow-up questions that the Committee may have of you, and we will write to you. You have problems getting access to your e-mails. We are very keen to see the e-mail you sent at 7 o'clock on 3 November. We will ask to receive a copy. You are welcome to stay for the evidence of Rob Whiteman. If as a result of anything he says you wish to write to us, I am happy to receive any letters from you.

Brodie Clark: Thank you, Mr Chairman.

Chair: Thank you, Mr Clark.

Examination of Witness

Witness: **Rob Whiteman**, Chief Executive, UK Border Agency, gave evidence.

Q180 Chair: Mr Whiteman, welcome. May I congratulate you on your appointment as the new head of the UK Border Agency? We would very much like to have met you in different circumstances as part of our normal look at the agency. As you know, the Committee decided last year, because of the problems with the UK Border Agency, some of which have manifested themselves in this recent set of developments, to monitor the agency on a three-monthly basis. The inquiry we are conducting at the moment will form part of our report, which we will publish in January, into the UK Border Agency and the work that you will have done from July to November 2011.

Rob Whiteman: Thank you, Chairman, for your welcome. I am grateful to you and the Committee for giving me an opportunity very early in my tenure to come and speak to you about these matters. Border security is very important. I am grateful to be able to come today.

Q181 Chair: Just to book your diary, we will have you in in December as part of the normal review that

we do, but this session, which has already gone on much longer than I anticipated, deals specifically with the situation concerning the Home Secretary's pilot, Mr Clark's suspension and issues relating to that, so we will confine our questions to that. We may have other questions generally that have come up in the public domain since we asked you to come in. This is clearly not Barking and Dagenham. It is a different area of immigration for you. This is something of a baptism of fire. I am sure you did not expect in your first six weeks to be in a position where the head of your Border Force was being suspended. Indeed, other key people at Heathrow and the director of southern and European operations has also been suspended. May I begin by talking about the pilot? You were not involved in any of these discussions concerning the pilot. What date did you take on your responsibilities as chief executive?

Rob Whiteman: 26 September.

Q182 Chair: So you were not involved in any of the submissions that went from Mr Clark to the

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immigration Minister and Baroness Pauline Neville-Jones. You were not involved in any discussions the Home Secretary had. This was already in existence when you took up your office on 26 September. Is that right?

Rob Whiteman: That is correct.

Q183 Chair: When did you first discover that there was a pilot going on?

Rob Whiteman: I discovered there was a pilot going on very early in my tenure. I do not know if it would be helpful, Chairman, for me to very briefly set out what checks we do carry out. I am aware that the Government do not often comment on the range of checks. Would it be helpful for me to say what checks we do and then I will talk about what the pilot covered?

Q184 Chair: I think we all understand this. We have had an hour and a half of this, so we know the checks. We want to go straight into the pilot. There is a general agreement. We have heard from Mr Clark; he supports the pilot. The Prime Minister supports the pilot. The Home Secretary supports the pilot. The pilot was massively successful, we are told, though we would like some statistics on this. Everyone loves the pilot. Presumably, you like the pilot, too.

Rob Whiteman: I was aware of the pilot very early on in post. The pilot focuses on two areas, as you know: not always checking children against the warnings index, and similarly not always opening up the chip where the photograph can be compared. As people come through the border, their passport is scanned in, which makes the warnings index check, but the pilot was to not always open the chip, because in 50% of cases, 50% of EEA passports do not have a chip, but we open them up to compare the photograph.

Q185 Chair: As we have heard, this is about chips and children. When did you first discover—who told you—that the pilot had been extended?

Rob Whiteman: I was aware on joining the agency that prior to my arrival, earlier in that month, the pilot had been extended for a further period to November.

Q186 Chair: An authorised extension by the Home Secretary, signed off by Ministers.

Rob Whiteman: Yes.

Q187 Chair: When did you discover that there was possibly unauthorised activity going on?

Rob Whiteman: On 2 November, John Vine raised with me that he thought there was confusion on the ground with regards to what checks were taking place.

Q188 Chair: John Vine being the independent chief inspector.

Rob Whiteman: I am very sorry—being the independent chief inspector of UKBA.

Q189 Chair: How did he raise this with you? Did he come and see you in Marsham Street or did he ring you up?

Rob Whiteman: It was a prearranged meeting. John Vine and I will meet regularly, so this was a

prearranged meeting—in fact, probably the first—and we will have regular meetings.

Q190 Chair: So it was your first ever meeting with John Vine?

Rob Whiteman: I had met him before, but this was our first formal meeting.

Q191 Chair: He came to you and said he believed there was confusion on the ground. What did you take that to mean?

Rob Whiteman: And more than that, he said that secure ID, which is the fingerprint check, was not being taken for non-EEA cases and that he thought that went beyond any ministerial approval with regards to the pilot.

Q192 Chair: How would John Vine have known about the ministerial approval, bearing in mind the fact that he was not involved in policy issues?

Rob Whiteman: I think John Vine was interested in the pilot. He was carrying out field work at the time for part of his next report to UKBA.

Q193 Chair: As a result of his concern, what did you then do?

Rob Whiteman: I asked Brodie Clark that evening whether it was correct.

Q194 Chair: Sorry. We need to be very specific here, because we have had specific evidence. Did he come and see you at Marsham Street or did you speak to him on the phone?

Rob Whiteman: Brodie Clark and I both work in Marsham Street. We had a prearranged meeting for that evening, so we had a one-to-one meeting arranged for after I had had an earlier meeting with John Vine.

Q195 Chair: What time was the John Vine meeting?

Rob Whiteman: The John Vine meeting was at 4.30 pm. My meeting with Brodie Clark was at 6 or 6.30 pm.

Q196 Chair: Between 4.30 and 6.30 pm, you did not need to speak to anyone else about this matter? You did not contact the Home Office?

Rob Whiteman: The meeting with John Vine—I can give the exact times, Chair—I think started at 4.30 pm and finished some time after, so there was not a lengthy time between my meeting with John Vine and the meeting with—¹

Q197 Chair: But you had no conversations with anybody else about this?

Rob Whiteman: No.

Q198 Chair: You saw, at a prearranged meeting, Brodie Clark. What happened at that meeting?

Rob Whiteman: At the meeting, I asked Brodie—Mr Clark—if it was the case that secure ID was not always being checked, and he said that was the case. I asked, if it was the case, whether Ministers had specifically not given authority that those checks

¹ The witness later clarified that, the meeting he held with John Vine started at 3.30 and finished at 4.30pm.

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should not be taken, and he confirmed to me that Ministers had explicitly wanted secure ID to be checked. Therefore, I made him aware that this was a very serious matter, and that I would want to see him first thing the next morning.

Q199 Chair: Did you have note takers in the room at this stage?

Rob Whiteman: I had two private secretaries. As is common for meetings, I had two private secretaries who produced a note of the meeting.

Q200 Chair: You are telling this Committee that, at that meeting, Mr Clark admitted to going beyond the authority given to him by Ministers?

Rob Whiteman: Yes.

Q201 Chair: He did not say to you that there are two separate issues here—on the one hand was the pilot, and on the other hand was a long-standing arrangement that goes back to 2007, which allowed the possibility of these checks to be raised due to health and safety issues?

Rob Whiteman: He e-mailed me the next morning.

Q202 Chair: You did not suspend him at that meeting?

Rob Whiteman: No. I suspended him the next—

Q203 Chair: Okay. So you said, “Go home, and I’ll talk about it again with you tomorrow.” Is that right or what did you say to him?

Rob Whiteman: I did not suspend him. I said it was a very serious matter, and that I would want to see him the next morning. I also said that I would want further information about what had taken place and that, if the secure ID checks had not taken place, I would want to know more information about where that was.

Q204 Chair: That is very clear. Then you had an e-mail at 7 o’clock in the morning?

Rob Whiteman: If I could add, Chair, that also that evening I discussed this with Jonathan Sedgwick, who had been acting chief executive before I arrived. I wanted absolute clarity on whether Ministers had ever given authority for secure ID—the fingerprint check—not to be taken. Jonathan was very clear with me that he had been in the meetings with Ministers and had been a party to the submissions, and that Ministers had been clear that, whilst they agreed other aspects of the pilot, they thought that fingerprint checking should always take place.

Q205 Chair: But did you ask Brodie Clark why he had gone beyond ministerial authority? This is a very important, very serious matter, as you have said. You were very concerned about it. Wouldn’t the first thing to say to the head of border security be, “Why did you do this?”

Rob Whiteman: This is a serious breach of ministerial instruction. I discussed the matter with Dame Helen Ghosh, the Permanent Secretary of the Department—

Q206 Chair: When did you discuss it with her?

Rob Whiteman: Before I met Brodie Clark the next morning.

Q207 Chair: So, let’s see whom you talked to: first, you saw Brodie Clark.

Rob Whiteman: Yes.

Q208 Chair: You then spoke to Jonathan Sedgwick.

Rob Whiteman: Yes.

Q209 Chair: You then rang Dame Helen Ghosh.

Rob Whiteman: I spoke to her the next morning, before—

Q210 Chair: You spoke to her in person.

Rob Whiteman: In person, before I met—

Q211 Chair: You went to see her in her office.

Rob Whiteman: Yes.

Q212 Chair: And you said what to her?

Rob Whiteman: I said that Brodie Clark had admitted to me that secure ID was not being checked, even though Ministers had explicitly said that it should be, and that I thought the best way forward was to suspend him from duties so that a thorough investigation could take place.

Q213 Chair: Did you show her a copy of the e-mail?

Rob Whiteman: I did not.

Q214 Chair: Why?

Rob Whiteman: I had only received the e-mail on my BlackBerry coming into work, therefore I had not been into my office to print it off.

Q215 Chair: Because what is very odd is that you asked for further information from Mr Clark, which was provided to you, but you were not able to show that to the Permanent Secretary.

Rob Whiteman: The further information from Mr Clark was that whilst Ministers had not agreed to suspend secure ID checks, there was a pre-existing practice of not taking these checks, of which Ministers were not aware. To me, that was the same point. Ministers had explicitly said, “We think these checks should be taken.” Here was an admission to me that ministerial instruction had not been followed. The point I am making is that I suspended Brodie because ministerial instruction had not been followed, whether that was through the pilot or the health and safety policy, it was clear that Ministers had intended that these checks should be taken.

Q216 Chair: Indeed. Would you send the Committee a copy of the e-mail, please?

Rob Whiteman: It will be made available to John Vine’s investigation, as will all other papers.

Q217 Chair: Sorry, Mr Whiteman. This is a Committee of the House, and I have asked that you send us a copy of that e-mail. It is very relevant to the Committee’s consideration.

Rob Whiteman: My understanding of the Government’s position is that all papers will be made

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available to John Vine's investigation. I believe the Home Secretary has said in the House that all papers will be made available to John Vine.

Q218 Chair: You obviously did not look at the transcript of the Home Secretary's evidence to this Committee, in which she says that she would send information to us, so I would like you to send me a copy of that e-mail, please. That is a request from this Committee.

Rob Whiteman: I hear the request, Chair—

Q219 Chair: If you do not do so, Mr Whiteman, we will take other instructions.

Rob Whiteman: If I am in a position to send it to you, I will do so.

Q220 Steve McCabe: Who would stop you being in a position to send it to us?

Mr Winnick: You understand that this is a Select Committee of the House of Commons, Mr Whiteman. When the Chair asks on behalf of this Committee for a paper to be sent, he expects it to be sent—simple, clear.

Chair: Anyway, Mr Whiteman, you will reflect on what I have said.

Rob Whiteman: In no way am I trying to be discourteous to the Committee. I am saying only that I understand that the Home Secretary has said that all papers relating to this will be made available to John Vine.

Q221 Chair: I do understand. Mr Whiteman. I would be grateful if you would go away and reflect on this, and consider what we have said.

May I just finish this line of questioning before I ask colleagues to come in? I am a little concerned now about the evidence we have received from Mr Clark on your second conversation with him, when you suspended him. Did you suggest that he retire from the service?

Rob Whiteman: I didn't suggest that. We had the meeting in which I suspended him and, as you said earlier, my two private secretaries were there. I appointed David Wood as a—

Q222 Chair: Just go back a second. We are talking about the offer made to Mr Clark when you suspended him.

Rob Whiteman: At the break-up of the meeting, Brodie Clark said that he would talk to HR. He also used a phrase to me—something like, "Is that the formal business done?" My private secretaries left the meeting and we had a brief conversation. In answer to your question, I did not suggest that Brodie retire, but I was aware, during the day, that he had discussions with HR about whether he could take retirement. I discussed that with him later in the day, after HR had spoken to him. What was being discussed with him was a discretionary retirement. This would be where he receives a six-month payment and three months pay in lieu of notice. There were discussions between him, HR and, indeed, myself. My HR director briefed me that he told Mr Clark that although this was being discussed with him—about

whether or not that was possible—this was not a formal agreement.

I discussed the matters with Dame Helen Ghosh, the Permanent Secretary, because during the day the seriousness of the allegations was becoming greater. I suspended him on the issues of secure ID, but questions are now being raised about Calais as well. In the meeting I asked whether there was anything else I should know about, and Mr Clark mentioned Calais. Therefore, the decision was that we would not agree to a request for retirement. There had been discussions with him during the day, including with myself and HR, and we had verbally discussed the possibility of doing that. The Permanent Secretary's position, however, was that any discussion had to be withdrawn because of the seriousness of the case; she felt that it would be wrong to give discretionary benefits to a retirement once a disciplinary action—or an investigation that may lead to a disciplinary action—had started.

Q223 Chair: Basically, you are telling the Committee that you had a discussion about his retirement and you discussed terms—six months plus three. That discussion was ongoing, but then the Permanent Secretary intervened and said that there should be no question of a retirement package being given. Is that right?

Rob Whiteman: That is correct, yes.

Q224 Chair: Is it normal practice in an agency that the Permanent Secretary is able to suggest to the chief executive that he change his position on something? I want to clarify this.

Rob Whiteman: Yes, it is.

Chair: It is. Okay. Thank you.

Q225 Mr Clappison: Mr Brodie Clark has given a lot of very good service, and his retirement issues are a matter of importance in their own way. I want to ask you about what was happening at Calais, which you just touched on. You have dealt with the question of secure fingerprints, but we were told by the Home Secretary that the watch list at Calais in respect of adults had apparently not been followed, although there had been careful discussion during the ministerial pilot on the question of whether or not children travelling in families or school groups should be checked against the warnings index. According to the Home Secretary, it transpires that the warnings index had not been operating in respect of adults travelling through Calais, even though it deals with people who are suspected terrorists or criminals and those who have been excluded from the country. What was happening?

Rob Whiteman: For the purpose of the pilot, the warnings index is always checked for adults. It has become clear that up to 100 times, fears at Calais about health and safety problems at the port led to the suspension of the warnings index being checked against adults. That is what we believe to be the case. That is now being investigated and is something that John Vine will look at in further detail.

The only other point I want to make is about the older policy called HOWI—the Home Office warnings

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index. That policy clearly applies only to EEA cases, so in no way does it cover secure-ID or non-EEA cases. From what I have seen of the submissions—as you say, Chairman, I was not in post at the time—it is absolutely clear that the older policy that was being used at times was not mentioned to Ministers. It is disingenuous to ask Ministers—

Q226 Chair: Any Ministers? Even those in the previous Government?

Rob Whiteman: I do not know about the previous Government. From the submissions that I have seen over this year, we have been asking Ministers to make decisions on the pilot while not giving them the full picture of other policies that were used at times.

Q227 Mr Clappison: So this was happening after July, and it was not being brought to the attention of Ministers. Is that right?

Rob Whiteman: That is correct, yes.

Q228 Mr Clappison: It was in everybody's mind that this was being discussed because the question of whether children should be subject to watch-list requirements had been discussed. Ministers were not told that in fact non-EEA adults were not being checked against the list.

Rob Whiteman: My understanding is that in the pilot, Ministers had to consider the balance between mandatory checks and discretionary checks, with regard to how border staff could best focus their attention on the more risky cases. In the case of children, the information from before the pilot started is that some 8 million children were checked against the warnings index in 2010, which led to one alert that proved not to be a problem. Therefore, on a limited basis, Ministers were willing to allow this pilot to take place, because those 8 million checks had not led to an alert, and those staff could be deployed doing other things. Similarly, Ministers considered that opening the chip on EEA cases to check the second photograph before the pilot started had led to very few identified forged documents. Therefore, again on a limited basis and not to be used routinely, that would be used to see whether staff could focus attention, Ministers were clearly of the view that secure ID is not a secondary check. The fingerprint is taken to ensure that the person presenting themselves at the border is not an imposter, because we've taken their fingerprint abroad and therefore, even if they look like the person in the photograph, we have a check. The incidence of that resulting in identification of forgery is low, but in the period April and May, Ministers had been clear that they wanted that check to take place, and I have seen confirmation from the Home Secretary's office on 22 July that my officials had no authority to go beyond what was being agreed for the pilot.

Q229 Mr Clappison: To be clear, there was no authority to go beyond the pilot, which you have just described, and no authority to do without the checks against the warnings index on non-EEA nationals coming through—

Rob Whiteman: Ministers were not aware in those submissions of an older policy which was being used to not check the warnings index. I haven't seen any mention of that in any submissions.

Q230 Alun Michael: Can I be clear about your communications with Mr Clark, please? You suspended him, and informed him that a colleague would be undertaking an investigation. Is that correct?

Rob Whiteman: Yes.

Q231 Alun Michael: He has told us that note-takers left the meeting, and that you then offered him a retirement option. Is that correct?

Rob Whiteman: It is not correct that I offered retirement. It is correct that I discussed retirement with him.

Q232 Alun Michael: Excuse me. Can we be precise about this? Did you suggest a retirement option?

Rob Whiteman: No, but I acknowledge—

Q233 Alun Michael: I want to be quite clear. What was the first reference to a retirement option, and in what terms?

Rob Whiteman: The first reference to the terms of a retirement package that I was aware of was later in the morning at 12.30. I was briefed by my office that Brodie Clark was in discussion with HR, and at approximately 2.30 I met him. He had discussed the package with HR, and I discussed with him that he wanted to retire.

Q234 Alun Michael: Are you saying that his evidence to us that you suggested a retirement option, and, secondly, that you suggested that he speak to Human Resources, is incorrect?

Rob Whiteman: My very clear recollection of events is that at the break-up of the meeting Brodie and I had a conversation when it was discussed that he would talk to HR, which he did. I did not suggest retirement, but I did discuss it with him.

Q235 Alun Michael: I want to be quite clear about this. He said to us that you offered the option of retirement, and that you suggested that he speak to HR.

Rob Whiteman: That's not my recollection of events.

Q236 Alun Michael: Thank you. Did you withdraw the offer or the option of retirement on your own initiative, or were you instructed to do so?

Rob Whiteman: I discussed the position with the Permanent Secretary, Helen Ghosh, whose formal decision it is, and we agreed jointly that the discussions on pensions should be withdrawn. That is formally her decision, but I agreed that that was the case because of the seriousness with which she felt matters had now progressed.

Q237 Alun Michael: As we understand it, the Border Force records the data about checks—what is done, what is not done, when anything is suspended, and so on. In view of that, did it come as a surprise when

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you learned the arrangements that had been in place for a considerable period?

Rob Whiteman: In the days or a week or so before John Vine spoke to me on 2 November, I had had discussions with Brodie—Mr Clark—at one-to-one meetings about a range of issues, which included when there were technical problems, ICT issues, with checks and what was happening in terms of the operation of the pilot. I did not understand in any of those meetings that checks such as secure ID were not being taken even though Ministers had expressly said that they should be.

Q238 Nicola Blackwood: I do not know whether you heard the evidence we have just received from Mr Clark, but he specifically claims that he did not authorise checks on the second photograph in the biometric chip of passports of non-EEA nationals to be regularly stopped. But this is one of the allegations that has been brought forward against him. Could you tell me if, in that meeting or any of the meetings you had with him, he admitted this to you?

Rob Whiteman: No, and the matter of opening the chip to compare the photograph on non-EEA cases is something that John Vine will now be investigating. In my meetings with him, the predominant conversation was with regard to fingerprints as secure ID. As I said earlier, in answer to the Chairman, I also asked Mr Clark, “Is there anything else I should know?” and he made reference to Calais, which we discovered subsequently was about the use of the HOWI policy and the warnings index checks. I am aware that there are concerns, from what people have said, but we did not always open the chip for non-EEA cases. That is now being investigated, as part of John Vine’s review.

Q239 Nicola Blackwood: Could I ask whether you are of the opinion that the 2007 guidance has been used in an inappropriate way, given the evidence that you have received over the past few days?

Rob Whiteman: I would say that the guidance relates to significant health and safety problems. For instance, if at Calais traffic was backing up to the péage, the motorway, or if flights were in the air and, therefore, the operators felt that they could not operate a safe airport, I think that the use of those provisions 100 times is greater than is likely to have been caused by significant health and safety problems. Although, as I said, this is a matter that John Vine will investigate, I think that there was confusion on the ground about what provisions were being used in relation to different checks. I think that the health and safety provisions became used routinely, rather than being used only in those circumstances.

Q240 Nicola Blackwood: Do you think that it is possible that those provisions were used without the knowledge of Brodie Clark and senior officials?

Rob Whiteman: No. I think that Brodie Clark and senior officials will have been aware of that.

Q241 Lorraine Fullbrook: Just to go a bit further than my colleague’s questioning, do you think that Mr Clark is in this position because the 2007 guidance,

which was actually designed for emergency situations, has been stretched to become in effect routine guidance?

