

# ‘Fast and fair?’

A report by the Parliamentary Ombudsman  
on the UK Border Agency



# ‘Fast and fair?’

A report by the Parliamentary Ombudsman  
on the UK Border Agency

## Fourth report

Session 2009-2010

Presented to Parliament pursuant to  
Section 10(4) of the Parliamentary Commissioner Act 1967

Ordered by  
The House of Commons  
to be printed on  
8 February 2010

HC 329  
London: The Stationery Office  
£9.50

© Crown Copyright 2010

The text in this document (excluding the Royal Arms and other departmental or agency logos) may be reproduced free of charge in any format or medium providing it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the document specified.

Where we have identified any third party copyright material you will need to obtain permission from the copyright holders concerned.

For any other use of this material please contact the Office of Public Sector Information, Information Policy Team, Kew, Richmond, Surrey TW9 4DU

or e-mail: [licensing@opsi.gov.uk](mailto:licensing@opsi.gov.uk).

ISBN: 9780102964295

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

ID 2347492

02/10

PHSO-0070

Printed on paper containing 75% recycled fibre content minimum.

# Contents

Foreword.....	5
Introduction .....	7
List of cases.....	19
A: Asylum cases.....	21
B: Core immigration and nationality work .....	27
C: Delays and backlogs on applications where a fee is paid .....	33
D: Applying under European law .....	39
E: What can a customer expect from the Agency?.....	43



# Foreword

I am laying this report before Parliament under section 10(4) of the *Parliamentary Commissioner Act 1967*.

The report contains summaries of 11 cases which are illustrative of the large numbers and wide range of complaints referred to the Parliamentary Ombudsman by Members of Parliament about the UK Border Agency (the Agency). They involve applications for asylum, as well as the Agency's core immigration and nationality work, and applications for residence cards, which confirm rights of residence under European law.

By way of introduction to the summaries of complaints we have investigated, we have identified some issues and themes arising from our investigations which I hope will be of wider interest and will help to drive service improvements and inform public policy.

The Agency and their predecessors (the Border and Immigration Agency, UKvisas and the Immigration and Nationality Directorate of the Home Office) have consistently generated a large number of complaints to the Ombudsman – as the figures below demonstrate.

## **In 2007-08**

- We received 316 complaints.
- We accepted 47 for investigation.
- We reported on 55 investigations, of which 84% were upheld in full or in part.

## **In 2008-09**

- We received 517 complaints.
- We accepted 55 for investigation.

- We reported on 23 investigations, of which 96% were upheld in full or in part.

## **In the first 9 months of 2009-10**

- We received 478 complaints.
- We accepted 11 for investigation.
- We reported on 33 investigations, of which 97% were upheld in full or in part.

Over the past three years we have had an open and constructive dialogue with the Agency, at both senior and operational levels, about the need for improvements in their service to users and in their complaint handling performance. We have seen progress – not least in the proportion of complaints that we are able to resolve by way of informal intervention rather than a full investigation – but the Agency still have a long way to go on their journey to being able to demonstrate to us in our casework that they are meeting the Ombudsman's *Principles of Good Administration, Principles of Good Complaint Handling* and *Principles for Remedy*.

I should stress that it is not the Ombudsman's role to inspect the Agency's functions or to report on their efficiency and effectiveness. That is the statutory remit of John Vine, the Independent Chief Inspector of the UK Border Agency. I note with interest that the Chief Inspector will publish a report later this year following his own thematic inspection of the Agency's complaint handling and I hope that my report will both inform and complement that important aspect of the Chief Inspector's work.

As I say in the introduction to the report which follows, most of the complaints we receive are from people in this country who are facing long delays awaiting a decision on their application

to the Agency. Delays by the Agency in deciding such applications mean that people who should be given permission to stay are often left unable to support themselves and uncertain as to their future; and those who should be removed remain here, with their chances of eventually being allowed to stay increasing because of the Agency's delay. As the cases in this report show, the Agency's failure to resolve applications within reasonable timescales can have serious implications for the individuals involved, for society in general, and for the public purse.

The Agency's biggest problem is the huge backlog of old asylum applications which has built up over a number of years, leaving hundreds of thousands of applicants waiting for years for a final decision on their application. It is only in recent years that the Agency have put in place a five-year plan, backed by sufficient resources, to reduce and eliminate this backlog. They have also introduced a new system for assessing asylum applications which, in their words, is '*faster and fairer*'. But many of the complaints we have seen have demonstrated that, at the same time as working to reduce the backlog of old asylum claims, the Agency have allowed large backlogs to build up in other key areas of their work, often as a result of sudden changes in priorities and switching of resources.

The Agency have made significant progress in recent years towards clearing their backlogs, although progress has been slow because of the scale of the problem. They need to make sustained and consistent progress towards their commitment to meeting their service standards, clearing existing backlogs and avoiding them in future – because the implications of them not doing so are serious and far-reaching, both for the individuals caught up in the system and for society as a whole.

Given the scale of the problems, there can be no short-term fix, and the resolution will need to be founded on clear and consistent priorities, supported by good forward planning and adequate resources. I hope that the lessons to be learnt from this report will also be of benefit to the Agency as they continue on their journey to improved customer service and complaint handling.



Ann Abraham  
**Parliamentary and Health Service Ombudsman**

February 2010

# Introduction

It will not have escaped the notice of anyone returning from a recent trip abroad that staff at customs and passport control now have a new uniform and work under a new UK border sign. They are from the UK Border Agency (the Agency), an agency of the Home Office formed in April 2008. They manage border control for the UK, enforcing immigration and customs regulations. The Agency also consider applications for permission to enter or stay in the UK, for citizenship and for asylum. The Agency's origins lay in the Border and Immigration Agency (formerly the Immigration and Nationality Directorate of the Home Office) and grew to take on UKvisas (dealing with entry clearance) and the port of entry functions of HM Revenue & Customs.

The Agency now have a workforce of 24,500, working in 135 countries and all over the UK, and a budget of more than £2 billion. In 2008 the Agency handled over 100 million international arrivals from outside the Common Travel Area<sup>1</sup>; issued over 1.5 million entry clearance visas and made almost 375,000 decisions on applications for extension of leave to remain and for settlement. They also received almost 26,000 applications for asylum, excluding dependants (including dependants, the figure is over 31,000).

The Agency's statement of purpose is to 'secure our borders and control migration for the benefit of our country', supported by their three strategic objectives to 'protect the UK border and national interests ... tackle border tax fraud, smuggling and immigration crime ... implement fast and fair decisions'. They aim to:

*'help create a society where the contribution from immigration is recognized, the communities in the UK are cohesive, discrimination is minimized and the public are confident that migration is well managed, firmly enforced and, therefore, demonstrably fair.'*<sup>2</sup>

As the Foreword to this report indicates, the Agency and their predecessors have consistently generated a large number of complaints to the Ombudsman, not just in terms of the number of complaints we receive, but also the number of complaints accepted for investigation and the high proportion which are upheld. The complaints are mostly from people in this country who are facing long delays awaiting a decision on their application to the Agency. This may, for example, be an application for asylum or for permission to visit, study, work, or settle in the UK.

## Asylum

Asylum is protection given by a country to someone who is fleeing persecution in their own country. It is given under the *1951 United Nations Convention relating to the Status of Refugees*. To be recognised as a refugee, the asylum seeker must have left their own country and be unable to return because they have a well-founded fear of persecution. The UK also abides by the *European Convention on Human Rights*, which prevents someone being sent to a country where there is a real risk that they will be exposed to torture, inhuman or degrading treatment or punishment.

What should we expect from an effective system for the assessment of asylum applications? That applicants are told what to expect: that they are safe and properly supported while awaiting a decision, and that they receive a 'fast and fair' decision on their application. For those who are unsuccessful the expectation must be that, unless there is some other reason why they should be allowed to stay in the UK, they should promptly leave the country, or be removed as soon as is practicable.

In our experience the Agency are a very long way from achieving this. Historically some of the biggest problems they face, reflected in the complaints we receive, are those of very long delays in dealing with applications, and huge backlogs of work. The largest backlog by far has been in resolving asylum applications, although the number of asylum applications has now dropped significantly, from 80,000 in 2000 to just under 26,000 in 2008. In July 2006 the Home Secretary announced that the Immigration and Nationality Directorate of the Home Office had a 'legacy' of between 400,000 and 450,000 electronic and paper records relating to unresolved asylum cases, and that they would aim to clear those cases in 5 years or less.<sup>3</sup>

The Agency's stated intention at that time was to complete consideration of all those cases by July 2011. But even before the Home Secretary made his announcement, several of the applicants had already been waiting many years for a final decision on their status, and so many will have had to wait up to 5 more years for a final resolution (although the Agency say the majority would already have had a previous decision). By the end of September 2009 the Agency had concluded 220,000 cases. They say that they are on track to clear this backlog ahead of the summer 2011 deadline, which was a target they imposed upon themselves and set aside fresh resource to deliver.

