THE GOVERNMENT RESPONSE TO THE EIGHTH REPORT FROM THE HOME AFFAIRS COMMITTEE SESSION 2012–13 HC 603

The work of the UK Border Agency (April – June 2012)

Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty

March 2013

Cm 8591

£10.75

Any enquiries regarding this publication should be sent to us at:

Ben Archibald
Chief Executive's Office
UKBA
Home Office, 2 Marsham Street, London SW1P 4DF

This publication is also available for download at www.official-documents.gov.uk

ISBN: 9780101859127

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office

ID 2548488 03/13 28361 19585

Printed on paper containing 75% recycled fibre content minimum.

Government response to the Home Affairs Select Committee's Eighth Report of Session 2012-13: The work of the UK Border Agency (April - June 2012).

The UK Border Agency has considered the recommendations of that report and the Government response is below.

Before responding to each of the recommendations we would like to make the following clarifications in the Committee's report:

- On page 12 of the Committee's report, under key figures relating to foreign national offenders, it states that 28 offenders released without being considered for deportation in 2010-11 are still untraced. This figure should be **three** foreign national offenders released without being considered for deportation in 2010-11 are still untraced (as stated at paragraph 33 of the report).

- At paragraph 57 of the Committee's report, and in the key figures section on page 23, it states that the number of asylum cases pending an initial decision after six months has risen by 36% since the end of June 2011. The data in the table at paragraph 54 includes both main applicants and dependants – it does not equate to the number of asylum cases. In fact the number of asylum cases pending an initial decision after six months has risen from 2,717 in Q3 2011 to 3,393 in Q2 2012, an increase of 25% rather than 36%.

Conclusion / recommendation 1

We are concerned at the findings the court has made about the treatment of the individuals in question. All of those held pending deportation, including ex-foreign national offenders, should be held in appropriate accommodation. If medical practitioners have advised that detainees should be accommodated in hospital or other institutions that care for the mentally ill then that guidance should be acted upon by the Agency and not ignored.

Government response

The UK Border Agency takes seriously any instances in which it is found by the courts to have acted unlawfully and this is particularly so in cases of unlawful detention. On the rare occasions when such cases occur, the Agency seeks to learn lessons from them to prevent a recurrence.

The detention of persons suffering from mental disorders inevitably raises difficult issues, particularly where the individuals concerned are foreign national offenders (FNOs). The UK Border Agency remains committed to ensuring that it deals fairly and humanely with those with whom it comes into contact, especially those it detains, whilst ensuring that it discharges its core functions of maintaining an effective immigration control and protecting the public from harm. In the case of detained persons, that commitment translates into a need to ensure that the dignity of detained persons is respected and that they are held in secure but safe and humane conditions, with access to appropriate healthcare services when necessary.

Where medical practitioners advise that detained persons are suffering from mental ill-health and need to be transferred to hospital for assessment and/or treatment, the UK Border Agency acts on that advice in liaison with the relevant health authorities.

Conclusion / recommendation 2

We recommend that Mr Whiteman write a letter of apology to the claimants concerned, setting out the steps the Agency has taken and is taking to ensure that incidents such as these ones will not reoccur.

Government response

As Rob Whiteman said in his letter to the Committee of 8 October 2012, the UK Border Agency has not formally apologised outside the settlement process, but has agreed appropriate damages in line with the Administrative Court's findings that limited periods of detention had been unlawful.

Conclusion / recommendation 3

We are concerned that the cases outlined above may not be isolated incidents but may reflect more systemic failures in relation to the treatment of mentally ill immigration detainees.

Government response

The UK Border Agency does not consider that the regrettable cases highlighted by the Committee provide evidence of a systemic failure in relation to the treatment of mentally ill detainees. The UK Border Agency is not complacent about the challenges presented by the detention of persons with mental health conditions and, where things do go wrong in individual cases, the Agency is keen to ensure that it learns from the experience and, if appropriate, make any necessary improvements to its policies and processes.

Conclusion / recommendation 4

The Agency must inform us how many individuals the 109 Rule 35 reports relate to and why medical advice was overruled on so many occasions

taken with

Conclusion / recommendation 5

We recommend the Agency immediately carry out an independent review of the application of Rule 35 at Harmondsworth and at its other immigration removal centres across the country.

Government response

The purpose of Rule 35 is to ensure that particularly vulnerable detainees are brought to the attention of those in the UK Border Agency with responsibility for

authorising, maintaining and reviewing their detention. The information contained in a report needs to be considered carefully in deciding whether continued detention is appropriate in each case.

Rule 35 of the Detention Centre Rules lays out three types of report that the medical practitioner must issue when appropriate:

"(1) The medical practitioner shall report to the manager on the case of any detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention;

(2) The medical practitioner shall report to the manager on the case of any detained person he suspects of having suicidal intentions, and the detained person shall be placed under special observation for so long as those suspicions remain, and a record of his treatment and condition shall be kept throughout that time in a manner to be determined by the Secretary of State;

(3) The medical practitioner shall report to the manager on the case of any detained person who he is concerned may have been the victim of torture."

It will usually be only Rule 35(1) that contains medical advice as to whether ongoing detention is medically advisable or not. Rules 35(2) and 35(3) alone will not address concrete concerns about health in the same way, but will instead provide information which must be taken into account in considering whether ongoing detention is appropriate, alongside wider information about the individual.

It is not therefore the case that the existence of a Rule 35 report necessarily requires the release of a detainee, and it is not the case that continued detention necessarily indicates that medical advice has been overruled.

An audit of Rule 35 processes was undertaken in 2010-11, and identified a number of areas in which the process required improvement. Immediate steps were taken to improve administration. Further discussions with corporate partners have since identified further improvements which could be made to Rule 35 processes. Work to develop and finalise the revised process instructions plus training packages has been ongoing over the last year, in consultation with corporate partners.

A revised Detention Service Order (DSO) which provides guidance to Immigration Removal Centre (IRC) healthcare teams on how to complete Rule 35 reports was issued on 19 October 2012. Training sessions on the DSO have been delivered to IRC healthcare representatives. Separately, a revised Asylum Instruction on Rule 35 for use by case owners is due to be published in the near future, with associated training to follow.

Once the revised Asylum Instruction on Rule 35 is issued and associated training of officers has been undertaken, a further audit will be carried out to measure the effectiveness of the implementation and the impact that the new range of measures has had.

One of the improvement measures introduced after the earlier audit was to record Rule 35 activity on our Casework Information Database (CID), including the report subtype. This will enable us to record those cases where a report (if properly issued) contains medical advice about an individual's health in detention (Rule 35(1) cases). This system was not in place throughout the 2011 period so to identify which of the 109 reports was issued under Rule 35(1), and to provide details of the reasons for ongoing detention in each case would require a case by case examination, which could only be achieved at disproportionate cost. We can confirm however that the Harmondsworth report refers to 106 separate individuals.

Conclusion / recommendation 6

We welcomed this commitment by the Agency and we are disappointed that the Home Office is now reconsidering its commitment.

Government response

As indicated in the written answer provided by the Immigration Minister on 7 September 2012 (col. 491W), the commitment to carry out an Equality Impact Assessment of the detention of persons with mental health problems was given in the course of legal proceedings and is being reconsidered in the light of the outcome of those proceedings, which are currently subject to appeal to the Court of Appeal. That remains the case.