Rob Whiteman: I think that is possible. I would say two things, if I may, Chairman. First, in terms of my position, this is why—

Lorraine Fullbrook: I mean stretched by Mr Clark—
Rob Whiteman: This is why, of course, I suspended Brodie Clark, in order that these matters would be investigated—because of that very clear risk. That is something that John Vine will now look at through his investigation. To answer your question, I think that, from what I see, the 2007 guidance has been stretched—

Lorraine Fullbrook: To become routine.

Rob Whiteman: To become certainly not unroutine—being used on more occasions than real, health and safety, dire positions. I think that is the case, yes.

Q242 Mr Winnick: When Mr Clark strenuously denies that he went beyond the ministerial authorisation for July, which was extended in September, you are saying that he is lying.

Rob Whiteman: What I am saying is that, at the first meeting, which took place on the evening of 2 September, Brodie Clark confirmed to me that fingerprint checks were not being taken, against the express authorisation of Ministers. I am also saying that, when he e-mailed me the next morning, he was clear that Ministers had no knowledge of the health and safety provisions under which he considered that he was suspending secure ID. They both add up to a clear picture on that morning that ministerial instruction to use secure ID was not being applied. I think that I was right to suspend Mr Clark, so that those matters could be investigated.

Our management procedures are to appoint someone from outside the line between myself and Brodie Clark. I appointed David Wood, who is a former deputy assistant commissioner of the Metropolitan police and our director of crime and enforcement, to carry out that investigation. In our management procedures, it says that suspension is a neutral act. When you think there are allegations, you suspend someone and have it investigated, which is what I did. I stand by that. I was right to do so, because I was given clear evidence that ministerial instruction was not being followed.

Q243 Mr Winnick: As you know, Mr Whiteman, Mr Clark strenuously denies going beyond and he is taking legal action for constructive dismissal. We shall see the outcome if that case goes ahead. His reputation, as he has said in evidence today, has been much tarnished. Indeed, the phrase “a rogue civil servant” has been used. Mr Clark has given 38 years of public service, with 15 years of that in various senior positions. Do you think that there is any justification for how, unofficially and in various ways, it has been said that he is a rogue civil servant?

Chair: You did not say it. You were not part of those briefings.

Mr Winnick: I am not saying that he did.

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Rob Whiteman: No, I wasn't. Clearly, I carefully considered suspending Mr Clark. As you have said, he has a long career and these things are not done lightly.

Q244 Mr Winnick: A distinguished career?

Rob Whiteman: He has a long career, which I am aware of. I did not suspend him lightly, but the role of a senior official is to advise Ministers and implement their direction. It was absolutely clear to me that Ministers wanted fingerprint checks to be taken and that that had not been put into effect. I think that I was right to suspend him under those circumstances. In relation to the other things that you have said, I have no knowledge or role in anything else. I cannot comment on that.

Q245 Mr Winnick: I noticed that you hesitated, to say the least, to use the word distinguished, but he has held senior positions and presumably when you took up your own post as head of UKBA, you would have known of the careers of people like Mr Clark who were going to work very closely with you. Presumably you knew when he was awarded a CBE for public services, so all that was known to you. The question that arises, which is my last, is: why should a person of his service over the years—some would say distinguished—wish to go on his own initiative against what the Minister has authorised? What possible incentive would he have to do that?

Rob Whiteman: I cannot answer that, Mr Winnick.

Q246 Mr Winnick: It would seem strange, wouldn't it?

Rob Whiteman: It would have been explored through a management investigation and Mr Clark asked why that took place. Since he has resigned from the civil service, that investigation falls.

Q247 Mark Reckless: Mr Whiteman, you say your role is to advise Ministers and implement their directions. Can you tell the Committee, therefore, why you suspended Mr Clark without any reference to Ministers?

Rob Whiteman: Because that is the way these things operate. I discussed the matter with the Permanent Secretary, who is the head of the paid service—the senior civil servant for the Home Office—and decisions to suspend officers are taken by officials, not by Ministers.

Q248 Mark Reckless: Is it also the case in these scenarios that retirement is discussed? Is that a proper process?

Rob Whiteman: The retirement process for officials of this level is, again, a decision for the Permanent Secretary, not for Ministers.

Q249 Mark Reckless: But you say that it was discussed at your meeting with Mr Clark. You deny suggesting it yourself. Are you saying that Mr Clark suggested it?

Rob Whiteman: I did not suggest it, but I am absolutely happy to put on the record that I discussed retirement with Mr Clark. He discussed it with HR, and I was supportive of that if formal agreement

would be given. I did not suggest it, but I am absolutely happy to confirm to the Committee that I discussed it with him. Dame Helen Ghosh's view, when I discussed it with her, is that the issues coming to light about Calais during the day, as I said earlier, meant that it would be inappropriate for discretionary benefits, such as the six-month payment or pay in lieu of notice, to be considered when we are in the position of a disciplinary investigation.

Q250 Mark Reckless: I would like to move on. On 9 November you wrote to the Committee and said that Mr Clark had "authorised his staff to go further than Ministerial instruction. I therefore suspended him from his duties." Can you clarify that? Is your point that he went further than ministerial instruction or further than ministerial authority?

Rob Whiteman: Further than ministerial instruction in that Ministers had instructed that secure ID checks should be taken.

Q251 Mark Reckless: You said earlier that Ministers were not aware of the pre-existing practice of suspending those in certain circumstances. Could you explain to me, then, this paragraph in the 28 July minutes—I raised it with the Home Secretary last Tuesday: "If, for whatever reason, it is considered necessary to take further measures, beyond those listed above, local managers must escalate to the Border Force Duty Director to seek authority for their proposed action"? I said to the Home Secretary, "You say that relates back to some previous guidance about health and safety." The Home Secretary answered, "Yes. When the warnings index was brought into place in 2007 this was in guidance that was there at the time. We are happy to provide a copy of that to the Committee."

Rob Whiteman: The 28 July document is an operating procedure, so this is something that is agreed by senior officials within UKBA because we have to take ministerial instruction or policy decisions and translate that into something on the ground that people will use. The point made in there about "if you want to go further, refer that to your director" undoubtedly does, I now know, refer to the 2007 HOWI policy, but in the submissions that were made around the pilot, no explanation at all was made of the use of that HOWI policy. Even if one does refer to that policy, the policy does not apply to non-EEA explicitly, and it would not apply to fingerprint checks, because they were introduced after the policy. That is why, in my view, the authorisation not to make those checks, if that was done by speaking to a director beyond the pilot, had no direct ministerial authority.

Q252 Mark Reckless: But this was written on 28 July—we are still to find out whether Ministers saw it or not—and it says, "If, for whatever reason, it is considered necessary," and has a process whereby you just have to go up to the Border Force Duty Director. Is it not possible that, actually, Home Office officials and Ministers were well aware of that—that it was the paragraph, as the Home Secretary told me, that had been used again and again in guidance since 2007—

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and it is just that, five weeks into the job, you were not familiar with it?

Rob Whiteman: No. I discussed this with Mr Sedgwick, the acting chief executive, who, again, confirmed that the position of not taking secure ID was very firmly against ministerial instruction—the position that you say now is rectified for the future. In future meetings I will be very happy to discuss with this Committee how we now get a grip of these issues. We have issued very firm instructions with regard to what is and is not allowed, and obviously in the months ahead, I will want to review operating procedure in order that there is cast-iron clarity because something that we need to do for UKBA is to develop better compliance and assurance.

In answer to your question, I am clear in my mind that Ministers were not aware in any of the submissions they received that secure ID would not be checked. They were asked whether it should be checked. They said that it should be. They had given instruction to that effect, which is why I believe I was right to suspend Mr Clark and have the matter investigated.

Q253 Mark Reckless: Can you explain why the Border Force operations manual has been removed from the UKBA website?

Rob Whiteman: I wasn't aware that it was not on the website, but clearly now, Mr Reckless, an urgent task for us is to review that operating policy and make sure that it is clear.

Q254 Mark Reckless: Mr Whiteman, you say it is an urgent task for you, but surely it is an urgent task for this Committee. The Home Secretary promised us last week that we would be provided with this information, yet you are now saying that we are not to be and it should just be given to John Vine who is appointed answerable to the Home Secretary, and that he should decide what MPs see. Surely to get to the root of this, we need to see this information and come to a view as to who was at fault to ensure that it does not happen again.

Rob Whiteman: I will refer if I may to the discussion earlier with the Chairman; I will consider what has been said and take advice on it.

Mark Reckless: That is very generous of you, Mr Whiteman.

Chair: We will certainly consider and take advice. Steve McCabe.

Q255 Steve McCabe: There is obviously a significant gulf between your account of events and Mr Clark's. Helpfully, there is a minute of your meeting with Mr Clark, which would obviously help clarify the situation. Are you under instructions to withhold that minute as well as to withhold the e-mail from Mr Clark? Are you currently under instructions to withhold that, or are we able to see that minute?

Rob Whiteman: As I said earlier, my understanding is that the Home Secretary has said that all documents and relevant e-mails will be made available to John Vine.

Q256 Steve McCabe: So on the minute that would cast a bit of light, currently you believe you are not able to let us have access to it.

Rob Whiteman: I will consider that further, as I said to the Chairman, and take advice on it.

Q257 Steve McCabe: What about your meetings with Helen Ghosh? Were they minuted as well?

Rob Whiteman: No. My meetings with the Permanent Secretary are not.

Q258 Steve McCabe: There may be an obvious explanation for this, but I wondered why you chose to have a minute of your meeting with Mr Clark, but there is no minute of the meeting with Helen Ghosh where you discussed the possible suspension.

Rob Whiteman: It is usual practice for my meetings with all people who report to me—Mr Clark and the other directors—to be minuted by a private secretary because obviously that then forms part of my management or supervision of them. That is standard practice. My meeting with Helen Ghosh was in order to make her aware that I had this information—

Q259 Steve McCabe: Since she is responsible for you, she wouldn't have kept a minute of that meeting?

Rob Whiteman: The meeting was not minuted.

Q260 Steve McCabe: Tell me about the three people who are going to conduct these inquiries. Did you appoint John Vine, David Wood and Mike Anderson?

Rob Whiteman: I appointed one of them because the one that I appointed is the management investigation. In relation to the disciplinary matters, the procedures are that I suspend the officer, appoint a manager in order to investigate the matter who would then report back to me on whether a disciplinary breach had occurred and whether there should be a disciplinary hearing.

Q261 Steve McCabe: I don't know what happened in your previous job, but do you find anything slightly strange in the fact that Mr Vine was the person who raised the issue with you immediately, but he now has an investigative role? Mr Wood worked closely alongside Mr Clark and may well have been familiar with some of what is going on, and he has an investigative role. Does it cause you any anxiety about the quality of these investigations that two of the principal investigators are actually part of the issue?

Rob Whiteman: I think that it is right Mr Wood was appointed to carry out the management investigation because that is in line with our HR procedures, and that is what happens in most organisations.

Q262 Steve McCabe: Even if he was familiar with what had gone on beforehand?

Rob Whiteman: And someone from outside the line would be appointed. That is common in organisations. The Home Secretary has appointed John Vine, who is the independent chief inspector of UKBA, to carry out a review. That, to me, seems appropriate. He is the independent chief inspector and he will carry out—

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Q263 Steve McCabe: Even though you suspended Mr Clark on the basis of the anxieties that Mr Vine raised with you? He is independent enough still?

Rob Whiteman: Yes, his job is to raise concerns and I am grateful that Mr Vine raised concerns at the earliest opportunity with me. Because we are an agency of the Home Office, the Permanent Secretary has also appointed a director general from the Home Office, Mike Anderson, to oversee the David Wood investigation. So the David Wood investigation is taking place within UKBA management procedures, but a director general from the Home Office gives assurance to the Permanent Secretary that that—

Steve McCabe: One last thing. If the minutes of your meeting with Mr Clark were to be revealed, are you absolutely confident that they would confirm your version of events?

Rob Whiteman: Yes.

Q264 Chair: Thank you. Just by way of clarification you mentioned the role of Dame Helen Ghosh. You have not seen her letter to this Committee: “Question 5: When were you informed that Brodie Clark had been suspended? Rob Whiteman informed me that he had suspended Brodie Clark.” So the decision was yours, not Dame Helen’s?

Rob Whiteman: The decision to suspend was mine.

Q265 Chair: And the decision to take away the package was Dame Helen Ghosh’s?

Rob Whiteman: Yes.

Q266 Chair: Isn’t that a bit odd?

Rob Whiteman: I have authority to suspend. The pension package I discussed with Helen Ghosh because the Permanent Secretary has authority over senior civil service terms and conditions, so that is correct, Mr Vaz.

Q267 Dr Huppert: There are many fascinating things here. I find it interesting that you said suspension was a neutral activity, which apparently means that somebody cannot get a retirement package. I do think, for your sake, for your credibility on what you are claiming about what was said, that it would be helpful if we could see the e-mails that you say back up what you say. We heard from Mr Clark that there were two issues that were separated that had been conflated. You say that he accepted that they were in fact related. I think we do need to see that to know—

Rob Whiteman: In the first meeting he did. In the e-mail he didn’t. Either way I thought it was going against ministerial instruction.

Q268 Dr Huppert: We look forward to seeing the e-mail. The interim operational instruction of 28 July contains a section about escalation—where you can do more. There is nothing in there at all about EEA, non-EEA or any of those separations. Is that right?

Rob Whiteman: I don’t have the guidance note in front of me, but the pilot note is very clearly about EEA.

Q269 Dr Huppert: You are welcome to have a look, while I speak, at the middle of the second page. I should be very impressed if you could find anything there about the EEA. It does seem that there it is very clear that there is complete opportunity to—it is half way along: is there anything there about EEA and that it is only some things that can be stopped and not others?

Rob Whiteman: “We will cease routinely opening the chip”—

Q270 Dr Huppert: But below that is the section about—

Rob Whiteman: “In EEA cases” and below that it says: “Discretion may be exercised at director level.”

Q271 Dr Huppert: And the section slightly below that where it says—

Rob Whiteman: “If, for whatever reason, it is considered necessary to take further measures, beyond those listed above, local managers may escalate to the... Director”

Q272 Dr Huppert: There is nothing there saying, “But only for EEA”. There is nothing there saying “only under certain circumstances”. Is that correct?

Rob Whiteman: Yes. That is correct about that document, but the point I made earlier is that this document is an operating document drawn up by officials. In my view, that document should be much clearer on these issues in order that Mr Clark has translated what Ministers have instructed through to the operating guidance, which is given on the ground.

Dr Huppert: If I can ask just one more question, Chair, stepping back briefly. There have been a huge number of problems with UKBA and its predecessors for many, many years. There have been catastrophes with asylum and a whole number of other areas. This is just the latest. This Committee has criticised UKBA on countless—although I am sure they can be counted—times. What is going wrong? Is it that there is something fundamental about immigration? Is it something about the quality of staff? Is it about the quality of leadership? Why does this area cause problems so many times for so many Home Secretaries?

Rob Whiteman: I think that the agency is better than it was a few years ago, but nowhere near as good as it needs to be. I would say that, clearly, at one stage there were 500,000 asylum backlog cases and at one stage foreign national prisoners were being released without being referred to UKBA between the Prison Service and UKBA. Clearly, the position now is much more stable and a number of those backlog issues of the past have gone, but the agency is not nearly as good as it needs to be. In answer to your question, I would say that it operates in quite strong silos or blocks for the things that went in—

Q273 Chair: How does it compare with your last two jobs, as deputy chief executive of Lewisham and chief executive of Barking and Dagenham?

Rob Whiteman: More silo based.

Q274 Chair: More efficient?

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Rob Whiteman: No. High-quality organisations have good corporate systems in order to check what is going on. It should not be that an area of the business is impenetrable and that we are not quite certain what operating procedures—or I should be able to assure this Committee with independent information, in terms of both numbers and qualitative issues. Urgently, I will now create a new strategy and intelligence directorate in order to have independent figures about different parts of the agency, so I can start to give assurance to this Committee that we get a grip on performance and that we take the agency forward. The answer is that it is better than it was, but it has a long way to go.

Chair: That is very helpful.

Q275 Michael Ellis: Mr Whiteman, on the issue of the two junior officials who were apparently in the room at the time of the disciplinary-style meeting that was in progress with you and Brodie Clark, presumably you could provide the names of those two officials and their positions if the Committee asked for them.

Rob Whiteman: Yes.

Q276 Michael Ellis: Because clearly where there is such a divergence, it may be necessary to seek further inquiries, as well as the minute.

The evidence of Brodie Clark, at least in part, seemed to rely on the Home Office warnings index of 2007 in connection with why what was happening was happening, but the index of 2007 is silent on the issue of fingerprints, isn't it?

Rob Whiteman: Yes, it is.

Q277 Michael Ellis: Because fingerprints were only being checked in the way we know they now are as recently as early 2010.

Rob Whiteman: They were introduced around March 2010.

Q278 Michael Ellis: Is it within your knowledge that Brodie Clark sought ministerial approval for new pilot measures this year?

Rob Whiteman: In January of this year, Mr Clark asked for three measures—the two that were ultimately agreed around children and chips, and he also asked that fingerprints should not be checked on every occasion for non-EEAs, so he sought approval for that to be part of the pilot. In April, Ministers—the Home Secretary—said no to the proposals as they stood. The proposals were then discussed between Ministers, Mr Sedgwick—the acting chief executive—and Mr Clark in the period of May and June. When the proposals were brought back to Ministers in July, when they did ultimately then agree the pilot, the provisions around fingerprints had been dropped from the proposals, because Ministers had not been willing to agree them in April.

Q279 Michael Ellis: Did he make a second inquiry of Ministers as to the pilot?

Rob Whiteman: To my knowledge, no. As the Chairman said at the beginning, I was not there at the time, but from what I have seen, there were no

submissions after that period asking for permission not to take fingerprints.

Q280 Michael Ellis: Thank you. What I am putting to you is that if he was relying on that which was the case in 2007 as to fingerprints, is it not inconsistent with that, in your opinion, that he was seeking ministerial approval in January as to the fingerprints?

Rob Whiteman: It is completely inconsistent. It is completely inconsistent that we put submissions to Ministers and say, “Can we have your permission to do something? By the way, if you say no, I'm doing it anyway, but you don't know the policy under which I'm doing it.” That is completely inconsistent.

Q281 Michael Ellis: Both you and, as you were obviously very new, your predecessor—the acting chief, Jonathan Sedgwick—were of the view that disciplinary matters should follow?

Rob Whiteman: Mr Sedgwick gave me unequivocal advice that Ministers had been clear that the fingerprint should be taken and that no authority had been given to go beyond the two measures that were agreed. The decision to suspend Brodie Clark was mine and not Mr Sedgwick's, but I had discussed it with him and he agreed with me in relation to the very great seriousness of the fact that one of our senior directors appeared to have authorised or allowed something to take place that Ministers had explicitly said no to, and for that reason I thought it was necessary to suspend him.

Q282 Michael Ellis: It was within your knowledge that Ministers had clearly, explicitly and unambiguously said they wanted the secure ID checks done?

Rob Whiteman: Yes, because I think Ministers' consideration had been that, although the checks do not lead to many direct alerts, obviously there is a deterrent factor. But also, of course, if somebody is found by that, it is actually quite a high-risk case—if somebody has gone to the position of forging the photograph in comparison with the photograph on the chip—so, although the number might be very low, Ministers were of the view that the risk value of an incident would be high and, therefore, ministerial consideration was not to agree to that proposal.

Q283 Nicola Blackwood: To follow up a little on the issue of the suspension of secure ID, did Mr Clark make it clear to you—when he tried to distinguish between his failure to get authorisation for the suspension of secure ID on limited occasions on a discretionary basis for border officials and this other policy which he had instigated from March 2010 with no ministerial approval at all—that he had never sought ministerial approval for the March 2010 practice which he had put in place from that time?

Rob Whiteman: Yes, that is correct. At the meeting on the evening of 2 November, he was clear to me that Ministers had instructed that secure ID should be taken, and that it was wrong that it had been authorised for it not to be taken. That is the meeting that I referred to earlier, with my private secretaries in the room.

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The next morning, he e-mailed me very early in the morning and made this distinction: “Actually, Ministers said no to this proposal and I consider that I complied with that, whilst at the same time there are provisions under which I have authorised it and Ministers have never been aware of those provisions.” That is the same effect, isn’t it? What I had was evidence from one of my senior directors that Ministers were not aware of what was going on under that separate provision, even though they had explicitly said what should take place under the provision they were aware of.

Q284 Nicola Blackwood: When you spoke to Mr Clark after receiving that e-mail, which was the meeting in which you informed him of your intention to suspend him, did you ask him if he thought he had the authority to authorise the suspension of secure ID without ministerial approval?

Rob Whiteman: I said that I considered the matters to be very serious, and that ministerial direction had not been followed. He had admitted to me the night before that it was wrong that ministerial direction had not been followed. Therefore, I thought the best course of action was to suspend him in order that these matters would be thoroughly investigated.

Q285 Nicola Blackwood: Did you ask him why he had authorised the removal of secure ID without ministerial authority?

Rob Whiteman: I did not ask him at that meeting, because I did not want to prejudice a disciplinary investigation. The correct procedure to follow at that point is to make the suspension, and then those questions are asked as part of the investigation. If I started to ask them then, there was a risk that I was prejudicing the investigation that will one day come back to me from the investigation officer.