The administrative muddle created from this legacy backlog has had a serious impact on many thousands of asylum applicants. Mr C (see page 23) is just one example where, having decided to grant him indefinite leave to remain as a refugee, it then took the Agency seven years to resolve a simple matter:

*'The Agency decided to grant Mr C indefinite leave to remain in May 2000, but he did not receive his status documents until*

*February 2008. Initially the Agency were not at fault as they had not been given details of Mr C's representatives' new address. But once Mr C re-established contact in March 2001 the Agency should have reconsidered their original decision and issued a new decision. This did not happen then, nor on the five subsequent occasions between 2002 and 2007 when Mr C's representatives contacted the Agency about his outstanding asylum application. It was not until Mr C's representatives contacted his MP that any real progress was made. This long delay caused Mr C considerable uncertainty and stress, along with more practical difficulties such as being unable to open a bank account.'*

The National Asylum Support Service was once a division of the Agency which administered the support provided to asylum seekers who would otherwise be destitute. (This function has since been devolved to the appropriate caseworkers.) But Mr W's case (see page 25) shows how the Agency's administrative failings can leave someone in limbo for six years, and completely without support for eight months:

*'In October 2001 Mr W was refused leave to enter the UK, and claimed asylum. He started receiving assistance from the National Asylum Support Service (NASS). In March 2002 the Agency refused his asylum claim and granted him exceptional leave to enter for one year. But they failed to send the decision notification to him. At an interview with the Agency in January 2007 Mr W learnt of the exceptional leave to remain notification which had not been served in 2002. However, the Agency assumed that the notice had been served and so stopped his NASS support from January 2007.'*

*The Agency's handling of Mr W's case was poor, characterised by errors and delays in processing both his asylum claim and his entry clearance appeal, culminating in the incorrect withdrawal of his NASS support. These errors were compounded by wholly ineffective complaint handling and a lack of urgency to "put things right". On numerous occasions Mr W told the Agency of his predicament in being without NASS support and requested urgent action: these included three letters under the Agency's complaints procedure which received no responses other than acknowledgements. Having left Mr W in a state of limbo for six years, the Agency granted him indefinite leave to remain in September 2007.'*

By acknowledging and addressing the legacy backlog in 2006, and then introducing their New Asylum Model in April 2007, the Agency have taken significant steps towards improving the service they provide to their customers. Under the new process a case owner manages each new asylum case from application to conclusion, at which point the applicant is either allowed to stay in the UK or returned to his or her country of origin. This is central to the Agency's aim of 'faster and fairer' decisions. Commenting on the Agency's progress, the Head of the National Audit Office said in January 2009 that:

*'The aim of the New Asylum Model is to strengthen the management of asylum applications, and it has delivered some improvements. But the system is not working as it should for every case ... There is a risk that a new backlog of unresolved cases will be created, adding to the existing backlog of "legacy cases".'*<sup>4</sup>

The House of Commons Public Accounts Committee also found in June 2009<sup>5</sup> that the

Agency had made significant progress through the New Asylum Model, but that they still had some way to go to meet their aims of reaching initial decisions in 80% of cases within 2 months of an application, and of concluding all cases within 6 months. In July 2009 the Chief Executive of the Agency told the Home Affairs Select Committee that some 60% of applications were concluded within 6 months.<sup>6</sup> The Public Accounts Committee also found that backlogs had also built up in other areas of the Agency's core immigration work: for example, applications for leave to remain on the basis of marriage to a UK spouse, where decisions had been outstanding over a period of 3 or 4 years or more.

The Agency also face the challenge in 2010 of beginning to review the refugee status of all those granted asylum since August 2005, when the Agency started granting refugee status for 5 years rather than indefinitely. The National Audit Office report in January 2009 found that over 23,000 applicants had been granted asylum since 2005: 'However, the Agency has no process to keep track of refugees after they have been granted asylum and no plans in place to review these cases'.<sup>7</sup> In March 2009 the Permanent Secretary said that: 'We start this [review] at the five-year point which is in the last quarter of 2010. We do now have a plan in place for starting that system in the latter part of 2010'.<sup>8</sup> HM Treasury have said that they will ensure that the necessary resource is available to carry out these reviews.<sup>9</sup>

## **Core immigration and nationality work**

The Agency's core immigration and nationality work is dealing with applications for limited or indefinite leave to remain from those who wish to visit, study, work, or settle in the UK, or who wish to become British citizens. These applications are generally chargeable and the fees can be

significant (at the time of writing, this was up to £820 for a postal application for indefinite leave to remain, or £1,020 for such an application made in person). The Agency's Customer Charter<sup>10</sup> sets out service standards and targets for the key areas of their operations.

Anyone paying for a service can expect to receive that service within a reasonable time, and to be told if there are going to be any delays. The higher the payment, the higher the expectation. But Mrs L (see page 29) paid £950 and had to wait for over a year for a decision on her application for settlement on the grounds of marriage:

*'Mrs L applied in July 2007 for indefinite leave to remain on the basis of her marriage. She paid £950 for a priority "same-day" application, which is intended for straightforward applications. Mrs L's application was not straightforward and we accepted that it was reasonable for the Agency not to make a decision on the day. But it then took them over a year to make a decision and grant her indefinite leave. Delays by the Agency included taking six months to link the relevant files together, and closing their marriage interview team without putting in place all the necessary alternative arrangements – this led to marriage interviews being suspended for approximately a year. Mrs L said that this was "the most stressful year of my life waiting and worrying" about the outcome of the Agency's deliberations, "only to find out that all the stress was caused by pure inefficiency".'*

Another reasonable expectation is that if the Agency are charging for an application, they will tell the customer if there has been a problem processing the payment. This did not happen in Ms T's case (see

page 31), with the result that the Agency requested an increased fee of an additional £415:

*'Ms T applied in February 2007 for indefinite leave to remain on the basis of her marriage. The Agency attempted to process the payment of £335, but the credit card was declined. Ms T said that she had repeatedly checked with her bank to see if the payment had gone through, and when she contacted the Agency they told her not to worry. The Agency did not make her aware that there was a problem with the payment until they returned her application as "withdrawn". She was then required to submit another application paying the new fee of £750, as this had gone up in the meantime. Ms T complained to the Agency that no one had told her that her credit card had been declined, and when the Agency did contact her it was too late to submit new payment details. The Agency's response to her complaint was that they had followed the correct procedure in treating her application as withdrawn.'*

### **Delays and backlogs on applications where a fee is paid**

People who have entered the UK illegally, or have overstayed their leave, have no right to remain here. But if they make an application to the Agency to regularise their stay, the Agency must consider that application and decide either to allow them to stay, or remove them. Whether or not the applicant has paid a fee, both the applicant and the general public should be able to expect that the Agency will make this decision within a reasonable time, and for the applicant to be given some indication of how long it will take. It is also reasonable for the applicant to expect that any letters they or their representatives write to the Agency will receive a response. Delays by the Agency in deciding such

applications mean that people who should be given permission to stay are often left unable to support themselves and uncertain as to their future; and those who should be removed remain here, with their chances of eventually being allowed to stay increasing because of the Agency's delay.

The Agency say they are committed to *'meet our service standards, including quality improvements, and progress towards our goal of becoming a no backlog organisation'*.<sup>11</sup> But we have seen backlogs arising in other areas of the Agency's work in addition to their legacy of old asylum claims. These included 33,000 applications where a fee was paid, and 77,000 applications for residence made under European law. It seems that these new backlogs arose when Agency resources were directed towards other priorities, such as dealing with the backlog of asylum applications, and the removal of foreign national prisoners (after it was revealed that over 1,000 foreign national prisoners had not been considered for deportation when they should have been).

In October 2005 the Agency set up a new team to deal with the above backlog of almost 33,000 paid applications for leave to remain in the UK from applicants who had either entered the UK illegally or had overstayed their leave. In the 12 months from September 2008 we accepted for investigation 21 complaints about the Agency's delays in coming to a decision on applications made between 2005 and 2007. We found numerous instances of the Agency's failure to reply to correspondence or deal with complaints, their inability to give applicants any indication of when they could expect to receive a decision, and also their failure to consider whether particular cases should be prioritised for compassionate or other exceptional reasons. The Agency told us that they aimed to clear all outstanding cases by July 2010 at the latest, and had put in place arrangements for

dealing with correspondence, advising applicants when they might expect a decision, and prioritising applications where appropriate. The Agency have said that they are ahead of their July 2010 target – the remaining cases are complex and they aim to complete them by early 2010, leaving only a small number of cases outstanding.

Although the Agency eventually put reasonable arrangements in place to manage this particular backlog, for years on end thousands of applicants had been left in limbo, unable to obtain any indication from the Agency of when they might be given a decision on their status. The two cases described below were both caught up in this backlog, and illustrate well the impact of the Agency's poor service:

*'Ms G [see page 35] was brought to the UK at the age of seven in August 1987 by her father's relatives. In November 2005 she applied for indefinite leave to remain on the grounds of 14 years' residence in the UK. The Agency acknowledged her application and said that it would be dealt with in 13 weeks at most. Although in later correspondence the Agency said that applications such as hers could not be dealt with within normal timescales, they gave no indication of how long it might take. Ms G said that the Agency's delay had overshadowed all aspects of her life – it had prevented her from finding employment and had meant that she was totally dependent on others, which she found very embarrassing. She felt that her life was being shattered because of her lack of status in the country she had grown up in, and she felt misplaced as a result. The Agency granted her indefinite leave to remain in April 2009, having taken three-and-a-half years to decide the application.'*

*‘Mr E [see page 37] applied in February 2005 for leave to remain as the spouse of a person settled in the UK. The Agency acknowledged his application and said that it would be dealt with in 13 weeks at most. But, in fact, the Agency did not progress Mr E’s application for over four years, and did not give him or his MP any useful advice about when they could expect a decision. While the Agency did reply to much of the correspondence, they failed to reply to a number of letters, and made some errors in their responses. Specifically, the Agency disregarded Mrs E’s letter of November 2005 in which she explained that her husband was depressed and had attempted suicide because of his inability to support his family. Mr E told us that he was concerned about the effects of the Agency’s delay on his family: he had been married for five years and had two young children. He did not receive any form of financial support, and relied on the wages from his wife’s part-time job. He wanted to move on with his life and be able to provide for his family. In April 2009 the Agency granted Mr E indefinite leave to remain in the UK exceptionally outside the Immigration Rules. Mr E told us that, now his status is clear, he and his wife intend to take a three-year Mental Health Nursing course together.’*

Quite apart from those in this backlog, it seems that some applications have been overlooked altogether. In one case, which we resolved without investigating, the applicant had been waiting for over five years for a decision on her application for indefinite leave to remain. It was only when we contacted the Agency that they realised her case should have been transferred to the charged casework team dealing with this backlog, and they then began processing her application.

## **Applying under European law**

European Economic Area (EEA) and Swiss nationals have the right to live and work in the UK provided they are self-sufficient (not a burden on the social assistance system). If someone has this ‘right of residence’, their family is allowed to join them here. The Agency issue residence cards to family members of EEA nationals who are not themselves EEA nationals. The card confirms that person’s right of residence under European law.

Family members of EEA nationals have more than simply a reasonable expectation that their application for a residence card will be dealt with in a reasonable time, as the Agency are required by law to issue a residence permit within six months of the date of application.<sup>12</sup> When the Agency acknowledge applications, they tell applicants that they are allowed to work while awaiting confirmation of their right of residence. But when there are delays beyond the statutory time limit in dealing with applications this can cause difficulties, such as in finding employment, or with an applicant’s employers, or with travel abroad.

