



**THE UK BORDER AGENCY RESPONSE TO
THE INDEPENDENT CHIEF INSPECTOR'S REPORT OF
THE THEMATIC INSPECTION OF THE POINTS-BASED
SYSTEM: TIER 2**



The UK Border Agency thanks the Independent Chief Inspector for advance sight of the report. The agency is pleased that the Chief Inspector notes that performance targets are being met and recognises the strong relationships that have been developed with stakeholders and delivery partners. The agency is particularly pleased with the Chief Inspector's positive comments about agency staff and these will be communicated to those involved.

The agency accepts eleven out of the twelve recommendations.

The agency agrees that productivity levels and quality processes across the agency's global footprint should be better aligned. This ambition needs to be carefully considered alongside the diversity of immigration applications the agency receives. Local managers and operational business units need to have the autonomy to operate in a way that is appropriate and deals with the issues pertinent to the context in which they work whilst maintaining synergy with other business units.

The agency is committed to continually reviewing its processes to maintain a high quality immigration system and deliver good customer service. The agency is in the process of deploying a new IT system that will enhance its capability in identifying immigration abuse, improve customer service and enable us to offer better value for money to the public.

The UK Border Agency response to the Independent Chief Inspector's recommendations

1. identifies all Tier 2 migrants whose leave should be curtailed, acts promptly to curtail their leave and, subject to any appeal, takes appropriate enforcement action.

The UK Border Agency accepts this recommendation.

- 1.1 There are 150 cases currently awaiting curtailment action on Tier 2. These cases are in hand and will be worked through the system once the period of notification to curtail has elapsed. Most of these cases come from routine casework. A small proportion of this number are identified within the change of circumstances reports produced by the sponsor management system. There are currently approximately 4000 outstanding notifications of change of circumstances provided by sponsors and additional resources have, as of January 2011, been allocated to sifting the notifications. A proportion may lead to curtailment action but because a 'change of circumstances' can include a change in pay, a change in job title or a change in role, the Tier 2 operational teams expect this to be limited.
- 1.2 Tier 2 operational teams notify local immigration teams of curtailments and enforcement action is then considered. Whilst the agency is committed to improving its performance on enforced removal, it recognises that it is not possible to carry out enforced removal action on every migrant who no longer has the right to stay in the UK and so prioritises enforcement activities on a risk basis and removes those that pose greatest harm. The agency is committed to using the sponsorship system - that puts greater responsibility on those that benefit from migration - to place restrictions and then remove organisations that sponsor migrants who do not adhere to the rules. The agency also imposes high fines on any employers in the UK that are found to employ migrants who do not have any legitimate right to work. The strong message that the agency sends to employers creates an environment where it is not advantageous for migrants to remain in the UK beyond their period of leave.
- 1.3 The agency's Immigration Casework Programme (ICW) will make significant improvements to the ease and efficiency of taking curtailment action, including making an automated link between notifications from sponsors and the curtailment of leave. From September this year, student cases will be processed on the new ICW system and employment cases (inc. Tier 2) will follow in February 2012.

2. identifies and carries out all outstanding checks and visits to ensure that all registered sponsors meet the criteria in PBS published policy guidance.

The UK Border Agency does not accept this recommendation.

- 2.1 There are no outstanding pre-licence checks for registered sponsors. The agency does not licence any Tier 2 sponsors without being confident that they meet the published criteria and policy.
- 2.2 The agency operates a systematic approach to sponsor licence applications and undertakes all necessary checks. The agency looks at data available from all legacy and current immigration databases and also complete specific checks on individuals.
- 2.3 All prospective sponsors are required to submit authentic supporting documents as part of their application for a sponsor licence. This enables the sponsorship teams to check that the organisation is genuine and operating/trading lawfully in the UK.

- 2.4 All sponsor licence applications are assessed against risk profiles. These risk profiles have been collated and updated over many years and are based on experience of risk and abuse from the (legacy) Work Permit system and Tier 2 of the points-based system. The risk profiles are constantly reviewed and amended as abuse is detected and risks are identified through intelligence analysis.
- 2.5 Assessment against these risk profiles determines which prospective sponsors require a pre-licensing visit and enables visits to be targeted in an intelligent and robust manner. Pre-licensing visits are not necessary in every case and the agency refutes the statement that they are not carried out in all cases that require them.
- 2.6 The organisations that meet the tough criteria to be licensed as a sponsor are subject to a rigorous and targeted sponsor compliance regime. Since the launch of the points-based system sponsor register 182¹ Tier 2 sponsors have had their licences revoked.

