



An inspection of how the UK Border Agency and Border Force handle customs and immigration offences at ports

May-October 2012



John Vine CBE QPM

Independent Chief Inspector of Borders and Immigration



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Contents

	Foreword	2
1.	Executive Summary	3
2.	Summary of Recommendations	6
3.	The Inspection	7
4.	Background	9
5.	Inspection Findings: Operational Delivery – Customs and Immigration Offences	15
6.	Inspection Findings: Operational Delivery – Entry, Stay and Removal Decisions:	22
7.	Inspection Findings: – Safeguarding individuals	32
8.	Inspection Findings: – Continuous Improvement	36
	Appendix 1 – Inspection Criteria	42
	Appendix 2 – Glossary	43
	Acknowledgements	46

Foreword from John Vine CBE QPM Independent Chief Inspector of Borders and Immigration



One of the most important functions of Border Force and the UK Border Agency (UKBA or the Agency) is to detect, investigate and, where appropriate, seek to prosecute those who are suspected of committing immigration and customs offences. This inspection examined the efficiency and effectiveness of the handling of such offences, with a particular focus on the work of the Agency's Criminal and Financial Investigation (CFI) teams at Heathrow, Manchester Airport and Dover.

I found that there was a broadly consistent approach towards the investigation of offences and that Border Force made appropriate use of their powers to confiscate goods and cash, or issue fines. In immigration cases, I found that removal was a cost-effective and efficient alternative to investigation and prosecution where individuals did not claim asylum.

There is, nonetheless, room for improvement. CFI teams kept an insufficient record of the reasons for the decisions they took in immigration cases. The management information collated by the Agency on the handling of all offences was inadequate and of inconsistent quality across the ports I inspected. This failing must be addressed if CFI teams are to plan their work effectively and match resources to priorities.

I found a lack of consensus between Border Force and CFI managers on the circumstances in which certain immigration offences should be referred for potential investigation. There is a need to clarify when such referrals should take place and to communicate this to Border Force staff.

In my sample of cases where CFI teams had decided not to investigate people for suspected immigration offences, I found that the majority of those who claimed asylum on arrival in the UK were either granted refugee status or removed. Some, however, had waited for almost a year without initial decisions on their claims. This is unacceptable.

Finally, I was disappointed that, despite numerous recommendations made in previous reports, the Agency and Border Force failed to locate more than half of the paper files that I initially requested as part of this inspection. Both organisations must do more to improve their file retention and retrieval processes.

A handwritten signature in black ink that reads 'John Vine' followed by a period.

John Vine CBE QPM
Independent Chief Inspector of Borders and Immigration

1. Executive Summary

- 1.1 Between April 2011 and February 2012, Border Force referred 2,885 individuals to the Agency's Criminal and Financial Investigation (CFI) teams at ports because they were suspected of having committed immigration or customs offences. Of these, 1,315 (46%) were investigated with a view to criminal prosecution.¹
- 1.2 This inspection focused on the handling of suspected immigration and customs offences by the CFI teams at Heathrow and Manchester Airports, and at Dover.² It also examined what happened to individuals whom the CFI teams decided not to investigate, looking in particular at the use of alternative sanctions, such as confiscation and fines in customs cases, and removal from the UK in immigration cases.
- 1.3 We found that CFI teams adopted a broadly consistent approach towards customs referrals from Border Force. Decisions to investigate individuals involved in the importation of drugs, cash and other goods were generally supported by clear evidence and in line with policy. Where CFI teams decided not to investigate, this was normally either because they were satisfied with the explanation provided by the passenger, in cases involving large quantities of cash, or because they advised Border Force to seize the goods or fine the individuals concerned.
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- Decisions to investigate individuals involved in the importation of drugs, cash and other goods were generally supported by clear evidence and in line with policy*
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- 1.4 In immigration cases, Border Force is required to refer certain suspected offences, such as those involving the facilitation of illegal migrants, to CFI teams. In most cases where a passenger is suspected of having used a false document or having destroyed a travel document, Border Force has discretion to deal with the individual by seeking to remove them from the UK rather than referring the case for potential criminal investigation. Where cases were referred to CFI teams at Heathrow and Manchester, we found that the approach they adopted was generally consistent. Only 38% of individuals suspected of having destroyed travel documents were investigated. However, the majority of cases where the individual had sought to use deception to enter the UK were investigated at both ports.
- 1.5 As part of our inspection, we examined what happened to individuals suspected of immigration offences whom CFI teams decided not to investigate. We looked at 88 port files relating to individuals who had arrived at Heathrow, Manchester and Liverpool airports. Where the individuals did not claim asylum, removal generally proved to be an efficient and cost-effective alternative to criminal investigation and prosecution. Of the 18 foreign nationals in our sample who were potentially subject to removal and had not claimed asylum, 17 were removed from the UK. In most instances, removal took place within two to four days. Where removal took
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- Where the individuals did not claim asylum, removal generally proved to be an efficient and cost-effective alternative to criminal investigation and prosecution*
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¹ These calculations were based on management information provided by the Agency. This included records of all cases not investigated across all UK ports and data showing the number of offences investigated, broken down by port and offence.