EEA applications is another area of the Agency’s operations where a large backlog has built up. This backlog of up to 77,000 residence applications began when the Agency diverted existing staffing resources away from European casework to focus on the Government’s priority of foreign national prisoners. In June 2007 the Agency published a programme which included a five-fold increase in the number of people working to address the previous failings in the handling of the cases of foreign national prisoners. The Agency have said that this increase was met, in part, by diverting some 140 European caseworking staff to their Criminal Casework Directorate in March 2008. This diversion of experienced staff has had a negative effect on the Agency’s ability to process

EEA applications, with almost 39,000 applications being outside the statutory six-month time limit by August 2009.<sup>13</sup> The Agency put in place a recovery plan which aimed to return to service standards by December 2009. The Agency have said that the total number of outstanding EEA applications has reduced from approximately 77,000 in April 2009 to 38,000 in November 2009, and that all the remaining cases should be resolved by early 2010; applications submitted since 29 July 2009 are being dealt with within their service standards.

Even before the current backlogs, we have seen examples of poor handling of EEA residence cards. For example:

*'Mrs N's [see page 41] application for a residence card was subject to a catalogue of errors by the Agency. They wrote to her at the wrong address, failed to identify her letter as an appeal and incorrectly sent her file to the removals unit, where it was incorrectly put into storage. They also failed to respond to the substance of her complaint about their handling of her case, and so missed the opportunity to put right their earlier mistakes. The Agency's errors delayed the approval of Mrs N's residence card by over 12 months and in the meantime she was unable to start work without it.'*

## **What can a customer expect from the Agency?**

In my *Principles of Good Administration*,<sup>14</sup> I described what I consider public bodies should do to deliver good administration and customer service, and how to respond when things go wrong. While all the Principles are applicable to the work of the Agency, the ones most relevant to our investigations of complaints about them are

*'Getting it right'* and *'Putting things right'*. It is also important that the Agency follow the Principle of *'Being customer focused'*. This includes:

- *'Informing customers what they can expect and what the [Agency] expects of them.'*
- *'Keeping to ... commitments, including any published service standards.'*
- *'Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances.'*

From the complaints we have seen, it is clear that the Agency are a long way from achieving this, and from meeting their customers' reasonable expectations. Indeed there are numerous examples where the Agency have been unable to perform at even a basic level of administration, such as reading and replying to letters, keeping proper records, keeping case files together and in the proper place, and notifying the applicant of their decision. The worst examples of this are usually from those who are unfortunate enough to be caught up in one of the Agency's backlogs mentioned above.

If someone asks for confirmation that they have been granted indefinite leave to remain, one would expect the Agency to be able to confirm this from their records without too much difficulty or delay. But this did not happen in Mr P's case (see page 45), with serious consequences:

*'Mr P was granted indefinite leave to remain in the UK in May 1990. His previous Jamaican passport had been destroyed, and so in 2004 he applied for a No Time Limit stamp to be put on his new passport to show that he did have leave to remain in the UK, enclosing a fee of £155. This application was refused because he had provided no evidence that he had indefinite leave to*

remain, and the Agency said that they had no record of it either. In February 2005 Mr P made a new application for indefinite leave to remain. The Agency took almost two-and-a-half years to reject this application and then served Mr P with a notice saying that he was liable to be removed from the UK. Mr P appealed against this decision but was unsuccessful. In October 2007 he made a further application for indefinite leave to remain, enclosing the fee of £750. In November 2007 an Agency officer emailed another seeking a “brief look” for any file papers on Mr P. These enquiries uncovered Mr P’s original Home Office paper file which contained clear evidence of his original entitlement to indefinite leave to remain. In February 2008 the Agency finally returned his passport, endorsed with his indefinite leave to remain status. We found that the Agency had failed to “get it right” from the beginning, as they did not take the obvious step of checking their own paper records to confirm Mr P’s status. As a result of this simple failure and the Agency’s lack of “customer focus”, over a period of three-and-a-half years Mr P missed two family funerals, was unable to visit his mother when she was ill, was wrongly threatened with removal from the UK and paid £750 for an application that should not have been necessary.’

In the case of Mr J (see page 47), the Agency’s failure – twice – to serve their decision in February 2002 meant that by the time they started action to serve the decision for a third time their policy had changed, causing unnecessary complications:

*‘In January 2006 Mr J applied for indefinite leave to remain. The Agency told Mr J that such applications were taking an average of eight months, but then took over two years to make a decision on his application. Without his MP’s intervention it is doubtful that Mr J would have received any information about his case, as the*

*Agency had previously failed to respond to his and his representatives’ correspondence, and failed to do so again in November 2007. The Agency’s delay in considering Mr J’s application coincided with a time when his mother was seriously ill in Pakistan and, without his passport, Mr J was unable to visit her.’*

Mr H (see page 49) is another example where problems were caused by confusion over whether a decision had been served:

*‘Mr H arrived in the UK as a visitor in 1998. The Agency decided in July 2000 to grant him limited leave to remain on the basis of his marriage, but they did not serve that decision because they discovered that the most recent visa stamp in Mr H’s passport had been forged. Over the next eight years the Agency missed numerous opportunities to resolve the matter, but instead gave inconsistent and inaccurate information to Mr H’s representatives and to his MP. They also lost Mr H’s passport. In the meantime, in January 2001 Mr H had been charged with drugs offences and a warrant had been issued for his arrest for absconding from bail. Mr H subsequently served a ten-month sentence for supplying a controlled drug, and was released from prison in March 2009. The Agency finally made a decision in July 2009. They refused the application. (Mr H has since told us that he won his appeal against this refusal.)’*

It is clearly essential that the Agency keep important personal documents safe, and this is the least that their customers might expect. Obtaining replacements can be difficult and costly, as well as upsetting. But Mr H was only one of a number of complainants whose passport was lost by the Agency. The Agency also did not ‘get it right’ when

dealing with Mr M's (see page 51) simple request for the return of his documents:

*'The Agency failed to return Mr M's passport in August 2004 when he was refused asylum, and when asked to do so in July 2007. The Agency also did not take the opportunity to "put things right" as they did not respond substantively to his representatives' follow-up letters, took until February 2008 to return his passport, and did not return his other documents until August 2008. These failures caused Mr M considerable worry, distress and inconvenience, particularly given his learning difficulties, long-term health problems, and language and literacy needs.'*

In line with my Principles, bodies should *'deal with complaints promptly, avoiding unnecessary delay, and in line with published service standards where appropriate'*. Where they have got things wrong they should *'put things right'*.

I have referred above to Mr W's (see page 25) experience of the Agency's former complaints procedure: he sent three letters of complaint but received only acknowledgements. This is confirmed in many other complaints we have investigated. By and large, complainants received an acknowledgement of their complaint, telling them that it had been passed to the relevant business unit, but they did not then receive a substantive response. In February 2008 the Agency introduced a new two-stage complaints procedure seeking to address these problems. Although we have seen some signs of improvement since then, with some complainants receiving a substantive response to their complaint, some still do not receive a reply. It is too soon for us to comment on the quality of those complaint responses or on the effectiveness of the new procedure.

Our investigations have shown numerous examples of very poor customer service by the Agency. In addition to delays in dealing with applications, we have found consistent failures in responding to correspondence and complaints, mislaid files and poor record keeping, failure to manage customers' expectations (or unreasonably raising them), and poor standards of advice and information. I do not underestimate the problems that the Agency face in trying to clear such large backlogs of work, but it seems that there is a long way to go before a large number of their customers can expect to receive a service which meets even minimum acceptable standards of customer service.

## **Progress and learning for the future**

The Agency have made significant progress in recent years towards clearing their backlogs both in asylum and non-asylum cases, and they say that they have acted decisively to remedy mistakes of the past. As regards asylum, the Agency have pointed out that the two applicants referred to in this report (Mr C and Mr W) both applied around the time that there were the highest peaks of asylum applications in the last decade, reflected across Europe. They were received into a system that was mainly paper-based, and significant structural and legislative change has taken place since then to put the Agency on a sure footing.

As regards the time taken to bring asylum cases to a conclusion, the Agency say that in December 2008 they met their target to conclude 60% of new asylum cases within 6 months, in comparison to 1997 when it took on average 22 months merely to reach an initial decision. That means not only that decisions were taken earlier but that in a significant proportion of refusals, removal from the UK was effected within 6 months of application. They say that it is highly unlikely

that today a new application would wait years. They attribute this to the new regionalised asylum model, where each asylum applicant has a named case owner responsible for taking the case from the beginning to the end of the process.

The Agency recognise the cost to the taxpayer of unresolved asylum cases and say they have reduced the annual cost of asylum support by a total of £550 million in the four years to 2007-08. They have continued to implement processes and procedures which are aimed at driving down costs still further. In the current financial year, they set up an Asylum Costs Reduction Board to review asylum costs each week.

## Conclusion

If the Agency were operating effectively, any application – whether chargeable or not – would be determined within a reasonable period. This would apply whether the application was ‘in-time’, or made by an overstayer or illegal entrant who was seeking to regularise his or her status in the UK. As the following cases show, the Agency’s failure to resolve applications within reasonable timescales can have serious implications for the individuals concerned, and for society in general.

There is also a risk for the Agency of a loss of faith in their system by applicants, by other related organisations, and by the public at large. For the applicants and their families, there is the uncertainty and the inability to plan their lives, often coupled with financial difficulties caused by not being allowed to work pending a decision. For society, there is the cost to the public purse of supporting applicants pending a decision, as well as the cost to public services such as health, education and social services. There is also the opportunity cost: applicants who are eventually given permission to stay could have been working

and contributing to society much sooner. Long delays in resolving applications can also have an effect on the eventual decision. Applicants who would have been refused and removed, if the Agency had made a decision at the proper time, can be allowed to stay because they have, in the meantime, put down sufficient roots in the UK so that it would be unreasonable to remove them. There are similar consequences when the Agency fail to keep track of and properly manage those who enter or remain in the country illegally. If someone manages to stay in the country unlawfully for 14 years or more, they obtain the right to apply under the *Immigration Rules*<sup>15</sup> for indefinite leave to remain.

To prevent these problems continuing the Agency need to make significant and consistent progress towards their commitment to meeting service standards, clearing existing backlogs and avoiding them in future. This will be challenging, not least because from 2010 onwards the Agency will need to start reviewing all grants of asylum made since 2005. This is one area where a new backlog might arise, although with proper planning and resourcing it should be avoided. Past experience suggests that other backlogs may arise due to changing political imperatives. But the consequences of the Agency not improving their service are serious and far-reaching, both for the individuals caught up in the system, and for society as a whole. Given the scale of the problems, there can be no short-term fix, and the resolution will need to be founded on consistent priorities, proper forward planning, and adequate resources.