Conclusion / recommendation 7

We welcome the large decrease in the number of children held in immigration detention since March 2010. However we are concerned that the numbers held are starting to increase again, albeit on a much smaller scale. There are three main situations in which children are placed in immigration detention: at the border on trying to enter the country with no valid visa, while awaiting departure; if the Agency disputes that they are in fact a minor (age-related disputes); and immediately prior to removal from the UK after previous attempts have failed. We recommend that the Agency publish a breakdown of the number of children entering immigration detention by the reason for their detention. This will enable policy-makers to see the extent of the issue at different points in the immigration process and to investigate how to further reduce numbers.

Government response

The UK Border Agency publishes information on the number of children entering detention and the place of detention on a monthly and quarterly basis. As the Committee notes, the detention of children in immigration removal centres and pre-departure accommodation happens only in the following very limited circumstances:

- Children, as part of a family group, may be accommodated at Cedars pre-departure accommodation immediately prior to their ensured return from the UK, and after advice has been sought from the Independent Family Returns Panel;

- Children, as part of a family group, may be accommodated at Tinsley House for

    - while a decision is made as to whether to grant them entry to the UK or, if this is refused, while awaiting a return flight;
    - where, very exceptionally, a family presents risks which make the use of Cedars pre-departure accommodation inappropriate;
    - where a foreign national mother and baby from a prison mother and baby unit are being returned during the Early Removal Scheme (ERS) period but it is not practicable or desirable, owing to time or distance constraints, to transfer them direct from prison to the airport for removal.

- Occasionally we encounter cases in the immigration removal estate where the person's age is disputed. An individual who is defined as an 'age dispute case' will not remain in detention pending a Merton compliant age assessment. He/she will be released and the Merton compliant age assessment will be conducted in the community. He/she must be released into the care of the local authority as soon as appropriate arrangements can be made for his/her care because of the possibility that he/she is under 18 years of age;

- In criminal cases, detention of a foreign national offender under 18 may be authorised in exceptional circumstances where it can be shown that they pose a serious risk to the public and a decision to deport or remove has been taken. This detention is subject to Ministerial authorisation and advice is also sought from the Independent Family Returns Panel. These cases are very rare and would not be detained in an IRC until the age of 18.

The Agency does not publish details of the individual reasons why children enter immigration detention but does publish information on the location of children held in immigration detention, which provides a good indication for the reason for detention. The Agency carefully monitors the numbers of children entering detention to ensure this only occurs as a last resort and only in one of the circumstances set out above.

Conclusion / recommendation 8

We welcome the considerable achievements of staff at Cedars in providing a supportive, child centred environment for families going through the distressing process of removal, and recommend that this best practice is shared at any other centres where children are held. We share the concerns of HM Inspector of Prisons however about the use of force on children and pregnant women. We reiterate the conclusion of the inspection report that force should never be used to effect the removal of pregnant women or children and only ever used in relation to either to prevent harm. We recommend that all staff should receive immediate training on how to manage children and vulnerable adults who become violent. Current training on the use of force against detainees should be reviewed to make sure staff understand clearly what restraints are permitted, the situations in which they are permitted and against whom they can be used.

Government response

The vast majority of detainees comply with their return so are taken to the airport, placed aboard an aircraft but then travel alone. For a small number of people who still refuse to leave, escort officers have to travel with them. Even in those cases, the vast majority comply, but for a small number, force may be required to ensure they leave the UK.

Escort officers may also be used for a variety of other reasons, either because the person is vulnerable, because it is a requirement of another country through which the detainee is transiting, or for safety and security reasons on board a chartered flight.

The UK Border Agency has used private sector escorting companies to undertake this work for nearly 20 years and in all but a handful of cases their staff have acted professionally, ensuring those being removed are treated with dignity and care. These officers are highly trained and operate in very difficult circumstances in which they sometimes suffer serious verbal and physical abuse from those being removed.

All escort officers complete a comprehensive training course, the contents of which are approved by the Agency. This encompasses human rights, diversity, self-harm and suicide prevention, child protection, first aid, the work of the UK Border Agency and use of control and restraint (C&R). Officers are required to report any use of restraint or use of handcuffs; this is covered in the initial training. Officers receive regular refresher training in the use of restraint every twelve months.

The UK Border Agency would prefer that pregnant women, vulnerable adults and under 18s who form part of family groups in Cedars left the UK voluntarily and compliantly. It would not be practical to consider a blanket ban on the use of physical intervention on pregnant women and under 18s as this might encourage non-compliance and render the Agency unable to maintain effective immigration controls. Force must only be used when it is:

- Honestly perceived that the use of force is necessary in the circumstances;
- The degree of force used is reasonable; and
- The force used is proportionate to the seriousness of the circumstances.

Any physical intervention on a pregnant woman for the purposes of removal would be subject to rigorous risk assessment and take place on a planned basis with advance authority from the Director of the Returns Directorate (or his deputy).

Although there may be occasions when it is necessary to use physical intervention with under 18s for the purposes of removal, this will always be as a last resort, and only with the advance approval of the Minister for Immigration.

Established principles for managing difficult behaviour by children at Cedars are already in place which emphasise verbal de-escalation and persuasion techniques and engaging with family members, including children, to help them work through their concerns and the source of their anxiety. Only as a last resort is non-

compliance managed through other means by staff who have received the appropriate training.

Conclusion / recommendation 9

We are disappointed that the Agency has not made any progress in removing these individuals from the UK. The Agency should inform us what its strategy is for overcoming these obstacles. We would find it helpful if the Agency could provide us with anonymised case studies that demonstrate the range of issues they are dealing with in attempting to deport these individuals.

Government response

We have attached at Annex A some anonymised cases studies as requested.

The UK Border Agency Criminal Casework Directorate has a dedicated team in Liverpool managing FNOs living in the community who by law can no longer be detained. FNOs are prioritised in terms of the risk the individual poses to the public and their removability. Our Trace and Locate specialists use a range of sources, including social media, to track down absconders. They also work closely with the police and probation services to locate these individuals and return them to prison. Some absconders leave the country without detection and they are subsequently added to UK Border Agency watch lists in case they seek re-entry. This is difficult casework and around 20 non-detained cases are removed from the UK each month.

The use of judicial challenges as a means to frustrate removal is being tackled through improved legal case working in the UK Border Agency. The judiciary are also addressing abusive judicial reviews through recent judgements.

There may be delays in deportation if FNOs do not co-operate with the documentation process. The UK Border Agency works with the Foreign and Commonwealth Office (FCO) in order to engage foreign embassies and High Commissions to ensure that the documentation process for the removal of their nationals is efficient. There are no countries to which, as a matter of immigration policy, we cannot remove. However there are countries where it is extremely difficult to undertake enforced removals, or where there are legal barriers.

Checks for a valid or expired travel document are undertaken routinely during the initial stages of receiving a referral. Where a valid travel document is not traced we attempt to obtain relevant bio-data so that a travel document can be obtained as quickly as possible.

Some of our staff have specific in-depth country knowledge and the most complex cases are reviewed on a country specific basis in order to identify any issues and escalate cases with all possible partners responsible for liaising with the relevant foreign Governments.