Q286 Chair: Do you not think it would have been helpful to know why, when there was going to be a statement to the House that was going to cause enormous political furore and when the Home Secretary was going to be dragged into it? When you gave an explanation, don’t you think you should have asked why?

Rob Whiteman: I think I did the right thing, Chairman. As soon as I was made aware of these events, I made a suspension in order that they could be investigated and the HR advice to me was not to prejudice the investigation—I had discussed the matter with my HR director, and it was very clear

advice to me that, when making a suspension, I should not prejudice the investigation—and that is what the investigation does.

Q287 Chair: Mr Whiteman, you will appear before us on a number of occasions in the future and, obviously, we want a good, strong relationship with the chief executive of the UKBA. I do not know whether you have had a chance to see the report that was published on the very day this crisis developed. In paragraphs 54 and 55 of our report, we specifically say that we expect the UKBA to be transparent and open with this Committee in providing information. We were not very pleased when Ministers wrote to us and said that they would not be providing us with an update of issues of concern. This is exactly why Parliament needs to be kept informed, because Parliament knew nothing about this. Therefore, if we had known, at least we would have been able to have done something about it. Do you hope that in the future, when we write to you about things, you will be able to be open and transparent as, frankly, your predecessors have not been?

Rob Whiteman: It is very much my intention to be so, Chairman. I think this Committee has an important role in holding me to account and also in my being transparent about the good things and the bad things that happen. I am explicitly creating a new strategy and intelligence directorate in order that there is independent information available with regards to what is happening in services. I want to give a cast-iron guarantee to this Committee that we will get a grip of the border and UKBA, and I look forward to working with the Committee in future in order to do so.

Q288 Chair: A demonstration of this commitment will be that when we ask for documents, they are supplied. We know that there are other internal investigations going on, but Parliament has a job to do and we have a job to present Parliament with a full report, so we will be writing to you after this meeting requesting further information. We do not really want to use the powers that the House has to get those documents; we would like it to be done on a basis of trust because, as I am sure you would agree, it is important that Parliament knows what happens.

Rob Whiteman: I very much want to work on the basis of trust with this Committee, Chairman.

Chair: Mr Whiteman, thank you very much for coming in.

Rob Whiteman: Thank you very much indeed.

Tuesday 22 November 2011

Members present:

Keith Vaz (Chair)

Nicola Blackwood
Michael Ellis
Lorraine Fullbrook
Dr Julian Huppert

Steve McCabe
Alun Michael
Mark Reckless
Mr David Winnick

Examination of Witness

Witness: **Dame Helen Ghosh DCB**, Permanent Secretary, Home Office, gave evidence.

Q289 Chair: We now change the subject of the Committee's deliberations to UKBA. Can we call the permanent secretary at the Home Office? Good afternoon, Dame Helen. My apologies for keeping you waiting. We are in the middle of two other inquiries that have been going on. Thank you for giving evidence. On behalf of the Committee, may I thank you personally? Whenever we have written to you, you have been very co-operative with the Committee in providing us with information, and I am most grateful to you for coming here to give evidence on the latest issues that are challenging the Border Agency. We will see you again before the end of the year about your normal work—not that this is not part of your normal work.

We want to concentrate today on what has happened with regards to the pilot that the Home Secretary instituted, the unauthorised extension—according to the Home Secretary, but not Mr Clark—and, finally, the suspension of Mr Clark. I suggest that this has been something of a public relations disaster for the Home Office in the past two weeks. The head of border force security has resigned, the Home Secretary has been to the House on a number of occasions and there was obviously confusion as to whether the fingerprinting was going on at Heathrow. Had it not been for Mr Vine visiting on a particular day, we would still be in a position where some of these extensions to the original pilot would be taking place. Are you embarrassed, surprised, disappointed? What is your reaction to what has been happening over the last two weeks? You are permanent secretary at the Home Office.

Dame Helen Ghosh: Thank you, Chairman. As I have said on a number of previous occasions, I think that the Home Office is a complex delivery and operational Department and we need to ensure that we have the right systems and processes in place for understanding the risks that the Department carries. As I set out in my letter to you of 14 November, we have a number of high-level governance arrangements, both in the Border Agency and in the Department as a whole, particularly in the form of the executive management board, which I chair, and the supervisory board. Those two boards look at a range of high-level indicators around UKBA performance, for example, on the border force side, around the number of clandestine illegal immigrants, the kind of goods we seize and so on.

Q290 Chair: You can take it that we have all read your letter.

Dame Helen Ghosh: Splendid, but, of course, recent events give us pause in terms of how in any very complex organisation, such as this, you understand what is happening at the front line. My colleagues and I make a number of visits to the front line. I was at Gatwick over the summer talking to staff about the circumstances in which level 2 checks were instituted. This is an issue that Rob Whiteman is now looking at in terms of the kinds of management information he requires and the kinds of checks we make, but ultimately I think in this instance, despite the fact that Ministers had requested weekly reports—

Chair: We will come on to that.

Dame Helen Ghosh:—none of them mentioned secure ID for non-EEA visa nationals. Unless that kind of data come up from staff, you rely on the very good inspector, John Vine, who we have looking at processes.

Q291 Chair: Right. We will come on to all that. Thank you for that very helpful introduction. Let us go to your knowledge on these matters. You became Permanent Secretary this year. Presumably, you had a briefing on the arrangements at the border.

Dame Helen Ghosh: I had a high-level briefing, as would Ministers—I know that is also an issue in which you are interested, Chairman—across the range of issues that the Home Office deals with. Inevitably, initial briefings are at a high level, and they would almost certainly focus on issues of immediate interest, whether of political or operational nature. For example, an issue around what arrangements were made on health and safety grounds at the border would not feature in that kind of initial high-level briefing; it would be the kind of issue that would emerge as one made visits, as one received submissions from relevant officials. That would be how I would have expected to hear about that particular issue.

Q292 Chair: So your answer to my question, very simply, is that you did not have a briefing on what Brodie Clark told us last week was the relaxation that had apparently gone on since 2007.

Dame Helen Ghosh: Absolutely not.

Q293 Chair: That is very clear. You did have a briefing, though, at some stage, and you were aware of the existence of—I think we should call it the Home

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Secretary's pilot. Everyone agrees that this pilot was very successful—the Prime Minister, Mr Clark and, indeed, the Home Secretary. You knew about the pilot.

Dame Helen Ghosh: Indeed I did. Again, I shall give the Committee some understanding of how I operate in my role. I see—they pass through my in-box, they are put in to me to read—all key submissions that go to Ministers in which the Department believes I would be interested, so issues like the early and later submissions from the border force on the summer pilot were ones that I would have seen and read. I was aware of the whole sequence of advice, responses from Ministers and the ultimate conclusion.

Q294 Chair: Excellent. And you would have known then that the Immigration Minister and the Minister for Security had signed off the original pilot that Mr Clark had put to Ministers. You were aware that they had given permission for it to start.

Dame Helen Ghosh: No. They had not given permission for it to start. At the beginning of the year, in January, the border force, led by Brodie, started to put together a range of options—

Chair: I think we should call him Mr Clark.

Dame Helen Ghosh: Mr Clark had put together a range of options for Ministers for dealing with both risk-based approaches to the border and, in particular, summer pressures. The early submissions that Mr Clark put to Damian Green and Pauline Neville-Jones were clearly the beginning of a process. They were not—and I don't believe Mr Clark thought so, either—the conclusion of the process, because they were seeking early steers. Again, as a former Minister, you will be familiar with that process.

It was clear from Mr Clark's responses to the comments that both Damian and Pauline made to the submissions, that he was anticipating that further advice would come forward. Clearly, given the importance of this issue in terms of risk-based approaches, it was inconceivable that they would act on a basis other than approval by the Home Secretary. That is completely clear from the sequence of events.

Q295 Chair: Fine. But there would be submissions anyway. I remember, as a former Minister, that if I got a submission, I had to initial whether I accepted it, or I had to say, "No, I want further work." So there was then further work.

Dame Helen Ghosh: There was then further work—

Q296 Chair: And there was then agreement by all concerned that the Home Secretary's pilot, supported by Mr Clark, should be commenced.

Dame Helen Ghosh: There was then agreement. Again, there were discussions in April and, finally, in July, before the pilot was due to start, which absolutely tied down what its content should be. As the Committee has discussed, both with Rob Whiteman and Brodie Clark, it was very clear what the terms of the pilot were, in terms of under limited circumstances for short periods and not routinely opening the chip on adult EEA customers and so on. It was completely clear, by the time the Home Secretary gave her final approval, what was in the pilot and what was not in the pilot, and I think that

Mr McCabe's question to Brodie at the hearing last week brought that out very clearly.

Q297 Chair: You are also very clear that there was an explicit instruction, which the Home Secretary told the House and, indeed, mentioned to this Committee. I am sure that you have seen the correspondence between myself and the Home Secretary.

Dame Helen Ghosh: I have.

Q298 Chair: There was an explicit instruction to Mr Clark that he should not exceed the authority of the pilot.

Dame Helen Ghosh: Yes, there is an explicit e-mail instruction from the Home Secretary's office to Mr Clark to that effect.

Q299 Chair: Finally, before I ask colleagues to come in on the pilot, isn't it strange that, despite the fact that we have all these people working for UKBA and that you as permanent secretary have given us a list in your letters of all the boards and supervisory boards that exist, it took a chance visit from Mr Vine—presumably he has been visiting since he became the independent chief inspector—to discover this most extraordinary circumstance whereby thousands of people were allowed into the country without having their fingerprints checked? With all these people employed by UKBA and all these people sitting on boards, it was just a chance visit.

Dame Helen Ghosh: As I said in my opening remarks, I think it gives us cause to consider the chain of management information and our process for checking it. I think it also raises cultural issues around the leadership of border force. Ultimately, Ministers were relying on very detailed weekly reports from Brodie Clark that never mentioned the issue. I think that is the issue we have to deal with.

Q300 Chair: These submissions are going to be available in the end to various inquiries. You talked about a cultural problem at the head of the UK border force. Is that now solved?

Dame Helen Ghosh: As you know, we have put in place an acting head, Matthew Coats, who is an experienced UKBA and civil service leader, and Rob Whiteman has instituted a much more rigorous—I believe six-hourly—suite of management reports on what is happening.

Q301 Chair: And you get a copy of that every six hours, do you?

Dame Helen Ghosh: I don't get one; Rob Whiteman gets one.

Q302 Michael Ellis: The original pilot appears to have been rather effective, according to reports that we have heard, presumably in that it allowed officers to focus on real perceived risks. We have had figures that show that there is a 10% increase in the detection of illegal immigrants and a 48% increase in the detection of forged documents, so are we on the right ground to say that, actually, the original pilot was pretty sound?

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Dame Helen Ghosh: We are operating on the basis that the original basis was indeed sound, as you would expect from a pilot that focused on high-risk issues rather than the low-risk EEA passengers. Before we can finally identify the outcome of the pilot, we have, of course, to look and see what our baseline was. Given the fact that it was not, as we had thought, being operated with the rigour that the Home Secretary and Ministers were led to believe it was, you have to question what the baseline is. So final evaluation of the pilot will take perhaps a couple of months further, to make sure we really are comparing like with like.

Q303 Michael Ellis: There has clearly been a divergence between Mr Whiteman, in whom I presume you have every confidence, and Mr Clark in connection with the evidence that they gave to this Committee last week. We have heard that there were two junior officials present in that meeting. In circumstances where there is such a divergence, have you spoken to either of those officials, or have you seen for yourself the minutes that were generated by that meeting? Do you have any observations to make about the divergence in opinion?

Dame Helen Ghosh: First, I certainly have faith in Mr Whiteman. I appointed him myself in the course of the summer and he has a long and distinguished record. I have seen the disciplinary notes, which are part of the disciplinary process that is now obviously suspended, in relation to Brodie Clark himself.

Chair: Yes, we will come on to the details.

Dame Helen Ghosh: I have read those accounts. I have also read, of course, Mr Clark's own testimony before this Committee and some of the media appearances that he has made. In terms of the facts of the case that were covered by Mr Whiteman both on the Wednesday evening in his interview with Brodie Clark and the Thursday morning when he had the formal interview, I don't think that in substance—Mr Clark raised the point that he believed that he was covered because, although he had suspended the biometric checks on non-EEA nationals, he believed that he was acting under the earlier HOWI guidance—there is actually any difference in outcome.

Q304 Chair: Perhaps you would explain what the HOWI guidance is for the benefit of those who do not know.

Dame Helen Ghosh: Certainly. Mr Clark's essential argument to explain the significant divergence from the clear instruction given by the Home Secretary is that, although this was never mentioned at any stage in the policy-making process, he was in fact operating under guidance on the suspension of the warnings index which was formulated in 2007. That provides—this is a very important point—that in relation only to EEA nationals who are travelling on services of low or very low risk, UKBA staff can suspend warnings index checks if there are significant health and safety issues. For example, if cars are backing up on to the motorway at Calais, or there is crowding at airports. In the exchanges with Rob Whiteman over that important evening and morning, Mr Clark said that he accepted that he had relaxed the biometric checks, but

that he believed that he had been covered by the earlier advice. Given all the evidence that both Mr Clark and Rob Whiteman had given, I think there is no difference of opinion about that point, as covered in the notes.

Q305 Michael Ellis: Can I add one more point? This is important. Mr Whiteman said to this Committee that the possibility of Mr Clark retiring was raised—

Q306 Chair: Mr Ellis, you can raise that later. We are concentrating on the pilot. Do you have a question on the pilot? We will raise the suspension later.

Q307 Michael Ellis: It is sort of connected, but I'm happy to come back to it.

Q308 Alun Michael: On this business of responsibility, you refer in your letter to the UK Border Agency as being part of the Home Office, and later you refer to Home Office HQ and the UK Border Agency as if they are something different and outside. If they are part of the Home Office, surely you can't talk about the Border Agency and the border force as if they are not your responsibility.

Dame Helen Ghosh: No, and we tried to think of a better way of drafting that. We redrafted it several times.

Q309 Chair: Redrafted the letter?

Dame Helen Ghosh: To explain that point, because the terminology that is used, including by the Committee, is to say that there is the Home Office on one hand, and UKBA on the other. UKBA is part of the Home Office. I lead 30,000 people—

Q310 Alun Michael: Yes, that is my point.

Dame Helen Ghosh: It is absolutely part of the Home Office.

Q311 Alun Michael: So why in the letter do you draw the distinction as if it is nothing to with the main Home Office HQ?

Dame Helen Ghosh: I was just trying to answer the question in the terms in which the Committee had put it to me.

Q312 Alun Michael: So you accept that you are entirely responsible for the Border Agency and the border force.

Dame Helen Ghosh: I accept that as accounting officer and leader of the Home Office I am responsible for leadership of the Border Agency and the border force.

Q313 Alun Michael: Could you help me with one other thing? There seems to be a reference to all sorts of boards: the main Home Office board, the executive board, the supervisory board, the Home Office advisory board and the agency board. Is it clear to everyone who is responsible for what, and are they all fit for purpose?

Dame Helen Ghosh: I believe it's clear to everyone who is responsible for what.

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Q314 Alun Michael: It's not clear to us.

Dame Helen Ghosh: If I may help the Committee, essentially in terms of the overall high-level governance there are three boards in which you would want to take an interest. There is the supervisory board, an innovation of this Government—

Q315 Chair: Well, we want to take an interest in everything, not just the three at the top.

Dame Helen Ghosh: Indeed you do, but I was trying to assist Mr Michael. The supervisory board, introduced by this Government, is chaired by the Home Secretary, is supported by non-executives, and takes a high-level, non-executive role. It doesn't take decisions about management of the organisation, but it monitors our performance, particularly against our business plan, and risks.

Q316 Alun Michael: Dame Helen, with respect, I suspect that we'll get bogged down in this.

Q317 Chair: Too many boards.

Q318 Alun Michael: Could we have a list of the boards, whether you think we might be interested or not, and could you express with clarity who is responsible to whom, and exactly for what?

Dame Helen Ghosh: I would be delighted to do that.

Q319 Chair: Perhaps we could know who is on all the boards. I think Mr Michael mentioned four, but there is also the group investment board, the capital and portfolio board and the audit risk board. If we could have a list of all those boards, how often they meet, and the membership, that would be very helpful indeed.

Dame Helen Ghosh: I would be delighted.

Q320 Mr Winnick: In the saga that is continuing with a number of inquiries, including our own, isn't the crux of the matter to some extent whether Mr Clark believed that what he was doing, which led to his suspension, arose from what was agreed to in 2007?

Dame Helen Ghosh: That is indeed, as I was saying to Mr Ellis, effectively the crux of the argument he has put.

Q321 Mr Winnick: He continued, as you know, in evidence before us last week to emphasise that. Mr Clark I think gave 38 years' service—longer than yours, because of his age—15 of which were held in very senior positions. Would you not find it strange that he should, on his own initiative, go against the policy that had been agreed to? Would there be any incentive or any reason for him to do so?

Dame Helen Ghosh: Obviously, the reasons why he did so are the subject of the inquiries to which the Chairman referred. I would come back to the point that I made to Mr Ellis, which is that if Mr Clark were relying on this earlier policy instruction, it was disingenuous to do so because it was absolutely clear that that did not apply to non—too many negatives—non-EEA passengers, and, therefore, to suspend the use of biometric checks on non-EEA passengers as an

unauthorised extension to the level 2 pilot was not covered explicitly by the 2007 guidance.

Q322 Mr Winnick: Well, clearly Mr Clark thinks otherwise. When she agreed to the pilot that we are discussing, was the Home Secretary fully aware of the 2007 position?

Dame Helen Ghosh: Absolutely not, because that guidance was never, ever mentioned to her.

Q323 Mr Winnick: Why not? Unlike the rest of my colleagues, I confess to being a total layman in these matters. If the Home Secretary decides to take such an active interest in day-to-day operations at the airport—I am not criticising that; if the Home Secretary of the day wishes to do so, so be it—why was she not informed of the previous policy relating to 2007? Shouldn't she have been properly briefed?

Dame Helen Ghosh: I cannot answer that in relation to what was in the mind in particular of Mr Clark, but certainly the lesson that I learn as head of the civil service for the Home Office is to make sure that we put all relevant facts in front of Ministers when we are giving them advice.

Q324 Mr Winnick: But she was not, therefore, aware of the 2007 advice?

Dame Helen Ghosh: She was not aware of the 2007 advice, nor at any stage in the operation of the pilot was the fact that these suspensions were happening drawn to her—or indeed to Mr Green's—attention.

Q325 Mr Winnick: Is it possible that had she known, she might have taken a different decision over the pilot? Is that a possibility?

Dame Helen Ghosh: I am never a believer in speculating on a counter-factual. She was certainly very clear what she wanted in the pilot, and she was very clear what she did not want in the pilot. Had she known that this earlier advice might erroneously be interpreted in the way it was interpreted, I guess she would have been even clearer in her statement about what should happen and what should not.

Q326 Mr Winnick: Dame Helen, that is very much a politician's answer; whether that will be taken as a compliment or not, I do not know. Just one more question: the Chair has emphasised that had it not been for the intervention of Mr Vine, nothing would have occurred. Again, I am a bit puzzled, even if I cannot bring my colleagues in and say that they should be equally puzzled. If the Home Office, led by the Home Secretary, takes such an active interest in the pilot and the rest of it, why was it not monitored accordingly? Why should it simply be left to Mr Vine to discover that, lo and behold, what was being done was not in accordance with the pilot?

Dame Helen Ghosh: My prime answer to that question is that it was being monitored, and it was being monitored through the weekly reports that were coming from Mr Clark to Ministers, none of which mentioned this issue. That is the essential point to make in response to your question. What it does raise, and this is something that Rob Whiteman is looking at very carefully in terms of lessons learned, is that

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we need to have a culture of very clear logging of activity—another point on which I know John Vine will be very focused—or an absolutely systematic logging of activity so that we can go back through the record and ask precisely that question.

Q327 Lorraine Fullbrook: Dame Helen, Mr Clark last week admitted to me that he had suspended fingerprint checks without ministerial approval and that he subsequently made a request, which was then rejected. It was my contention to Mr Whiteman last week that Mr Clark had stretched the 2007 guidelines—I understand that they are designed for emergency situations—and he had stretched them to the extent that they had, in effect, become routine guidance. Would you agree with that?

Dame Helen Ghosh: There are two issues here. The area in which he had stretched the pilot was, of course, in particular in relation to secure ID. What we are now looking at and analysing is the extent to which it went beyond the strict terms of the pilot—in other words, that it should operate only for short periods of time and that only in those short periods of time should staff not routinely open the chip or not routinely check children. We need to establish the facts, as I am sure John Vine will be doing, about what periods those checks—that level 2 freedom—were being used. I cannot say at the moment exactly what the periods of time were for which it was being stretched.

The key issue on which the initial suspension of Mr Clark happened was around the biometric checks.

Chair: Yes, we will come to that.

Q328 Lorraine Fullbrook: It is alleged that Mr Clark carried out biometric checks on EEA nationals and warnings index checks on EEA nationals, but those on children were not carried out on a regular basis, adults were not checked against the warnings index at Calais, the verification of fingerprint checks on non-EEA nationals from countries that require a visa was stopped on regular occasions and checks on second photographs in the biometric chip of passports of non-EEA nationals were regularly stopped. Were you aware of this?

Dame Helen Ghosh: No is the answer, for the reasons I have previously given to the Committee. Some of those things are allowed for, and I will just pick one example under the HOWI of 2007. For example, were the French police to say, “Look, cars are backing up on to the motorway,” and we did not check EEA adults—or, indeed, children—against the warnings index, that would have been covered by the HOWI guidance.