## Footnotes

- <sup>1</sup> The Common Travel Area comprises the UK, the Channel Islands, the Isle of Man and the Republic of Ireland.
- <sup>2</sup> Working together to protect the public, Home Office Departmental Report 2009.
- <sup>3</sup> These legacy cases relate to asylum applications made before March 2007 which were unresolved before the introduction of the Agency's New Asylum Model in April 2007.
- <sup>4</sup> Press release accompanying the January 2009 National Audit Office Report *Management of Asylum Applications by the UK Border Agency*.
- <sup>5</sup> *Management of Asylum Applications*, House of Commons Public Accounts Committee HC 325, published 16 June 2009.
- <sup>6</sup> Lin Homer's evidence to Home Affairs Select Committee, 8 July 2009.
- <sup>7</sup> January 2009 National Audit Office Report (as above).
- <sup>8</sup> Sir David Normington KCB's oral evidence to Public Accounts Committee, 4 March 2009.
- <sup>9</sup> Treasury Minutes on the Twenty-Eighth Report from the Public Accounts Committee Session 2008-09.
- <sup>10</sup> Published in March 2009.
- <sup>11</sup> *Working together to protect the public*, Home Office Departmental Report 2009.
- <sup>12</sup> *The Immigration (European Economic Area) Regulations 2006*.
- <sup>13</sup> In 2007–08 the average processing time was 3.0 months, and this has since risen to 6.4 months. 38,854 applications were outside the six-month time limit in August 2009.
- <sup>14</sup> Republished in February 2009 and available at [www.ombudsman.org.uk](http://www.ombudsman.org.uk)
- <sup>15</sup> HC 395 – the *Immigration Rules* are made under section 3(2) of the *Immigration Act 1971*.



## List of cases

<b>A: Asylum cases.</b> .....	<b>21</b>
Mr C's application for asylum. ....	23
Mr W's application for asylum. ....	25
<b>B: Core immigration and nationality work</b> .....	<b>27</b>
Mrs L's application as the spouse of a UK citizen .....	29
Ms T's application on the grounds of domestic violence .....	31
<b>C: Delays and backlogs on applications where a fee is paid.</b> .....	<b>33</b>
Ms G's application on the basis of 14 years' residence in the UK .....	35
Mr E's application as an overstayer, now the spouse of a UK citizen. ....	37
<b>D: Applying under European law.</b> .....	<b>39</b>
Mrs N's application for a residence card as the spouse of a European Economic Area citizen .....	41
<b>E: What can a customer expect from the Agency?</b> .....	<b>43</b>
Mr P's request for confirmation of his indefinite leave to remain in the UK. ....	45
Mr J's application for indefinite leave to remain .....	47
Mr H's application as the spouse of a UK citizen .....	49
Mr M's request for the return of his passport and other documents .....	51



# A: Asylum cases



# Mr C's application for asylum

## Background to the complaint

Mr C, a Somali national, arrived in the UK in December 1997 and applied for asylum the following year. The UK Border Agency (the Agency) considered his application in May 2000 and decided to grant him indefinite leave to remain in the UK as a refugee. In July the Agency sent Mr C's status document to his solicitors, but it was returned to the Agency marked '*addressee gone away*'. In line with their guidance, the Agency placed the returned papers on file to await contact from Mr C or his representatives.

Mr C instructed new solicitors to act on his behalf, and between March 2001 and May 2002 they wrote to the Agency three times about Mr C's application. The Agency did not reply to any of those letters. However, in July 2002 they did remove Mr C's file from their storage facility, intending to deal with it, but they took no further action and returned the file to storage. Some time later Mr C again instructed new representatives. In October 2004 they wrote to the Agency, providing an updated address for Mr C, and asking the Agency to deal with his case urgently. The Agency did not respond. In November the Agency retrieved Mr C's file from storage once again and placed it in the work in progress store, where it remained for some considerable time before being returned to storage.

In November 2006 Mr C's representatives wrote to the Agency saying that they were concerned that the Agency still had not processed Mr C's asylum claim. Mr C's representatives also wrote separately providing Mr C's new address. The Agency retrieved Mr C's file from their storage facility once more and placed it in the work in progress store, where it remained untouched. In December 2007 Mr C's representatives wrote to the Agency saying that Mr C had not been issued with an Application Registration Card, which was causing

him problems, and also provided his new address. The Agency replied thanking the representatives for telling them about Mr C's new address, and confirming they had updated his records. The Agency took no further action.

In February 2008 Mr C's Member of Parliament contacted the Agency on his behalf. In reply, the Agency explained that Mr C had been granted indefinite leave to remain as a refugee in May 2000, and that his status documents had been sent to his (first) representatives, but had been returned undelivered and had remained on Mr C's file since then. The Agency asked where the status documents should be sent. The Agency wrote to Mr C to confirm what they had told the Member, apologised for the time they had taken to resolve his application, and enclosed the status document they had prepared in 2000.

## What our investigation found

The Agency decided to grant Mr C indefinite leave to remain in May 2000 but he did not receive his status documents until February 2008. Initially the Agency were not at fault: if Mr C's first representatives had told the Agency of their new address, Mr C's status documents would have reached him in July 2000. The Agency acted appropriately by serving Mr C's decision on file, following receipt of his returned status document. However, when Mr C re-established contact with the Agency through new representatives their handling of his case deteriorated markedly.

On receipt of Mr C's new representatives' first letter of March 2001, the Agency should have reconsidered their original decision to grant him indefinite leave to remain as an outstanding initial application, and issued a new decision and the appropriate documentation. That did not

happen. Nor did it happen following the five subsequent occasions between March 2002 and December 2007 when Mr C's representatives contacted the Agency about his outstanding asylum application. It was only when Mr C approached his Member that any real progress was made. But, in acting swiftly to resolve matters, the Agency compounded their earlier mistakes by mishandling the service of Mr C's status documents. Rather than reconsidering the application and serving a fresh decision in line with the published policy, the Agency despatched the original status documents prepared some eight years previously. That should not have happened.

### **The injustice to Mr C**

The lengthy and unnecessary delay in receiving his status papers resulted in uncertainty and stress for Mr C, and caused more practical difficulties such as being unable to open a bank account. Mr C also said that the Agency's delay in dealing with his application denied him access to local authority housing. While we had some sympathy with that position, we were unable to conclude that the Agency's delay denied him access to public housing.

### **How we resolved the complaint**

We upheld Mr C's complaint. Rather than reconsider Mr C's case afresh the Agency confirmed that their original decision would stand, because their actions had understandably raised his expectations. They also acknowledged their poor handling of Mr C's case, offered him their apologies, and made him a consolatory payment of £300.

# Mr W's application for asylum

## Background to the complaint

In December 2000 the British Embassy in Tunis refused Mr W (an Algerian national) entry clearance to the UK as a spouse of a UK citizen. He appealed against this decision. Mr W returned to the UK in October 2001: he was refused leave to enter and claimed asylum. He started receiving National Asylum Support Service (NASS) support. In March 2002 the UK Border Agency (the Agency) refused Mr W's asylum claim and granted him exceptional leave to enter for one year. However, a decision letter was prepared but not sent to Mr W and so did not take effect.

Responding to a query from Mr W's Member of Parliament about Mr W's case (his appeal had not been heard and his leave had expired) the Agency said, in July 2003, that they expected to forward the appeal papers to the Immigration Appellate Authority within 12 weeks, and that Mr W's asylum claim would be considered once the appeal had been resolved. The Agency did not, however, forward the appeal papers as they had said. In November 2004 the Agency faxed the British Embassy in Algeria (this was the wrong Embassy) for a copy of Mr W's appeal papers because the originals were missing. They were held on a second file which had been incorrectly put into storage. The Agency have no record of a reply to this fax and took no further action on Mr W's appeal.

In October 2006 Mr W asked the Agency to grant him leave to remain in the UK under the 'seven-year concession'. (The Agency will not normally pursue enforcement action against the family as a whole where the children were born in the UK and have lived here continuously until the age of seven years.) In December the Agency invited Mr W to an appointment about replacing his Application Registration Card, which he had lost. Following the appointment, the Agency refused

a replacement Application Registration Card and stopped Mr W's NASS support. (The Agency think that the officer took this decision without spotting an entry on the computer system, which cast doubt on whether the decision to grant Mr W leave had been served.)

In January 2007 Mr W learnt that the award of exceptional leave to remain had not been served in 2002, and complained to the Agency that this had deprived him of the chance to apply for indefinite leave to remain. Mr W did not receive a substantive response. He then wrote to the Home Secretary. In reply, he was told that his case was part of a backlog, but the Home Secretary could give no indication of when his case would be processed. The letter also enclosed a leaflet of help and advice on returning home voluntarily.

Mr W wrote again to the Home Secretary and complained again to the Agency about the poor service he had received, the loss of NASS support, the failure to receive his exceptional leave to remain and the lack of a response to his previous representations. He did not receive a substantive response. In May Mr W complained for a third time to the Agency and requested the urgent issue of his leave to remain. In April the Agency noted that Mr W appeared to qualify under the seven-year concession. The Agency said that they gave his case urgent consideration, but did not prioritise his case over others because there was, they said, no evidence on the file that he had no financial support. (This is incorrect. Many of Mr W's letters to the Agency either mentioned that his NASS support had been withdrawn or referred to financial problems.) In August the Agency told Mr W that they had decided to grant him indefinite leave to remain under the seven-year concession. They issued his status papers in September.

## **What our investigation found**

The Agency failed to tell Mr W of their decision to grant him exceptional leave to remain, apparently deciding that the appeal took precedence. If there were good reasons for that decision, then the appeal should have been progressed. But it was not. It is unclear what the Agency's correct action should have been, but doing neither was maladministration.

The Agency's handling of Mr W's appeal was a catalogue of errors. They did not forward the papers to the Immigration Appellate Authority and nothing happened between January 2001 and March 2002. When the Agency finally began to consider the appeal, the papers had been mislaid and they attempted to retrieve the papers from the wrong Embassy. The Agency took no further action and the appeal was never heard. This series of further errors amounts to maladministration.

We found that the Agency should have replaced Mr W's Application Registration Card and they were wrong to have stopped his NASS support: the officer should have taken all relevant matters into account before making a decision – such as the entry about whether the leave decision had been served. The failure to pick up this fact was particularly poor, given that Mr W apparently said at the interview – and we had no reason to doubt him – that he had never been given a decision on his asylum application. It was true and his financial support depended on it. These failings also amount to maladministration.