Operation Nexus is a new partnership between the UK Border Agency and the Metropolitan Police Service to intervene on FNOs wherever they are encountered.

This creates a working relationship that uses intelligence and better information sharing. That includes working on immigration offenders who have absconded.

The aim of this project is to design and implement a new operating model for enforcement in London, providing more resources, tools and intelligence to target offending and establish nationality and identity at an earlier stage. For those who cause most harm, we will bring the combined forces of the police and the UK Border Agency to remove or disrupt them.

Conclusion / recommendation 10

We accept the Agency's caveat about prisoners released late in the quarter but that does not explain why such a large proportion of cases remain outstanding. We are concerned that continuing high numbers of outstanding cases will add to the backlog of ex-foreign national offenders whom the Agency is trying to deport. We welcome the changes made to the immigration rules by the Home Secretary to make it harder for ex-foreign national offenders to remain in the UK on the basis of their Article 8 rights to a private and family life. We were pleased to hear from Mr Whiteman that these changes will help the Agency to deport more ex-foreign national offenders. We expect to see this begin to take effect soon both on the proportion of ex-offenders the Agency are able to deport on release and in a decrease in the backlog of 3,954 ex-offenders the Agency is still working to deport.

Government response

The UK Border Agency is continuing to work towards increasing the return of FNOs, closely managing contact with the offender and using specialist investigation skills to obtain travel documents for non-compliant individuals. We are also making greater use of prosecution powers against FNOs who do not cooperate with the deportation process or breach bail conditions and are working more closely with other agencies, including the police, to overcome barriers to removal. We work in partnership with the Ministry of Justice who will also take action when licence conditions are breached.

The FCO helps to engage with foreign embassies to ensure that the documentation process of the removal of their nationals is efficient. In some cases Ministers will raise specific cases with their foreign counterparts.

The UK has established safe routes and re-documentation arrangements with a significant number of countries and this is aiding our ability to return prisoners and immigration offenders.

Conclusion / recommendation 11

In our view it is unacceptable that the Agency is prevented from considering offenders for deportation earlier in their sentence especially when it can take a very long time to secure the necessary travel documents.

Government response

As the Committee is aware, following the judgment in the case of Chindamo we are precluded by law from considering FNOs for deportation too early into their sentence. The Agency can therefore consider an individual's case up to 18 months before the earliest release date. However, where a shorter sentence is given or where a sentence is in part served on remand, this will mean that consideration is made immediately upon referral from the prison. 18 months is sufficient time to secure a travel document for compliant FNOs, and given that some such documents have limited validity there may be little value in obtaining one much earlier in the process. Upon referral of a potential FNO the Agency takes steps to establish identity at the earliest stage, as this is a crucial element of the subsequent consideration of deportation action. The Agency's prison-based staff are successful in persuading around half of all FNOs to take up the early release scheme to return to their own country.

If an FNO does not comply with our attempts to gather information for a travel document, this can delay removal, sometimes indefinitely. In some cases the current relationship with a foreign government prevents the UK from working effectively with them. For diplomatic reasons it would be unhelpful to name countries publicly but we would be happy to brief the Committee privately.

Conclusion / recommendation 12

We are concerned that new backlog cases may still be coming to light so long after the Agency is supposed to have tackled the backlog. We expect an explanation from the Agency as to where these cases have come from.

Government response

These are not new cases. The additional 3,000 cases noted in the live migration cohort as at June 2012 came from the 26,000 original cases in the migration controlled archive.

Conclusion / recommendation 13

The Agency gave the size of both controlled archives as 92,000 at the end of August so we are perplexed where the additional 4,000 cases will come from. The Agency must tell us where the extra 4,000 cases they are planning to assess in the closure of the controlled archives have come from and why they are not in the figures given to us for the size of the controlled archives.

Government response

We provided the Committee with a full report on the closure of the controlled archives on 18 December 2012. This included the final number of cases closed and the numbers located and transferred to caseworkers to progress.

Conclusion / recommendation 14

We accept that in a significant proportion of cases the applications are likely to be duplicates or the applicants are likely to have left the UK voluntarily. However we are not convinced that the Agency's limited checking regime will have picked up all of the applicants who remain in the country. For this reason we are concerned that the final checks made on these cases should be thorough and that they should not be rushed to meet an artificial deadline. We expect the Agency to provide us with a list of all the checks that will have been carried out on an application before it is closed.

Government response

On 18 December 2012 Rob Whiteman sent the Committee on a full closure report on the controlled archives which confirmed the checks that had been undertaken on cases before being closed. We believe that this process was thorough.

Conclusion / recommendation 15

We are concerned that preparations should be made for the event that a number of people whose applications are closed may subsequently be discovered to be in the country. We expect to hear from the Agency what the consequence of this would be both for the individual concerned and for the tax payer. We are particularly interested to find out whether any such individuals would be offered an amnesty or if they would have to start their asylum or immigration application again.

Government response

We have ensured that processes are in place so that where UK Border Agency staff encounter individuals with closed cases through allegations, representations, intelligence or enforcement activity we can reactivate and consider these cases.

Where individuals have absconded and deliberately evaded immigration control, such non-compliance will be taken into consideration and where we find individuals have no right to be in the UK we will seek to remove them from the country. Where individuals with a closed case apply to re-enter the UK they will be required to make a fresh application and their previous immigration history will be taken into account. Such individuals will not be offered an amnesty.

Conclusion / recommendation 16

Mr Whiteman told this Committee that the Agency had "seen the figures on 30 days go in the right direction". We do not see how this can be the case when less initial decisions are made within 30 days than in the previous year.

Government response

Mr Whiteman was referring to internal figures for initial decisions made within 30 days which had been improving in the months before his appearance in front of the Committee in September 2012.

He also made the point in his evidence that it is important to take a balanced approach to tackling the asylum workload, making progress on both old and more recent cases. Whilst we experienced a drop in our adult initial decisions within 30 days from 59% in 2010-11 to 47% in 2011-12, we improved performance on concluding and removing older cases over this period. Conclusions within 12 months were up from 56% in 2010-11 to 63% in 2011-12 and conclusion rates at 36 months were up from 63% in 2010-11 to 70% in 2011-12.

Conclusion / recommendation 17

We are pleased to see this progress but we would like to hear from the Agency what the main causes are for an asylum claim taking three years to complete. The Agency should provide us with a breakdown of the length of time it took to conclude the remaining 37% of cases still awaiting conclusion after 36 months in 2010-11 and how many remain outstanding as of the end of June 2012.

Government response

We are working hard to increase the speed with which we achieve case conclusions. As stated above, we have pushed conclusions within 12 months up from 56% in 2010-11 to 63% in 2011-12 and we will continue to drive performance against this indicator. We have also increased conclusion rates at 36 months driving them up from 63% in 2010-11 to 70% in 2011-12.

The main causes for an asylum claim taking three years or more to complete are significant barriers to removals. There are a number of countries to which making returns is extremely challenging because of issues around co-operation on documentation and/or on the acceptance of returned individuals. The compliance of an individual in the re-documentation and return process is also a major factor.

A further 29% of the remaining cases that had not been concluded after 36 months in 2010-11 had been concluded by the end of June; in total 76% of the cases in this cohort had been concluded by this time. Please note that the statistical information for June 2012 is provisional and may be subject to change. It has not been quality assured under National Statistics protocols.

