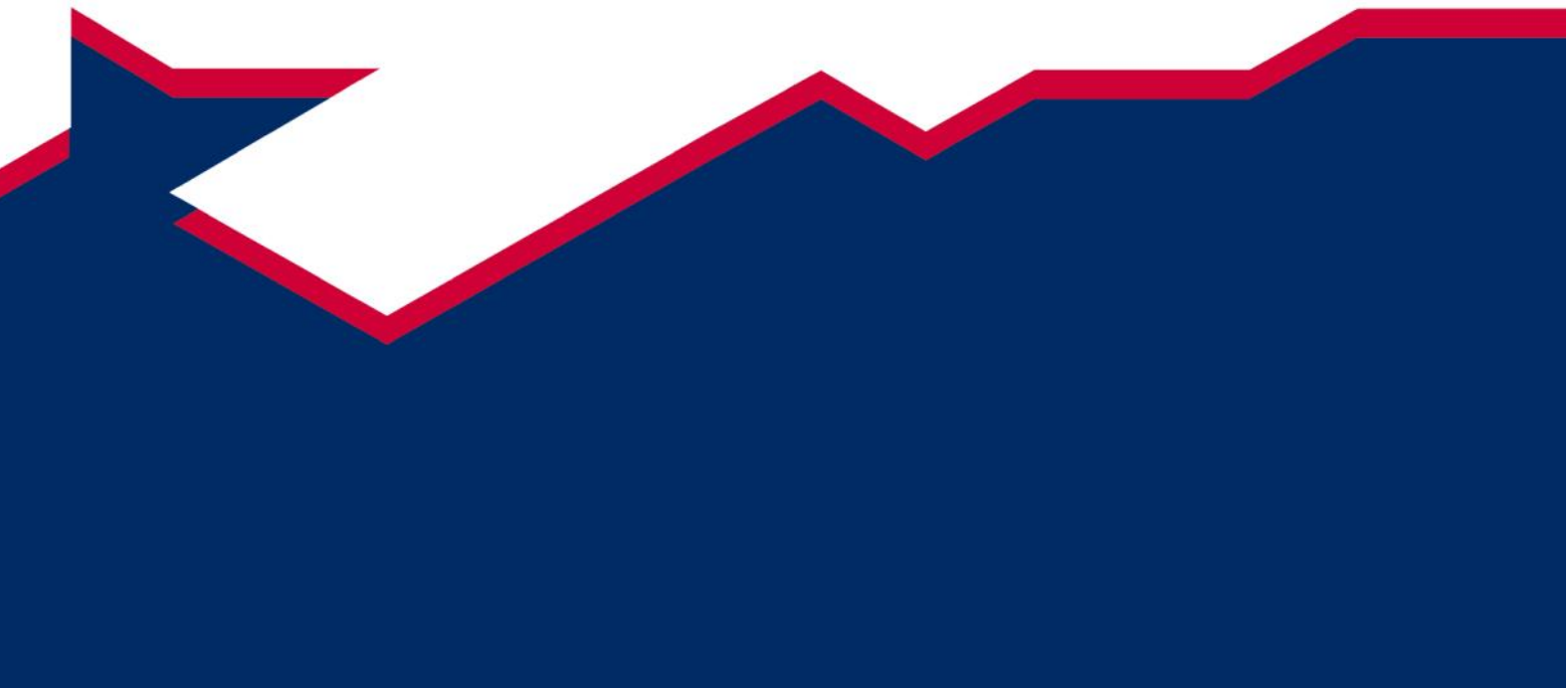




**THE UK BORDER AGENCY'S RESPONSE TO THE REPORT OF
THE INDEPENDENT CHIEF INSPECTOR OF BORDERS AND
IMMIGRATION ON THE HANDLING OF LEGACY ASYLUM AND
MIGRATION CASES**

MARCH - JULY 2012



THE UK BORDER AGENCY'S RESPONSE TO THE INDEPENDENT CHIEF INSPECTOR'S REPORT ON THE HANDLING OF LEGACY ASYLUM AND MIGRATION CASES.