3. adopts a pragmatic approach to deciding applications where there are minor omissions in documentation or information and implements this consistently at all its locations worldwide.

The UK Border Agency accepts this recommendation.

- 3.1 The agency will review and issue refreshed guidance for staff in-country and overseas where the only reason for refusal is a minor omission of a document or a known piece of evidence which, if provided, would lead to an approval of the application. This will help ensure a consistent approach to evidential flexibility. This guidance is currently being developed and will be issued by the end of February 2011. Managers will ensure that members of staff understand the guidance and how to apply it.
- 3.2 The implementation of the guidance will be reviewed at the end of July 2011 to ensure it is being applied correctly and consistently.

4. evaluates and compares productivity levels and targets for PBS applications decided overseas and in the United Kingdom to provide assurance that these are realistic, accurate and fair, while maintaining decision quality.

The UK Border Agency accepts this recommendation.

- 4.1 There are different service standards and processing times for applications made in the UK and those made overseas. Service standards are developed taking into consideration the levels of information that need to be considered and the criteria that apply; these are reflected in the published service standards.
- 4.2 The agency fully accepts the need to learn the lessons from those sites that have the highest levels of productivity. When the Immigration Casework model is brought on line, over a period of time, the agency will seek to narrow the gap between the UK and overseas and maximise the numbers of applications that can be cleared within our published service standards. However, it is important to note that there will always be a minority of cases where this is not feasible – for example, where agency decisions are subject to legal challenge, or where there is the need to make extended checks or intelligence investigations.

¹ As of 8 February 2011

4.3 Guidance on the setting of benchmark targets for overseas caseworkers was issued on 17 January 2011. This stresses the need for managers to fully involve staff in the process and that targets should be applied flexibly taking individual needs into account.

4.4 In terms of service standards for post-visit work undertaken on sponsor licences – the agency will ensure that individual caseworkers have set targets and expectations as part of their objectives. The agency will seek to develop a set of indicators to clarify expectations and standards for post-visit work by April 2011.

5. sets a minimum figure of PBS cases to be reviewed by managers in line with other limited rights of appeal cases, and implements a consistent formal quality assurance framework within overseas posts and Sponsor Licensing and Management units.

The UK Border Agency accepts this recommendation.

5.1 The agency places a high priority on making consistent, accurate and fair decisions.

5.2 The agency's strong track record on decision quality is supported by the Chief Inspector's findings. The report does not cite any immigration decision, to either to issue or refuse, to be incorrect. The Chief Inspector also recognised that agency staff take their responsibilities very seriously and was impressed with the professionalism, enthusiasm and commitment demonstrated.

5.3 The points-based system by its very nature aids high quality decisions because it is based on fair and objective criteria. In addition, overseas and in-country caseworkers use decision making templates to ensure all pertinent factors relevant to each application are considered.

5.4 Entry clearance managers receive standardised guidance and training covering the review of decisions. In light of the Chief Inspector's comments the agency will consider whether the quality assurance frameworks for overseas and in-country caseworkers can be more closely aligned. The agency will also introduce a global minimum review target of 2% for overseas applications (the same as for in-country migrant case work). This will be implemented by the end of February 2011.

5.5 A 2% minimum review target will also be introduced for sponsor licence applications.

5.6 Appeal rights and administrative review are avenues open to customers who consider that the agency has made an error in judgement and the volume is driven by customers.

6. adopts a clear and consistent approach to representing cases at appeal.

The UK Border Agency accepts this recommendation.

6.1 Improving representation levels at appeals is a Ministerial priority for the agency and it is our intention to continue to represent as many appeals as possible. The agency has a number of projects that will help increase representation rates, and help better target our presenting resources to those cases that will most benefit from the presence of a presenting officer. The agency has trained a number of asylum case owners across the regions so that they can present all types of immigration cases at court. The agency is also working with the Tribunals Service to review the effectiveness of the new Unified

Tribunals System, and this may identify further changes that can be made to the appeals process to increase efficiency.

7. ensures that decision letters contain the relevant Immigration Rules and purpose of the application, and ensures that document templates fully meet the needs of staff and applicants.

The UK Border Agency accepts this recommendation.

7.1 Revised refusal notice templates for entry clearance applications were introduced on 16 May 2010 (after the period of the report's file sample). Changes were made following comments made by the Chief Inspector which suggested that the refusal notices should be shorter and clearer for applicants. Training and guidance was also updated to detail what a refusal notice should contain, along with completed examples. All points-based system refusal notices were amended to reflect these changes. These changes were implemented without any difficulties and staff feedback on the new templates has been universally positive.