Conclusion / recommendation 18

The UK has responsibility under the UN Convention Against Torture to undertake thorough assessments of whether or not individuals returned to another state are in danger of being subjected to torture. We join the Foreign Affairs Committee in welcoming the establishment of a new official dialogue between the Agency, the Foreign and Commonwealth Office, Freedom from Torture and Human Rights Watch to discuss how the risk to those removed

from the UK is assessed. We urge the Agency to use this dialogue to promote a thorough evaluation of the risks to Tamil asylum seekers being returned to Sri Lanka.

Government response

The UK fully complies with all of its international obligations under the 1951 United Nations Convention Relating to the Status of Refugees and the European Convention on Human Rights (ECHR). The Government believes that the right approach is to consider the needs of individuals and their particular circumstances. Every application is given careful scrutiny, bearing in mind the potentially serious consequences if a mistake is made. Where a decision has been made by the Agency and by the Courts that a person does not require international protection and there are no remaining rights of appeal or barriers to their return, individuals are expected to return to their country of origin and assistance is available to them to do so.

The UK Border Agency has fully considered the allegations made of mistreatment, amounting to torture, of returnees to Sri Lanka and published its policy position in a Bulletin, available on the Agency's web site, in October 2012. The Agency does not accept that the evidence published by Freedom from Torture or Human Rights Watch supports their assertion that Tamils in general are at risk on return to Sri Lanka. The Agency and FCO's dialogue with Freedom from Torture and Human Rights Watch is ongoing.

Conclusion / recommendation 19

We will continue to monitor the number of individuals granted asylum after having previously had an application refused with a particular focus on individuals who have been returned to Sri Lanka. We expect the Agency to tell us what review processes they have in place to examine why the applications in question were initially refused when individuals have subsequently been found to have had a valid claim.

Government response

The UK Border Agency measures interview and decision quality by auditing 10% of all first instance decisions against a framework drawn up and agreed with the United Nations High Commissioner for Refugees (UNHCR). This reflects our obligations under the Refugee Convention and the European Convention on Human Rights (ECHR), our published policies and asylum instructions and allows us to quantify performance on quality.

From April 2011 to March 2012 we assessed over 1,400 cases against specific criteria and standards to quality assure the decisions we make and identify key issues affecting quality. During this period, our figures showed that UK Border Agency case owners were correctly applying 88.9% of the decision criteria. This indicates that decision quality is generally very high, although we recognise that there is still room for improvement and we are taking action to do so through our quality assurance processes.

We have also incorporated analysis of allowed appeals as part of quality assurance processes. Our analysis has highlighted that a key reason why well-reasoned decisions are overturned is due to provision of additional post-decision evidence (including medical reports, expert reports and witnesses). In 56% of all cases allowed during the last financial year, there was some form of further evidence adduced post-decision. We are currently working with corporate partners to design a system of information, advice and support for applicants that will help facilitate earlier disclosure of information crucial to the decision.

Conclusion / recommendation 20

We welcome the Minister's announcement that student numbers would be disaggregated in migration figures, but we cannot see how the Government will be able to reach its target of reducing net migration to tens of thousands without drastically reducing the number of student visas issued. This is a move that the Home Office itself estimated would cost in the region of £2.4bn. We therefore recommend that, in correspondence with the publication of disaggregated figures, the Government should specify that it will remove student migrants from its reduced net migration target.

Government response

The Government is committed to reducing net migration, and to eliminating the abuse of the student migration route. It is also committed to the sustainable growth of a sector in which the UK excels. The Government welcomes all genuine students coming to attend any university or college that meets our requirements and has always been very clear that it recognises the important contribution that international students make to the UK economy.

There is no visa limit on the number of overseas students who are eligible to attend institutions in the UK. However, we have put systems in place to tackle immigration abuse. The National Audit Office estimated that 40,000-50,000 of those who entered the UK under Tier 4 in its first year of operation came to work rather than study. By requiring all institutions to meet the standards demanded by the educational oversight regime and making Highly Trusted status compulsory, we are ensuring there is no opportunity for the bogus colleges who were sponsoring these entrants to operate in the UK. That means that as student visa grants have fallen overall, we have seen a small rise in visa applications for universities.

Net migration statistics are produced by the independent Office for National Statistics in accordance with the UN definition. All the UK's major competitors report a net migration figure that includes students. The UK will continue to comply with the international definition of net migration.

Conclusion / recommendation 21

We welcome the introduction of interviews for student visa applicants, a measure this Committee has repeatedly called for. However the Agency should clarify whether and how it intends to use the "intention to leave the UK upon

completion of studies" test. We recommend that the Agency also clarifies its position around the use of this test to its team of entry clearance officers. If face to face interviews are to be a success it is important that the interviews are as robust as possible and that officers have recourse to the most useful tests of credibility. We therefore recommend that an assessment of applicant's intentions upon completion of their course is made as part of entry clearance interviews. Applicants should either intend to return home or have credible plans for further study or skilled post-study work in the UK.

Government response

The guidance currently in use by entry clearance officers makes it clear that when applying the genuine student rule, they should consider the application in the round, using their expertise in assessing entry clearance applications and taking all the available evidence into account. It specifies that the applicant's post-study plans are one of a range of factors to be considered as part of the holistic assessment of the applicant and their circumstances. The lack of an intention to leave the UK is therefore one of the factors that entry clearance officers should take into account when assessing whether an application should be refused.

Clearly, however, as students are able to extend their visas or switch into other migration routes such as work, an intention to leave test cannot be applied in the same way as it is for a visitor. Therefore, the guidance makes clear that where the officer believes the applicant is a genuine student, it would not be appropriate to refuse them solely on the basis of intention to leave if there would be no abuse of the immigration system.

It is therefore already the case that an assessment of applicants' intentions upon completion of their course is made as part of entry clearance interviews, and that applicants should either intend to return home or have credible plans for further study or skilled post-study work in the UK.

Entry clearance officers have received training on the application of the genuine student rule and they report it is working effectively to enable them to identify and tackle residual abuse in the system. The Agency will continue to monitor how the rule is working as the new powers bed in.

Conclusion / recommendation 22

We are pleased to hear that the police have taken short term measures to mitigate the queues at ORVO, by allowing individual universities to take a co-ordinating role. However due to the cost and the very limited value the police believe the information to have we do not think that maintaining the current process can be justified. We therefore welcome the commitment from the Immigration Minister to review both the value offered by registration and the list of countries whose citizens are required to do so at the beginning of 2013.

Government response

We note the Committee's comments.

Conclusion / recommendation 23

We welcome the Agency's continued achievement of its targets in this visa processing.

Government response

We note the Committee's comments.

Conclusion / recommendation 24

In our view, taking six months to process an application that could be processed within 24 hours provides a very poor service to users. We recommend that the Agency alters its in-country service standard to processing 95% of in-country postal applications in 12 weeks, the same standard it works to for settlement applications made from overseas. We also expect to hear from the Agency whether or not the service standard for overseas applications will alter now that all applications from Commonwealth countries (with the exception of Hong Kong) also have to be made by post and not via the relevant British Consulate or High Commission.

Government response

The Agency will review service standards within broader work to implement a new, tighter and more progressive performance framework in time for the start of the 2013-14 financial year.