In 2006 the then Home Secretary announced a caseload of asylum legacy cases which subsequently totalled over half a million cases. This cohort was riddled with duplication and errors and many of the case records pre-dated our electronic case information systems. The majority of these cases were concluded by the Case Resolution Directorate (CRD) when its programme closed in March 2011. The Case Audit and Assurance Unit (CAAU) was then established to handle the remaining live cases and those which had been placed into the controlled archives. The Agency is pleased that the Chief Inspector's report comments positively on the progress the CAAU had made.

As Rob Whiteman set out in his letter to the Home Affairs Select Committee on 21 November, since the inspection the Agency has continued work to close the controlled archives according to the timetable previously provided to the Home Affairs Select Committee. Cases within the archives have now gone through an additional robust tracing programme to locate individuals by checking their case records with external partners and against our own databases. It is our view that it is not in the best interests of the taxpayer to employ staff to conduct further checks on these cases where our checks have already confirmed that there is no recent evidence that individuals are in the UK.

I wanted to be absolutely sure that this process had been conducted thoroughly. We therefore asked Deloitte to conduct an external, independent assurance exercise to ensure this is the case. We kept National Audit Office informed about our plans and methodology for closing the controlled archive, kept them updated on progress and they provided input where appropriate. Deloitte have provided assurance that we have undertaken the checks that we said we would in locating individuals in the controlled archives. The assurance exercise has involved selecting a random sample of 1,000 of the closed cases and verifying that the specified checks have been appropriately carried out.

We accept that there are lessons to be learnt from our handling of the legacy cases and these were acknowledged by Rob Whiteman in his last two evidence sessions before the Home Affairs Select Committee and in his letter to the Committee on 21 November. We have already completed a report on lessons learned in response to a recommendation of the Public Accounts Committee in its 28th report from the 2008-09 session. In that report the Agency recognised that more thought could and should have been given to the arrangements for handover and transition from CRD to CAAU and that increased scrutiny would have helped challenge some aspects of the closure and transition arrangements. We are determined that the Agency learns from shortcomings identified in this report as we create a more competent organisation.

The Agency will act on the recommendations made by the Independent Chief Inspector where it can. However, the report goes beyond the scope of the original inspection criteria in criticising administrative issues that predated the handling of the legacy cases. The origin of the legacy cases is well documented and it is

accepted that delays occurred with these cases. CRD and CAAU's remit was to deal with the legacy cases. The Agency therefore questions the merits of revisiting administrative failings which predated the legacy programme.

The majority of the report highlights shortcomings which occurred between the closure phase of the CRD and the transition to CAAU. Over 60% of the files sampled by the Inspection Team from the asylum controlled archive were taken from the final seven months of the CRD programme (between September 2010 and March 2011). The case studies in the report are relevant only to that particular phase of the legacy programme and findings from them should not be extrapolated to the whole legacy programme.

We will also look at the broader issues raised about how the Agency works with Home Office Policy, our complaints handling performance, our information management processes and how the Agency ensures that the welfare of children is safeguarded. However we do not consider that these findings are a fair reflection of the Agency's overall performance in these areas since the investigation is about only one area of the Agency's work. It is our view that these issues ought to be the subject of separate reviews.

THE UK BORDER AGENCY'S RESPONSE TO THE RECOMMENDATIONS

Recommendation 1 – that UKBA routinely and regularly matches asylum and migration legacy cases against PNC and WI records, until the point at which cases are finally concluded.

Accepted

1.1 When responding to this recommendation it is important to distinguish between historic and future issues.

1.2 In the past, cases in the controlled archives, where individuals had not maintained contact with the Agency, were routinely and consistently re-checked against the Police National Computer (PNC) and the Agency's watchlist by CRD up until April 2011. These re-checks were routine checks of an archive, to see whether new information existed which could enable us to trace, and make contact with, an applicant.