Finally, once the Agency became aware of their error in removing Mr W's NASS support, they should have acted quickly to resolve his case. Mr W told them of his predicament and asked for urgent action many times, including sending three letters of complaint which received no substantive

reply. He also received no substantive response to other letters, except for a reply sent on behalf of the Home Secretary which was unhelpful. The Agency say that they gave Mr W's case urgent consideration, but that was not apparent from the evidence.

## **The injustice to Mr W**

The Agency left Mr W in a state of limbo and uncertainty for six years, which will have caused him substantial distress and anxiety, especially in the context of not knowing what would happen to his children if he were removed from the UK. The realisation that the Agency had decided, but not served, leave to remain and their subsequent incorrect withdrawal of Mr W's financial support caused Mr W financial loss, serious hardship, and a further sense of hopelessness. All of that was compounded by the Agency's failure to respond to his letters.

## **How we resolved the complaint**

We upheld Mr W's complaint. In line with our recommendations, the Agency paid £1,508.76 (plus interest) to Mr W to compensate him for the NASS support he should have received from December 2006 until September 2007. They also paid him £750 to recognise the distress and inconvenience he suffered over a long period, and sent him a written apology.

## **B: Core immigration and nationality work**



# Mrs L's application as the spouse of a UK citizen

## Background to the complaint

Before meeting Mrs L, Mr L was charged with (and later convicted of) bigamy in 2001.

Mr and Mrs L married in 2004 and in July 2005 Mrs L applied for a spouse settlement visa, which was granted.

In July 2007 Mrs L applied to the UK Border Agency (the Agency), at a 'same-day' priority appointment, for indefinite leave to remain in the UK on the basis of her marriage to Mr L. She paid £950 for this service. At the appointment, the Agency noted that Mr L had been linked to another immigration application (that of his second wife) for leave to remain on the basis of her marriage to Mr L (for which he had been convicted of bigamy), and decided to refer Mrs L's case to the 'marriage' team for further consideration. The Agency told Mrs L that they aimed to complete her application within 13 weeks. Having heard nothing about her application, Mrs L contacted the Agency a number of times to try and find out what was happening. In December the Agency wrote to Mrs L apologising that they had not met their target timescales for processing her application because further enquiries were being made. In February 2008 the Agency decided that Mrs L's application would need to go for a 'marriage interview' because of the bigamy charge. Her file was then put in the backlog of cases awaiting a marriage interview.

In July 2008 the Agency told Mrs L that they would decide her application as soon as they had further documentary evidence to show that Mr and Mrs L had been cohabiting since their entry to the UK. They said that the evidence they had previously submitted was insufficient. Mrs L replied saying that she had taken 48 supporting documents to the priority appointment, but the caseworker had chosen only some of them. She enclosed

27 documents and the decree absolute for Mr L's marriage to his first wife, which was finalised after the date of Mr L's void marriage to his second wife. The Agency granted Mrs L indefinite leave to remain the day after receiving these documents.

## What our investigation found

Mrs L's application was not straightforward, so while it would have been good customer service if the Agency had told her much sooner that they were unlikely to be able to meet their service standards in her case, their failure to do so did not amount to maladministration. The Agency did, however, take six months to link the files related to Mrs L's case and delayed deciding whether a marriage interview was necessary. They failed to plan adequately when transferring responsibility internally within the Agency for marriage interviews – the department that was due to take on this work was unable to arrange the necessary training as quickly as it had hoped, which meant that the suspension was much longer than intended. We also found that the Agency neither managed Mrs L's expectations about the length of time they were likely to take to process her case, nor explained to her the reason for their delay. We considered this was maladministration.

## The injustice to Mrs L

For an extended period of time Mrs L was faced with a degree of uncertainty, frustration and upset, not knowing when her immigration status would be resolved.

## **How we resolved the complaint**

We partly upheld Mrs L's complaint. The Agency agreed to send her a letter of apology and to make her a consolatory payment of £250 in recognition of the injustice caused.

# Ms T's application on the grounds of domestic violence

## Background to the complaint

In February 2007 Ms T, a United States national, applied for indefinite leave to remain (as a victim of domestic violence) on the basis of her marriage. Ms T did not include the relevant fee (then £335) with her application, and so the UK Border Agency (the Agency) returned the application to her, on 23 February, saying that it could not be considered without the fee. If she wanted her application considered, she was to return it, together with the correct payment, within 28 days. If she did not, her application would be treated as withdrawn.

Ms T returned the application form with payment details to the Agency on 27 February 2007, where they were received on 2 March. An attempt was made to process the payment but the credit card details provided were declined. On 30 March the papers were returned to Ms T and she was advised that her application had been considered withdrawn as she had not paid the fee. The documents returned to Ms T included information about the 'Life in the UK test', which she believed she would need to sit to obtain indefinite leave to remain. She began to prepare for the examination.

In April 2007 Ms T complained to the Agency about the handling of her leave application. She said she had repeatedly checked with her bank to see if the payment had gone through, and when she contacted the Agency they told her not to worry. She said that at no time had the Agency told her there was a problem with the payment. The Agency replied that they had followed the correct procedure in treating her application as withdrawn because she had not made the payment within 28 days. They told Ms T that if she wanted to submit a new application, she would have to pay the new fee of £750 (effective from 2 April 2007). Ms T and the Agency continued to exchange correspondence through the summer; her main

grievances being that no one had told her that her credit card details had been declined, and when the Agency had contacted her, it was too late to submit new payment details. She had not been given the chance to supply the Agency with new card details, thereby avoiding the increased fee.

In April 2008 Ms T submitted an application for indefinite leave to remain under the domestic violence provisions, together with the fee of £750. She was granted indefinite leave to remain in May.

## What our investigation found

The Agency's handling of Ms T's application payment was poor: by the time they told her the payment had been declined, the 28-day window in which to make alternative payment arrangements had expired, resulting in her having to pay the increased fee. It did not help that the Agency were not able to communicate the payment problems to Ms T when she spoke to them. Although the Agency said that the onus is on the applicant to check with his or her bank to ensure the payment goes through, Ms T has said that she contacted the Agency immediately and on several occasions thereafter. We could not see what more she could have done to ensure her fee was processed, and it was unreasonable of the Agency to maintain the stance that they had followed their procedures.

Part of Ms T's complaint to the Ombudsman was that the Agency had not properly considered making reasonable adjustments for her (she is dyslexic), when she sits the Life in the UK test. It transpired that a person applying for indefinite leave to remain under the provisions of the domestic violence rules is not required to take the test, even after a change in the rules in April 2007. Ms T did not, therefore, have to take the test.

In summary, the Agency's poor handling of Ms T's application, together with their failure to promptly acknowledge their errors and take steps to rectify the situation, amounted to maladministration, and showed a clear lack of 'customer focus'. As Ms T will not have to take the Life in the UK test, we made no finding about whether the Agency had considered making reasonable adjustments to enable her to do so.

### **The injustice to Ms T**

Ms T suffered anxiety, frustration and inconvenience at not being told promptly by the Agency that there was a problem with her payment, and further frustration at having to complain at length to the Agency, who did not rectify the situation for almost 18 months.

### **How we resolved the complaint**

We partly upheld Ms T's complaint. The Agency made her a payment of £415, being the difference between the fees for her application, and offered her their unreserved apologies for the problems she encountered in her dealings with them. They also made her a consolatory payment of £200 in recognition of the inconvenience and distress that she suffered as a result. We considered that to be a suitable remedy, but recommended that the Agency provide Ms T with a written apology from a senior officer.

## C: Delays and backlogs on applications where a fee is paid



# Ms G's application on the basis of 14 years' residence in the UK

## Background to the complaint

Ms G was born in Nigeria and came to the UK in 1987, aged seven. In 2001 she was included in her mother's seven-year child concession application to the UK Border Agency (the Agency), which was refused; and in 2002 Ms G submitted a human rights application and an application for indefinite leave to remain based on the seven-year child concession. Both applications were refused. In November 2005 Ms G's solicitors submitted an application for indefinite leave to remain on the basis of fourteen years' residency in the UK. She was now an overstayer.

The solicitors wrote to the Agency in October 2006 asking for a progress update, and referring to a letter the Agency had sent them in December 2005 which said that Ms G's application would be dealt with within thirteen weeks. The Agency did not reply to this letter, nor to a further chasing letter sent in May 2007. Ms G then wrote to the Agency herself, describing how not having legal status in the UK was affecting her. She asked for her case to be expedited. The Agency sent Ms G two letters in reply, both of which said that due to the high volume of applications of this type, applications such as hers had met with substantial delay. The Agency also said they were taking steps to reduce waiting times but that they were unable to give a date by which her application would be decided.

Ms G's Member of Parliament wrote in July 2007 to ask the Agency for an update. The Agency replied saying that applications like Ms G's could not be considered within the normal timescales as they were more complex. The letter also explained that cases were normally dealt with in turn unless there were compelling, compassionate or operational reasons for doing otherwise. The Agency said that they could not give a precise date as to when Ms G would be told the outcome of her application.

The Agency also wrote to Ms G in September, informing her that it was not possible to say if her application would be dealt with quickly. The letter directed Ms G to the Agency's website for the up-to-date timescales for processing applications, and asked her not to contact the Agency until she had heard from them.

In January 2008 Ms G's new representatives (the Immigration Advisory Service) asked the Agency for an update on her application. The Agency responded, again citing the volume of applications and resulting delays, and were unable to say when Ms G's application would be decided. Ms G wrote to the Member again, in March, asking for help to resolve her immigration status. The Member duly wrote to the Agency, who said that Ms G's case was with their Liverpool Charged Casework Team, but they could not say when her case would be decided. In August the Agency received a letter from a firm of solicitors about someone else's application, which they mistakenly attached to Ms G's file and updated her file to show that firm of solicitors as being her representatives. Two days later Ms G wrote to the Agency, asking for her case to be expedited because the delay in deciding her application was preventing her from getting a job, making her feel stressed, and affecting her health. The Agency treated this as a letter of complaint. In October the Agency responded in writing to both of the above letters; with one letter (which Ms G did not receive because the Agency sent it to the wrong solicitors) apologising for the delay in dealing with her application, and saying that they were unable to give a precise date as to when they would reach a decision. This letter offered no advice on the second stage of the Agency's complaints procedure.