² The CFI team at Manchester Airport also deals with customs and immigration referrals from Liverpool airport and the CFI team at Dover deals with customs referrals from Coquelles in France.

longer, this was normally due to delays in obtaining travel documents from embassies and high commissions or legal challenges, rather than the actions of Border Force or the Agency.

- 1.6 However, our file sample demonstrated that the policy of using swift removal as an alternative to investigation and prosecution is not available in a large proportion of immigration cases. 73% (64 cases) of the individuals in our sample claimed asylum. This meant that they could not be removed from the UK until decisions had been made on their asylum claims and they had exhausted any in-country rights of appeal. Whilst 64% of these cases (41) were resolved, either through a grant of refugee status or removal, in 36% of cases (23) the individuals remained in the UK awaiting the outcome of an appeal or a decision on their initial claim. We were particularly concerned to find that nine individuals in our sample had been waiting on average for 323 days without initial decisions on their asylum claims. This is unacceptable.

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- 1.7 We found a lack of consensus on the circumstances in which certain immigration cases should be referred to CFI teams. Some Border Force officers told us that they saw no need to refer cases where they believed individuals who had arrived with false documents could be removed quickly. CFI team managers, by contrast, were of the view that they would expect all cases of suspected document fraud to be referred. There is a need to clarify the circumstances in which suspected immigration offences should be referred, and communicate that to staff.

- 1.8 There was a similar issue in relation to the re-referral of cases where the CFI team had initially advised against investigation because they assessed that the individual could be removed quickly, either directly or following any refusal of their asylum claim. We found little evidence that such re-referrals took place when circumstances changed or asylum claims failed. Clear guidance is needed on the circumstances in which re-referrals should occur.

There is a need to clarify the circumstances in which suspected immigration offences should be referred, and communicate that to staff

- 1.9 Whilst the recording of decisions on the investigation and non-investigation of customs offences was generally good, Heathrow had been over-recording the number of customs cases that its CFI team had adopted for investigation. Although the issue had been identified by senior managers and was in the process of being rectified at the time of our inspection, it is concerning that inconsistent practices had been allowed to develop. Record-keeping on decisions not to investigate immigration offences was particularly poor, making it difficult for us to assess the rationale for the decisions made. A clear audit trail should be kept in all cases. We also found that the management information that CFI teams kept was inadequate.

- 1.10 The records kept by the Agency and Border Force on the handling of offences need to be improved. The Agency's Crime Directorate was taking steps to address this, but it needs a much higher quality of management information in order to enable it to analyse trends and performance, as well as to direct future CFI activity.

- 1.11 Only 4% (12) of the cases that we examined involved children. No children were investigated and the Agency's policy is clear that this should take place only in exceptional circumstances. Where data was explicit, we were generally satisfied that the statutory duty to safeguard children was considered by Border Force and CFI teams. However, we were disappointed to find that, in the majority of cases, an audit of the steps taken to safeguard the welfare of children was not explicitly recorded as required by the Agency and Border Force's own guidance on keeping children safe.