7.2 The introduction of ICW will better support the creation of high quality refusal notices by increasing automation and standardisation.

8. revises its Tier 2 policy guidance, ensuring it is consistent, with clearly defined terms, and provides appropriate notice of forthcoming changes to staff, sponsors and all other interested parties.

The UK Border Agency accepts this recommendation.

8.1 In April, the agency will implement the new 'limit' on Tier 2 (General) and the new rules around Intra-Company Transfers. These changes will involve substantial changes to guidance. The agency cannot publish the new guidance in full until the necessary changes to the Immigration Rules are laid before Parliament 21 days before the new measures come into effect. However, to help employers and agency staff prepare for the change the agency will produce a simple and plain English 'Statement of Intent' made available on the agency website from mid-February 2011.

8.2 The agency will thoroughly review and user-test the guidance which follows to ensure that there is no repeat of the confusion and misleading terminology which the report's authors identified.

8.3 In March 2011, the agency will issue all caseworkers and entry clearance staff with guidance/instructions. Staff will have an opportunity to contribute to the development of the guidance to enhance its usability and they will receive training to ensure it is commonly understood. The agency will ensure this message has hit its mark by asking managers to confirm the guidance has been received, understood and incorporated into decision making.

8.4 When the customer guidance is published, the agency will write to all sponsors to make them aware and by trailing it as 'headline news' on the agency website. The agency will also send a note to all those who have subscribed to Tier 2 using our alert system on the website.

8.5 All guidance will be reviewed in the course of 2011 as part of the transition to ICW and with a view to achieving greater consistency and usability.

9. ensures that feedback on sponsor concern referrals and the outcome of any investigations is routinely provided to case working teams overseas and in the UK from Sponsor Licensing and Management units.

The UK Border Agency accepts this recommendation and has already implemented it.

9.1 The agency agrees that communication between the sponsorship unit and entry clearance staff is of paramount importance and has taken steps to reinforce arrangements.

9.2 In April 2010, the sponsorship unit set up the sponsorship desk officer network. This has created a two-way communication system by highlighting issues to be investigated and also feeding back the results of investigations and operations. The feedback from overseas and the sponsorship team is that this system is working well.

9.3 The agency needs to balance the need to provide feedback with following necessary procedures. It can be problematic and inappropriate to share information during the course of an investigation, particularly if there are criminal strands to the case. Sharing of sensitive information in these circumstances could jeopardise any investigation.

10. implements a permanent IT system-based solution so that staff in overseas posts can view the full Certificate of Sponsorship in order to process visa applications as efficiently and effectively as possible.

The UK Border Agency accepts this recommendation and has already implemented it.

10.1 The Chief Inspector's report recognises that the IT system now provides agency staff overseas with the information required to make decisions.

10.2 The original IT interface that was deployed overseas did not allow staff access to the full details held on the certificate of sponsorship (in particular the resident labour market test details) as there was no requirement for staff to view it. This requirement subsequently changed, so that staff had to consider the specific details of the certificate of sponsorship. The IT interface was updated to allow this, but as with any live IT system change this took time to introduce. The change was implemented on 18 October 2010 and there are no longer any delays in processing applications as a result of staff having to contact UK based colleagues to view the certificate of sponsorship.

11. improves its website to make it more user-friendly for all members of its target audience, and ensures that details of changes to policy guidance are made simultaneously on both its intranet and internet websites.

The UK Border Agency accepts this recommendation.

11.1 In accordance with government policy and customer feedback, the agency is already working to rationalise all of its websites and simplify the information contained within them. In order to ensure that the resultant single site is useful to customers, the agency

is currently testing proposed navigation structures with applicants and legal representatives. A new single agency website will be launched by September 2011.

12. reviews the length and content of its PBS Tier 2 application form to ensure it is easier and quicker for applicants, sponsors and staff to use.

The UK Border Agency accepts this recommendation

- 12.1 From February 2012, the default application process for all those applying under Tier 2 in the UK will be to use a new fully online application; this form is being developed under the ICW 'Forms Factory' approach.
- 12.2 The new form will be 'smart' so that customers only see the questions which are relevant to them, and should therefore be much shorter and easier to use. There will be an option to apply on paper, but this will be on an exceptional basis.
- 12.3 Overseas, the agency will continue to develop and use the Visa4UK online application system until that is replaced by the new ICW Tier 2 application form in 2012/13 (the agency cannot implement it overseas at the same time as the UK due to IT infrastructure issues).
- 12.4 In the meantime, the agency will continue its efforts to shorten and simplify the paper form.