What we need to be clear about, in the course of John Vine’s investigation, is to what extent there were genuine responses to health and safety issues, to which the HOWI could be applied in the case of EEA nationals, and to what extent there were not genuine health and safety instances. That is what we need to establish now, so I would not like to speculate on the extent or the timetable.

Q329 Chair: In your letter to us, you said you met Brodie Clark six times since July and you went down to the airports. You did not, by going down to the

airports, discover anything amiss? It was just Mr Vine, with his great super-power, who discovered something was going wrong? Ministers visited and the Prime Minister went down to the border—nobody asked anybody what was going on?

Dame Helen Ghosh: Well, nobody said, including in the weekly reports, that—

Q330 Chair: Yes, I understand the weekly reports, but we have not seen the weekly reports; we are not being given the weekly reports. But in the visits made by you and presumably by your predecessor David Normington, who is now the first civil service commissioner, by all these civil servants over all these years since 2007—because we are talking about the 2007 guidance and Mr Clark said that it had been used since 2007—and by Ministers in the last Labour Government, who all popped down to the border, to the airports, did nobody ask the question, “What is going on?”

Dame Helen Ghosh: If I may just describe, I visited a number of our ports—Heathrow, Gatwick, Glasgow, Portsmouth. If I take the example of going to Gatwick, it was in August, so it was during the pilot, and I had a discussion with two or three staff on the principal control point. We talked about the timing and circumstances in which they were moving to level 2, and I saw them do it, so I saw passengers coming in. Did I ask the question, “Can you tell me whether or not you are going beyond the terms of the pilot?” No, I am afraid I did not, because—

Q331 Chair: No, because they would not have necessarily known about the pilot.

Dame Helen Ghosh: They would not have known about that.

Q332 Chair: But this is common sense. Ministers and senior civil servants have visited our airports over four years. This Committee has visited the airports in the last four years and had a look at immigration control. Nobody ever discovered that this was happening.

Dame Helen Ghosh: It depends—sorry, I am just coming back to the comment to Lorraine Fullbrook—what you mean by “it is”. That is the issue.

Q333 Chair: The relaxation.

Dame Helen Ghosh: Sorry. We would all have accepted that there would be occasions when, for health and safety reasons, you would lift controls. If there was fire in the baggage hall—

Chair: Exactly.

Dame Helen Ghosh:—or, going back to the instance at Calais—

Chair: Or the planes not being able to land.

Dame Helen Ghosh:—that in that extreme situation, controls would be lifted. Volcanic ash, for example—when we suddenly had floods of passengers through, that was the kind of instance that was described.

Q334 Chair: So you would accept it.

Dame Helen Ghosh: But it was described, whenever it was described, as though it were an exceptional case, rather than a regular case.

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Chair: Not routine.

Dame Helen Ghosh: And the fact that it then linked back to a piece of 2007 guidance was never raised. I would say that I and all Ministers and my predecessors would have had the consciousness that you needed a response in extreme health and safety cases, but the extent to which that set of rules was being used in relation to EEA nationals, and that it was also being used against the rules for non-EEA nationals, would not have been clear.

Chair: That is very helpful indeed.

Q335 Mark Reckless: So, Dame Helen, are you saying that Ministers and officials had no awareness that that 2007 guidance had been stretched?

Dame Helen Ghosh: I am saying that, as far as I am aware, there was no awareness. There was no awareness and no drawing attention to it during any of the debates this year about the level 2 pilot.

Q336 Mark Reckless: Okay. In your letter to us of 14 November, you said that “Home Office officials are engaged with Agency staff on policy development and implementation in key areas,” and you then went on, “In this context they will be aware of a range of operational decisions by the Agency.” Could that not have included the stretching of the 2007 guidance?

Dame Helen Ghosh: It could have done, had it been drawn to their attention.

Q337 Mark Reckless: There is an alternative way of seeing this. Earlier you referred to Rob Whiteman’s long and distinguished service, but you did not mention that that had been in local government. You said that you had appointed him yourself, but you did not mention that that meant that he had not the benefit of a confirmation hearing from this Committee. You also did not mention that he had only been in post for, I think, five or six weeks.

Dame Helen Ghosh: Indeed.

Mark Reckless: Is it not possible that, prior to Rob Whiteman coming in, there was a long-running practice of stretching this 2007 guidance, but then when he came in not being aware of that, this all came to a head and led to Brodie Clark’s suspension?

Dame Helen Ghosh: As Rob Whiteman himself said, he was not aware of the 2007 guidance, but the issue on which he suspended Mr Clark was not that the 2007 guidance had been stretched, although that subsequently came to light; it was that he was explicitly breaching the instruction given him by the Home Secretary on biometric testing. That was the ground for suspension.

Q338 Mark Reckless: But aren’t those just two ways of describing the same thing?

Dame Helen Ghosh: Absolutely not, because for the reasons that I have just given Mr Ellis, the HOWI 2007 guidance could not conceivably have covered the situation of not taking biometric tests, because essentially it applied to non-EEA visa nationals and the HOWI guidance explicitly said—although it predated biometric checks, as Lorraine Fullbrook elicited last week—non-EEA nationals need to continue to be subject to the full barrage of controls.

Q339 Mark Reckless: So, Dame Helen, you state, and I think the Home Secretary states, that there is this one piece of evidence that explicitly states that. We have not seen that. What we have seen is this 28 July operational note, which has a paragraph that says that if staff—presumably quite junior staff—want to go beyond the terms of the pilot and take other measures—

Dame Helen Ghosh: Take further measures.

Mark Reckless: —they need to get that signed off by the duty officer of the border force. Doesn’t that suggest a sort of stretching of the 2007 guidance?

Dame Helen Ghosh: As I think both the Home Secretary and I have said, and Rob Whiteman, the policy side of the Department was not consulted on that operational guidance. Had we been, that particular—The description of the summer pilot that had been authorised by the Home Secretary is completely accurate. Had a policy person read that reference to if you want to take further measures, then the question, “What do they mean by further measures?” might have elicited the issue around HOWI and what they thought the further measures might be, but it was not cleared or seen by Home Office policy people and therefore that question was never asked.

Q340 Mark Reckless: You say it has not been seen by Home Office policy people, but on the second page of your 14 November letter to us, the final paragraph explains that this policy aspect of the Border Agency was moved, apparently in August, from the Border Agency into the Home Office. Isn’t that a potential source of this confusion?

Dame Helen Ghosh: No, because the arrangements for drafting that interim operating instruction predated those arrangements. But it is one of the ways in which we can ensure, going forwards, that the operating instructions issued by UKBA are also quality-proofed and checked by the policy side of the Department. That, I think, creates a much better creative tension and challenge to the operating instructions and whether or not they are actually fulfilling what Ministers want them to achieve.

Q341 Mark Reckless: Finally, in her letter of the same date to us, the Home Secretary stated that up until June this year she had met Mr Clark on average at least monthly but after June met him only once. Isn’t it possible that that may also be a source of this confusion?

Dame Helen Ghosh: Absolutely not, because Mr Clark was putting in weekly reports on the progress of the pilot and this issue was not raised at any of those.

Q342 Alun Michael: Isn’t it arguable that the 2007 guidance was not stretched because the checks that should remain in place for non-EU travellers, according to that guidance, did not include the biometric checks because they had not been introduced at that stage?

Dame Helen Ghosh: What the 2007 HOWI guidance makes clear is that the suite of controls we have and checks we have—

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Alun Michael: Which did not include the biometric checks?

Dame Helen Ghosh:—should not be relaxed, even under—

Alun Michael: Sorry, which did not include the biometric checks?

Dame Helen Ghosh: Which did not include the biometric checks, but it was completely clear that the policy was that non-EEA nationals should not have any relaxation of whatever the checks were; therefore I think it would be very—

Q343 Alun Michael: So this was guidance that actually included explicitly the retention of checks that did not exist at that point? That is a rather odd argument, is it not?

Dame Helen Ghosh: No, what I am saying is that the spirit—It was absolutely clear from the policy statement around that operating instruction that it was only to apply to EEA nationals on low or very low-risk services. Therefore, implicitly, it said that all checks, whatever they may be at the moment when they were being applied, that applied to non-EEA nationals should continue to be applied. In any event, the Home Secretary had in July this year explicitly said that she wanted those biometric checks to continue. I come back to the point that if anyone was interpreting the HOWI 2007 guidance to mean that they could raise the biometric checks, they should surely have said so to the Home Secretary at that point, and nobody did.

Q344 Alun Michael: You would agree, therefore, that it is sensible for us to be able to see those explicit instructions in order to see whether it is reasonable for the people who are being instructed to have interpreted what they were being told with a clarity that you imply is there?

Dame Helen Ghosh: As I have said, as the Home Secretary has said, all these documents will be available to Mr Vine, but I think to come back to the—

Q345 Alun Michael: But we are talking about this inquiry and the information that we need in order to be able to undertake our inquiry. That is surely the key document, isn't it?

Dame Helen Ghosh: I wouldn't agree with that. I come back to the evidence that Mr Clark himself gave to this Committee when asked, was there any ambiguity about the instruction that the Home Secretary had made, and he said no. So I don't think there was any ambiguity.

Q346 Chair: Let me clarify. It is for this Committee to decide what is relevant. I have written to the Home Secretary on behalf of the Committee. She has replied. The Committee has met in private session. We are not satisfied with her response, which presumably was done on the advice of officials, including yourself. This is a Committee of the House and we are conducting our own inquiry. It is not the same thing to hand documents to Dave Wood, who is a member of the management board—

Dame Helen Ghosh: Sorry, to John Vine.

Chair: No, Dave Wood is one of the inquiries, the other is John Vine. After all, John Vine is also a witness. He was the person who discovered what the entire UK Border Agency and the Home Office and all the Ministers we have had in the last four years have failed to discover—the fact that there was a relaxation. So he is a witness, and this Committee may call him to give evidence. In fact I shall be writing to him. The fact is that we need to see these documents and I am writing again to the Home Secretary. We don't want to have a fight on the Floor of the House over documents. These are documents that have been mentioned to the House. The Home Secretary said she gave an explicit instruction to Mr Clark. You have today told us for the first time that this was done by e-mail; we didn't know that, and I don't think it is sufficient to have this information coming out in these sessions. We are writing again to the Home Secretary about this, and if necessary we will take matters forward.

Dame Helen Ghosh: Thank you. I shall convey that to her.

Q347 Michael Ellis: The HOWI guidance that you have been referring to—Home Office warnings index 2007—is a restricted document, isn't it? Presumably it is restricted because of the danger of terrorists and other subversives—

Dame Helen Ghosh: Taking advantage of it.

Michael Ellis: Taking advantage of it. So can I ask you this, to try to crystallise some of the questions you have been asked in the last half hour? Is it your position that it is not possible for any senior manager to stretch the 2007 guidelines when in fact those guidelines are silent on the subject of biometric fingerprint checks? It is the equivalent of saying, "You cannot use your interpretation of a 2007 guideline, which is silent on the point of fingerprints."

Chair: I am looking for a brief answer: a yes or a no.

Dame Helen Ghosh: That is my position.

Chair: Excellent.

Q348 Dr Huppert: Could I come back to the pilot? We have heard from you, from Ministers and everybody that the pilot was a success. That is very good. You may be aware that there has been some questioning, for example, by statistician Professor Sheila Bird, one of my constituents, of how that could be evaluated. How rigorously has it been assessed—that it was such a great success? You will know that the Home Office has recently been criticised by the UK Statistics Authority on another issue. How do we know it was a great success?

Dame Helen Ghosh: I come back to the points I made to Mr Ellis. There is some high-level management information that suggests it was a great success, for example, in terms of seizures and the number of illegal immigrant entrants detected. As I said to Mr Ellis, because of the issues that have now arisen about what was in fact happening around relaxation, and those Ms Fullbrook raised about the length of time that was happening, we want to check that we are comparing like with like. Having done the pilot, we have stopped the pilot to evaluate. We now need to do

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a proper evaluation in more detail, one that is more statistically respectable.

Q349 Dr Huppert: That is very good, and I hope you will also be able to respond to the questions that Professor Bird raises on straight statistics. I will send you a copy of that. If it does turn out that the pilot was as successful as originally suggested, does that mean that it will be continued?

Dame Helen Ghosh: I think what an evaluation of the pilot will suggest—if it is indeed positive—is that the approach of Ministers, both in the previous and this Administration, of risk-based approaches being a good thing, both in terms of securing the border more effectively and the experience of passengers, is one we should take forward. A number of people, including the Prime Minister and the Home Secretary, have said that risk-based approaches are the way forward.

Q350 Dr Huppert: So you are confident that we will not see a retreat from intelligence-led approaches, merely as a result of this particular issue.

Dame Helen Ghosh: Both the Prime Minister and the Home Secretary have expressed their faith in the principle of risk-based approaches.

Q351 Chair: On the question of the pilot, a figure was given in the House that there was an increase of 10%. What was the base figure?

Dame Helen Ghosh: That is what we need to check.

Q352 Chair: So we don't have a base figure.

Dame Helen Ghosh: Given the evidence that we have about what was or was not happening, we need to establish that the base figure we are using is a comparable base figure.

Q353 Chair: But the Prime Minister and the Home Secretary said it has been increased by 10%. Do you know actual numbers?

Dame Helen Ghosh: I will let the Committee have the number.

Chair: We need to move on. The immigration Minister has been waiting very patiently to give evidence. We must not keep him waiting too long, colleagues. Nicola Blackwood.

Q354 Nicola Blackwood: Dame Helen, I wonder if I could take you back to the weekly reports. You mentioned that the reason why you and Ministers were unaware of the problems with border checks was that it was not included in Mr Clark's weekly reports. When we heard evidence from Mr Whiteman, he stated that he did not think it was possible that Mr Clark was unaware of the suspensions of border checks. Do you think it was possible that Mr Clark was unaware of any of the suspensions of border checks?

Dame Helen Ghosh: Of course, now I am straying into the area that will be looked at by John Vine's report and, indeed, into some of the context for the outstanding disciplinary inquiries, so I do not think I should speculate on that.

Q355 Nicola Blackwood: If he was aware, and we have Mr Whiteman's testimony to that, do you think that it would have been something that should have been included in the weekly reports?

Dame Helen Ghosh: If he was aware, as indeed the early statements by Mr Clark suggest, then I absolutely believe it should have been included in the reports, given the very clear—if I can clarify, Mr Vaz, when I said it was in an e-mail, it was the report of a discussion with the Home Secretary reported out from the private office in an e-mail in the normal way. So, it was the result of a discussion with the Home Secretary, then reported in an e-mail—was the Home Secretary's statement.

Q356 Nicola Blackwood: Is there standard information which is included in the weekly reports? Would you consider that an emergency situation at a port, which required the suspension of high-level border checks, would be worthy of note in a weekly report?

Dame Helen Ghosh: Yes.

Q357 Nicola Blackwood: Do you think that, if you are getting your information about such significant changes in border checks from one single source and there is a potential for that source to not be providing you information, it might be useful now to change the reporting mechanisms so that there are additional routes of information? So, where there is potentially a weak link, such as would appear to be the case in this instance, you could have other reporting arms.

Dame Helen Ghosh: Yes, and that comes back to the comments I made earlier about Mr Whiteman instituting, at the moment, much more regular six-hourly checks, but also looking at the whole issue around logs and how logs are kept on the ports, so that they are subject to, and capable of, being checked independently.

Chair: Excellent. Could we have a final question on the pilot, Mr McCabe? I want to move on to just one or two other questions.

Q358 Steve McCabe: If, when you have done all your checking, the pilot does prove to have been a success, does that mean you will need less staff to operate that kind of system in the future?

Dame Helen Ghosh: As you know, there are plans, over the SR10 period, to reduce the staff of the Border Force by around 900 people, from almost 8,000 people at the start of the period. But that is driven as much by technological introductions like e-gates, as well as a risk-based approach. Border Force will be getting smaller, although it has been protected to some extent from the overall level of cuts. We will also want to look at how we use staff to make sure that we are using staff at the times when there is the greatest passenger pressure. Some of the things that we have instituted recently, around more flexible rostering and teamworking, should help us with that too. So, that is how we will respond to these pressures against an overall shrinking work force.

Q359 Chair: Excellent. Let us now move on. These are really yes-no answers, because it is factual rather

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than discussion. You were informed about the unauthorised extension on the Thursday morning, is that right?

Dame Helen Ghosh: Yes.

Q360 Chair: Had you had the benefit of seeing the e-mail that was sent from Brodie Clark to Rob Whiteman at 7 o'clock in the morning, which is the subject of our request to the Home Secretary? Had you seen that e-mail?

Dame Helen Ghosh: I had not, but it would not have changed the view either of myself or of Rob Whiteman, who made the decision to suspend, about suspension.

Q361 Chair: But you hadn't seen it when he had the discussion?

Dame Helen Ghosh: I hadn't seen it at 8.30 when Rob came in.

Q362 Chair: But you have seen it subsequently?

Dame Helen Ghosh: I have seen it subsequently and I know its contents.

Q363 Chair: Excellent. That is very helpful. Did you know about the discussion that had been taking place between Rob Whiteman and Brodie Clark concerning his early retirement?

Dame Helen Ghosh: I was aware, when Rob Whiteman said he was proposing to suspend Brodie for—

Q364 Chair: At about what time was this?

Dame Helen Ghosh: About quarter-past or half-past 8 in the morning. Rob Whiteman speculated that Brodie might decide to leave the Department as an alternative. I simply noted that that was possible.

Q365 Chair: You didn't say, "This is a bad idea"?

Dame Helen Ghosh: I did not say it, but I will come back in a moment to say this is a bad idea. I know that, as Rob Whiteman has said, there were then discussions between the HR team—not in any detail—between Rob Whiteman and Mr Clark. At the end of the day and, in particular, in—

Q366 Chair: Sorry, let's get the sequence right. We were then told by Rob Whiteman that there was a meeting of the board of management of the UK Border Agency where they discussed and agreed to the retirement. There was no meeting of the board of management?

Dame Helen Ghosh: I will check the record. I am not aware of that. My understanding was that predominantly it was a discussion between Joe Dugdale, the HR Director of UKBA, and Brodie Clark on what the terms of a departure might mean.

Q367 Chair: So nobody else was involved in this discussion.

Dame Helen Ghosh: Not as far as I am aware, but I should say that it would not matter anyway because, when it comes to the terms of a departure of a member of the senior civil service of the Home Office—back to Mr Michael's point—that is for my approval. So

whatever they had decided, it would ultimately have had to come to me for decision.

Q368 Chair: Of course, and you took the decision that retirement was not an option.

Dame Helen Ghosh: I discovered at the end of the day—

Q369 Chair: Meaning 5 o'clock? A civil service day?

Dame Helen Ghosh: No, no. I can assure you, the civil service day—I was probably informed of it at about 8 o'clock that evening, 12 hours after the initial meeting. I had been told that he was proposing to retire.

Q370 Chair: At 8 o'clock?

Dame Helen Ghosh: Ish—in the evening of the Thursday. I understood at that stage that he was simply retiring—i.e., as if I suddenly said to Gus O'Donnell, "I am going to retire. Thank you very much", and go. I thought that he had simply decided to leave. I then discovered that he had been offered what I would call "enhanced terms" under the voluntary early retirement for staff over 60, which included an additional package: i.e., on top of what I would get if I stood up and walked out now—of my lump sum and pension. He had been offered an additional amount of six months' pay and, I think, three months' pay in lieu of notice.

Q371 Chair: And this was done by whom? By Mr Whiteman?

Dame Helen Ghosh: No, the negotiation was done in all good faith by the HR director, who believed that that was on offer. At that point, having been told early in the evening of the Thursday, I think it was, I concluded that it was quite inappropriate under the circumstances, and given the seriousness of the issue for which he had been suspended—that is, going against ministerial instruction—it would be quite inappropriate to offer any kind of enhanced package.

Q372 Chair: You would have accepted the other package.

Dame Helen Ghosh: If he had simply said, "I wish to depart", of course, there is nothing we can do to prevent anyone saying, "Thank you, I'm going."

Q373 Chair: It was the enhanced nature—

Dame Helen Ghosh: It was the enhanced nature of the package that seemed wholly inappropriate under the circumstances. So I then had a meeting with Rob—

Q374 Chair: At what time?

Dame Helen Ghosh: Again, I don't know—about 8.15 the following morning, on the Friday. I said, "Given the circumstances of which I am now aware, I think it's wholly inappropriate to offer an enhanced retirement package, so I would like us to return to the point where the suspension proceeds."

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Q375 Chair: During all these negotiations, you had no conversation with the Home Secretary or the Immigration Minister?

Dame Helen Ghosh: As you would expect on a day like that, towards the end of that day the Home Secretary had a round-up meeting with myself and—I am trying to remember—Rob Whiteman, probably our communications director, probably the special advisers.

Q376 Chair: What time?

Dame Helen Ghosh: Late that afternoon—6ish, 7ish—and at that stage, just seeking a situation report on what had happened in the course of the day. But she did not put any pressure on me to change my view about retirement, and I have to say it was entirely my own decision, given my understanding, as indeed emerged later that evening, that it was an enhanced package.

Q377 Chair: So no Minister said to you, “We are furious about what’s happening. This man must not be allowed to go”?

Dame Helen Ghosh: “And I insist that you withdraw this offer.” Exactly.

Q378 Chair: Had he said, “I’ll take what’s due to me without anything extra”, he would have got it?