Conclusion / recommendation 25

We are very disappointed to see that the Agency's progress against this target is backsliding. We acknowledge that the Agency hopes to improve its representation rate in the second half of this year through the short term recruitment of junior barristers to represent the Agency in court and the recruiting of law graduates to this role from September. In addition the Agency plans to share staff between regional offices to meet hearing volumes. The Agency also hopes that the reduction in family visit appeals will decrease their caseload of appeal hearings. We look forward to seeing an improvement in representation rates in our next report.

Government response

Our internal management information suggests there has been significant increase in overall representation at First Tier hearings since June 2012, from 78% in July to 92% and 95% in August and September respectively. This is compared to 76% in April to June 2012. This improvement is due to recruitment and resource sharing, as set out by the Committee above.

We are still monitoring the impact of restricting family visitor appeal rights. The changes were made in July and the immediate impact has been diluted by the seasonal global surge in visit and other entry clearance applications. However,

overall intake is showing a downward trend compared to the period April to June 2011 (25,500 compared to 26,700).

Conclusion / recommendation 26

We recommend that the Agency reviews what it has done differently in the categories where its win rate has improved and tell us how it will be applying these successful changes in practice to other categories of appeal.

Government response

Court statistics show that between October and December 2011 and January and March 2012 there has been improvement in win rates in visit visa, managed migration and out of country appeals. The overall win rate also increased by 3%. We acknowledge the need to improve win rates. Factors affecting win rates are varied, and vary between categories, and it is difficult to isolate particular initiatives that are guaranteed to lead to improvement. In addition factors leading to success in one category may not be applicable in others. For example, successfully arguing against the credibility of an asylum claim requires different evidence and knowledge to a visit visa appeal.

However we have a number of initiatives in place that aim to improve the win rate by continuously learning from what is working:

- we conduct regular detailed analysis of samples of appeal determinations across different categories of appeals, and hold workshops with decision makers to feedback the key trends and agree how specific issues identified can be tackled;
- we are focusing on improving representation rates and have recently seen representation rise to over 90% nationally. Through the measures we have taken we expect to see further improvements towards consistently achieving 100% representation;
- the quality of representation and advocacy skills are also critical in ensuring more appeals are won. The Agency has an accreditation programme and measures to monitor the individual win rates of presenting staff – and the quality of their representation in court - so that development needs can be identified and addressed.

Conclusion / recommendation 27

We would welcome a decline in the volume of appeals if it was shown to be the result of improved decision making on the part of the Agency. However we are concerned that the Family Visit Visa appeal route is being closed off at a time when the majority of appeals made against the Agency's decisions are upheld by the court. We reiterate below the recommendations we made in our previous report which should help to reduce the volume of appeals without closing off important routes of appeal.

Government response

In removing the full right of appeal in family visit applications we are bringing family visitor cases in line with other visitor categories that do not have a full right of appeal. The appeal system itself does not provide applicants with a quick outcome and can take up to eight months. Someone refused a visit visa may re-apply as many times as they like and a decision will be received much more quickly, typically within 15 days.

Decision quality is monitored robustly both within the UK Border Agency and externally by the Independent Chief Inspector of Borders and Immigration whose findings we consider carefully. We are working to improve decision quality on all application routes, irrespective of whether or not a refusal leads to an appeal. Through training, performance monitoring and continuous feedback loops, we seek to ensure that all decisions are of the highest quality. That work will continue to be strengthened across our entire decision making areas, regardless of the categories which attract a full right of appeal.

Removing the appeal right will also provide better value and deliver quicker and cheaper outcomes for applicants. The cost of a visit visa is £78, the cost of lodging an appeal is £80 for a hearing on the papers or £140 for an oral hearing.

We constantly look to improve our decision-making, and while we accept there are erroneous decisions, we do not agree that the majority of visit visa appeals are being upheld by the courts. In 2011/12, 32% of appeals were upheld (compared to 44% that were dismissed by the courts). Between April and June 2012, 30% of appeals were allowed.

Conclusion / recommendation 28

There are a number of simple changes the Agency could make to reduce the volume of appeals it handles. Firstly the refusal notices it issues should set out in clear bullet points why the application has been rejected. If, for example, it is due to missing documentation the applicant should be asked to provide this to the Agency as part of the same application. It should then be reviewed within an acceptable timescale. This could reduce both the time it would take for the applicant to get a decision and the resources spent on appeals.

Secondly, we understand that the Agency does not specify all the documentation it requires to grant an application. For example it asks for "proof of funds" instead of bank statements. We recommend that the Agency list specific documents that they require in order to grant an application. This will ensure that the application process is as clear as possible and should reduce the amount of verification work and appeals work that has to be done at a later stage.

Government response

All applicants who are refused receive a written notice explaining why the application was rejected. These notices set out clearly why the application was refused. Each

paragraph of the notice links to relevant sub-paragraph(s) of the Immigration Rules that the applicant does not meet.

The Immigration Rules already set out precisely what documentation is required to support an application in many instances, particularly under the Points Based System routes. Where the Rules do not specify the documentation required for an application to be granted, instead they lay out a set of requirements that applicants must meet. There are then a number of different types of documentation that an applicant could use to demonstrate that they have met the Immigration Rules, depending on the type of visa they have applied for, the context in which they are applying, and their individual circumstances. Always insisting on a specified set of documents could place an unreasonable or disproportionate obligation on some applicants, given the diverse range of situations this would need to cover. The Agency does provide guidance on its website on the types of documentation that make good evidence in support of an Entry Clearance application.

Where a decision maker believes that an applicant is likely to meet the Rules subject to some further piece of evidence needed for the decision, there are circumstances in which they will provide the applicant with an opportunity to submit this before the decision is finalised. However, it would not be proportionate for decision makers to introduce delays and offer case-by case guidance on how to meet the rules for each application. It is the responsibility of the individual making an application to demonstrate that they meet the criteria set out in the Rules. Decision makers may reject applications where there is insufficient evidence of the requirement being met, but are instructed not to refuse on the basis that a particular document is missing.

Conclusion / recommendation 29

The best way to communicate with applicants is through a clear website that works properly and sets out what is expected from the applicant at each stage of the process. The Agency's website is frequently inaccessible as vital pages do not download. The Agency needs to address the problems people are encountering with its website immediately.

Government response

We did experience performance problems with our online application and booking service between April and June 2012. During this period the contractual availability of the i-Apply website (excluding planned time for routine maintenance) was 96.9%. Since then a number of changes and improvements have been implemented, and the comparative availability for the three months from August to October was 99.3%.

The UK Border Agency is continuing to implement changes to improve the performance of the website, seeking to enhance applicants' online engagement. The Agency is currently working closely with Government Digital Service (GDS) to join other departments and agencies on a single government platform – GOV.UK. Learning lessons from Direct Gov and Business Link's customer-focused approach, this site will offer a single point of contact for government services firmly based on user need and enhance the customer experience.

Conclusion / recommendation 30

Given the turnaround time of applications in the first quarter of 2012 it is hard to see why so few pre-registration visits were carried out in either quarter one or two. We expect to hear from the Agency what proportion of applicants who applied for sponsorship in the first quarter of this year and in the second quarter have now received a pre-registration visit.