1.12 Finally, we examined how Border Force and the Agency stored and handled personal data. The paper files we saw were generally in good condition with comparatively few duplicate documents. However, we were disappointed that the Agency was able to supply us with only 37% of the paper files we requested. This is the fifth time we have raised the issue of file management, storage and retrieval in our reports. The Agency and Border Force need to improve their file retention and retrieval processes so that information can be shared with those have a right of access to the information in a timely fashion.

The Agency needs a much higher quality of management information in order to enable it to analyse trends and performance, as well as to direct future CFI activity.

2. Summary of Recommendations

We recommend that:

1. the UK Border Agency implements a management information strategy on customs and immigration offences to enable it to analyse trends and performance, and to direct future activity;
2. the UK Border Agency ensures that decisions whether or not to investigate suspected immigration and customs offences are clearly documented;
3. the UK Border Agency and Border Force clarify and communicate to staff the circumstances in which suspected immigration offences should be referred to CFI teams;
4. the UK Border Agency ensures that there is clear guidance or policy on when a re-referral to CFI teams should take place in immigration cases and communicates this to Border Force and Agency staff;
5. the UK Border Agency makes initial decisions on asylum claims in line with its own published standards and ensures that reasons for any delay are properly recorded and communicated to claimants;
6. the UK Border Agency and Border Force ensure that an audit of all contact with children is documented in line with guidance on keeping children safe; and
7. the UK Border Agency and Border Force ensure that file retention and retrieval processes are managed to enable information to be provided efficiently to authorised recipients.

3. The Inspection

The Independent Chief Inspector

- 3.1 The role of the Independent Chief Inspector ('the Chief Inspector') of the UK Border Agency (UKBA or 'the Agency') was established by the UK Borders Act 2007 to examine and report on the efficiency and effectiveness of the Agency. In 2009, the Chief Inspector's remit was extended to include customs functions and contractors.
- 3.2 On 20 February 2012, the Home Secretary announced that Border Force would split from the Agency from 1 March 2012, to become a separate operational command under a Director General within the Home Office. The Home Secretary confirmed that this change would not affect the Chief Inspector's statutory responsibilities and that he would continue to be responsible for inspecting the operations of both the Agency and the new Border Force. On 22 March 2012, the Chief Inspector of the UK Border Agency's title changed to become the Independent Chief Inspector of Borders and Immigration. His statutory responsibilities remain the same.
- 3.3 The Chief Inspector is independent of the Agency and Border Force and reports directly to the Home Secretary.

Purpose and Aim

- 3.4 One of the principal purposes of Border Force is to disrupt illegal activity at the UK border, be that people (illegal immigration) or goods (for example, drugs and firearms).
- 3.5 This reflects the harm that such activity can do – illegal immigration reduces public confidence in the immigration system and the incentive for other people to follow the immigration rules; in serious cases, it can also lead to criminal exploitation. Items such as firearms cause harm to individuals and communities. A Home Office strategy document of February 2010 estimated that the use of Class A drugs costs around £17.6 billion in crime and health costs each year.³
- 3.6 This inspection focused on whether the Agency and Border Force chose to pursue criminal investigations (with a view to prosecution) or alternative sanctions (such as administrative removals in immigration cases, or compounding fines in drugs cases) when they encountered suspected illegal activity at the border.

Terms of Reference

- 3.7 The terms of reference for this inspection were to inspect the efficiency and effectiveness of the handling of suspected prosecutable customs and immigration offences at ports, making recommendations for improvement where necessary. To achieve this we used the Chief Inspector's inspection criteria,⁴ which are grouped under the themes of:

³ 'Protecting Our Border, Protecting the Public – The UK Border Agency's five year strategy for enforcing our immigration rules and addressing immigration and cross border crime', February 2010, p11.

⁴ All criteria of the Independent Chief Inspector of Borders and Immigration can be found at <http://icinspector.independent.gov.uk/wp-content/uploads/2010/03/Inspection-Criteria.pdf>

- Operational Delivery;
- Safeguarding Individuals; and
- Continuous Improvement.