Dame Helen Ghosh: Because in employment law, I believe, as I was advised at the time, there is no way that we could have prevented him from doing so.

Q379 Chair: Do you think that all of this could have been handled slightly differently—better?

Dame Helen Ghosh: I believe that we followed the processes and procedures that we should have followed, as an employer, but of course, the various inquiries will tell us whether there were any failures in that, and we will co-operate wholly with those inquiries.

Q380 Chair: One final question about Graeme Kyle and Carole Upshall, who are still employed but suspended.

Dame Helen Ghosh: Suspended on a precautionary basis.

Q381 Chair: What exactly does that mean—“precautionary basis”?

Dame Helen Ghosh: For the purposes of our misconduct policy, it means there is no implication for their future in terms of having anything on the disciplinary record. If you suspend someone on a precautionary basis because you feel that something needs to be investigated, it doesn’t stay on their file.

Q382 Chair: I see. Now, looking back at what’s happened, do you regard Brodie Clark as a rogue official?

Dame Helen Ghosh: I believe that Brodie Clark had a long career in a number of high-profile, high-risk jobs, and that he always led from the front.

Chair: I am not sure whether that is a yes or a no.

Q383 Michael Ellis: Can I go back to the retirement point? Mr Whiteman said that the possibility of Mr Clark retiring was raised, but that you had intervened—you explained what happened there—saying that that was inappropriate. I am less interested in the timeline and the like than in your thinking process at that moment. Did you effectively say that you did not consider it appropriate because you were satisfied, as head of the civil service in the Home Office, that Mr Clark had acted outside of ministerial authority? Is that why you decided that it would be inappropriate to give him an enhanced package or anything more than he was entitled to by law?

Dame Helen Ghosh: I was aware—although of course subsequent investigations will comment on that—that we had suspended him on grounds that could potentially lead to a serious misconduct charge. In those circumstances, to spend taxpayers’ money on an enhanced package for that person to leave the Department seemed wholly inappropriate. That is why I took that view.

Q384 Michael Ellis: You were concerned that that could have opened you up to criticism in terms of being frivolous with taxpayers’ money?

Dame Helen Ghosh: Well, I actually thought that it was wrong, and incidentally, that it could potentially open me up to criticism, because I believe in personal accountability.

Q385 Mr Winnick: You said in a reply to the Chair that Mr Clark had a long career. Was it a distinguished career?

Dame Helen Ghosh: As I said, he had a career in a variety of high-profile, high-risk jobs, to which he was appointed on the basis of his previous record. That is why I put it as I put it.

Q386 Mr Winnick: Well, we note that you avoid using the word “distinguished”. As far as the suspension is concerned, obviously, from his point of view, he feels a very strong sense of injustice that he was suspended without being able to give his side of the story. After all, as you yourself have admitted today, Dame Helen, it amounts to the difference between 2007 and the pilot agreed to by the present Home Secretary. The sense of injustice which is so much in his mind, and which he expressed to the Committee, is understandable, is it not?

Dame Helen Ghosh: To go back to the evidence that Rob Whiteman gave in the discussion on the Wednesday evening and Thursday morning, Mr Clark admitted to Rob Whiteman that he had gone beyond the terms of the pilot, that he had not told Ministers that this had happened, and that what he had done was wrong. To pick up your point about right of hearing, the way that our misconduct policy works, as indeed it works in all large organisations of this kind, is that the line manager—in this case, Rob Whiteman—is right to suspend an individual pending an investigation if they believe that there is some serious issue to be investigated. Rob was absolutely following that guidance.

Then there is an investigation, which is what would have been carried out into Mr Clark by Dave Wood,

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but of course Brodie Clark then resigned. In the course of that, he would have had the chance for a hearing, supported as necessary by his union representative, a lawyer or whomever it might be. The disciplinary process which Rob Whiteman triggered was completely in accordance with our policy and would have offered Brodie Clark that chance to respond.

Q387 Mr Winnick: Mr Clark said in his opening statement that he is not a rogue officer. Clearly, he feels that he was named and shamed. Given the high profile of his position and the political impact of immigration controls and the rest of it, wasn't it obvious that if he was suspended in the way he was, which you have just tried to justify, it in fact amounted to being named and shamed, giving a very sorry end to what he, if not you, considered a distinguished career in the civil service?

Dame Helen Ghosh: As I said, in deciding to suspend Brodie Clark, Rob Whiteman was absolutely following to the letter the kinds of criteria set out in our misconduct policy. I believe that the Committee would want us to be concerned if there were apparent evidence of any official flouting ministerial instruction in such a way that could have—

Q388 Mr Winnick: Which, of course, he strongly challenges.

Dame Helen Ghosh: And that is going to be the subject of the inquiry of Mr Vine and, in parallel, of the two officers whom Keith described.

Chair: Indeed. Dame Helen, we would be concerned, but since you are not giving us the documents we can't be as concerned as we would like to be, because we haven't seen the information. Mark Reckless has the final question.

Q389 Mark Reckless: Dame Helen, given that you are not providing us with the documents that we need to give a judgment, and the only inquiries into this are by people appointed by and answerable to the Home Office, how are the public or Parliament to have any confidence in the outcome?

Dame Helen Ghosh: John Vine's report will be made public and, as the Home Secretary said in her letter to the Chairman, on the disciplinary side we are absolutely adhering to the terms of the arrangements between the Executive and the Select Committees. It wouldn't be appropriate to show all the material about the disciplinary case, but we will give you a summary of what the outcome was and what the lessons are to be learned. But as the Chairman has said, he will be writing again to the Home Secretary and I will take the feeling of the Committee back to her.

Q390 Chair: We are concerned because we saw a leaked version of Dave Wood's report—purported report—in the *Daily Mail* last week, so somebody in the Home Office has managed to give a version to the *Daily Mail*. If the *Daily Mail* has it, I think it appropriate that a Committee of the House should have it—unless that was a rogue report being leaked.

Dame Helen Ghosh: As you will be well aware, we deplore any leak of material, and I have asked my head of security to investigate all the leaks—a number of leaks—that have taken place in the last two weeks under proper procedures.

Q391 Chair: So, is it correct—was that in fact Dave Wood's report that was released to the *Daily Mail*, if the head of security is investigating it?

Dame Helen Ghosh: If there were any leaks, then I would be investigating them. But I come back to the point that material relating to disciplinary inquiries is, in any way, outside the terms of material we would release to a Select Committee while the disciplinary inquiry was going on.

Q392 Chair: Are you missing DEFRA, Dame Helen, or are you glad to be at the Home Office?

Dame Helen Ghosh: As one of my colleagues commented, I have the best permanent secretary job in Whitehall and I am enjoying it very much.

Chair: Thank you. Excellent. We will now release you—and thank you so much for staying so long—because we have the Immigration Minister. We are most grateful. Thank you.

Examination of Witness

Witness: **Damian Green** MP, Minister of State for Immigration, gave evidence.

Q393 Chair: Minister, please accept my apologies and those of the Committee for keeping you waiting for more than half an hour—almost 45 minutes. But as you know, these are important matters that have occupied the time of the Committee.

I intend to avoid any lengthy introductions, because you sat through the evidence and you know what's what. Also, I assume that have either seen a transcript of the evidence that Brodie Clark gave last week or you have listened to that evidence. I assume I am correct in thinking that you are up to speed with all this stuff.

Can I put to you points made by Brodie Clark concerning you and Pauline Neville-Jones? In the second question that I put to Brodie Clark last week,

I asked him whether or not the original pilot was put before Ministers and he responded, "I presented the case on three elements of the pilot to the Immigration Minister and the Security Minister in January of this year. Both Ministers agreed." When I asked who they were, he said, "Damian Green and Pauline Neville-Jones. Both Ministers agreed that we should proceed with the pilot which comprised three elements." In response to question No. 5, he went on to say, "Damian Green asked me to proceed with these three elements, but I chose at that stage to approach the Home Secretary and ensure that she understood what the plan was to introduce these three elements into our business." Is that correct? Was that put to you by

Brodie Clark? Did you sign it off? Did he subsequently ask the Home Secretary to reconsider?

Damian Green: No. As the permanent secretary has already explained, that's not correct. It was a preliminary submission sent to me and Baroness Neville-Jones. We both responded, effectively, "Yes, but...", in a way that former Ministers on this Committee will understand. Brodie Clark responded in detail to Baroness Neville-Jones. It didn't come back to my "but", as it were, until April; that was the next stage, where he put forward another submission, which was very different. It was clear that the January submission was a preliminary, first set of ideas. As I said, my response was, "Yes, but."

I believe in risk-based targeting at the border. I think that is the way ahead, so the principle seemed to be fine, but in April the substantive submission came both to me and to the Home Secretary. She and I discussed it and said, "No, we don't want to proceed with that because we want a much wider and deeper strategy. Rather than just picking individual measures, let's put this in a proper strategic framework so that we can have a proper strategy for securing the borders for the next four years, taking into account other things that haven't happened yet but will happen, such as rail liberalisation throughout Europe, because we have more international rail services into this country."

At that point it was specific that these individual proposals should not be proceeded with until we had had a proper discussion. As the permanent secretary just explained, that discussion took place between May and July with various submissions going back and forth. In July, the Home Secretary and I authorised the two elements of the pilot that then happened.

Q394 Chair: In respect of your taking office as Immigration Minister and the 2007 guidance—if we can call them the 2007 guidance, it is easier for people to follow what is going on—you were not aware of the 2007 guidance in all of your visits to airports and seaports? You have been doing your job, both as Immigration Minister and as shadow Immigration Minister, longer than anyone else on the Government Front Bench, apart from the Chancellor, I understand, so you know this stuff. In all the visits that you have made over the past five years or so since you have been the shadow Immigration Minister and then the Immigration Minister, you were not aware of the 2007 guidance?

Damian Green: Very specifically, the 2007 guidance was not put in my introductory pack as a Minister, so, to that extent, I was not aware of it. As you say, I have been marching this beat for some years now, so obviously I knew that there were emergency procedures.

May I have a go at trying to explain the 2007 guidance in lay terms? I sense genuine confusion, and I do not blame anyone for being confused, because it gets confused by jargon. The 2007 guidance says that, if there is a health and safety problem, you can stop checking some of the details of EEA citizens—specifically European citizens. The suspension of biometric checks is a suspension of checks on a

completely different group of people, because we do not take fingerprints from EEA citizens; we only take them from people from a set of countries where we require people to have a visa before they can come to this country.

So it is absolutely wrong in principle to say that you can stretch the 2007 guidelines to include the people covered by the fingerprints that we now discover were being wrongly not taken. That seems to be one of the central confusions about this debate, that somehow the 2007 guidelines could cover what was not happening. They just can't.

Q395 Chair: You knew, did you, that there was a request to go beyond the pilot? Did you know of the Home Secretary's explicit instruction that Brodie Clark should not go beyond the pilot? Did you know of that e-mail that was sent after a discussion between him and her private office? Would you have been copied in to that information?

Damian Green: Of course. To clear it up, what happened was that the proposal for, if you like, a three-point pilot, rather than a two-point pilot, came up in April. That was explicitly rejected by the Home Secretary and me. If these documents are ever published to the Committee, and I have heard what you have said about that, that is what they will show. As I said, it was so that we could put it in a proper context. As a result of that, a meeting was organised in May where we could have a proper discussion about border strategy looking ahead five years.

Q396 Chair: And you know of the e-mail that said, "Please don't go beyond. This is an explicit instruction not to go beyond"?

Damian Green: It was not, "Please don't go beyond," because we were not at that stage. It was to say, "You have suggested three things. Actually, none of those. Let's have a proper discussion about strategy."

Q397 Chair: No, subsequent to that. In July.

Damian Green: In July, we had various iterative discussions, as you do inside Whitehall. At the end, the Home Secretary and I cleared what became the pilot, and nothing else.

Q398 Chair: There is some criticism that you, as Immigration Minister, ought really to have been doing the heavy lifting on this, but at the end of the day, the Home Secretary has been very much to the forefront. Given what you have seen and what the Committee has seen over the last two weeks, hearing Dame Helen's evidence about the way in which the Border Agency is operating, and noting the fact that she talked about a culture at the highest levels of the border force, do you feel there was some responsibility on the part of Ministers to sort out what appears to be rather chaotic decision making in respect of what the Border Agency was doing?

Damian Green: I do not think it was chaotic at all; I would not characterise it like that. Clearly, what seems to have happened is that very relevant information was withheld from Ministers, and, as you say, it appears to have been happening for a period of time. Of course, as Immigration Minister, I am

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informed of emergencies; that is what I find most disturbing. I have heard people say, “Shouldn’t you have known if things were happening in an emergency situation?” Of course I am informed about emergencies. There are emergencies in the immigration system from time to time, as everyone knows, and some of them are directly relevant to this type of thing. Since I have been Minister, for example, there has been a fire in one of the terminals at Gatwick, which required the evacuation of large numbers of people, some of whom were evacuated from air side to land side, so the agency had to chase after them and try to check them through retrospectively, as it were. Those kinds of things happen, and I, as Minister, would be informed of them. So if the 2007 guidelines were being used in an emergency, as they were meant to be, I would have expected to be informed.

Q399 Chair: And you weren’t informed. Should you have asked on any of the visits? Why did Mr Vine ask? What superpowers does Mr Vine have that he discovered what was going on on the one visit he made? We have all these highly paid officials wandering round doing inspections, as well as Ministers and Prime Ministers in various Governments—this is not just about this Government, because Ministers in the previous Government presumably went off to Heathrow airport—but nobody knew this was happening.

Damian Green: Clearly, nobody knew that officials had designated things to happen that they should not have. I visit Heathrow and other ports regularly, and I always talk to people on the front line. I always ask them, “What could improve your job?” Nobody ever said, “Oh, by the way, you realise we’re not taking fingerprint ID?” Indeed, the last time I was at Heathrow, I saw people taking fingerprint ID. I can only assume—it seems intuitively plausible—that the people on the front line did not know that what they were doing or were not doing was in some way without ministerial responsibility. They had been told to do something, so they would not know about that. If I can just clarify something, you said earlier on to the permanent secretary that John Vine happened to be at Heathrow, but John Vine was specifically doing an inspection at Heathrow, so it is not surprising that he turned over some stones—that is what independent inspectors are for. The independent inspectorate was set up by the previous Government. I supported it then; I still support it now. I think it is extremely useful. This whole episode illustrates the value of having an independent inspector.

Q400 Lorraine Fullbrook: Minister, Mr Clark admitted to me last week that he had suspended fingerprint checks without ministerial approval, and he had subsequently made the request to the Home Secretary that those fingerprint checks be suspended, but that request was rejected. From that, it was my contention to Mr Whiteman that Mr Clark’s reasons for doing that went back to the 2007 guidance. Mr Clark had, in effect, stretched the 2007 guidance, which, as I understand it, is designed for emergency

situations, and made it routine guidance to his officers. Would you agree?

Damian Green: Well, from what he said, it clearly was not being used only in emergencies. But as I have just explained, even if you were using the 2007 guidance as a routine tool of management, which you should not be—it is meant for emergencies—that would not permit you, under any circumstances, to stop taking the fingerprints of people who require visas to come into this country. The 2007 guidance specifically says that you can relax some checks on EEA nationals, who, by definition, do not require a visa.

Lorraine Fullbrook: Thank you.

Q401 Chair: You did not answer my point about your visibility vis-à-vis the Home Secretary. Do you not think that you should have done a bit more of the heavy lifting?

Damian Green: I feel that I have done quite a lot of heavy lifting. In the last fortnight, I have answered Home Office questions, wound up a debate on this subject and answered an urgent question on this subject. We then took a three-day recess and I am now at the Select Committee. That is everything that I have done in the last two weeks. That feels like quite heavy lifting to me.

Chair: That was a planted question from me.

Q402 Alun Michael: You said explicitly that information was withheld from Ministers. I have some sympathy with that point. Government Departments often work on auto pilot unless and until someone stops them. Mr Brodie Clark, whatever the detail of e-mails and communications with Ministers, clearly assumed that Ministers would have known of the common practice. That means that he believed that it was common knowledge within the Home Office, which includes the UK Border Agency and the border force. Should it not have been up to the top management of the Home Office to be identifying that there was an issue here and checking with Ministers to see whether they were happy with what was happening?

Damian Green: The salient point here is that it was not just Ministers who did not know that this was going on. It was not just the chief executive of the UKBA, but successive chief executives of the UKBA. There is a genuine point here. How can you ask someone, “Are you not telling me something that you should be telling me?”

Q403 Alun Michael: You quite often need to ask the question, “What aren’t you telling me?”

Damian Green: As Minister, I do ask that question, but if they then don’t tell you, we enter a Rumsfeldian world of unknown unknowns.

Q404 Alun Michael: Are you sure that that is the case? There have been changes. We have a new chief executive in the Border Agency and a new permanent secretary. The implications of the evidence that Mr Clark gave to us were that people knew what was going on. Clearly, he found it strange that Ministers did not know.

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Damian Green: I find it strange that he could have thought that just because he knew something, then everyone else knew it. As has been shown over the years, the UKBA is an organisation whose internal workings quite often become external. At no stage did any of the people we talked to at the Border Agency or anywhere else say, “By the way, we are doing these things and perhaps we shouldn’t be.” If they were saying that, it may have been going up the management chain in the way in which it would have done in Whitehall, but it appears never to have got beyond Mr Clark.

Q405 Alun Michael: Have you asked people in the Home Office—obviously not the new permanent secretary or the new head of the agency—whether this was known at higher levels at an earlier stage?

Damian Green: That is precisely one of the questions that the investigations are now looking into. We will know soon enough when we get the results of those investigations.

Q406 Mark Reckless: Minister, can I take you to the interim operational instruction from 28 July? We wrote to both the Home Secretary and to Dame Helen Ghosh asking if they or Home Office officials had seen or signed off on this memo or operational instruction. They told us that no one at the Home Office had approved it and that it was a matter for UKBA who had signed it off. But we are none the wiser as to who, if anyone, in the Home Office had seen this operational instruction of 28 July. Could you enlighten us?

Damian Green: No, it was kept at official level within the Border Agency and that would be entirely normal. It is something that would not come to Ministers or necessarily, or indeed at all, to the permanent secretary because it is an operational instruction. There are thousands of these operational instructions in any year and they can range from an important policy such as this to somebody’s extension number changing. They are not the sort of thing that you would want clogging up the ministerial box.

Q407 Mark Reckless: So we are clear that Ministers and the permanent secretary had not seen this. Would any of the more junior officials at the Home Office have seen this operational instruction?

Damian Green: We are getting into this territory of what is the Home Office and what is the UKBA. The UKBA is part of the Home Office, so UKBA officials would have seen it, not least all the people who were having to implement it. It would have been widely seen around the border force.

Q408 Mark Reckless: At that time, between July and August, they got the shift of the policy function—very sensibly, perhaps—from the UKBA to the Home Office, for the ministerial oversight of policy, but also, at the same time, there was the move from the Home Secretary meeting on average at least monthly with Brodie Clark to at most one meeting following June. What impact did that have on the flow of information to Ministers?

Damian Green: None at all. I do not think there was a sense that the Home Secretary was meeting Brodie Clark less because of the split between operational and policy advice. I think it is happenstance, but during the period of the pilot, I met Brodie Clark nine times, so he had ample opportunity to tell me, “By the way, you ought to be aware that we are not taking secure ID as well”, and he did not do so—that is quite a heavy period over the summer period, to have met a single official nine times. I was seeing him very regularly, not least because I wanted to discuss how the pilot was going, on top of the weekly reports we were getting.

Q409 Mark Reckless: Finally, on this operational instruction, there is a paragraph within that saying that if the officials on the border force—presumably junior—for any reason, wanted to extend or take further measures, they needed to get that approved by the UK border force duty director. What do you make of that paragraph?

Damian Green: That is interesting because if a duty director thought, “I am doing something that goes beyond guidance”, he would then refer up—the standard sort of large-organisation thing, where you would refer up further. I would hope that is the way it would operate, but again, clearly one of the things that the investigations will need to look at is how that management chain works in practice.

Q410 Steve McCabe: Minister, if the whole purpose of the pilot was to release resources for intelligence-led targeting of higher risk groups, why was the trigger for implementing this the extent of queuing?

Damian Green: It was one trigger but as we have established, the original submission was in January and the original meeting I had with Brodie Clark—

Steve McCabe: It is a funny thing to pick, isn’t it?

Damian Green:—about this was last December, when we were entering a period, once you get past Christmas, when things are relatively quiet. You are for ever trying to balance two things. First of all—and absolutely primarily—you want to keep the border secure, but at the same time, you want airports and seaports to keep running smoothly, so how you do both at once is a question that everyone faces. The risk-based approach or the actual—I am sorry, I am talking jargon now. Pointing your people, resources and technology at the flights and the individuals that are most risky is what this is about. What we have discovered from the pilot—assuming that the pilot can be cleaned up, given everything else that was happening—is that that seems to work. We will get the full evaluation, and all of that.

May I take this opportunity, Mr Chairman, to fill in some of the figures that you asked for?

Chair: That would be very helpful.

Damian Green: In August 2010, we intercepted 737 clandestines at the border.

Q411 Chair: This is the issue of the 10% increase.

Damian Green: Exactly. In August 2011, it was 809. In September 2010, it was 661 and in September 2011, it was 721.

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Looking at forged documents is obviously another important thing we want to do: in August 2010, there were 128 and 135 in 2011; in September 2010, there were 121 and in September 2011, there were 179. As I say, that is initial information. It will all have to be evaluated.

Chair: Of course.