Government response

Our pre-registration visit strategy has been developed in line with the Hampton Principles for regulatory enforcement. All applications for a sponsor licence are subject to a risk assessment and this enables us to target visits at those potential sponsors who present the highest risk to immigration control. We visit:

- all potential Tier 4 sponsors;
- all start-up companies in Tiers 2 and 5; and
- other organisations where our initial checks give cause for concern.

We do not have a set number or percentage of prospective sponsors that we visit during any period. The proportion of prospective sponsors referred for a pre-licence visit will depend on the characteristics of the applications we receive.

We are collating information from the compliance officer network around the country on the proportion of applicants who received a pre-registration visit. We will send this information separately to the Committee.

Conclusion / recommendation 31

We are disappointed that the majority of post licence visits carried out by the Agency are still announced in advance. We reiterate the recommendation made in our last report that the majority of post licence visits should be unannounced. This should ensure that the enforcement system is both rigorous and gives the public confidence that the government is cracking down on illegal immigration.

Government response

Where there are significant concerns that a sponsor may not be complying with their duties the Agency does, wherever possible, undertake an unannounced visit. From March 2013 we will increase the number of unannounced visits to the maximum number possible.

We cannot undertake to complete all visits unannounced as we must balance our needs with the needs of businesses and educational institutions. Not all post-licence visits are related to potential abuse and we do not believe there is a need to make unannounced visits in every case. There are some instances where factors beyond our control require an announced visit to be made; for example, we always make announced visits to schools due to the need to safeguard children and to sponsors

where the health and safety of our staff may be an issue, such as animal testing laboratories. We are also sensitive when planning visits to religious premises.

Conclusion / recommendation 32

This is a concern for this Committee as we remain sceptical that simply reducing the number of people an institution can sponsor is an effective way of combating abuse of the immigration system either by wilful misuse or negligence. We reiterate our previous recommendation that a sponsor found to be failing to comply with their duties should have their licence suspended in the first instance and revoked if remedial action is not taken. We are concerned that the Agency is not monitoring how many sponsors are subject to this weaker sanction and we expect to hear from the Agency how it will ensure that institutions subject to these penalties are monitored more closely than others.

Government response

We take tough action against sponsors who abuse the immigration system but it is important that the action taken is proportionate to the issues identified. Where there is evidence of serious non-compliance or we have identified serious immigration abuse such as fraud we will revoke the licence immediately. In other cases we have a range of options open to us including reducing the number of Certificates of Sponsorship (CoS) or Confirmations of Acceptance for Studies (CAS) the sponsor can assign, downgrading the sponsor's rating, or suspension from the register. Where appropriate we will refer sponsors to other government departments (such as HMRC and DWP) for further investigation and to the police for criminal investigations.

Restricting the number of CoS/CAS available to a sponsor forces them to re-think their business model. This is particularly true for Tier 4 sponsors as their income generated by the presence of international students will be significantly reduced. For example, following the suspension of a major publicly funded institution in 2012, we placed a restriction on its licence, reducing the number of CAS it could issue by 75%. Initial estimates were that, as a result of this restriction, the institution was likely to lose income in the region of £7 to £10 million.

Since August 2012, we have limited the number of CAS in just two cases in Tier 4. We will closely monitor the CAS usage of these two sponsors and will undertake further compliance visits to ensure they are continuing to comply with their sponsorship duties and obligations.

Conclusion / recommendation 33

We welcome a robust enforcement system for non compliant sponsors but as so many students are affected by the revocation of an institution's licence more should be done to help institutions who are struggling to meet their requirements as a sponsor. We recommend that if an institution performs poorly in an inspection the Agency should send in a task force to help it improve its procedures.

Government response

When an education institution obtains a sponsor licence it commits to meeting the Tier 4 duties and obligations which are set out in published policy guidance on our website. Sponsors should be clear about what is expected of them.

We have to use our available resources to best effect and we cannot send in a task force in every case where a sponsor is not meeting its duties. We do work closely with sponsors who are struggling to meet the sponsorship requirements and are proactive in approaching us for help. In addition, we have recently delivered a joint workshop with Universities UK which focussed on sponsor compliance visits including what to expect and how to prepare for a visit.

As explained above, where a sponsor is found to be performing badly following an inspection we will take action proportionate to the issues identified.

Conclusion / recommendation 34

In our view the Agency is not taking sufficient steps to identify genuine international students who have been affected by the revocation of London Metropolitans licence and "students" supposedly attending the university who are not complying with the terms of their visas or do not have permission to be here in the first place. It is important that prompt action is taken both to help genuine students and to identify and remove bogus students before they are able to melt away into the woodwork and add to the Agency's extensive backlog.

Government response

We do not accept this point. The UK Border Agency has made considerable efforts to identify students affected by the revocation of London Metropolitan University's licence, including students who are not complying with the terms of their visas or who do not have permission to be here.

On 12 October 2012, the UK Border Agency wrote to all students supported by London Metropolitan University and all students previously supported by London Metropolitan University who they did not wish to re-enrol. We asked the students to respond to us by 31 October to tell us whether they wished to remain at London Metropolitan University, transfer to a new sponsor or leave the UK. Genuine students who have expressed their wish to continue studying at London Metropolitan University will be able to do so. We have agreed that such students can continue studying until their course has ended or until the end of the academic year, whichever is sooner, subject to them continuing to meet the necessary requirements.

We have curtailed the leave of students who responded to say they will be leaving the UK, and those who have not responded. We also curtailed the leave of students who were previously sponsored by London Metropolitan University, but from whom London Metropolitan University have now withdrawn sponsorship. Similarly we have curtailed the leave of students who indicated they would transfer sponsors, but from whom we have not received a further application for leave to remain. Those whose

leave has been curtailed will be referred for enforcement action through our National Tasking and Coordination Board.

Conclusion / recommendation 35

We further recommend that the Government review its policies about the fate of genuine students affected by their university losing its licence. If students have leave to be in the UK and are meeting the conditions of their visas it seems unreasonable to expect them to uproot and change course and university in the middle of their degree especially when they have paid substantial fees for their qualification. We recommend that when an institution's licence is revoked it is prevented from issuing any new Certificates of Acceptance for Study. However, the Agency should carry out checks on students who have received a Certificate of Study but have yet to begin their course, as well as students who are already studying at the University, to establish whether they have leave to be studying in the UK and are complying with their visa conditions. Genuine students should be allowed to start or complete their course at the university in question. "Students" that do not have leave to be here or do not meet the requirements for study should be prevented from entering the UK or removed if they are already here.

Government response

We do not accept that a wide scale review of policy is necessary. It is a fundamental principle of sponsorship that those who benefit most directly from migration (employers, education providers or other bodies that bring in migrants) help to prevent the system being abused. We engage in consultation with sponsors before we reach the point of revocation of a licence and we work hard in partnership with sponsor bodies to ensure they fully understand their duties. There is also a period of suspension before full revocation of a licence. We have to retain the power of revocation (and the associated impact on students who are about to begin or in the middle of a course) as an ultimate sanction for non-compliant sponsors. However, as shown in the work the Agency did following the revocation of London Metropolitan University's licence, we are keen to support genuine students and will work collaboratively with sponsors to do this. Equally, we will enforce the removal of those who are not genuine students and who have no leave to be in the UK.