Ms G was finally granted indefinite leave to remain in April 2009.

## What our investigation found

The Agency's handling of Ms G's case was poor from the start. Neither she nor her representatives were given any useful advice about when they could expect a decision. One Agency letter said that applications would be completed within thirteen weeks, and another referred her to their website for current processing times. But these were not timescales for applications made out of time, and gave no indication that some applications might take three years or more to decide. Although Ms G's application was not straightforward because she was an overstayer, the Agency took no substantive action on it for over three years. Given the significant backlog of such cases and the considerable time expected to deal with each one, it clearly would have been better if the Agency had managed Ms G's expectations more fairly and had alerted her to the possibility of a significant delay in dealing with her application. The Agency's approach lacked customer focus and failed to follow the Ombudsman's Principle that bodies should *'inform customers what they can expect'*.

In terms of their handling of Ms G's and her representatives' correspondence, the Agency did not reply to three letters. In addition, Ms G twice asked the Agency to expedite her case. They did not respond to her second letter, while their response to her first letter made no reference to her request. While it is unlikely that Ms G's reasons for wanting her application expedited met the Agency's criteria for doing so, we were not persuaded that she was aware that her request for prioritisation had even been considered. While it may well have been reasonable for the Agency to have declined to expedite Ms G's application, they should have properly considered her circumstances, and properly communicated any decision. Despite treating Ms G's letter of August 2008 as a complaint, the Agency's response

(sent to the wrong solicitor) failed to tell her that she had the right to escalate the complaint to the second stage of their complaints procedure. Thus the Agency did not follow the Principle that bodies should *'deal with complaints promptly, avoiding unnecessary delay, and in line with published service standards where appropriate'*. The Agency's overall handling of Ms G's correspondence lacked customer focus, and failed to follow the Principle that bodies should deal with people *'helpfully, promptly and sensitively, bearing in mind their individual circumstances'*.

## The injustice to Ms G

We were satisfied that Ms G suffered uncertainty and inconvenience as a result of the Agency's maladministration. Their inability to say when she could expect her application to be determined caused her anxiety, as did their failure to respond to some letters. However, we recognised that it was likely that Ms G suffered similar levels of anxiety and inconvenience during the fourteen years she was in the country unlawfully.

## How we resolved the complaint

We upheld Ms G's complaint. Her application was finally determined, which was the outcome she sought. In the course of our investigation, the Agency recognised their failure in mishandling correspondence and by way of remedy they offered Ms G their apologies, and £50 to recognise the effects these failings had on her. The Agency agreed to our recommendation that the written apology should come from a senior officer.

# Mr E's application as an overstayer, now the spouse of a UK citizen

## Background to the complaint

Mr E arrived in the UK from Zimbabwe in 1999 and unsuccessfully claimed asylum. His appeal against the asylum refusal was dismissed in 2003, as was his application to appeal against that decision. Mr E remained in the UK and in February 2005 he applied for a variation of leave to remain in the UK on the basis of his marriage to a UK citizen. Acknowledging the application, the UK Border Agency (the Agency) told Mr E's representatives, the Immigration Advisory Service (the Service), that they aimed to complete 70% of applications within three weeks of receipt. However, applications that were complex or required further enquiries normally took thirteen weeks to complete at most. (In fact the Agency had no service standards for cases such as Mr E's.) In late February the Agency told the Service that they could not decide Mr E's application on initial consideration, but expected to do so within their published timescales. The Service asked the Agency for an update on Mr E's application in May, but the Agency did not reply.

In November 2005 Mrs E wrote to the Agency saying that her husband could not work or claim benefits, was very depressed, and had tried to commit suicide because he could not support his family. The Agency did not reply. In December the Service asked the Agency for a progress update but got no reply. Mr E contacted his Member of Parliament, who wrote to the Agency in April 2007. The Agency replied that they could not consider Mr E's application within the normal timescales as he did not have valid leave to remain at the time he had applied. Such applications tended to be complex and could take much longer to decide. The Agency explained that Mr E's file had been passed to a specialist unit (the Liverpool Charged Casework Team), but operational constraints and a high volume of similar applications had resulted in delay. They said that Mr E's case was

awaiting allocation to a caseworker for detailed consideration, but were unable to say when he would be told of the outcome.

The Liverpool Charged Casework Team began to consider Mr E's application in May 2007, and initiated the required security checks. In July, having discovered that Mr E had a minor criminal conviction, the Agency put his application on hold pending the development of policy advice where an individual had been convicted of a criminal offence. In September the Member wrote to the Agency chasing progress. In their reply the Agency said that a number of checks had to be made before Mr E's case could be decided. The Member then wrote to the relevant Minister saying that the delay seemed excessive, and that without a decision Mr E was struggling to make ends meet. The Minister replied, apologising for the delays and saying that the checks were still ongoing.

In February 2008 the Member wrote to the Minister again saying that Mr E urgently needed permission to work, as his family's financial struggle was taking a heavy toll on them. In March Mr E's new representatives wrote to the Agency, saying that his application had a human rights basis, as removal from the UK would affect his right to family life. In April the Agency replied on the Minister's behalf to the Member, saying that the checks on Mr E's case were continuing. Mr E appointed new representatives and in May they asked the Agency to confirm what stage his application had reached, but received no reply. In August the Member referred Mr E's complaint about the Agency's handling of his application to this Office. After we made enquiries of the Agency, they agreed to treat Mr E's application as a priority. The Agency considered Mr E's application in March 2009, and decided to grant him discretionary indefinite leave to remain, subject to his satisfying (afresh) the routine

checks and agreeing to withdraw his asylum claim. That same day the Agency (mistakenly) wrote to the Service about their decision and requested photographs of Mr E and other documents. The Service returned the letter, pointing out that they no longer acted for Mr E. The Agency then directed their request to the correct representatives. In April the Agency despatched Mr E's status document, confirming their decision to grant him indefinite leave to remain in the UK exceptionally, outside the *Immigration Rules*.

## What our investigation found

The Agency's letters led Mr E to expect that his application would be dealt with within thirteen weeks, but that time frame did not apply to his case. Thus the Agency's letters were misleading and gave Mr E false hope of a quick decision. Given the significant backlog of overstayer cases and the considerable time expected to deal with each one, it would have been better if the Agency had managed Mr E's expectations. His application was further complicated by the need for policy guidance. While we appreciated those problems and the difficulty of dealing with a large volume of incoming applications while handling a large backlog, the delays in Mr E's case were unsatisfactory. By giving him no meaningful indication about the likely timescales for a decision, the Agency failed to live up to the Ombudsman's Principle of *'being customer focused'*.

Although the Agency responded to much of the correspondence about Mr E's case, they overlooked some items and made some errors. Their disregard of Mrs E's letter about her husband's health was of particular concern, and did not show – in the language of the Ombudsman's Principles – that they were *'dealing with people helpfully, promptly and sensitively, bearing in*

*mind their individual circumstances'*. Three of the Agency's letters to the Member also caused concern, implying that Mr E's application had been delayed by security checks, when their need for policy guidance was the cause of the delay. Thus, the Agency were not *'open and accountable'*. Finally, when the Agency determined Mr E's case they notified the wrong representatives of their decision, adding to the delay and inappropriately disclosing personal information to a third party.

To summarise, the Agency's delays and their inability to provide any timescale for determination, coupled with their failures to deal properly with correspondence, fell so far short of the *Ombudsman's Principles* as to be maladministration.

## The injustice to Mr E

Mr E suffered frustration, distress and anxiety.

## How we resolved the complaint

We upheld Mr E's complaint. Although the Agency eventually decided his application, that did not provide a remedy for the stress and anxiety he experienced. We therefore recommended that the Agency pay him £250 and send him a written apology – from a senior officer.

# D: Applying under European law



# Mrs N's application for a residence card as the spouse of a European Economic Area citizen

## Background to the complaint

In February 2006 Mrs N (a Romanian national) entered the UK on a visitor's visa. In August she applied for a residence card on the basis that she was the spouse of a Dutch national employed in the UK. (A residence card confirms that person's right of residence in the UK under European law.) She also supplied evidence of her husband's identity, nationality and employment, as well as a copy of their marriage certificate.

The UK Border Agency (the Agency) contacted Mr N's employer and found out that his employment had ended in August 2006. In November the Agency wrote to ask Mrs N for evidence that her husband was still employed in the UK. They incorrectly wrote to the main address on Mrs N's application form and not the return address she had given. Mrs N was in the process of moving house at the time, and did not receive the Agency's letter. Having received no reply to their letter, the Agency refused Mrs N's application in January 2007 on the basis that they could not be satisfied that her husband was exercising his right to work in the UK.

Mrs N immediately wrote to ask the Agency to reconsider their decision to refuse her a residence card, and enclosed evidence that her husband had a new employer. The Agency should have treated Mrs N's letter as a reconsideration request and made a fresh decision within one month. Instead, they forwarded Mrs N's file to the removals unit. No further action was taken on the case until May 2007, when the removals unit wrote to Mrs N at her old address. This letter – which said that Romania had become a member of the European Union on 1 January 2007 and that Mrs N was no longer subject to immigration control – was returned to the Agency marked '*not known at this address*'. They then put Mrs N's file

into storage and took no further action. In July Mrs N emailed the Agency to ask them to progress her case. They treated this letter as a complaint and passed it to the relevant business area. However, the email was never linked to Mrs N's file and she did not receive a substantive response.

## What our investigation found

Mrs N's application for a residence card was subject to a catalogue of errors by the Agency. They wrote to her at the wrong address, failed to identify her letter of January 2007 as an appeal, and incorrectly sent her file to the removals unit, where it was incorrectly put into storage. They also failed to respond to the substance of Mrs N's complaint about their handling of her case and so missed the opportunity to put right their earlier mistakes. These errors amounted to maladministration.

## The injustice to Mrs N

The delay in receiving Mrs N's residence card caused her problems once she moved home and delayed her applying for new employment. While we had no basis for saying that the maladministration led to actual financial loss, the Agency's mistakes did cause Mrs N inconvenience and uncertainty, and their failure to respond to her complaint compounded her sense of hopelessness in her dealings with them.