Scope

3.8 The inspection looked at the handling of prosecutable customs and immigration offences by the Criminal and Financial Investigation (CFI) teams at Heathrow Airport, Manchester Airport and the port of Dover. The CFI team at Manchester Airport also takes referrals from Border Force at Liverpool Airport, and the team at Dover also takes referrals from Border Force staff at French ports. The CFI teams at Heathrow and Manchester Airports handle both customs and immigration referrals, whereas the CFI team at Dover (at the time of the inspection) only took customs referrals. Under the juxtaposed controls arrangements, immigration control takes place on the French side of the English Channel. The inspection considered:

- the decisions by the Agency's CFI teams (in Heathrow, Manchester and Dover) whether to investigate suspected customs and immigration offences referred to them by Border Force – in particular whether those teams are making consistent decisions and using their powers effectively; and
- the administrative action taken in the cases of those suspected immigration offenders whom CFI teams decided not to investigate.

It did not consider:

- investigations of suspected offences by CFI teams;
- prosecutions of suspected offenders; or
- in-country cases referred to those CFI teams which are based inland, rather than at ports.

Methodology

3.9 In carrying out this inspection, we:

- analysed management information and documentation relating to the handling of suspected immigration and customs offences, including legislation, policy and guidance;
- sampled documentation for 290 cases referred to CFI teams at Heathrow, Manchester and Dover by Border Force, including some which were accepted for investigation and some which were not;
- sampled 88 port files relating to those people who were not accepted for investigation by CFI staff, to examine how their cases were then dealt with; and
- carried out interviews with 29 Border Force and Agency members of staff during the onsite phase of the inspection which took place in the period 11-19 June 2012.

3.10 On 27 September 2012, the inspection team provided feedback on high level emerging findings to the Agency and Border Force.

3.11 The inspection identified seven recommendations for improvement.

4. Background

Criminal investigations or alternative sanctions?

- 4.1 The Agency and Border Force have two main options for tackling suspected illegal activity encountered at ports. They can use criminal investigations with a view to prosecution⁵ or alternative sanctions. This inspection focused on the consistency and rationale for decisions to pursue these approaches in individual cases.
- 4.2 Criminal investigations may lead to custodial and community penalties; a judge may also, in certain circumstances, impose a preventative order, such as a Serious Crime Prevention Order or a Travel Restriction Order. Penalties deriving from these investigations send a strong, visible message about society's view of the behaviour in question and they seek to present a deterrent to others. The aim is to offer a proportionate response to the harm inflicted on society.
- 4.3 Parliament has, over a period of decades, created a large number of criminal offences relating to customs and immigration. Not all of those are likely to be encountered by officers at the border; those that are likely to be met include:
- Misuse of Drugs Act 1971, section 3 (restriction of importation and exportation of controlled drugs);
 - Immigration Act 1971, section 25 (assisting unlawful immigration to an EU member state ['facilitation']);
 - Customs and Excise Management Act 1979, section 170 (penalty for fraudulent evasion of customs duty);
 - Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, section 2 (entering the UK without a passport or other immigration document); and
 - Identity Documents Act 2010, section 4 (possession of false identity documents, etc., with improper intention).
- 4.4 However, alternative sanctions can sometimes be a more appropriate response to wrong-doing, especially for less serious offences. The resources of the criminal justice system are finite and so investigation with a view to prosecution cannot take place in every case of suspected crime identified at the border; cases have to be prioritised. Prosecution is also expensive. An administrative sanction will often be a more efficient and cost-effective solution. Such a sanction may also be a more proportionate response to the harm caused by the offence where it is of a minor nature. The challenge for Border Force and the Agency in every case is to match the appropriate sanction to the behaviour, taking individual circumstances, policy and guidance and the public interest into account.
- 4.5 In immigration cases, the main alternative sanction available to Border Force and the Agency is administrative removal. Those people who have no legal right to be in the UK are potentially subject to removal. This includes:

⁵ Border Force and UKBA do not carry out prosecutions themselves. In England and Wales these are done by the Crown Prosecution Service (CPS), in Northern Ireland by the Public Prosecution Service of Northern Ireland (PPSNI), and in Scotland by the Crown Office and Procurator Fiscal Service (COPFS).