The UK Border Agency offers the following comments on other observations made in the report for further clarification.

Paragraph 5.6 refers to customer service standards overseas, and states: “We found that while managers and more senior staff were aware of these targets, many staff had only a limited understanding and awareness of them, and how their work contributed towards their achievement”

When revised customer service standards were implemented on 1 April 2010 they were accompanied by a communications campaign that included an operational instruction to the overseas network and a global message from the director of visa services. Performance against customer service standards at each application point is published on the agency website.

Paragraph 5.9 states “We found no service level agreements were in place for post-licensing activities, and as a result, some teams within the Sponsor Management unit had less clear targets”.

Visiting officers do not work towards a standard numerical target for the following reasons:

- Geographical variations – it is easier, for example, for a visiting officer in London to conduct more than one visit in a day because of proximity, whereas visiting officers in Wales and the South West have to cover far greater distances.
- At a higher level some regions do have a “total number of visits” target, which takes into account issues such as resource and sponsor proximity, and regional leads manage their resource towards this target.
- All visiting officers are aware of the turnaround times required on visits, so they have 5 working days from receipt of referral to undertake a visit, and then a further 5 working days to produce and submit the visit report. This, in itself, is a performance target, and this is standard across the UK.

The rationale for staff in the suspensions and revocations team not working to specific targets is because of the differing complexity of the work – no two cases are exactly the same, and there is a considerable range of information to be assessed. This information is not of a standard nature or format as with traditional immigration caseworking processes. In addition, advice is often sought from a variety of other units/bodies such as Treasury Solicitors, police forces, accrediting bodies or local councils so that an objective, defensible decision can be reached. Finally, every decision made by these caseworkers requires assistant director and director clearance because of the potential consequences for the sponsor.

It is a similar situation for the re-rate team and their work - caseworkers along with their managers have to consider comprehensive, detailed representations that sponsors or their legal representatives send in. On every downgrade case sponsors are given the opportunity to submit representations, and so the time it takes to submit these, and their complexity, varies from case to case.

Paragraph 5.30 states that “We found that the UK Border Agency performed poorly against its target for processing sponsor licensing applications. The target in 2009/2010 was to process 95% of applications within four weeks and this was subsequently reduced to 65% of applications within four weeks for 2010/2011. Managers and staff consistently told us that the reason for changing the target was because 95% within four weeks was unachievable. The results of our sample showed that the Agency only managed to process within the four week target:

- **33% of applications which were awarded A rating sponsor status**
- **2% of applications which were awarded B rating sponsor status**
- **12% of applications which were unsuccessful and were refused.”**

The agency target for processing sponsor license applications was changed from 95% within four weeks to 65% within 20 workings due to the availability of sponsors to accommodate a pre-license visit. The agency operates a robust risk based pre-license regime, targeting those sponsors where compliance is likely to be poor. The sponsor licensing unit arranges an announced pre-license visit at a time suitable to the sponsor. Due to the delays in sponsor availability the agency was unable to meet the 95% target for reasons out of its control. Where intelligence indicates that a pre-license visit is required the sponsor licensing unit cannot casework without the results of the visit. The agency does not sacrifice the robust risk based approach merely to meet operational targets.

Paragraph 5.32 states that “Our sample showed that visits were carried out as follows:

- **A rated sponsors – 12 out of 49 cases (24%)**
- **B rated sponsors – 49 out of 50 cases (98%)**
- **Refused cases – 19 out of 49 cases (39%).”**

Out of the sample of 148 cases, 80 potential sponsors were visited. The risk based, targeted approach resulted in 98% of those subsequently B rated and 24% of those subsequently A rated being visited. The methodology clearly identified sponsors at pre-license stage that posed a risk of not being able to fully meet sponsorship duties, and this is where visits are targeted. This clearly demonstrates that the risk based approach taken to pre-license visits is correct and accurate.

Paragraph 5.37 states that “Our sampling showed that the time taken to process sponsor license applications ranged from a shortest time of 21 days and a longest time of 333 days. The average time taken ranged from 56 days for A rated sponsors, 85 days for B rated sponsors and 76 days for refused applications.”

Performance for week commencing 17 January shows a weekly turnaround of 74% and a year to date figure of 75% against the 65% in 20 working days target. The current work in progress stands at 460 cases. The sponsor licensing unit performance is measured against the time taken to process an application from the date the application is received and prepared. However, there is a delay between on-line submission and a complete application being received, as sponsors may need to forward original documentation. Delays in payment clearing can also affect the application received date. It is very rare that an application takes in excess of the 300 days quoted, but measures have been put in place to allow the agency to reject an application if it is not made complete by the sponsor within 14 days of submission.