## How we resolved the complaint

We upheld Mrs N's complaint. The Agency agreed that they had mishandled her case. They accepted that it was likely that she would have supplied the information they had asked for in November 2006, and were satisfied that she would have qualified

for the residence card at that time. The Agency decided Mrs N's residence card application, and sent her card to her in April 2008. They apologised to Mrs N for their mishandling of her case, and made her a consolatory payment of £300. We considered that those actions fully remedied the injustice to Mrs N.

**E: What can a customer expect from the Agency?**



# Mr P's request for confirmation of his indefinite leave to remain in the UK

## Background to the complaint

Mr P (a Jamaican citizen) was granted indefinite leave to remain in the UK in May 1990. He obtained a new Jamaican passport in 2004 (as his previous one had been destroyed), and in July he asked the UK Border Agency (the Agency) for a No Time Limit (NTL) stamp on his passport to confirm that he held indefinite leave to remain. He enclosed the fee of £155. The Agency asked Mr P for confirmation of his indefinite leave to remain, but he replied that he had lost all the correspondence about that. He asked the Agency to sort matters out quickly as he wished to visit his mother who was ill in Jamaica. The Agency rejected Mr P's NTL application, as he had provided no evidence of having been granted indefinite leave to remain and the Agency held no record of it either. They returned his passport and papers, but not his £155 fee.

In February 2005 Mr P submitted a new indefinite leave to remain application, on the grounds that he had resided in the UK for 14 years. The Agency returned it, saying that he had not paid the £155 fee. Mr P resubmitted the application with proof that he had paid the fee in 2004. In May 2005 the Agency wrote to Mr P, noting that he had not paid the £160 fee (which had just increased from £155). He promptly resubmitted the application and paid the increased fee. Also in May, the Agency told Mr P that they aimed to decide his case promptly, at most within 13 weeks, and finally refunded the fee of £155. In July 2006 Mr P asked the Agency to return his passport duly stamped. He said he still wanted to visit his mother who remained ill, and that he had been unable to attend the funerals in Jamaica of his father and sister because the Agency had his passport.

In January 2007 the Agency apologised to Mr P for not updating him sooner on the progress of his indefinite leave to remain application. Mr P

replied that he had not applied for indefinite leave to remain, but for a stamp on his passport to confirm the leave he had been granted in 1990, and stressed again the urgency of his case. In April and May 2007 the Agency asked Mr P to complete a questionnaire to help them to determine his lawful entry to the UK, and also asked the Foreign and Commonwealth Office if they held an overseas visa application for Mr P. In July the Agency told Mr P that they had rejected his applications for the NTL stamp and for indefinite leave to remain, and served him with a notice that he was liable to be detained and removed from the UK. He unsuccessfully appealed this decision. In October Mr P's solicitors submitted a new indefinite leave to remain application, on the basis that Mr P had lived continuously in the UK for more than 19 years, and enclosed the £750 fee.

In November 2007 an Agency official emailed another seeking a '*brief look*' for any file holdings on Mr P. These enquiries uncovered Mr P's original Home Office paper file which contained clear evidence of his entitlement to indefinite leave to remain. In February 2008 the Agency finally returned Mr P's passport, endorsed with his indefinite leave to remain status.

## What our investigation found

While it was not the Agency's fault that Mr P had no proof of his indefinite leave to remain status, they ought to have dealt with his case far better. From the beginning the Agency failed to 'get it right'. While they may have followed their own procedures in checking their computer database and checking with UKvisas, they did not take the obvious step of checking their paper records. That small error ultimately led them to threaten Mr P with removal from the UK.

The Agency lacked customer focus in their dealings with Mr P. They did not always pay attention to the details of his correspondence, failing to appreciate that he was applying not for a grant of indefinite leave to remain, but for confirmation that it had already been granted. They also failed to respond appropriately when Mr P described to them the impact of their delay on his normal family life. The Agency's attempts to 'put things right' were particularly poor: they did not recognise their errors until Mr P had been put to the trouble of approaching his Member of Parliament, writing to the Prime Minister, and complaining to the Ombudsman. The Agency's errors were so stark that they ought to have recognised them far earlier.

the full impact of the Agency's maladministration on Mr P. We recommended that the Agency also: refund all the legal fees Mr P incurred after he first approached them in 2004; refund his £750 fee, with interest; refund the £5 difference in fees (as they had not dealt properly with his first application); consider any other expenses that Mr P incurred as a result of their maladministration on production of supporting evidence; and pay him £2,500 in recognition of the severe distress, inconvenience, great uncertainty and embarrassment they caused him and his family.

## **The injustice to Mr P**

For three-and-a-half years Mr P was unable to exercise the rights that the indefinite leave to remain gave him. He missed two family funerals, was unable to visit his mother when she was ill, and was wrongly threatened with removal from the UK, which caused him and his family considerable distress and anxiety. The impact of being told by a government agency that you have no right to reside in the country that is rightfully your home must have been immense. The Agency also caused Mr P unnecessary expense in that he felt compelled to engage a solicitor, and paid £750 for an application that should not have been necessary.

## **How we resolved the complaint**

We upheld Mr P's complaint. The Agency apologised unreservedly to Mr P for mishandling his case and for the distress and inconvenience caused. They also offered to consider compensation and agreed to refund the £750 application fee. However these measures did not, in our view, recognise

# Mr J's application for indefinite leave to remain

## Background to the complaint

Mr J, an Afghanistan national, arrived in the UK in 2001 and claimed asylum. The UK Border Agency (the Agency) refused him asylum in February 2002 but decided to grant him four years' exceptional leave to remain. The Agency did not, however, send their decision to Mr J. Between May 2002 and February 2003 his solicitors wrote to the Agency five times seeking an update on his case. Having received no response, the solicitors approached Mr J's Member of Parliament, who then wrote to the Agency. The Agency retrieved Mr J's file from storage and in April they reviewed their February 2002 decision. They concluded that, although their decision to refuse asylum had been correct, because exceptional leave had since been superseded by discretionary leave Mr J should be granted discretionary leave. (Before 1 April 2003, when the Agency refused asylum but considered it inappropriate to remove the applicant from the UK, they generally awarded four years' exceptional leave. Their policy from 1 April 2003 was to award discretionary leave, usually for three years. Applicants can then apply to extend their discretionary leave by three more years, and may only apply for indefinite leave having completed six years' discretionary leave.) The Agency decided to grant Mr J discretionary leave until February 2006 (when his exceptional leave would have expired had the Agency served their initial decision), and prepared a letter informing him of their decision. Again, this was not served on him.

In January 2006 Mr J applied for indefinite leave and submitted his passport. The Agency acknowledged receipt and told him that: *'Currently applications of this type are taking an average of eight months from the date of receipt'*. In February Mr J's case was sent to the Agency's Managed Migration Directorate. The caseworker noted that Mr J had been refused asylum and granted three years'

discretionary leave until February 2006. He wrote on the file that he could not deal with the case as his team dealt only with indefinite leave cases, where the applicant had completed four years' discretionary leave. Mr J's file was consequently sent to the 'legacy' casework team. (The Agency said this action was taken in the *'mistaken belief'* that a decision needed to be made on whether to grant further discretionary leave.)

No further action was taken until February 2007, when the Member wrote to ask the Agency when Mr J could expect a decision on his application for indefinite leave. The letter prompted the Agency to look again at Mr J's case and in March a caseworker noted there was a *'misconception'* that he had been granted three years' leave rather than four. The relevant Minister's reply to the Member said that due to high volumes of work, the Agency were unable to say when Mr J's application would be processed. The Agency also wrote to tell Mr J that his case fell into the 'legacy' category of cases that they hoped to deal with within five years or less, but that they could not say when his case would be processed.

In May 2007 Mr J's mother was admitted to hospital in Pakistan. The following month the Member wrote to ask the Agency to expedite Mr J's case so that he could visit his mother. The Minister replied saying that the Agency were unable to prioritise Mr J's case because of the volume of similar cases. Mr J was free to leave the UK whenever he wanted, although if he did, his application would be deemed to have been withdrawn. In November Mr J's solicitors wrote to ask the Agency for a timescale for reaching a decision on the case. The Agency placed this letter on Mr J's file but did not acknowledge or answer it.

Following the referral of Mr J's complaint to us, the Agency reviewed his case and in April 2008 they decided to grant him indefinite leave to remain.

## **What our investigation found**

The Agency's failure, twice, to serve their decision of February 2002 meant that by the time they started action to serve the decision for a third time their policy had changed. Their decision at that stage, to grant Mr J three years' discretionary leave, put him back in the position that he would have been in but for their errors, but unfortunately meant that his subsequent indefinite leave application appeared more complex than it might otherwise have done.

The Agency initially processed Mr J's indefinite leave application quickly, but then confusion about how much discretionary leave he had previously been awarded led the Managed Migration Directorate to believe that they could not deal with it. The Agency were unable to say if Mr J's case would have been dealt with any sooner had it been considered correctly by that Directorate. But the fact remains that the Agency looked at Mr J's application in February 2006 and we saw no reason to believe that they could not have reached a decision on the case at that stage, had they considered it to be a 'standard' application for indefinite leave following four years' exceptional leave.

When the Member brought the case to the Agency's attention in February 2007, they did not take the opportunity to resolve matters. Although a caseworker realised what had gone wrong, no steps were taken to put things right until this Office became involved. That was an unsatisfactory delay, especially as the Agency had told Mr J that applications were taking an average of eight

months to complete. To manage his expectations fairly, the Agency should have told Mr J – as soon as they realised it – that his indefinite leave application could not be determined on initial consideration or, at least, before the eight-month period had expired.

In summary, the Agency's confusion and delay in dealing with Mr J's application, together with their failure to manage his expectations and to respond to correspondence, amounted to maladministration.

## **The injustice to Mr J**

The poor handling of Mr J's case would have led to worry and anxiety for him. The delay in considering his indefinite leave application coincided with a time when his mother was seriously ill in Pakistan and, without his passport, Mr J was unable to visit her. The Agency's failure to answer correspondence exacerbated his frustration and anxiety.

## **How we resolved the complaint**

We upheld Mr J's complaint. The Agency addressed their failures by making a decision to grant him indefinite leave to remain. They also apologised to him and made a consolatory payment of £200.

# Mr H's application as the spouse of a UK citizen

## Background to the complaint

Mr H, a Jamaican, arrived in the UK in 1998 and was granted leave to enter as a visitor until February 1999. A passport stamp appeared to show a further grant of leave until February 2000, and shortly before the expiry of that leave Mr H applied for leave to remain on the basis of his marriage to Ms Q. In July 2000 the UK Border Agency (the Agency) decided to grant Mr H leave to remain until July 2001, but before the decision papers could be dispatched, they discovered that the passport stamp was forged.