- illegal entrants (Immigration Act 1971, Schedule 2, paragraph 9);
- those refused leave to enter the UK (Immigration Act 1971, Schedule 2, paragraph 8);
- those who remain in the UK beyond the expiration of their leave;
- those who do not observe a condition attached to their leave;
- those who use deception in seeking leave to remain;
- those whose indefinite leave to enter or remain has been revoked; and
- family members of those against whom removal directions have been made (Immigration and Asylum Act 1999, section 10).

4.6 When an individual is found in possession of drugs at the border, the most common alternative sanction is the payment of a compound settlement (under section 152(a) of the Customs and Excise Management Act 1979), which can be imposed if a Class B drug (up to 10 grams/dose equivalent for amphetamines, up to 50 grams/dose equivalent for other Class B drugs) or Class C drug (up to 50 grams/dose equivalent) is seized. The penalty imposed is generally £100 for Class C drugs, and £100 - £300 (depending on the quantity of the drug found) for Class B drugs. Another example of an alternative sanction for customs offences would be the seizure of the goods in question.

The organisational landscape

- 4.7 In April 2008, the immigration functions of the then Border and Immigration Agency and the border customs detection functions within Her Majesty's Revenue and Customs (HMRC) were brought together within the Agency and, since 1 March 2012, within Border Force. In the first instance, suspected illicit goods and illegal immigration are detected by Border Force.⁶ For example, in the financial year 2010/11, the Agency (then incorporating what is now Border Force) made 3,954 drug seizures. This included 64% of the quantity of cocaine seized in the UK that year.⁷ In the same period, individuals forfeited more than £6.4m in cash under Proceeds of Crime Act 2002 (POCA) powers.⁸
- 4.8 Border Force does not itself investigate criminal activity. Instead, suspected customs or immigration offences are referred to the Crime Directorate within the Agency, which was established in 2010 and now sits within the Agency's Enforcement and Crime Group. It includes CFI teams, which are divided into two categories:
- CFI (Borders), which is based within ports and investigates suspected offences referred by customs and immigration officers at ports; and
 - CFI (Immigration), which deals with suspected offences detected in-country.