Conclusion / recommendation 36

It is unacceptable for the Agency not to be able to keep track of its performance in this key area of compliance. The sponsorship system cannot be fit for purpose if reports made by sponsors about potential abuse are not dealt with swiftly. We recommend that the Agency immediately instigates a way of tracking follow up actions taken on potential non-compliance reports. Without this we cannot see how it can keep track of the number of people who may be breaking the terms of their visa and therefore remaining in the country illegally.

Government response

It is important to recognise that not all notifications by sponsors to the Sponsor Management System are to report abuse. We have undertaken extensive work in improving systems and data management to better identify those notifications which signal potential abuse and where curtailment action may be appropriate. We are continuing to build on these improvements to enhance and accelerate the process still further.

Conclusion / recommendation 37

In its response to this report we expect the Agency to tell us why it did not think it was necessary to report this to Parliament. We were also concerned to hear from Mr Whiteman that the Agency does not currently have data about the number of records that met the criteria for being in the migration refusal pool prior to 2008. We are encouraged to hear from Mr Whiteman that work is currently underway to construct this data and we expect to hear from the Agency when we will be able to see the results.

Government response

The Migration Refusal Pool (MRP) is a tool to help case workers identify and track suspected overstayers that have seen their extensions of leave in the UK refused, and for whom we have not yet confirmed their departure from the country. By doing this, it enables officers to proactively and efficiently target those who are eligible for removal rather than deal with them on a reactive basis. Therefore it is not a list of those waiting to be removed but a referral mechanism that helps UKBA more efficiently identify and remove those who are ready to leave from those who are not.

The number of cases in the MRP was previously in the public domain. The National Audit Report 'Immigration: The points based system – work routes' commented on the size of the MRP on 15 March 2011. At paragraph 17 the NAO reports cites ' the Agency estimates there may be up to 181,000 migrants in the UK of all visa types whose permission has expired since 2008'.

The Agency is currently conducting a data cleansing exercise in respect of this data, and we will be able to provide the Committee with an update on progress in the Spring of 2013.

Conclusion / recommendation 38

Whilst we acknowledge that the pilot sample is not representative of the whole pool its findings are still deeply concerning. We understand from the Agency that it is signing a contract with Capita to follow up the records in the pool. Given the small proportion of individuals the pilot identified as having left the UK we welcome this development and hope that Capita's progress will be swift. We understand that Capita's reward will be determined by the extent to which it achieves the outcomes the Agency wants such as the number of individuals whom Capita makes contact with who go on to leave the UK as a result. However when we took oral evidence from Mr Whiteman, he seemed

uncertain as to how a good performance in this regard would be defined. The Agency have since written to us to say that the negotiations over performance benchmarks are ongoing and that final specific benchmarks will not be disclosed due to reasons of commercial confidentiality. It is unacceptable that a contract with a potential value of £30m and with a payment structure gradated by achievement of outcomes is obscured from proper scrutiny by Parliament. The Agency must provide us with further detail as to the benchmarks Capita will need to achieve if it is to receive the full value of the contract, £30m.

Government response

As a major part of our work to understand and reduce existing caseloads within the Agency, we awarded a contract to Capita to progress and close cases within the post 2008 MRP. We are proceeding now with the initial element of the contract, costing up to £5 million over a nine month period. This will include triage and contact management of 150,000 cases (including checking and confirming records where e-borders indicates a possible departure), as well as casework on 50,000 cases. Of the 150,000 cases we expect to refer to Capita, 20% are expected to be confirmed departures, 65% are expected to have barriers to removal and 15% are expected to be cases which we cannot positively trace.

We have not yet finalised unit pricing and incentives on the casework element of the contract (and this aspect of the work will not begin until we do so). The contract itself provides for further joint developmental work before we reach that stage. As previously advised, the contract will have a graduated payment structure where Capita will be paid more for the outcomes we want, such as departures from the UK.

Should Capita demonstrate a successful set of outcomes, we have, subject to Treasury approval, the potential to extend their work under this contract beyond this initial pool of cases, up to a value of £30 million over four years.

Conclusion / recommendation 39

We are disappointed that the launch of the database was delayed. At the time of writing we were told that it would be launched on the 30 September but we have received no confirmation as to whether this deadline has been met.

taken with

Conclusion / recommendation 40

We are concerned that the Agency is not able to tell us how many enforcement actions resulted from the 11,537 allegations that were made in the second quarter of 2012 as it is not able to link specific allegations to specific enforcement activity. It is able to tell us that it carried out 795 enforcement actions and 606 arrests in the second quarter of 2012 as a result of previous allegations. Given the number of allegations made so far this year we are concerned that this appears to be a very low number. We are encouraged to hear that the new database will enable the Agency to track the results of

specific allegations. As we have said in previous reports it is important that members of the public who make genuine reports about suspected abuse of the immigration system know that their reports are acted upon and what the result of their allegation was.

Government response

As the Agency informed the Committee by letter on 8 October 2012, our national allegations database went live on 30 September 2012.

The Allegation Management System (AMS) system now enables us to track an individual allegation through to outcome, and will allow us to address the concern of the Committee regarding our inability to link specific allegations to specific enforcement activity.

As we informed the Committee in our last response, the 30 September launch was only for the initial elements of the AMS and we are developing it further. The current plan includes the introduction in 2013 of a fully revised e-form on the Home Office website. The new form will guide members of the public in providing the key information needed to identify immigration and border crime. This is critical to improving the quality of the information that we receive from members of the public and, alongside analysis of what type of allegations provides us with successful outcomes, will form the basis of our work in increasing the utilisation rate of allegations received.

With regard to the public facing elements we are happy to invite the Committee to see the proposed form when we move to user acceptance testing.

The reform of the public facing elements of how we receive allegations will enable us to identify clearly those who wish to obtain feedback and we are currently considering how to introduce this in a legal and safe manner.

Conclusion / recommendation 41

Given the problems experienced by the Agency in tracking and carrying out its enforcement work we welcome the planned increase in resources in this area.

Government response

We note the Committee's comments and work is in progress to redirect significantly more staff into the enforcement business area.

Conclusion / recommendation 42

We reiterate our previous recommendations that no senior staff should receive a bonus until the Agency has improved on its performance in key areas of its work. If the performance of senior staff is strong then it should soon be reflected in an improved performance.

Government response

The Home Office follows Cabinet Office guidance on Senior Civil Servants' (SCS) performance management and the payment of bonuses.

In accordance with Cabinet Office guidance, only the top 25% of the Department's SCS members are eligible for consideration of the award of a bonus. Bonus payments are kept under constant review and are only awarded to the top performing SCS following objective assessment of individual performance. Information on bonuses paid to the Department's SCS is published in the autumn by the Cabinet Office and is available on data.gov.uk. This information gives the total amount spent on bonuses to the SCS and the total number of SCS members who received a bonus.

Information on bonuses awarded for the 2011/12 performance year was published on 20 December.

Conclusion / recommendation 43

We welcome the improvement in responding to MPs' queries from the previous quarter and we expect to see further improvement towards both targets made in the next quarter.

Government response

We welcome the Committee's positive comments on the progress we are making in responding to Members' enquiries. Our MP Account Manager teams will continue to work proactively with MPs and their offices to further improve the services we provide.