Paragraph 5.50 reports “We raised the issue of administrative review delays when we were on site. Managers and staff told us that there had been a problem when a backlog of administrative reviews had built up to an unmanageable level. Although UK Border Agency guidance stipulates that administrative reviews should be carried out by Entry Clearance Managers, managers in Manila took the decision to ask experienced Entry Clearance Officers to undertake reviews on a temporary basis to help clear the backlog”.

The administrative review backlog in Manila developed during the peak application season and the entry clearance managers (ECMs) at Post at the time were unable to conduct sufficient administrative reviews. A decision was taken locally to ask two experienced entry clearance

officers (ECOs) to act as ECMs to help clear the backlog. It is not uncommon for ECOs to be asked to act up as ECMs and cover different aspects of ECM work when there are particular pressures or staff absences.

A new Regional Operations Manager position was created and filled in July 2010. This has taken some of the operational pressures away from the ECMs in Manila and given them more time to conduct administrative reviews. The practice of using ECOs temporarily promoted to ECM to process administrative reviews in Manila has stopped and all administrative reviews are now considered by an ECM.

Paragraph 5.62 notes that “in sampling 48 Manila cases we found nine cases (19%) where there were inaccuracies in stating the correct period and purpose of the entry clearance awarded, and one case with incorrect stating of the applicant’s details. These problems should have been picked up before the vignettes were issued”.

Manila have taken action in respect of the comments regarding errors on printed visa vignettes. An additional check has been introduced whereby the records of all applications that have been approved for issue by an ECO (not just Tier 2 cases) are re-checked by an ECA before any vignette is printed to identify and rectify any errors in the validity or category of visa or in the applicants’ biographical details.

Paragraph 5.64 states that ‘we were concerned at the disparity between the ways cases were selected for quality checking as the lack of control, particularly when Case workers were able to self-select the cases checked, meant there was potential for abuse of the system which would be difficult to detect’.

With effect from 10 January a revised quality sampling system has been tested across Tier 2 case working. This system ensures a random and more efficient selection process.

Paragraph 5.109 states that “We found there were clear limitations around the number of pre-licensing and post-licensing visits that the UK Border Agency could undertake due to a lack of visiting officer resources. Waiting times for visits varied around the country depending on the ratio of sponsors to visiting officers in the regions. A high concentration of sponsors is situated in the Midlands and London and we were told this could cause difficulties. We found examples of visiting officers from Sheffield having to carry out visits in other parts of the country to assist. Staff told us that they were having to wait around four to six weeks for a visit to be carried out.”

Visiting officers from Sheffield have previously had to support other regions, particularly London & the South East because of the volume of pre-licence referrals. This situation largely occurred when the Sponsor register was first opened in 2008, and through into 2009. There has been no requirement for visiting officers from Sheffield to undertake visits outside of Yorkshire and the Humber since March 2010.

Paragraph 5.117 states that “A major UK industry stakeholder also voiced concerns over the extent to which the UK Border Agency focused on compliance. They told us they had received feedback from some A rated sponsors who are concerned that they have still not received a post-license visit. This has led to wider concerns regarding whether the

necessary checks are in place to ensure compliance, which they consider vital to a successful managed migration system.”

The agency does not visit every sponsor. The sponsor management unit's key focus is on compliance, there is a dedicated compliance team and a specialist investigations team in the unit. Intelligence, external information and regional knowledge are combined to identify where post-licence visits are necessary based on risk and this allows the sponsor management unit to utilise the visiting officer network efficiently. There will be sponsors that have not yet received a post-licence visit, but these sponsors will have received thorough checks at the licensing stage, and they will be low risk based on our intelligence and local regional knowledge.

Paragraph 5.149 states that “We found widespread concern among staff at all locations we inspected that there were loopholes in PBS which were currently being exploited in relation to workers coming to the United Kingdom. Examples included workers from Mumbai and Manila coming to work as managers in fast food chain restaurants for considerable salaries, for example £28,000 per year. To put this into context, the Office of National Statistics published data for July 2010 showing the average UK salary as £25,543 per year.

As part of our compliance and visit regimes the sponsor management unit will check during visits that migrants are undertaking the role that they were granted leave for, and that the supporting evidence, such as a salary level, is verified.

Where officers have reason to believe that deception was used to gain leave, such as inflated salary levels, the sponsor management unit will take tough action and remove the licence of the sponsor.