Damian Green: But just on those two important issues, it looks like this kind of approach makes the border more secure. If you can do that and, at the same time, stop queues peaking at the levels they tend to peak at, that seems to me to be, overall, a good thing to do.

Q412 Steve McCabe: Thank you. You mentioned forged documents; have your officials brought to your attention that they have a major concern about Jamaicans travelling on fraudulent UK passports?

Damian Green: Yes, there a number of countries around the world where we have particular issues, and it is no great secret that Jamaica is one of them. Indeed, one of the two countries in the world where we have not just UKBA people but specifically border force people trying to stop things before they get to this country is Jamaica. There is a lot of drug smuggling and things like that, so there is a nexus of problems that we have. We co-operate well with the Jamaican authorities, but yes, it is an issue.

Q413 Steve McCabe: May I ask one last thing? Most of this came to the attention of the public and of Parliament because of leaks from within the UKBA. Given your own history, do you agree with Dame Helen that leaks should be deplored?

Damian Green: I think that that is always the official position of Government. The best thing I can say is that I can guarantee to all members of the Committee—and indeed to the shadow Minister for Immigration—that, unlike previous Administrations, I will not be arranging for anyone to be arrested if they get a leak from the UKBA.

Q414 Steve McCabe: I think we will all be glad to hear that. Do you detect that these leaks are a measure of dissatisfaction on the part of staff within the agency? Is that why there have been so many leaks over this issue?

Damian Green: As I say, and as we all know, it is one of the organisations that has always been fairly public in its internal discourse, and once something like this comes up, inevitably a lot of people will go scouring around for individuals to tell them what is going on. That is what happens at times like this.

Q415 Mark Reckless: Minister, the data that the Home Secretary provided us with showed that the number of arrivals into the country was down by 8.5% year on year in July, and by 14% year on year in August. This was in the table at the bottom of her letter to us of 14 November. Do you know why entries were down so sharply, and do you think that this had an impact on the perceived success of the pilot?

Damian Green: I think entries are down because there is a recession on around the world, and fewer people are travelling. There is no particular reason why it

should have any effect on the pilot one way or the other, I would have thought. The levels are still very, very high. Something like 100 million people come into this country every year, so to put it mildly, we have a large enough sample to have a decent experiment with.

Chair: Michael Ellis has a quick supplementary question.

Q416 Michael Ellis: Thank you, Mr Chairman. Minister, you have said, I think, that you saw Brodie Clark on nine separate occasions, so there were clearly a number of opportunities for the matter of measures outside of ministerial authorisation to be raised with you. When you saw him, you would have seen him with other officials present, would you?

Damian Green: Normally, yes. There would certainly be someone there from my private office. That is a mixture of meetings, some of which would be to discuss the pilot. There are other things going on, and some of the meetings would be to discuss issues of international rail travel or something like that, at which there would be lots of people present. Some of them would be meetings with outside bodies.

Q417 Michael Ellis: We have also heard that there is something called a weekly report that comes through. The Home Secretary gets one, and you get one as well; is that right?

Damian Green: Just to avoid confusion, there are two. I get a weekly report from the UKBA chief executive every week. That happens all the time, and indeed I have a weekly meeting with the chief executive as well, at which we discuss what is going on. Separately, during the course of the pilot, Brodie Clark was providing a weekly report to me and to the Home Secretary, so that we could check its progress.

Q418 Michael Ellis: In his weekly reports, did he say anything at any time about going outside the ministerial authority?

Damian Green: None of the reports—

Chair: I think that the Minister has already told us that, Mr Ellis.

Michael Ellis: Sorry; could I just ask the Minister to finish his reply?

Damian Green: None of the reports that I received told me anything that was outside ministerial authorisation.

Q419 Michael Ellis: There is a report, isn't there, that additional measures to those authorised by Ministers were at one point included in a weekly report, but then not sent on to your office? Have you heard anything about that, or can you confirm it?

Damian Green: I read that, as I imagine you did, in a newspaper, but—

Q420 Chair: It is not correct?

Damian Green: I do not know if it is correct or not, because I have not seen the basis on which the report was produced.

Chair: Thank you. Dr Huppert?

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Q421 Dr Huppert: I am keen to try to move from staring at the past to working out the future. I have a very brief question about evidence and statistics. You said that there is still work to do to evaluate the pilot, and you are presumably aware that the Home Office has been criticised for some of its comments about drug seizures. Sir Michael Scholar wanted reassurance that the statistics will always be released in accordance with a code of practice. Presumably you can give an assurance to the Committee that that will be true of everything that comes out of the Home Office as regards drugs, and as regards analysis of this pilot.

Damian Green: Absolutely. I have responded to Sir Michael's letter, pointing out that nobody could have confused the press release about drug seizures with official statistics. Indeed, the press release explicitly said that it was management information. It was very clear that they were not official statistics. We seek to ensure that all our use of official statistics is properly done.

Q422 Dr Huppert: I am very glad to hear that. If we assume that the pilot has been properly evaluated—let us assume for the moment that it turns out to be the success that was initially indicated—what is your vision for the future of border controls? How far would you like to go down this risk-led route? Can we have an assurance, as I asked the permanent secretary for, that this particular incident will not jeopardise what will hopefully prove to have been a successful pilot?

Damian Green: As I said, and as the Prime Minister and the Home Secretary have both said, a risk-based approach needs to be the basis for how we make our border more secure in times ahead, particularly if, as I imagine they will, passenger flows increase again. If they are down because of the recession, the world economy will recover and we will get even bigger flows, so we will need to be even sharper on where we point our resources. Obviously, the details of how we do that will depend on the evaluation of the pilot, and the other reports that we are waiting for from John Vine and others.

There is, however, a countervailing view that says that we should never stop checking anyone—every check we can devise, we should do on everyone; we should treat everyone the same. I think that this Committee could contribute hugely to this debate. I would be interested to know if you can establish consensus on whether you think risk-based controls are better than one-size-fits-all controls. I think that that would be a constructive and useful contribution to the debate.

Q423 Dr Huppert: I would certainly provide a steer towards risk-based, intelligence-led controls. What options are there for taking this further? How can we become sharper at using that?

Damian Green: The root of it is early intelligence and information. That is why this Government, even through the difficulties of getting rid of the previous e-Borders main contractor, because it was running behind so badly, are determined to carry on with e-Borders. We already have 90% of flights from outside Europe covered by that. It is that kind of early

intelligence—intelligence before people get on a plane—that will help us make our borders secure. The old idea that the border starts at Dover or Heathrow will become increasingly old-fashioned. I want to export our borders, so that they start at airports around the world, and so that, as is the case now, if people come through France, the borders start at Calais or Gare du Nord, or at Brussels rather than Dover. We have already stopped 68,000 people who would otherwise have got on planes flying in the past year, because of intelligence that we have collected. It seems to me that that is the route that we need to go down.

Q424 Chair: Thank you. Just two issues. First, did you know that face-to-face interviews had stopped in posts abroad?

Damian Green: Well, they stopped before this Government came in.

Q425 Chair: Are you considering reintroducing them in view of the fact that, in a number of reports, the Committee has highlighted the issue of forced marriages and, indeed, in certain posts—not all—since we are talking about a risk-based system, a concern about terrorists entering the country?

Damian Green: To some extent, of course, we are effectively reintroducing that with our proposals on marriage. I share your concern, Chairman, about forced marriage. We have said that you will have to demonstrate knowledge of English to a basic level before you come here to get married; people will have to show that before they come here, so for a significant vulnerable section of those who come here, we have introduced face-to-face interviews. Obviously, we do it on a risk basis. As you say, for terrorists—anyone with any remote terrorist suspicions surrounding them—we would take very strenuous measures.

Q426 Chair: Excellent. The Home Secretary has written to me about Sheikh Salah, because we wrote to her about his arrival. Do you know—if you do not have the answer, would you write and tell us?—if Sheikh Salah was fingerprinted on arrival at Heathrow on 25 June? You may not know this. We just wondered whether he was one of the people who got in because of the possible unauthorised extension. No one can give us an answer to that.

Damian Green: Well, yes, 25 June would have been before the pilot, so it would have been something that was happening anyway.

Q427 Chair: Would you be able to provide us with that?

Damian Green: I will check that out, certainly.

Q428 Chair: We know that Mr Whiteman is going to get reports every six hours. As a result of what has happened, will you be getting more detailed reports? Will you be able to ask more questions about what is happening in the UKBA?

Damian Green: Yes. I think it is part of the improvement programme that, clearly, the UKBA needs. The UKBA is now a mixed bag, a curate's

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egg—it is good in parts, but it is nothing like good enough in other parts. What we need to happen is to get more information, and to have it spread around so that we can take decisions earlier and faster. That is very much Rob Whiteman’s vision, which I share. Indeed, I was at Heathrow last week looking at the place where there will be a new central control, where information from around the airport can come in. It has never happened before; it is now happening.

Q429 Chair: Are you still on target, despite everything that has happened this year, to meet the target that the Prime Minister set for reducing net migration from hundreds of thousands down to tens of thousands during the lifetime of this Parliament?

Damian Green: Yes. That is why we set it for the lifetime of this Parliament—because we know it is turning an oil tanker around, so it will take some time. Indeed, all our measures will not come into effect until

next year. Absolutely, by this time next year, certainly, we will have all the measures in effect that will enable us to get immigration down to the sustainable levels that we pledged.

Mr Winnick: We shall see.

Q430 Chair: On a lighter note—I do not know whether this is good news or bad news—in *The Times* yesterday it was reported that the number of migrant birds had declined by 70% since 1995. I do not know whether this is Government policy, or whether it has just happened.

Damian Green: I regret to say that—

Alun Michael: Careful, Minister—don’t wing it.

Damian Green: Very good. This is one area of control of migration that, first, I am not responsible for and, secondly, I rather regret.

Chair: Minister, thank you very much indeed.

Thursday 8 December 2011

Members present:

Keith Vaz (Chair)

Mr James Clappison
Michael Ellis
Dr Julian Huppert
Steve McCabe

Alun Michael
Mark Reckless
Mr David Winnick

Examination of Witness

Witness: **Jonathan Sedgwick**, International Group Director, UK Border Agency, gave evidence.

Q431 Chair: Order. I refer all those present to the Register of Members' Financial Interests, where the interests of members of this Committee are noted. I welcome our witness this morning, Jonathan Sedgwick, as part of our continuing inquiry on the UK Border Agency. Mr Sedgwick, welcome back.

Jonathan Sedgwick: Thank you very much.

Q432 Chair: Congratulations on your new appointment as head of the international section of UKBA.

Jonathan Sedgwick: Thank you.

Q433 Chair: We are not going to delve into too many details of other issues in your portfolio; we are going to concentrate on the UK Border Agency's approach to the change that occurred—basically, the Brodie Clark issue, to put it mildly and succinctly. That is what we want to talk to you about today. Thank you for the correspondence that you sent this Committee.

I want to start, however, with something that is in the public domain. I am sure that you were aware that I would ask you about this. It is the so-called Lille loophole, which relates to an investigation that the BBC published this morning, which shows that a person can travel from Brussels to Lille and, if they do not leave the train, go on to the United Kingdom and not have their passport checked at all. Do you recognise this scenario?

Jonathan Sedgwick: Thank you for giving me notice of the fact that you would want to raise this issue. I would not call it a loophole, actually. Clearly, we operate under constraints in Belgium; as for persons who intend to travel within the Schengen area, clearly there are limitations on what activity we can conduct in relation to those people, but it is simply not the case that you can travel from Brussels through Lille to the UK without any checks at all. We have a range of operational measures in place. We carefully monitor all trains that stop in Lille. We have arrangements in place to remove passengers from the train at Lille. I think that, over the course of this year to date, up to around 140 people have been removed in that way.

Q434 Chair: Yes, but many hundreds and thousands are coming through without being checked.

Jonathan Sedgwick: I do not believe that that is the case.

Q435 Chair: Are the passports checked when people get to Lille?

Jonathan Sedgwick: We carefully monitor every train. We look carefully. Clearly we need to do this sensibly on a kind of risk basis, but if we believe that there is someone on the train who is trying to evade our controls then, for example, we might routinely—as we do—have a forged ticket check at St Pancras.

Q436 Chair: Mr Sedgwick, let us get back to the facts here. You said that it was not possible to do this, and that it is not a loophole, but your Minister has said, in effect, that there is a loophole, that it is closed at times, and that you are looking at ways to close it permanently. Is he wrong? Does he think it is a loophole, while you do not?

Jonathan Sedgwick: It is of course the case that we would like to improve the arrangements. The Minister is, of course, absolutely right about that.

Q437 Chair: So it is an unsatisfactory arrangement at the moment, because what is being said is that someone can travel from Brussels to Lille and not have their passport checked because they are within the Schengen area; if they remain on the train, they can travel from Lille to London without having their passport checked. That is the case, isn't it?

Jonathan Sedgwick: Except that if we suspected that someone was trying to do that—and, as I say, we carefully monitor those trains—

Q438 Chair: How do you monitor the trains, if you are not on them?

Jonathan Sedgwick: We sometimes are on the trains.

Q439 Chair: How many times a week?

Jonathan Sedgwick: I do not have those figures, but if we were concerned about somebody whom we had seen boarding a train, we would have discussions with Eurostar—we are working very closely with Eurostar—and that is why we have been able to remove so many people from the train.

Q440 Chair: Mr Sedgwick, those are people whom you know you wish to monitor. That means the vast majority can travel, because they are not people being monitored. You do not have people on the train from the time it leaves Brussels, do you?

Jonathan Sedgwick: As I say, it is simply not the case that—

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Q441 Chair: Are you satisfied with these arrangements?

Jonathan Sedgwick: No. We would like to strengthen them.

Q442 Chair: So you accept that it is a problem.

Jonathan Sedgwick: We are working very closely with Eurostar and the Belgian authorities to strengthen the arrangements. Indeed, I am planning to go to Brussels next week to try to finalise those arrangements. We think there are practical things that we can do to make it much more watertight than it presently is, so that if someone has bought a ticket for Lille, they need to get off the train at Lille.

If I may, there is just one other figure that you may be interested in, Chair. As I say, we do routinely, where necessary, introduce ticket checks at St Pancras. In the year to date, we have intercepted around 160 people in that way, whom we have been able to return to Belgium.

Q443 Chair: So it is the case that people can travel and not have their passports checked at Lille. It happens occasionally—you used the word “sometimes”. The Minister says that the loophole is closed on other occasions. You talk about co-operation, but the BBC also has evidence that when our officials have tried to intervene they have been threatened with arrest by the Belgian police, because the Belgian police will not allow them to intervene. Is that correct? Have you heard of this?

Jonathan Sedgwick: I have heard that the BBC is reporting this point. The reality is that it is a question of not just our officials but, obviously, Eurostar officials, who are also very assiduous in ensuring that people who have Lille tickets only travel as far as Lille. They have an interest in this, and sometimes what we do and what Eurostar does can become confused in the way that it is reported.

Q444 Chair: That is a long answer to a very simple question. Do you know that our officials, in trying to stop this happening, have been threatened with arrest?

Jonathan Sedgwick: I am not aware that we have been threatened with arrest. We have a very close working relationship with the Belgian authorities. We co-operate with them, as you would expect. We operate in Belgium; we need to work closely with them.

Chair: So you have no information on this. Mr Clappison.

Q445 Mr Clappison: I am interested in how this happens. I travelled on Tuesday on a train from Brussels to this country that stopped at Lille. Now I know why my ticket was checked by UKBA people on arrival at St Pancras, which I thought was rather odd. I did not understand why they were checking tickets there. Does that happen on every train from Brussels that stops at Lille?

Jonathan Sedgwick: As I say, we monitor those trains carefully. If we have concerns, we will institute a ticket check, precisely as you say. That must mean that we had concerns about that train; we will seek to

identify anyone who has only a Lille ticket, and then we will return them to Belgium.

Q446 Mr Clappison: So the answer is that not every train is checked.

Jonathan Sedgwick: Not every train is checked. We do it on a risk basis.

Q447 Mr Clappison: How often are they checked?

Jonathan Sedgwick: I do not have those figures, but we do it when we believe it is necessary.

Q448 Mr Clappison: Speaking from my experience—I use that train with the European Scrutiny Committee when it has to go to Brussels—I would not be as confident as you are of checks being made on the train by Eurostar staff; I make that observation. What happens when people travelling to Lille from Brussels get on the Eurostar train at Brussels? To get on the train, you have to pass through an elaborate security procedure; you are scanned, and you have your passport checked twice—once by UKBA. Do people who are travelling domestically go through that process?

Jonathan Sedgwick: There is a separate process for people who are just going to Lille. As I understand it, there is a separate entrance that obviously goes through the security screening, in terms of baggage and so on, but does not go through the immigration—

Q449 Mr Clappison: Is that a different entrance to the one used by people who are travelling internationally, in the way that I was?

Jonathan Sedgwick: I understand it is, yes.

Q450 Mr Clappison: So we have established that their passports are not checked there.

Jonathan Sedgwick: As I say, we, with the help of Eurostar and the Belgian authorities, obviously maintain a keen interest in people who are travelling to Lille. Clearly we operate on a risk basis, and we have operational insight into the kinds of people who might not be very convincing Lille passengers, for example.

Q451 Mr Clappison: What exactly do people pass through at the Brussels end of the Eurostar if they are travelling to Lille?

Jonathan Sedgwick: They have to pass through the full security screening—the baggage screening and so on. Of course, our staff have some visibility of what is happening in relation to that. As I say, if we have concerns, we can intervene with Eurostar and, if necessary, institute ticket checks at St Pancras.

Q452 Mr Clappison: How can they know on the basis of that whether somebody is travelling from Brussels to Lille and planning not to get off at Lille, but to come to this country when they should not? How can they know that from their luggage?

Jonathan Sedgwick: We have to operate in a risk-based way. The kind of people who travel from Brussels to Lille are often, for example, those who are attending European Commission meetings, the Parliament and so on. If we were to see a large family

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with huge amounts of luggage, we might want to ask one or two more questions.

Q453 Mr Clappison: May I suggest that it would be a sensible precaution, at least in the interim, to check at St Pancras the tickets for every train that stops at Lille, just as my ticket was checked?

Jonathan Sedgwick: We do that when we believe it is necessary.

Q454 Mr Clappison: Every train.

Jonathan Sedgwick: We do believe that the arrangements need tightening. Ministers are keenly aware of this issue and have raised it with their Belgian counterparts. We are actively pursuing a range of measures to make the system much tighter. I believe we will have new arrangements in place very shortly.

Chair: Mr Sedgwick, Mr Clappison is making the point that this is most unsatisfactory. We would like to see the loophole closed. It is not just a matter of co-operation with the Belgians; it is what we do to secure our borders. It is not acceptable that people can travel in this way.

Q455 Alun Michael: May I simplify the language? Having heard what you have said, Mr Sedgwick, it is quite clear that there is a loophole, isn't there? It does not have to be 100% of people taking advantage of a loophole for it to be a loophole; if there is a possibility of people coming through, there is a loophole. You mentioned that ticket checks in London have demonstrated that a significant number of people have arrived in London without appropriate travel documents or passports, so can we agree that there is a loophole? The next questions are: how big is the loophole, and what should be done about it?

Jonathan Sedgwick: We certainly believe that the arrangements need tightening. We share your view, Chair.

Q456 Alun Michael: Sorry, can we just use the word? "Loophole" means that there is something that allows some people to come in without a passport check. That is the case, isn't it?

Chair: This is a feature of the evidence that you have given to this Committee whenever you have appeared: you are asked a question by Committee members and you give an answer that is not based on the question that is asked. It would be very helpful—this will be a feature of our questions to you concerning Brodie Clark—if we had straight answers. That would make it much easier for us to come to conclusions. What Mr Michael, Mr Clappison and I have said is that there is clearly a loophole, because people are able to get through the system. We know that you want to improve it—I am sure that you will after today—but as Mr Michael has said, people can come through. Even the Minister accepts that there is a loophole, because he cannot close something that is not a loophole. Yes or no?

Jonathan Sedgwick: Of course, it is perfectly possible that people in some circumstances can get through, but I would not want the Committee to believe—

Alun Michael: That is a yes, then.

Jonathan Sedgwick—that there were no checks that we could carry out, and that we do not carry out checks and fine people, because we do.

Q457 Alun Michael: We did not say that, Mr Sedgwick. It is a loophole. If it is possible for some people to come without a passport check, that is a loophole in the passport checks arrangements. Simple, isn't it?

Jonathan Sedgwick: Well, if that is the word you want to use, I am not going to argue, but I think I have made my point.

Alun Michael: It would be nice if you just agreed, because that would make it simpler.

Chair: Thank you for that final answer.

Q458 Steve McCabe: Mr Sedgwick, you said that you are going to Brussels to try to negotiate some improvements in the arrangements. Which official or member of staff at UKBA is ultimately responsible for the current arrangements?

Jonathan Sedgwick: Mr Whiteman, the chief executive, is obviously ultimately responsible for everything that happens in the Border Agency.

Q459 Steve McCabe: And if I asked him, who would he say he had put in charge?

Jonathan Sedgwick: He has asked me to work with the Belgian authorities—

Q460 Steve McCabe: So Mr Whiteman is ultimately responsible, but this current state of affairs is your responsibility. Is that right?

Jonathan Sedgwick: He has asked me to conduct the negotiations to improve the arrangements.

Q461 Steve McCabe: He has asked you to look at the problem that has been identified, but I am trying to establish who is responsible for the existing state of affairs. Is that also you?