Conclusion / recommendation 44

The number of cases or records that the Agency has yet to investigate, trace or conclude has now reached over the 300,000 mark. This is an increase of 9% since our last report. We are deeply concerned that, despite all the work the Agency is putting into resolving these cases, the backlog keeps on growing. We hope that we will begin to see a reversal in this trend when we undertake our next report.
Government response

We note the Committee's comments.

Annex A

Anonymised case studies demonstrating the range of issues the UK Border Agency is dealing with in attempting to deport foreign national offenders (conclusion/ recommendation 9)

Case Study 1

On 14 March 2011, Mr A was served with an automatic deportation decision and signed Deportation Order. He subsequently lodged an appeal against the decision to deport and exhausted all his rights of appeal on 19 December 2011.

Mr A claimed asylum on 16 January 2012 and this was treated as an application to refuse to revoke his Deportation Order and was refused on 14 March, with an out of country appeal.

Removal directions were set for 2 April, but on 26 March Mr A submitted a judicial review challenging the Secretary of State's decision to refuse to revoke his Deportation Order without an in-country right of appeal. On 2 May, the judicial review claim was found to be totally without merit.

Removal directions were again set for 30 May, but on 28 May his solicitors submitted correspondence on his behalf asking for the representations to be considered as a fresh application for Human Rights. The further representations were treated as an application to revoke a Deportation Order but were refused, with no right of appeal. The removal directions of 30 May were cancelled due to Mr A being disruptive.

Removal directions were re-set for 1 July, but on 26 June, his solicitors submitted correspondence on his behalf requesting his immediate release on temporary admission. They also submitted further submissions regarding Mr A’s Article 3 and Article 8 rights under European Convention on Human Rights (ECHR). These further representations were treated as an application to revoke a Deportation Order but were again refused, with no right of appeal. On 28 June, his solicitors submitted further correspondence on his behalf again requesting his immediate release on temporary admission. They also submitted further submissions regarding Mr A’s Article 2, 3, 5, 6 and Article 8 rights. Mr A’s solicitors were notified on 28 June that our decision would be maintained.

On 29 June, his solicitors lodged a judicial review against our decision. The judicial review was refused due to “repeat judicial review policy” and removal directions for 1 July were maintained. However, the removal directions were cancelled as Mr A had become extremely violent and disruptive towards flight escorts. On 11 September, Mr A was sentenced to six weeks’ imprisonment for his conviction for common assault.

The Crown Court has confirmed that Mr A's criminal appeal against his conviction for two counts of common assault against the flight escorts has been accepted, the hearing has not yet taken place. On 29 October, Mr A lodged a judicial review on the ground of Articles 2,3,5,6 and 8 of ECHR. The case remains outstanding.

Case Study 2

On 24 April 1984, Mr D claims to have arrived in the UK on a genuine passport as a member of his country's armed force, as such he was exempt from immigration control. On 1 October 1991 he retired from the armed forces and in the same month he applied for Leave to Remain (LTR) as a civilian component, which was granted on the same day valid until 31 May 1993. He applied for further grants of leave which were granted until 31 August 1997.

Between January 2004 and September 2005, Mr D was convicted on three occasions for theft-shoplifting for which he received fines. On 28 September 2007 he was convicted for conspiracy to supply controlled drug - Class A - other and was sentenced to seven years imprisonment. On 8 April 2009 a signed Deportation Order was obtained, and on 27 April 2009 he submitted further representations raising Article 3 and Article 8 ECHR issues.

Mr D lodged an appeal on 29 May 2009, against the decision to deport him. He became appeal rights exhausted on 21 December 2010. However there were additional caseworking issues which remained unresolved including fresh Article 8 consideration as well as an outstanding Confiscation Order. These were resolved and on 4 August 2011, he was re-detained to initiate his removal on 25 August 2011.

However on 24 August 2011 further representations were received. As a result of this, an Injunction was granted as an application for judicial review and Interim Relief following consideration of the documents lodged by him. He submitted further submissions dated 8 and 22 December 2011 requesting the revocation of his deportation order. These submissions were refused on 11 January 2012 allowing Mr D an out of country appeal only.

Removal directions were set for 3 February and as a result Mr D was re-detained on 26 January. However, his removal directions were deferred as his country's Embassy advised the UK Border Agency that further paperwork needed to be signed before the issue of a new Direct Return passport, removal direction was consequently deferred.

Removal directions were reset for 13 February. However, it became apparent that when he signed the judicial review consent order, the order was that his judicial review was stayed, not withdrawn. Therefore, as the decision was stayed, his removal directions were deferred. On 22 March permission to apply for judicial review (Papers) were refused. He renewed his judicial review application on 23 March. On 19 June his oral permission hearing took place and this was refused on the same day.

Mr D's judicial review oral hearing held on 19 July was refused by the court. Removal directions were again set for 31 July. However an Injunction was granted pending a decision on his application to appeal (judicial review) and as such the removal directions were cancelled. Permission to Appeal to the Court of Appeal was adjourned on 27 July, but permission to proceed was granted on 12 September. The case remains outstanding.

Case Study 3

There is no evidence to confirm when Mr E entered the UK although he was first encountered by the police in 1994 and 1996 for drink driving offences. In August 1996 he was served with liability to deportation paperwork but no further action was taken because of the outbreak of civil war in his home country and no enforced removals were being made at that time.

In 1997 Mr E claimed to be a British citizen but provided no evidence to support this claim. Between March 2000 and October 2002, he was convicted of a number of relatively minor offences ranging from criminal damage, drunk and disorderly to false instrument. In 2004, he was convicted and sentenced to 8 years for rape and required to register for life as a sex offender. In August 2006 he was served with liability to deportation papers and in December 2006 became appeal rights exhausted. Various legal challenges delayed the actual service of a deportation order until April 2009.

He was detained under immigration powers in November 2008 at the end of his prison sentence. During the course of his custodial sentence and detention Mr E was challenging to manage, being subject to 71 adjudications and various incidents including dirty protests and threats to staff.

Mr E claimed at various stages to be British and that he had arrived in the UK as a minor. He continued to make contradictory claims to frustrate the removal process. In June 2009, he was interviewed by his home country's High Commission who refused an Emergency Travel Document.

Investigations were carried out through family members in the UK to establish Mr E's home country. In November 2009, Mr E was again interviewed by his home country's High Commission but an Emergency Travel Document was again refused. Mr E has stated at interview that he did not know his parents, he was not sure of his real name and that he knew nothing about the country.

In March 2010, an evidential report containing strong supporting evidence to show that Mr E was from his home country (evidence from family members and law enforcement agencies) was forwarded to the relevant High Commission and British High Commission to consider. In June 2011, following a number of prompts via the Foreign and Commonwealth Office, Mr E's home country agreed to issue an Emergency Travel Document based upon the evidence submitted to them. On 1 July 2011, an Emergency Travel Document for Mr E was received and removal directions served on him at on 12 July 2011.

In view of Mr E's history of disruption his removal was carefully planned with HMP/DPMU/Escort services. An FCO representative was on hand to mitigate the removal failing. Mr E, a high risk, non compliant and deceptive offender was removed on 15 July 2011, having spent a considerable time in detention.

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ISBN 978-0-10-185912-7