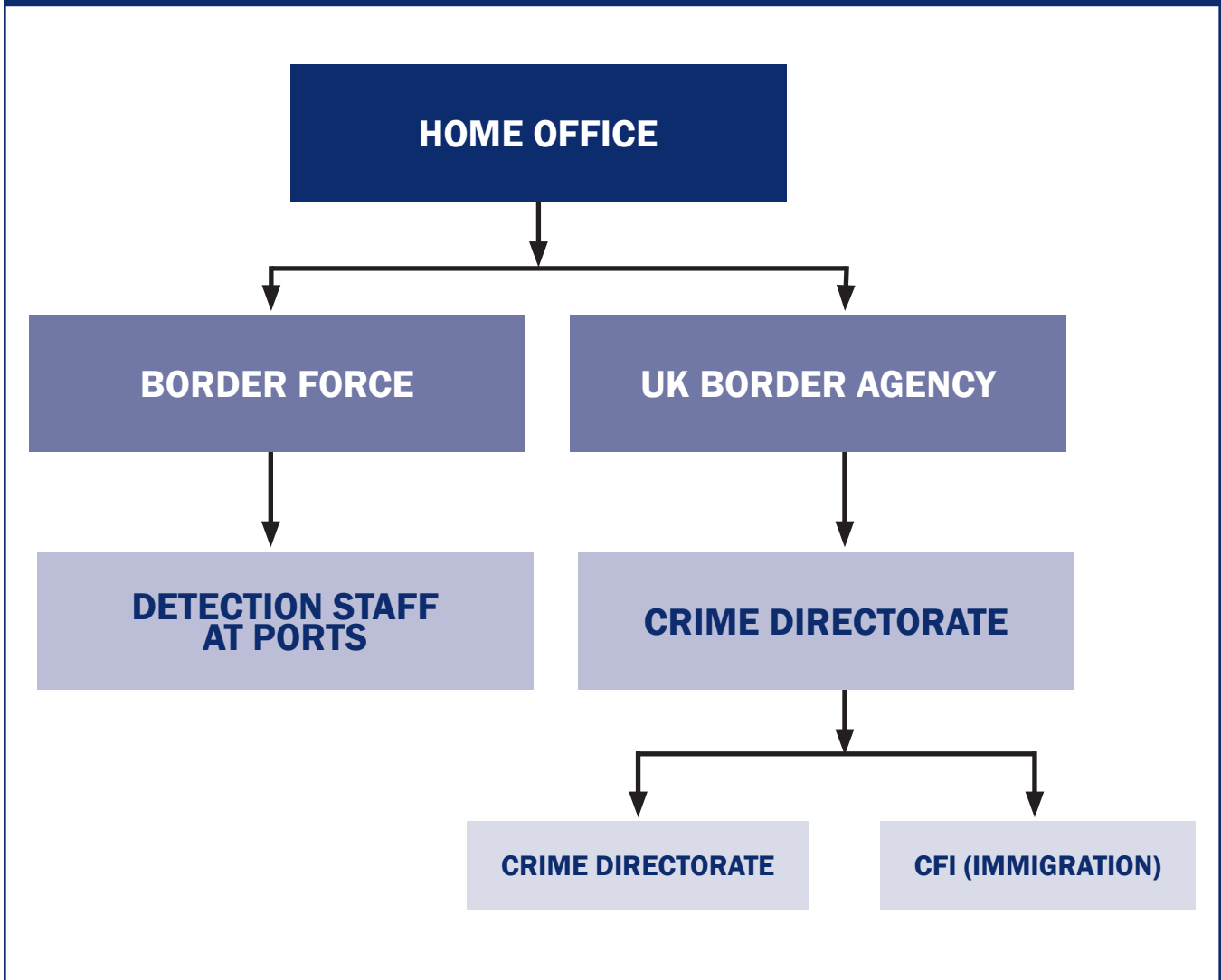
This inspection deals solely with the work of CFI (Borders) teams. Figure 1 illustrates the organisational structure.

⁶ In some cases, other parties, such as the police or airline staff, may detect suspected offences.

⁷ Home Office Statistical Bulletin, 'Seizures of drugs in England and Wales, 2010/11', second edition, 9 November 2011, pages 17-18.

⁸ UKBA Crime Directorate Business Plan, 2011/12-2014/15, page 3.

Figure 1: Organisational structure



- 4.9 According to its business plan, the stated purpose of the Crime Directorate is to disrupt and dismantle the organised criminal networks which seek to undermine the UK's border and immigration controls.⁹ It has an annual budget of around £37m¹⁰ and around 750 staff,¹¹ including a number of secondees from the police.
- 4.10 CFI teams are responsible for the investigation of all immigration, cash and non-fiscal customs offences detected at ports (whereas fiscal customs offences, such as tobacco smuggling, are dealt with by HMRC). They do so in partnership with other organisations, such as the police and the Scottish Crime and Drug Enforcement Agency. For example, offences tend to be categorised by the relevant agencies as:
- Level 1 (local level immigration and cross border crime, such as overstaying immigration leave);
 - Level 2 (regional immigration and cross border crime, for example, facilitating illegal immigration); or
 - Level 3 (international immigration and cross border crime, for example, trafficking large quantities of Class A drugs).

⁹ Crime Directorate Business Plan, 2011/12-2014/15, page 8.

¹⁰ Crime Directorate Business Plan, 2011/12-2014/15, page 15.

¹¹ From information provided by UKBA managers.