In January 2001 a warrant was issued for Mr H's arrest as he had absconded from bail on drugs charges. In August a specialist unit confirmed that the passport stamp was counterfeit and returned the file. It is unclear what happened next, but the Agency deemed the file lost in February 2003. In May Mr H's representatives asked the Agency for an update on his leave application. The Agency replied that they would be notified once a decision had been made (this was at the time when the file was deemed lost).

Although Mr H had separated from Ms Q in May 2003 and had begun a relationship with a new partner – Ms U – that August, in June 2004 Mr H and Ms Q jointly asked the Agency about the progress of the application Mr H had made on the basis of their marriage.

Mr H's Member of Parliament wrote to the Agency on his behalf in May 2006. In reply, the Agency said that an initial consideration of Mr H's application had been carried out but they needed more information from him. Mr H was arrested in February 2007, admitted to prison, and released pending trial. In August Mr H's representatives formally complained to the Agency about the delay over his application, but received no

substantive response. In their response to a query from the Member, the Agency said (among other things) that they had granted Mr H leave to remain until July 2001 and had sent the decision papers to his solicitors (that was not the case).

The Member contacted the Agency again in April 2008 raising concerns about their handling of Mr H's case, which the Agency then promised to investigate. The Member asked for an update in September. Meanwhile, in May Mr H applied for leave to remain on the basis of his marriage to his new wife, Ms U. In November Mr H was found guilty of the drugs offence and readmitted to prison. In line with procedures, the Agency took no action on Mr H's application pending the outcome of his appeal against his prison sentence (which was successful). Mr H was freed in March 2009 and the Agency finally determined his application in July. He was refused leave to remain.

## What our investigation found

Although Mr H's complaint was that the Agency had not told him about their July 2000 decision, that decision was never issued and so had no effect. The Agency's subsequent actions and communications, however, were based on the assumption that it had been issued. The Agency's handling of Mr H's application, after deciding that the passport stamp was counterfeit, was poor. Although the leave decision was not implemented, it should have been made clear on the file that the decision had not been issued. It then took over a year to confirm that the stamp was forged. Thereafter, the Agency lost Mr H's file, and took no substantive action until early 2005. Between June 2002 and July 2008 the Agency had many chances to review Mr H's case, as he and his representatives sought updates on his application.

But the Agency did not reply to a number of letters, or to the formal complaint.

Having failed to 'get it right' and having missed many opportunities to 'put things right', the Agency failed to be 'open and accountable' by not telling Mr H, his representatives or the Member that the 2000 application had not been granted. Nor did they raise their concerns about the passport stamp. In addition, the Agency gave the Member inconsistent and inaccurate information; there was no evidence of their promised investigation; and they said Mr H's application was receiving attention when the file was lost. We did not, however, hold the Agency responsible for any delay between Mr H's imprisonment and his release.

As for Mr H's complaint that the Agency had not returned his passport, the evidence suggested that he returned it together with other documents to the Agency in April 2005. They were unable to find it and the most likely explanation is that they lost it.

To conclude, the Agency's actions fell so far short of the standards of good administration that the Ombudsman expects of public bodies that they amounted to maladministration.

## **The injustice to Mr H**

The Agency put Mr H to unnecessary time and trouble in him pursuing matters. We could not safely conclude, though, that his application would have succeeded if the Agency had dealt with it properly and promptly, even without the counterfeit stamp. In fact, Mr H may have had the benefit of living in the UK for eight years when not eligible to do so. Similarly, had the Agency acted when Mr H and Ms Q chased up his application, they would probably have refused him leave as the

relationship on which the application was based was not subsisting.

## **How we resolved the complaint**

We partly upheld Mr H's complaint. The Agency offered him £100 for not responding to correspondence and a further £50 for giving incorrect information to the Member. They also refunded the £395 fee he paid for his 2008 application, and gave his representatives a detailed account of events. The Agency also explained the loss of the passport to the Jamaican High Commission, and agreed to our recommendation that a senior officer send Mr H a written apology for their handling of his application.

# Mr M's request for the return of his passport and other documents

## Background to the complaint

Mr M, a Lithuanian national, applied for asylum on his arrival in the UK in December 2000. By his account, he handed the UK Border Agency (the Agency) his passport and birth certificate at his initial interview. Their notes of that interview indicated that Mr M gave them his passport, but made no mention of his birth certificate. Because of ill health Mr M was unable to continue the interview and the Agency granted him temporary admission to the UK. He attended the Agency again in June 2001, at which time they gave him a standard acknowledgement letter. (This letter, which is issued when the Agency are unable to give an asylum applicant an Application Registration Card, has tick boxes to show which documents the Agency have received from the applicant. There are specific boxes for passports and birth certificates.) The relevant box was ticked to indicate that the Agency had received a passport from Mr M.

In June 2002 Mr M made a new asylum application. The Agency interviewed him in November, granted him further temporary admission for six months, and gave him another standard acknowledgement letter. The letter did not indicate that the Agency had received his birth certificate. In January 2003 the Agency issued Mr M with an Application Registration Card to replace his standard acknowledgement letter. In July 2004 the Agency refused Mr M's asylum application. In August they completed a form which stated that any original documents they held would be enclosed with their covering decision letter when it was despatched to the failed applicant. A box on the form was ticked which noted that *'any original documents with the exception of false or fraudulent passports and travel documents'* had been despatched to Mr M's representatives. The Agency did not return Mr M's passport.

There is no evidence of any correspondence between Mr M, his representatives and the Agency about Mr M's passport until July 2007, when the representatives wrote to ask the Agency to return it to Mr M, along with any other original documents. The Agency logged this letter as a complaint. Mr M's representatives chased the Agency in late August for an update on the complaint and pressed for the return of his passport. They explained that Mr M's lack of proof of his European Union nationality was causing him difficulties. The representatives wrote to the Agency in November, telling them that they had complained to the Ombudsman, and that Mr M was: *'in an extremely difficult position because without a passport and his birth certificate, he is unable to find work and so is street homeless'*. They also asked for compensation.

The Agency returned Mr M's passport (which had expired the previous month) in February 2008 and apologised for the delay in responding to his compensation request. The representatives wrote back to the Agency, requesting the return of Mr M's birth certificate. The Agency replied in August, saying that they could find no reference in their records to Mr M having given them his birth certificate. They enclosed a medical certificate which they had found. In terms of Mr M's compensation claim, the Agency suggested that the representatives give details of their request to the Customer Service Unit.

Having considered Mr M's compensation request in December 2008, the Agency told his representatives that they could not consider compensation in respect of his birth certificate because they had no record of having received it. They did acknowledge, though, that they should have returned Mr M's passport in August 2004 when they refused his asylum application. They had first received a request to return it in July 2007,

but had not done so until February 2008. The Agency explained that after August 2004 Mr M had been entitled to register under the ‘*workers registration scheme*’, and apologised that they had not made that clearer to him at the time. To make amends the Agency offered Mr M a consolatory payment of £150 for the delay in returning his passport and for not making his position in the UK clearer. They also accepted that they had denied Mr M the chance to seek work and offered £200 in recognition of that. They apologised for the time taken to consider his compensation claim and offered a further payment of £50.

## **What our investigation found**

In the language of the *Ombudsman’s Principles*, the Agency did not ‘get it right’ in the following ways: they failed to return Mr M’s passport in August 2004 when he was refused asylum, and when asked to do so in July 2007. The Agency did not take the opportunity to ‘put things right’ as they: did not substantively respond to Mr M’s representatives’ follow-up letters; took until February 2008 to return Mr M’s passport and did not return his remaining documents until August 2008; and they took over a year to deal with Mr M’s request for compensation. These service failures were so serious as to amount to maladministration. We found insufficient evidence, however, that Mr M had given his birth certificate to the Agency.

## **The injustice to Mr M**

We were satisfied that the Agency’s failure to return Mr M’s passport and their delay in responding to his complaint were likely to have caused him considerable worry, distress and inconvenience, particularly given his difficult

personal circumstances (he has learning difficulties, long-term health problems, and language and literacy needs). Although Mr M had an Application Registration Card even after his asylum application had ended, this may have proved insufficient as a means of identification, in particular to prospective employers, because it would have shown that he was not allowed to work. Mr M was denied the opportunity to seek work while the Agency held his passport. Whilst we could not be certain that Mr M would have gained, or kept, employment since August 2004, the fact that he was denied the opportunity to try and support himself was a considerable injustice.

## **How we resolved the complaint**

We partly upheld Mr M’s complaint. Although the Agency apologised to him and paid him £400 in total, that did not fully remedy the injustice to him in our view. At our recommendation the Agency paid Mr M another £200 (to remedy the significant impact that the loss of opportunity to seek work had upon him, and the additional inconvenience of having to seek a new passport after his old one had expired); and a further £30 to cover the costs he incurred in pursuing his complaint.



**Parliamentary and  
Health Service Ombudsman**

Millbank Tower  
Millbank  
London SW1P 4QP

Tel: 0345 015 4033  
Fax: 0300 061 4000  
Email: [phso.enquiries@ombudsman.org.uk](mailto:phso.enquiries@ombudsman.org.uk)

[www.ombudsman.org.uk](http://www.ombudsman.org.uk)



**Published by TSO (The Stationery Office) and available from:**

**Online**

[www.tsoshop.co.uk](http://www.tsoshop.co.uk)

**Mail, Telephone Fax & E-Mail**

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries 0870 600 5522

Order through the Parliamentary Hotline Lo-Call 0845 7 023474

Fax orders: 0870 600 5533

E-mail: [customer.services@tso.co.uk](mailto:customer.services@tso.co.uk)

Textphone: 0870 240 3701

**The Parliamentary Bookshop**

12 Bridge Street, Parliament Square,  
London SW1A 2JX

Telephone orders/ General enquiries: 020 7219 3890

Fax orders: 020 7219 3866

Email: [bookshop@parliament.uk](mailto:bookshop@parliament.uk)

Internet: <http://www.bookshop.parliament.uk>

TSO@Blackwell and other Accredited Agents

**Customers can also order publications from**

TSO Ireland

16 Arthur Street, Belfast BT1 4GD

028 9023 8451 Fax 028 9023 5401

ISBN 978-0-10-296429-5