1.3 After the transfer of the legacy cases to CAAU, at which point no more cases were added to the controlled archives, we acknowledge that routine six-monthly checks lapsed. However, between August and October 2012 CAAU re-checked all cases in the controlled archives against the PNC and watchlist.

1.4 Now that the controlled archives have been closed in accordance with agreed closure criteria, the Agency will not be undertaking regular checks on these cases against PNC and watchlist records.

1.5 For legacy asylum and migration cases being actively caseworked, we will also not be conducting routine checks as the applicants whereabouts are known to the Agency. However, as in all asylum and migration cases, the Agency will complete PNC and watchlist checks before a grant of leave is implemented to ensure any adverse behaviour or criminality is taken into consideration.

Recommendation 2 - that UKBA ensures that the information it provides to the Home Affairs Select Committee is accurate and includes all legacy cases where asylum applications were made before March 2007.

Accepted and implementing

2.1 The Agency is committed to providing accurate and helpful information to the Home Affairs Select Committee. As Rob Whiteman acknowledged to the Committee in his letter on 21 November, there have been a small number of instances where incorrect evidence was inadvertently given to the Committee during the five years we have reported to the Committee about this work. This was unacceptable and something we need significantly to improve in the future.

2.2 We have put governance in place to improve the quality and range of data we routinely publish. The Agency has created a new Performance & Compliance Unit, with an explicit remit to assure that information.

2.3 As far as including legacy cases pre-2007 in our figures is concerned, we have always been clear that due to the quality of case records which pre-date October 2001, when use of the Case Information Database (CID) commenced, we cannot be absolutely certain all cases have been captured in the data. Appropriate caveats have been provided to the Committee on the data accuracy of this group.

Recommendation 3 – that UKBA is clear and consistent in the terminology it uses so that Parliament and the public understand exactly what progress the Agency is making in concluding legacy casework.

Accepted and implementing

3.1 We are committed to being open and transparent with the way we present information to Parliament and the public. The Chair of the Home Affairs Select Committee commented in both May and September how the clarity of the information being provided to the Committee has improved recently. It is important we continue to improve on this to ensure that Parliament and the public can understand the progress we are making with the remaining live cases.

Recommendation 4 – that UKBA develops a realistic timescale to conclude all remaining legacy cases and gives a public commitment to do so.

Partially accepted - implementing

4.1 The remaining legacy cases are, by their very nature, old and complex cases where in many cases barriers to removal remain, such as ongoing litigation, impending prosecution, incomplete legal or criminal proceedings, or because the individuals are from difficult to remove countries.

4.2 Once we have fully analysed the contents of the remaining cases the UK Border Agency will actively manage these cases to the furthest possible point and set out a timetable to conclude as many of them as possible. However, there will be cases among them which will not be able to conclude within a set timescale due to circumstances outside of our control, such as individuals serving prison sentences or if they are from countries to where we are currently not able to return.

Recommendation 5 - that UKBA clarifies the information that should be stored on the file and the Casework Information Database and incorporates checks of this into the quality assurance framework.

Accepted – implementing

5.1 UKBA is developing a plan to identify and resolve data quality issues in CID. This strategy will aim to ensure the quality of CID data and assist the Agency in 2013 to cleanse the data of records already on the system.

Recommendation 6 - that UKBA introduces a protocol between CAAU and Local Immigration Teams to ensure that when legacy asylum and migration applicants are refused, removals are prioritised.

Accepted – implementing

6.1 The Agency is developing a new operating model and part of that is strengthening links between decision making teams and enforcement. We will ensure that cases where leave in the UK is refused are progressed to removal.

Recommendation 7 - that UKBA works with the Home Office to ensure that guidance on new policies sets out any relevant exceptions, and communicates these effectively to staff so that they are applied fairly and consistently.