Jonathan Sedgwick: Clearly, this falls to the responsibilities of the border force, which you will be aware, would have been part of Mr Clark's responsibilities. As Mr Whiteman has told the Committee, Matthew Coats, a senior official, has been put in charge, for an interim period, of the border force—he is responsible for its operation. I am assisting Mr Coats over the next few weeks, and this is one particular area in which I am doing that. I am taking responsibility for the discussions.

Q462 Chair: But for a large part of this time, you were the acting chief executive, so although you are referring to Mr Whiteman, it was your responsibility.

Jonathan Sedgwick: It was, yes. I was in Brussels over the summer and I had discussions. I have been very active in trying to resolve these issues.

Q463 Chair: I am surprised that when you last appeared before the Committee you did not tell the Committee about any of this. If you had concerns that you did not have absolute co-operation, is that not something that you should have brought to our attention?

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Jonathan Sedgwick: Forgive me if I did not raise it, but I think that we had a number of matters to discuss when I last appeared before you.

Q464 Chair: But you informed Ministers about the problem.

Jonathan Sedgwick: Ministers were well aware of this concern.

Q465 Chair: From when?

Jonathan Sedgwick: I could not be clear about that, but it is certainly something that I have discussed with Ministers over a number of months.

Chair: Thank you.

Q466 Michael Ellis: Mr Sedgwick, I think that it is probably accurate to say that the Belgian Government are responsible for the actions of their police force. That is fair enough, isn't it?

Jonathan Sedgwick: It is.

Q467 Michael Ellis: If this BBC report is accurate—if it is a BBC report, originally—it appears that the Belgian authorities are the ones that are not being co-operative with our authorities in Lille.

Jonathan Sedgwick: The Belgian authorities are obviously very concerned to comply, and that anyone operating in Belgium should comply, with the Schengen regulations and with freedom of movement rules.

Q468 Michael Ellis: The British ambassador in Belgium has apparently spoken to the authorities there. Is that right? Is that within your knowledge?

Jonathan Sedgwick: We work very closely with the ambassador to resolve and improve these matters.

Q469 Michael Ellis: So we would hope and expect that our friends and neighbours in Belgium would co-operate with our security protocols and try to prevent our borders being violated by those who are not authorised.

Jonathan Sedgwick: Absolutely. We have close co-operation with them.

Q470 Michael Ellis: And we look forward to further co-operation with them.

Jonathan Sedgwick: We do.

Q471 Michael Ellis: You alluded, in an answer to one of my colleagues a few moments ago, to a hope and expectation, as I interpreted it, that this putative loophole will be closing soon. Do you have any reason to believe that the processes in Lille are about to change?

Jonathan Sedgwick: I believe that they are. We are in very intense discussions with both Eurostar and Belgian colleagues. This is a tripartite matter. It is not just about the Belgian authorities; it is also about Eurostar.

Q472 Michael Ellis: Because Eurostar could decline to carry a passenger, couldn't they?

Jonathan Sedgwick: They could, yes.

Q473 Michael Ellis: What about our arrangements? Presumably, we will have safeguards at St Pancras, so that if they cannot be checked at Lille, they can be checked at St Pancras.

Jonathan Sedgwick: That is true; you are perfectly right. We could step up those controls.

Michael Ellis: Thank you.

Q474 Chair: And you intend to do so?

Jonathan Sedgwick: We intend to introduce tighter controls overall, yes.

Q475 Mr Clappison: May I ask, in the light of that, whether you know at what stage of the journey the tickets are checked by Eurostar staff?

Jonathan Sedgwick: My understanding is that they are checked shortly after departure from the originating terminus, and that there will then be further checks of people who arrive at particular stations along the route. That is exactly the kind of detail that we are working closely with Eurostar on.

Q476 Mr Clappison: My ticket was checked on getting on the train, as a lot of other people's were. May I suggest that one of the things that you might take up with Eurostar is having a full ticket check both before and after the train has left Lille, so that there are two full ticket checks?

Jonathan Sedgwick: Thank you.

Q477 Chair: Mr Clappison is happy to give advice on this matter on an unpaid basis to UKBA.

This is unsatisfactory and it needs to be sorted out. If we want a secure border, we need to make sure that people's passports are checked. You understand the concern of this Committee?

Jonathan Sedgwick: I fully understand it and, indeed, fully share the concern. Ministers are in no doubt that we have to improve the arrangements.

Chair: Excellent.

Jonathan Sedgwick: But I would not want the Committee to think that there are no arrangements.

Q478 Chair: I think that you made that point. One of the reasons why we are so tough on this area is because of what happened with Brodie Clark. When did you first become aware, Mr Sedgwick, that there was action beyond the authorised pilot by the head of border security?

Jonathan Sedgwick: On Wednesday 2 November, in the evening, Mr Whiteman asked me to go and see him, and he told me that the chief inspector had shared with him concerns that the secure ID checks were not being completed in full at Heathrow. He asked me whether I was aware of that, and whether I had authorised it. He asked me whether Ministers were aware of it, or whether they had authorised it. I was able to tell him clearly that I was not aware, I had not authorised it and Ministers were not aware, and so on.

Q479 Chair: That was the very first time that you were aware of it?

Jonathan Sedgwick: That was the first time that I was aware of it. I was obviously operating at that stage from memory but, as you would expect, I have

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subsequently carefully reviewed my written record of events—e-mails, notes of meetings, etc. I am very confident that that memory is completely accurate.

Q480 Chair: You are a member of the UKBA strategy board?

Jonathan Sedgwick: I am, yes.

Q481 Chair: We have received a letter, which we are publishing today, dated 24 November 2011 from Brodie Clark—a copy will be given to you—in which he says: “I made a full presentation to the UKBA Strategy Board (chaired by Lin Homer and with David Wood and Jonathan Sedgwick in attendance, along with the rest of the UKBA Board and non-executive members) in December 2010. The subject was ‘Failure to Maintain Robust Border Controls’ which is one of 18 headings on the UKBA Risk Register... It was a 9 page slide presentation and Point 2 on slide 8 focussed on suspension of secure ID and WI suspensions. The subject of the suspensions was considered by the Board in relation to its use to that point, and how collectively to reduce the occurrences.” So you were aware, in fact, from December, when Brodie Clark made a full presentation—a full slide presentation—to members of that strategy board.

Jonathan Sedgwick: As a matter of detail, I was not present at the board on that occasion, as I recall. That does not particularly alter matters; clearly, I am a member of the board.

Q482 Chair: Do you get the papers?

Jonathan Sedgwick: I do. It is true that Mr Clark made a presentation to the UKBA board that day. He made a presentation about aviation security. We discussed the aviation security review, which had been taking place in the months since the concern about the vulnerability of physical security of aircraft, and that was the focus of the discussion. I understand that there is, frankly, a slightly ambiguous reference to secure ID in one bullet point at the end of one very detailed slide, but that was not discussed by the board, and Mr Clark would know very well that we have clear rules about how things are presented to the board. If you wish an issue to be clearly noted or agreed by the board, you provide a clear submission. There is a well established format for doing that.

Q483 Chair: Mr Sedgwick, that is because this process was going on for some time, and in point 2 on slide 8 of the presentation—you have the documents and the minutes of the meeting—it is clear that this has been going on for some time. Mr Clark was not putting something new to the board. His argument is that members of the board—including David Wood, who is conducting the investigation into him, and Lin Homer, who headed the whole organisation before you took over—were well aware of this, so this was an ongoing practice; it was not something new that needed discussion. Are you saying this was not an ongoing practice?

Jonathan Sedgwick: This was not something that was discussed at the board, or that the board was aware of. I did not recognise this as an ongoing practice. It was

a very minor sub-point in a very detailed slide that was probably, as these things often are, circulated at the meeting itself. I was not there, so I cannot recall. We have a very clear process in place if a member of the board wishes to make something clear to the board. This was not discussed with the board.

Q484 Chair: We understand that, but if it is a routine occurrence that has been going on since 2007, and it was a presentation on the failure to maintain robust border controls, why is it that all these very intelligent people sitting on the strategic board did not pick it up?

Jonathan Sedgwick: Because the discussion was about the aviation security review. It was about physical threats to aircraft. That was what we focused on, and that was what we discussed. This was a very minor sub-point.

I might also say this, because I think it is helpful to the Committee: even if it is possible that Mr Clark believed that this was a well-established practice that everyone should be aware of, I cannot understand why he did not remind me of that when we were having the intense discussions that we had about these various pilot proposals, and indeed why he did not ensure that Ministers were aware, as we were having these very intense discussions with them. It was perfectly clear that Ministers did not approve the suspension of secure ID. If Mr Clark genuinely believed that this was accepted practice, he should have ensured that Ministers—and, indeed, I and the rest of the board—were aware of it.

Q485 Chair: Mr Sedgwick, you had been at the Home Office for a long time, I understand. A previous Home Secretary has told me that he was well aware that this was the practice of the UK Border Agency; the Committee has written to him to get that information from him. If that is the case, surely you—as someone who has been sitting on the strategic board for some time—and Mr Wood and Lin Homer would have been aware of it.

Jonathan Sedgwick: I find that slightly strange, because, of course, secure ID was completed in full only in March 2010, very shortly before the general election. I would be very surprised if this specific check and practice around it was evident to a Minister in a previous Government.

Chair: Thank you. Mr Winnick?

Q486 Mr Winnick: You worked with Brodie Clark for some time, didn't you? You joined the UKBA as deputy chief executive in 2008; am I right?

Jonathan Sedgwick: That is correct.

Q487 Mr Winnick: Had you known Brodie Clark before, when you worked at the Home Office and the Ministry of Justice?

Jonathan Sedgwick: I had not worked closely with him, but I had known of him, and had dealings with him.

Q488 Mr Winnick: So it would be true to say that from the time you were a deputy director—and later, as acting director—you would have worked pretty closely?

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Jonathan Sedgwick: Yes.

Q489 Mr Winnick: I said “pretty”, but you worked closely with Brodie Clark.

Jonathan Sedgwick: Yes, of course; he was a board colleague.

Q490 Mr Winnick: Did you at any time have any feelings of a lack of confidence in his work—in his wish to maintain immigration control effectively at all times? It is a simple question.

Jonathan Sedgwick: It is. I think the Committee will understand that it is quite difficult for me to comment on my views about a former colleague who has taken legal action against the Department. That legal action is pending.

Mr Winnick: Let me put it a different way—

Jonathan Sedgwick: I do not mean to be obstructive, but I do not think that is an unreasonable position for me to take.

Mr Winnick: I am not altogether satisfied.

Chair: Order. One second: Mr Winnick is not seeking your views on the legal issues; he is seeking your personal views on someone who has worked with you. That is all.

Jonathan Sedgwick: It is quite hard to draw a line between those.

Chair: Well, try to draw the line and answer his question.

Q491 Mr Winnick: I will put it differently. When you were fulfilling your position as deputy at UKBA and later as acting director, did you at any time or stage—prior to what occurred with the Home Secretary—have any necessity to criticise Mr Clark over his position?

Jonathan Sedgwick: Yes.

Q492 Chair: In what respect?

Jonathan Sedgwick: For example, during the pilot period I insisted on having a very detailed weekly report, because I thought it important to have utter transparency on what we were doing. On two occasions in relation to that report, I raised concerns with him about what was happening.

Q493 Mr Winnick: When was that?

Jonathan Sedgwick: I guess it seemed to me to be important to have utter transparency.

Q494 Chair: Sorry, Mr Winnick wants to know when it was.

Jonathan Sedgwick: When it was? I certainly raised concerns after the first weekly report that I received, because it appeared to me that the pilot measures were being used too routinely at Heathrow. I told him that. He took my concern and spoke to the staff at Heathrow and changes were made.

I visited Heathrow myself in August, and I was concerned to discover that the e-gates were not working in the terminal I was visiting. I had given specific instructions, as had Ministers, that we were to maximise our use of the e-gates, because of course the e-gate completes the full check, including the chip, so I was very dismayed to see that the e-gates were not

working. Again, I gave him very clear instructions that that was not to happen again. Our use of e-gates over the period of the pilot increased very substantially.

Q495 Mr Winnick: All that you have just been telling us happened this year; am I right?

Jonathan Sedgwick: Those two events certainly did, yes, of course.

Q496 Mr Winnick: Before 2011—the current year—did you have any reason at any time to criticise him and take him to task for whatever reason?

Jonathan Sedgwick: Of course, in the rough and tumble of being a board colleague, one always has disagreements, concerns and issues that are discussed, as you would expect in that kind of fairly robust operational environment. We had disagreements.

Q497 Mr Winnick: Of course; that is perfectly understandable in any organisation. Did it ever occur to you that disciplinary action should be taken against Mr Clark?

Jonathan Sedgwick: He had never done anything prior to these events that made me think that disciplinary action should be taken. Had there been, I would have initiated such action.

Q498 Mr Winnick: So robust disagreements as in any organisation; we understand that. I now come to my final question in this series. There is a lot of controversy over the relaxation of 2007. We were told by the Permanent Secretary that the Minister was not aware of what one of her predecessors had done in what we know as the relaxation, or whatever, of 2007. In your position at the time, did you know all about that and implement it accordingly?

Jonathan Sedgwick: I knew about the existence of the HOWI policy—the policy on how existing controls should be done. Yes, I was aware of that; I knew about it. It is one of many hundreds, possibly thousands, of pieces of operational guidance that govern the way we do our work.

Q499 Mr Winnick: Mr Clark says that what he did was within the framework of what was agreed to in 2007.

Jonathan Sedgwick: I do not see how he could possibly believe that. The 2007 warning index guidance is specifically about EEA nationals. Secure ID checks related to non-EEA nationals—

Q500 Mr Winnick: He disagrees with you.

Jonathan Sedgwick: It is simply a matter of fact. I do not think that he disagrees, and in giving evidence to Nicola Blackwood—I think—he clearly confirmed that the HOWI policy relates to EEA nationals.

Chair: Thank you. We may come back to that, but a number of Members are seeking to intervene.

Q501 Dr Julian Huppert (Cambridge) (LD): It seems that there has been a lack of clarity about a lot of the arrangements in UKBA and UKBF, and it also seems particularly interesting and striking that this whole thing blew up just after Mr Whiteman came

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into post. When he spoke to you to ask for your advice, how clear was he about the distinction between the risk-based trial, the HOWI guidance and other relaxations? Was he clear on all the differences, or was he perhaps slightly confused as well?

Jonathan Sedgwick: No, I do not believe that he was confused. I think he knew very well what had been agreed during the summer pilots, and he had heard from the chief inspector that further measures had been taken. He knew that they were not part of the pilot process, and I suspect he would have been aware of the broader HOWI policy as it related to EEA nationals and low-risk travellers. I do not believe that he would have been confused. His purpose in asking to speak to me was obviously to confirm exactly what had and had not been authorised by me and by Ministers.

Q502 Dr Huppert: So you think it is pure coincidence that this happened in the very early days of the tenure of a new chief executive? It had not come from within the organisation?

Jonathan Sedgwick: The causation is not the arrival of Mr Whiteman; the causation is the fact that Mr Vine was conducting an inspection at Heathrow.

Q503 Dr Huppert: Mr Vine is obviously doing a detailed piece of work at the moment, which will report. What is your judgment as to whether the problems ultimately came with the leadership at the top of UKBF and the instructions given, or is it simply the fact that different people within UKBA and UKBF—both seem to do this—make different decisions and have different understandings of rules? I suspect that I am not alone on the Committee in having had experience of visa and other immigration issues. Do you think it is a fundamental problem with the whole organisation that there is a lack of clarity between the people on the ground making the decisions?

Jonathan Sedgwick: Of course one can always improve on that kind of clarity, and we are always trying to improve matters. In this case, however, there was a very specific, particular, and—in my experience—unique failure to translate a clear policy and ministerial instruction into effective operational action.

Q504 Alun Michael: Would you be surprised to know that from the outside it looks as if this is another example of linguistic muddle, rather than clarity?

Jonathan Sedgwick: Which aspect of it?

Alun Michael: All of it. It looks as if people inside the UK Border Agency were not communicating well with each other, and therefore a lot of different people had different ideas about what had been decided, and what were the appropriate procedures to follow.

Jonathan Sedgwick: Perfectly clearly, I would not disagree with you that there has been a failure to communicate within the agency the Minister's clear policy intention and instruction.

Chair: Apart from the Minister, I think Mr Michael is referring to a wider failure to communicate.

Q505 Alun Michael: I am referring to people within the UK Border Agency.

Jonathan Sedgwick: I am saying that in this instance we did fail as an organisation to translate those directions clearly into operational practice.

Q506 Alun Michael: Okay. The UK Border Agency is a part of the Home Office.

Jonathan Sedgwick: It is.

Q507 Alun Michael: What are the responsibilities of the members of the strategic board?

Jonathan Sedgwick: The UKBA's strategy board consists of our non-executive directors—that is the UKBA non-executive directors, not the Home Office non-executive directors—and the executive members of the board.

Q508 Alun Michael: That tells me the composition of the board. I asked what the responsibilities of the members are.

Jonathan Sedgwick: The oversight of the agency; the delivery of the operations; the financial propriety, etcetera; the risk management: all of those aspects as you would expect to be properly overseen by the board.

Q509 Alun Michael: So it would be a responsibility of each of the members of the board to contribute to ensuring that was undertaken?

Jonathan Sedgwick: It is a collective responsibility. Obviously, individual members of the board have their own specific responsibilities, and it is the responsibility of individuals to raise issues with the board where there are concerns.

Q510 Alun Michael: You were previously the deputy and then the acting chief executive, and you have been a member of the board for some time. Is that right? How long was that?

Jonathan Sedgwick: It will be four years next year.

Q511 Alun Michael: Is it the responsibility of members of the board to question procedures and make sure that they fully understand exactly the way that policy is decided, either at the level of Ministers or at the level of the Home Office board, and translated into actions and procedures within the UK Border Agency?

Jonathan Sedgwick: It is our job collectively to ensure that ministerial directions are clearly translated into operational practice. But, of course, there is a particular responsibility on the member of the board who is responsible for that area of business to ensure that if there are doubts, challenges, risks, issues around that area, it is brought to the board's attention for discussion. There is no other way in which a board can operate other than by ensuring that individual members responsible open up issues in areas for discussion.

Q512 Alun Michael: Referring back to the evidence that we have now been given by Brodie Clark of his reference within a document given to that strategic board to what he understood to be normal practice and

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to be known by everybody, do you not find it surprising, firstly that there does not seem to have been knowledge within the strategic board level and secondly that neither you nor anybody else appears to have questioned this?

Jonathan Sedgwick: As I say, the discussion on that occasion was about aviation security—

Q513 Alun Michael: I have taken that into account.

Jonathan Sedgwick: As I understand it, this was a throwaway reference at the end of a very detailed document. It was simply not the case that this issue had been raised with the board.

Q514 Alun Michael: If the board was briefed on that occasion, and there now seems to be some doubt as to whether you were actually present, you would have received the papers.

Jonathan Sedgwick: I was not. But I don't hang very much on that. As I said, I am a member of the board.

Q515 Alun Michael: But you would have received the papers.

Jonathan Sedgwick: I would have received them, yes.

Q516 Alun Michael: And did the throwaway remark, as you describe it, which is obviously not the way that Brodie Clark described it, not alert you to the need to ask questions?

Jonathan Sedgwick: Well, as I say, the substance of the discussion on that day and the substance of the presentation was about the security of aircraft.

Alun Michael: No, I understand that

Jonathan Sedgwick: It is a pretty meaty subject.

Q517 Alun Michael: Mr Sedgwick, very frequently as Members of Parliament we get documents in which issues are raised almost extraneously. The comments in this document, which presumably we will see at some point, did not raise any concerns in your mind?

Jonathan Sedgwick: Sorry, I really do not mean to be unhelpful, but the focus of the discussion was—

Q518 Alun Michael: No, I know about the focus of the discussion. I have taken that into account. When that discussion, which you were not present for, focused on the document, the fact that the issue was referred to in the document did not raise any concerns?

Jonathan Sedgwick: I do not believe it did on that occasion. It would have been perfectly open and proper for Mr Clark, particularly as these matters became more and more relevant, if he had been so clear about it. It was incumbent on him, I believe, to ensure that the board was briefed on it and was aware of it, and I do not believe he did that.

Q519 Michael Ellis: Mr Sedgwick, you have worked at the Home Office and the Ministry of Justice for 18 years, is it, in a number of different roles?

Jonathan Sedgwick: Something of that kind.

Q520 Michael Ellis: And you joined the Border Agency in 2008 as a deputy chief executive?

Jonathan Sedgwick: Yes.

Q521 Michael Ellis: I want to go back to something I think you said in answer to a question by one of my colleagues a few minutes ago. You described the episode with Mr Clark that the Committee has been questioning you on as, in your assessment, a unique failure to follow ministerial instruction.

Jonathan Sedgwick: In my direct personal experience.

Q522 Michael Ellis: In your direct personal experience, you consider this to have been a unique failure to follow what you consider to be clear ministerial instruction?

Jonathan Sedgwick: As a board member and as a colleague—that was the question that was being asked—yes.

Q523 Michael Ellis: Do you stand by that?

Jonathan Sedgwick: Yes.

Q524 Michael Ellis: With reference to the so-called HOWI—the Home Office Warnings Index—document that dates from 2007, the biometric fingerprints were not being taken in 2007 because the technology was not available.

Jonathan Sedgwick: That is correct.

Q525 Michael Ellis: In fact, it only took place in the early part of 2011.