Accepted – implementing

5.1 The Home Office strongly agrees that all policy guidance, including guidance on any exceptions to a policy, should be published and communicated effectively to all staff. The Home Office will work with UKBA to ensure that this is the case.

5.2 In relation to the policy guidance considered in the report, all relevant guidance – including on exceptions – is available in published guidance via chapter 53 of the Enforcement Instructions and Guidance (EIG) and the Asylum Instruction (AI) on Discretionary Leave. The latter was updated on 9 July 2012.

Recommendation 8 - that UKBA ensures decisions affecting young people are dealt with in a timely way that minimises any uncertainty that they may experience with their applications.

Accepted – implemented (processes in place).

8.1 The Agency takes its responsibility for the care of children very seriously. It is under a statutory duty to ensure that its functions are discharged having regard to the need to safeguard and promote the welfare of children who are in the UK. This duty extends to all UKBA staff and those acting on behalf of UKBA when carrying out immigration functions in relation to children in the UK.

8.2 The Agency has specially trained staff to handle their cases and the best interests of the child are at the heart of the decision making process.

8.3 The Agency has separate processes in place for the management of asylum claims from children and the Asylum Instruction '*Processing an asylum application*

from a child sets out for UKBA staff involved with asylum cases how applications from children should be dealt with.

8.4 Earlier in the year the Agency responded to a recommendation from the Children’s Commissioner by agreeing specific arrangements in respect of minors who claim asylum on arrival in the UK. This set out that at the point at which a minor makes an asylum application, and when it is their first point of contact with the Agency, the Agency will ensure that it carries out the necessary biometric tests, that it establishes the identity of the minor and that it carries out a welfare interview. Following this, the Agency will immediately refer the minor to local social services and there will then be a period of up to four days to allow the minor to recuperate from their journey and arrange for legal representation (should they require it) before an asylum screening interview takes place.

8.5 The Independent Chief Inspector has notified us that he will shortly be carrying out an inspection of issues relating to Unaccompanied Asylum Seeking Children and we look forward to receiving his findings following this broader investigation.

Recommendation 9 - that UKBA manages complaint handling processes effectively, ensuring:

- **complaints are recorded accurately;**
- **responses deal with the substance of the complaint; and**
- **published service standards are met.**

Accepted – implementing

9.1 It remains a high priority for the Agency to provide a timely response to correspondence from applicants, representatives and MPs. We are introducing a national operating model in which all MP correspondence will be managed through a single process and there will be dedicated MP Account Managers in all locations to deal with the more complex queries.

9.2 We have also issued guidance on effective handling of correspondence from the public, including applicants and their representatives, and will be monitoring this to ensure we drive up performance.

Recommendation 10 - that UKBA embeds a stronger quality assurance framework within CAAU which ensures that decisions are made in accordance with the law and its policies and are based on all available evidence.

Accepted – implementing

10.1 We are pleased that the Inspection Team found that all of CAAU’s “decisions to refuse and pursue removal were reasonable and in line with the evidence (page 39, paragraph 5.81)”.

10.2 We were also pleased that the inspection team recognised that all cases were checked against the PNC and watchlists before issuing a grant of leave.

10.3 We are committed to embedding a right first time approach to decision making and are considering where we can improve our policy and process guidance to best support caseworkers in this.

10.4 A Chief Caseworker post has been created to implement a stronger quality assurance process over decisions made on the remaining legacy cases. All caseworkers will be required to meet agreed standards for the quality of their work.

10.5 Adherence to these standards will be monitored through an assurance framework that will see senior caseworkers independently review a representative sample of caseworkers' decisions.

10.6 We will apply the same assessment procedures and marking criteria that are currently used to monitor the quality of casework on initial asylum decisions.

10.7 We are also rolling out refresher training in asylum and human rights considerations for our caseworkers.