Jonathan Sedgwick: It was fully rolled out, I think, from March 2010.

Q526 Michael Ellis: So any so-called misunderstanding in relation to the Home Office Warnings Index document from 2007 could not relate, in your assessment, to the failure to comply with instructions on the taking of fingerprints? The HOWI document is silent on the subject of biometric fingerprints, is it not?

Jonathan Sedgwick: It is, but it is extremely relevant that the HOWI document is very clear on the subject of EEA nationals.

Q527 Michael Ellis: That too.

Jonathan Sedgwick: It allows a scaling back of checks in relation to low-risk EEA nationals.

Q528 Michael Ellis: Yes, I was about to ask you about that. The Home Office Warnings Index document from 2007 refers specifically to EEA nationals.

Jonathan Sedgwick: It does.

Q529 Michael Ellis: But it is also silent on the issue of biometric fingerprints because they were not around in 2007.

Jonathan Sedgwick: It is, but, of course, they are not taken on EEA nationals, either.

Q530 Michael Ellis: No, that is accepted. Is it, in your assessment, perfectly clear that Ministers did not want to continue the practice that was actually continuing?

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Jonathan Sedgwick: It is perfectly clear that Ministers wanted secure ID checks to be carried out on every occasion.

Q531 Michael Ellis: And that that was not happening?

Jonathan Sedgwick: It was not clear to me at that stage. It was not clear to me until 2 November that that was not happening.

Q532 Michael Ellis: But it is clear to you now?

Jonathan Sedgwick: It is clear to me now that that was not happening on every occasion.

Chair: Thank you very much, Mr Ellis.

Q533 Steve McCabe: Mr Sedgwick, I want to be absolutely clear about this strategy board meeting on 10 December. Is Mr Clark's recollection wrong, and you most definitely were not present?

Jonathan Sedgwick: I have consulted a number of my records and the minutes of other meetings. I was not present at that meeting, no.

Q534 Steve McCabe: I just wanted to be clear, because I was not sure why you were saying it was not important.

Who had line management responsibility for the pilot?

Jonathan Sedgwick: It is obviously Mr Clark's area, and I am Mr Clark's line manager.

Q535 Steve McCabe: So it was you. You were responsible for the pilot?

Jonathan Sedgwick: Well, I was the acting chief executive. I was responsible for everything, but Mr Clark was responsible for the—

Q536 Steve McCabe: We can say everything devolves to Mr Whiteman because he has ultimate responsibility, but in this case you actually had direct line management responsibility.

Jonathan Sedgwick: No, in this case the implementation of the pilot was Mr Clark's responsibility.

Q537 Steve McCabe: And the person responsible for making sure he was doing his job was you. Is that right?

Jonathan Sedgwick: That is correct.

Q538 Steve McCabe: What questions did you ask? I notice John Vine's letter refers to the non-uniform implementation of the pilot and the non-uniform relaxation of security checks. What questions did you ask about that? It is a funny pilot. I am intrigued, reading the Permanent Secretary's letter about how it will be evaluated. It is funny pilot and it is going to be quite a challenge to evaluate it if you did not actually implement it in a uniform fashion. At what point did you become aware that the thing you were responsible for was being implemented in what looks like a rather ad hoc manner?

Jonathan Sedgwick: On 2 November, as I have said.

Q539 Steve McCabe: But surely before 2 November you would have had some responsibility for checking on Mr Clark's work?

Jonathan Sedgwick: I had insisted on having very detailed weekly notes that set out exactly when we moved to the pilot measures, for how many hours and in what places; that set out what the results of that were, in terms of increased border security activity to recover more drugs, guns, etc.; and that set out that we should be very clear about our use of e-gates. The notes set out all those things.

Q540 Steve McCabe: Were those weekly notes and weekly records accurate, to the best of your knowledge?

Jonathan Sedgwick: They were, to the best of my knowledge. And they contained no reference—

Q541 Steve McCabe: So didn't you notice that there was something different happening at Heathrow?

Jonathan Sedgwick: As I said in response to an earlier question, I did look at those notes carefully and I specifically raised concerns about the fact that I believed that we were moving to the checks too routinely at Heathrow. So I was giving this very careful regular scrutiny and I raised that issue, and Brodie Clark took action about it. But there was no reference in any of the weekly notes to the suspension of secure ID.

Q542 Chair: Thank you. Before I bring in Mr Reckless, you said in answer to Mr McCabe that the implementation of the pilot was basically Brodie Clark's call.

Jonathan Sedgwick: It was his responsibility, yes.

Q543 Chair: Because we have just received an e-mail dated 1 February, a copy of which the Clerk will give you, which was sent on your behalf but signed by you. In that e-mail, you said, "Brodie, Now that the Minister has approved the submission on checks, I would like to reinforce my views on how we should implement the proposition." That is not saying, "By the way, this is what I think." As his boss—because you were the acting chief executive—you were making it very, very clear how you wanted to see it done. And you went on in paragraph 2 to say, "As you know, I am concerned to ensure that we do this in a disciplined way." He replied at 12.14 pm to your e-mail, and the reply is shown above your e-mail: "Jonathan, Absolutely fine...Important that we get some real early clarity on the assurance 'bar'. So, Justin"—whoever that is—"I would appreciate your early view (by early next week) on the prerequisites and the reasoning. I think much better to get this clear and up front than try and retrofit something clumsily and later." [Interruption.] Maybe Mr Michael is right about linguistics. Here is an absolute request to you as the acting chief executive, following your very strong e-mail saying, "This is what we want to do", and the subject heading is: "Risk-based checks / quick wins submission". He is asking you, you are telling him and he is then asking you again, "What should I do? Clarify it now." What was your response?

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Jonathan Sedgwick: I am giving him very clear instructions that I want this to be executed transparently and clearly, and reported fully to Ministers. And that is what happened in those regular weekly notes when the pilots began in July. That underlines, if you like, my point.

Q544 Chair: No, it does not, Mr Sedgwick, because you don't refer to weekly notes at all in this e-mail. Would you like to look at it?

Jonathan Sedgwick: The weekly notes were a way of putting into effect—

Q545 Chair: But I am referring to this e-mail and your instruction.

Jonathan Sedgwick: This was some months earlier, Mr Vaz.

Chair: Of course.

Jonathan Sedgwick: And by the time that we got to the implementation of the pilot measures, I was very clear at that stage with him that I wanted a weekly note that clearly set out—

Chair: So you will be able to show the Committee appropriate e-mails in which you request that. It would be helpful to have a copy of the e-mail that you sent back to him when he said, "Let's do it now and let's not retrofit and be clumsy". If that information could be provided, that would be very helpful.

Q546 Steve McCabe: Who is Justin? Could we just clarify that?

Chair: Yes, who is Justin? And who is

*****?

Jonathan Sedgwick: Justin is Mr Holliday—Justin Holliday, who is the resources management director on the UKBA board.

Q547 Chair: *****?

Jonathan Sedgwick: *****
*****.

Chair: Right. Thank you.

Q548 Mark Reckless: Mr Sedgwick, you said just now that there was no reference in the meeting notes to the suspension of secure ID. Is that correct?

Jonathan Sedgwick: That is correct.

Q549 Mark Reckless: But Mr Clark said, and I thought that you had just confirmed, that at the December 2010 meeting there was a note saying that secure ID was being suspended.

Jonathan Sedgwick: There was a slide pack that Mr Clark had produced for the board, which had a slightly ambiguous reference on a bullet point at the end of a very long and detailed presentation in the slide pack.

Q550 Mark Reckless: You say it was a very long and detailed slide, and Mr Clark said it was the second point. Perhaps you could show us this nine-slide thing so we can clear the issue up.

Jonathan Sedgwick: I am very conscious of not trying the patience of the Committee, but the point is that this was a discussion about aviation security. This was very much a sub-point, and there are clear

measures and rules that are very clearly understood by board members. If you want unambiguously to bring something to the board's attention, there is a format for that purpose and it is very clear what you have to do. This was not done by Mr Clark on that occasion. This was background information for a discussion about aviation security.

Q551 Mark Reckless: Can you give us these notes on how the UKBA board should deal with these issues, and can you give us this nine-page presentation?

Jonathan Sedgwick: I think you have had discussion with Mr Whiteman and with the Home Secretary—

Q552 Chair: Not about this.

Jonathan Sedgwick: About the provision of notes in relation to this investigation. Clearly, I can feed that request back into that process, but I think you are aware of the Home Secretary's views in relation to that.

Q553 Mark Reckless: The Committee will publish its report and the Home Office will publish its various internal reports, and the public can judge between them. If we do not have the information—if it is not supplied—people may infer, wrongly or rightly, that the evidence does not back up the position the Home Office gives.

Jonathan Sedgwick: I take that point.

Q554 Chair: Would you be kind enough to tell Mr Whiteman, if he is not watching these proceedings, that we would like the slides?

Jonathan Sedgwick: I will, of course.

Q555 Mark Reckless: As I understand it, the allegation against Brodie Clark is that he started suspending the secure ID in an unauthorised extension of the pilot. Is that correct?

Jonathan Sedgwick: My understanding—clearly, I have not talked to him about this—based on certainly having read the transcript of his evidence to the Committee is that he became aware that that was what was happening and that he endorsed that practice.

Q556 Mark Reckless: Were you aware of this, as acting chief executive?

Jonathan Sedgwick: No.

Q557 Mark Reckless: You said earlier to us that it was incumbent on Brodie Clark to secure the country's borders. Wasn't it incumbent on you, as the acting chief executive?

Jonathan Sedgwick: It was incumbent on me to set a proper framework of controls in which he operated; I believe I did that. That was why I insisted on the weekly note, which made no reference to the suspension of secure ID. There is a limit to what one can do if you are not being given information about practice.

Q558 Mark Reckless: Mr Clark's position, of course, is that information was given. By example, in passing, in December 2010 we have heard that,

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apparently, the previous Home Secretary was aware of this in March 2010.

Jonathan Sedgwick: But in that case I find it utterly astonishing, and frankly incomprehensible, that we could be having very detailed discussions, as we were, both with Ministers and bilaterally, about possibilities of various options for pilot measures. If Mr Clark was aware that something was routinely being done that the Home Secretary was expressing very serious doubts about, I find it astonishing that he never referred to that to me, and he did not.

Q559 Mark Reckless: But isn't that just a conflation between the pilot and the standard operational procedure?

Jonathan Sedgwick: I do not believe so. If I were an operational manager responsible for an area of an operation, and I was having discussions with my boss or with my Minister about perhaps suspending some checks, and I knew that the Minister did not approve of them, and I knew that under a different heading that was already happening, I would certainly make it my business to tell them. I find it astonishing that he did not.

Q560 Mark Reckless: Finally, what was your involvement in the appointment process for the permanent chief executive position at UKBA?

Jonathan Sedgwick: None. None whatever.

Chair: Mr Clappison had a quick point on what was raised.

Q561 Mr Clappison: Yes, just to follow up. I want to be absolutely clear on pinning this down, the question of the fingerprints. This is one of the three things that happened that should not have happened, apparently. We are talking about the verification of the fingerprints of non-EEA nationals from countries that require a visa.

Jonathan Sedgwick: That is correct.

Q562 Mr Clappison: To check that they are the people who they say they are according to the visa. This was not part of the pilot, was it?

Jonathan Sedgwick: It was not. The Home Secretary could not have been clearer.

Q563 Mr Clappison: It was not part of the pilot. It had not been part of the HOWI business, because it was not possible at that stage.

Jonathan Sedgwick: Correct.

Q564 Mr Clappison: Was this mentioned or not at the meeting that Mr Clark has told us about, in December 2010? I appreciate that you might not have been there. It was not said—

Jonathan Sedgwick: I do not believe it was.

Q565 Chair: How could you know if you were not there?

Jonathan Sedgwick: The minutes would have made that clear—

Q566 Chair: So they are in the minutes—

Jonathan Sedgwick: As I understand it, the discussion was about aviation security.

Q567 Mr Clappison: I want to be clear about this, because it is not clear with the language that has been used so far. Mr Clark tells us in his letter, "Point 2 on slide 8 focused on suspension of secure ID and WI suspensions." But that that did not include the verification of fingerprints.

Jonathan Sedgwick: That is the same thing. Secure ID is the verification of fingerprints.

Q568 Mr Clappison: He has said that. So is it not true, then?

Jonathan Sedgwick: As I understand it, it is not true that that matter was discussed by the board or indeed properly raised with the board.

Q569 Mr Clappison: No, I want to be clear about this. Was it mentioned to the board?

Chair: Was it in the slide, Mr Clappison means.

Mr Clappison: Was it mentioned to them? I am not asking whether it was discussed, but was it mentioned?

Jonathan Sedgwick: It is clear that it was in the slide. As I say, my understanding is that it was not discussed; the discussion was about aviation security.

Q570 Chair: I think we are just a little confused about how you all do your slide presentations. Clearly, it is all done in silence, and nobody says anything. Somebody comes along with some slides and shows them. Members of the board are not there, but they know what is being discussed.

Jonathan Sedgwick: Not at all—

Q571 Chair: But there are these slides, so it is quite clear what was—

Jonathan Sedgwick: Slides are often circulated by way of background and context—

Chair: Yes, we have had slides.

Jonathan Sedgwick: Key points are clearly set out, and there is discussion on the key points. It is a perfectly common practice—

Chair: You have not had a chance to read this letter, Mr Sedgwick. You will be able to look at this letter in detail, and if there is anything you want to come back to us on, please do so.

Q572 Mr Winnick: A letter from Brodie Clark that the Committee is publishing today, as the Chair said, makes the point, which arises to some extent from your concluding answers to my earlier questions, over the weekly reports that he made to the Home Secretary. Brodie Clark maintains that the Home Secretary had specifically asked for reports on the pilot, nothing else. You would challenge that, would you?

Jonathan Sedgwick: The reports were about the pilot, but I find it inconceivable that somebody could be providing reports about pilot measures, having asked to include something in those pilot measures that was specifically refused, and not refer to that or make it clear, if he was aware, that those measures were in fact being carried out, in those reports.

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Q573 Mr Winnick: That is your view. Mr Brodie Clark has been in public service I would imagine for around the same number of years as yourself.

Jonathan Sedgwick: He is a little older than me, I think, Mr Winnick.

Q574 Mr Winnick: Yes. Would there be any reason for you to doubt his integrity?

Jonathan Sedgwick: As I say, there have been specific occasions when I have challenged him and pressed him on points. I do not think that it is sensible for me to be commenting on the character of someone who is engaged in legal proceedings against my department.

Q575 Mr Winnick: So you are not willing to answer the question?

Jonathan Sedgwick: I think you will understand, Mr Chairman, that legal proceedings are pending—

Q576 Chair: You think you might be a witness and you do not want to compromise yourself.

Jonathan Sedgwick: It is perfectly possible.

Chair: We understand that.

Q577 Mr Winnick: Just one other question. If Mr Clark has been involved in public service for so many years in a job, as far as one can tell, despite robust disagreements from time to time, that in no way involved disciplinary action—as you said yourself, Mr Sedgwick, and we agree that it would be like any other organisation—would there be any reason or any incentive for Mr Clark to relax immigration controls, other than in the way that he described and in the circumstances he described?

Jonathan Sedgwick: I think you will have to put that question to him.

Chair: Yes, I agree.

Q578 Alun Michael: A few moments ago, you gave a very robust and comprehensive list of reasons why you now say that you find it astonishing that Mr Brodie Clark did not draw the suspension of fingerprint verification specifically to your attention. Does not that list, and the fact that such an omission would be extraordinary, rather reinforce his evidence that everybody in the Borders Agency knew what was happening? He would hardly need to brief you about something that he believed that you and others at a senior level in the agency knew to be the case.

Jonathan Sedgwick: I don't agree with that. If you are having intense discussions about whether or not you should do a particular thing, where you've got a very clear direction from the Home Secretary, and if you know that that thing is regularly being done, I find it astonishing and incomprehensible that you would not raise that. Otherwise, he would have presumably—I just find it—

Q579 Alun Michael: But Mr Sedgwick, I want to put this to you. Listening to your evidence, it is a conclusion that one is drawn towards. If the discussions were about the pilot and not about existing practice, surely it would not be his responsibility to brief you on all sorts of things that were not part of

the pilot, which he understood you to know as being common practice. That is the key element.

Chair: Could we have a quick answer?

Jonathan Sedgwick: You can't separate the pilot from existing practice. The pilot is grafted on to existing practice. If you have asked for us to do something under the heading of the pilot and you have been told no, and you are aware and you believe that it is being done under existing practice, it is completely incomprehensible that you don't raise that.

Q580 Chair: It may well be, Mr Sedgwick, because this Committee is at a disadvantage—you have seen papers that we haven't seen. If we were able to see those papers, we might come to the same conclusion. We simply don't know.

We are coming to the end of this. Can I put to you the letter we will be publishing today from the independent chief inspector, a copy of which we will give you now? Basically, everyone knew that he was going to do these checks, because he had published the fact that he was going to Heathrow as part of his overall inspection plan. So Mr Clark and you, as the head of the agency, and everybody knew that John Vine was going to end up at Heathrow airport asking these questions. Nobody ran around and tried to stop it happening. In the third paragraph of his first answer to us, he says: "In subsequent interviews and focus groups with staff and managers at all levels, I noted a degree of confusion amongst both immigration officers and more senior management about what was permitted under 'Level 2' measures, resulting in inconsistent implementation." It may well be that this wasn't a deliberate attempt by individuals to thwart anybody, but at the end of the day, it may be confusion, as the chief inspector has said, and an inconsistent implementation. Could that be a possible solution to what has happened?

Jonathan Sedgwick: As Mr Whiteman would have made clear in what he said to the Committee, there is no suggestion that individual officers at the front line were not acting in good faith.

Q581 Chair: We are not talking about the front line here; we are talking about senior management.

Jonathan Sedgwick: What we are talking about here is a failure at a senior level to translate clear direction into operational policy. The Committee will form its judgment.

Q582 Chair: Mr Sedgwick, with respect, this is the man who is conducting the report. He has written to the Committee and he said that there seem to be measures that were inconsistent in implementation. The chief inspector, as we have asked him to do, publishes his inspection plan at the beginning of the year. Can you satisfy us that, as a result of what has happened, there is consistency now and there is clarity as of today?

Jonathan Sedgwick: There is absolute consistency and clarity about the checks that are conducted at the border, and a regular, I believe, six-hourly report that goes to the head of the border force to ensure exactly what is being done. That has happened almost immediately after these events were uncovered.

Q583 Chair: I have two final points. You were not consulted about the suspension—not your suspension, but that of Brodie Clark—but you were told he was being suspended.

Jonathan Sedgwick: Correct.

Q584 Chair: Was this suspension ratified by the board of the UKBA, consisting of yourself and David Wood?

Jonathan Sedgwick: No. That would not have been appropriate. The suspension is a matter between Mr Whiteman and Mr Clark.

Q585 Chair: Did you know—presumably, you have your office also in Marsham Street—about any of the package of arrangements? Did it come as a surprise to you when you heard the evidence of Dame Helen Ghosh to this Committee that in fact an agreement was made that Mr Clark could leave with his pension intact? Did you know that?

Jonathan Sedgwick: I was aware that there were discussions about—

Q586 Chair: Were you part of those discussions?

Jonathan Sedgwick: No.

Q587 Chair: But you were aware of them?

Jonathan Sedgwick: Mr Whiteman had obviously briefed the board in general terms about—

Q588 Chair: When?

Jonathan Sedgwick: I believe he briefed the board on Thursday 3 November that there was going to be an investigation.

Q589 Chair: He briefed the board before he made the decision to suspend or after?

Jonathan Sedgwick: No. He briefed the board that the chief inspector had raised these concerns and that, as a result of that, there would need to be an investigation.

Q590 Chair: What time was that briefing?

Jonathan Sedgwick: I really cannot remember—probably in the middle of the day.

Q591 Chair: In the middle of the day, he briefed the board?

Jonathan Sedgwick: He briefed the board, as you would expect. You would expect him to keep his senior colleagues apprised of the fact that the chief inspector had raised these concerns and that therefore an investigation was necessary. It was perfectly obvious that, during that investigation, Mr Clark could not continue in his post.

Q592 Chair: But he made the decision to suspend on the Friday morning, as we understand it.

Jonathan Sedgwick: I believe that that is when he made—

Q593 Chair: Yes. But you were aware of the pension arrangement—that he would get a package if he went?

Jonathan Sedgwick: I was aware that that was one of the issues being discussed, but the decision was made and communicated to Mr Clark—and, indeed, to the rest of us—on the Friday.

Q594 Chair: Finally, I have to ask you this question because in the past we have had the Permanent Secretary of the Home Office before us and the next day he took up another appointment that we did not know about. I understand that you are to be offered an ambassadorial position in the Foreign Office. Is this right?

Jonathan Sedgwick: That is the first that I have heard of it, Mr Vaz. I do not believe that that is true. I would be fascinated to know where—

Q595 Chair: We are all very pleased to hear that. How long will you remain in your post doing this job, which is obviously going to be extremely important? The issue of stability at the top of the UK Border Agency is important to this Committee. How long will you remain in post?

Jonathan Sedgwick: I hope to be in my post for some considerable time, for years possibly. Who knows? It is a fascinating, engrossing job. I am very much enjoying it. There is lots to do and, as you say, it is an extremely important and challenging role.

Q596 Chair: So we will see you again?

Jonathan Sedgwick: I hope so.

Chair: Excellent. Mr Sedgwick, thank you very much indeed. The session is concluded.