Whilst the Agency would lead on Level 1 and 2 offences, the Serious Organised Crime Agency (SOCA) leads on Level 3 offences.¹²

- 4.11 The Home Office directory of business lists 74 staff in the CFI team at Heathrow (excluding the surveillance unit), 21 in Manchester and 70 in Dover.¹³

Criteria for investigating suspected offences

- 4.12 Border Force officers do not refer every case which they encounter to CFI teams. There is not the capacity to investigate all suspected offences detected at ports and so cases must be prioritised. Staff at the border follow general guidance, or 'referral criteria', which set out when it is mandatory to refer offences detected at ports to CFI teams. These criteria were established to attempt to ensure an effective use of resources, a proportionate response to offences and a broadly consistent approach to referral and investigation.¹⁴ For customs offences, the criteria also incorporate the expectations set out in the HMRC Enforcement Handbook. Officers are required to notify CFI teams when they detect one of the following nine offence types:
- i. Facilitation;
 - ii. People trafficking;
 - iii. Cases where the volume of offences indicates serious and organised immigration crime (for example, visa fraud);
 - iv. Accompanied and unaccompanied illicit drug importation;
 - v. Importation of firearms;
 - vi. Offensive weapon(s) where there are aggravating factors;
 - vii. Importation of indecent and obscene material;
 - viii. Importation of prohibited goods and products under Products of Animal Origin rules or The Convention on International Trade in Endangered Species; and
 - ix. Importation of cash over £1,000 under the Proceeds of Crime Act 2002 (if there are reasonable grounds to suspect that the origins of the cash could be illegitimate).

In turn, CFI teams follow the referral criteria in deciding which offences to investigate.

- 4.13 For other offences, there is no expectation that Border Force officers must refer cases to CFI teams. Instead, they make further enquiries to satisfy themselves as to whether alternative sanctions can be used to deal with offences effectively.
- 4.14 In the case of immigration offences, Border Force officers should consider whether there are other aggravating factors, for instance whether the passenger is a repeat offender or they suspect that there could be links to serious and organised crime, in which case the individual may be of interest to a CFI team. Otherwise, if the passenger can be removed, Border Force officers may remove them from the UK without consulting CFI teams about the prospect of a criminal investigation. Border Force officers may still contact CFI teams if they have concerns or are seeking advice about offences detected.
- 4.15 In the case of customs offences, officers must follow the relevant parts of HMRC's Enforcement Handbook, which also contains guidance on alternative sanctions.

¹² 'Protecting Our Border, Protecting the Public – The UK Border Agency's five year strategy for enforcing our immigration rules and addressing immigration and cross-border crime', February 2010, pages 14-15.

¹³ Home Office intranet.

¹⁴ UKBA criminal investigations – Standard Acceptance Criteria, April 2009.

- 4.16 In general, there is greater discretion about whether to refer suspected immigration offences to CFI teams than there is in relation to suspected customs offences, particularly drug importation.
- 4.17 In deciding which of the cases referred to them should be investigated, the Agency's policy sets out that criminal investigations should be pursued when:
- it is in the public interest to prosecute;
 - there is enough evidence to bring a charge; and
 - a prosecution would help the Agency and Border Force to fulfil their duties and organisational aims.

The first two considerations are a matter for the Crown Prosecution Service (CPS) in England and Wales or Crown Office in Scotland, whilst the third is a matter for the Agency.

- 4.18 Cases may not be investigated if the suspect has protection under law from prosecution, known as a 'statutory defence'. This may concern, for example, acting under duress, but most commonly involves the behaviour having been carried out in connection with an asylum claim (if an asylum application is made soon after arrival in the UK).¹⁵ Case law has over the years widened the definition of a protected person in these circumstances, leading to fewer cases passing the CPS's threshold test for prosecution. This in turn has influenced decision-making by CFI managers.
- 4.19 If CFI teams decide not to investigate a case, it is returned to Border Force who may decide to pursue alternative sanctions such as a fine or, in immigration cases, removal from the UK.
- 4.20 Figure 2 sets out the number of cases that were referred to CFI teams at all UK ports, considered appropriate for investigation and put before the prosecuting authorities between April 2011 and January 2012.¹⁶

Figure 2: Number of cases referred to CFI teams at all UK ports between April 2011 and January 2012

Cases referred to CFI (Borders) teams	2,582
Cases not considered appropriate for investigation	1,468
Cases considered appropriate for investigation	1,114
Number of people arrested	740
Number of people charged	696
Cases referred to prosecuting authorities	675
Cases prosecuted by prosecuting authorities	621
Cases not adopted by prosecuting authorities	54

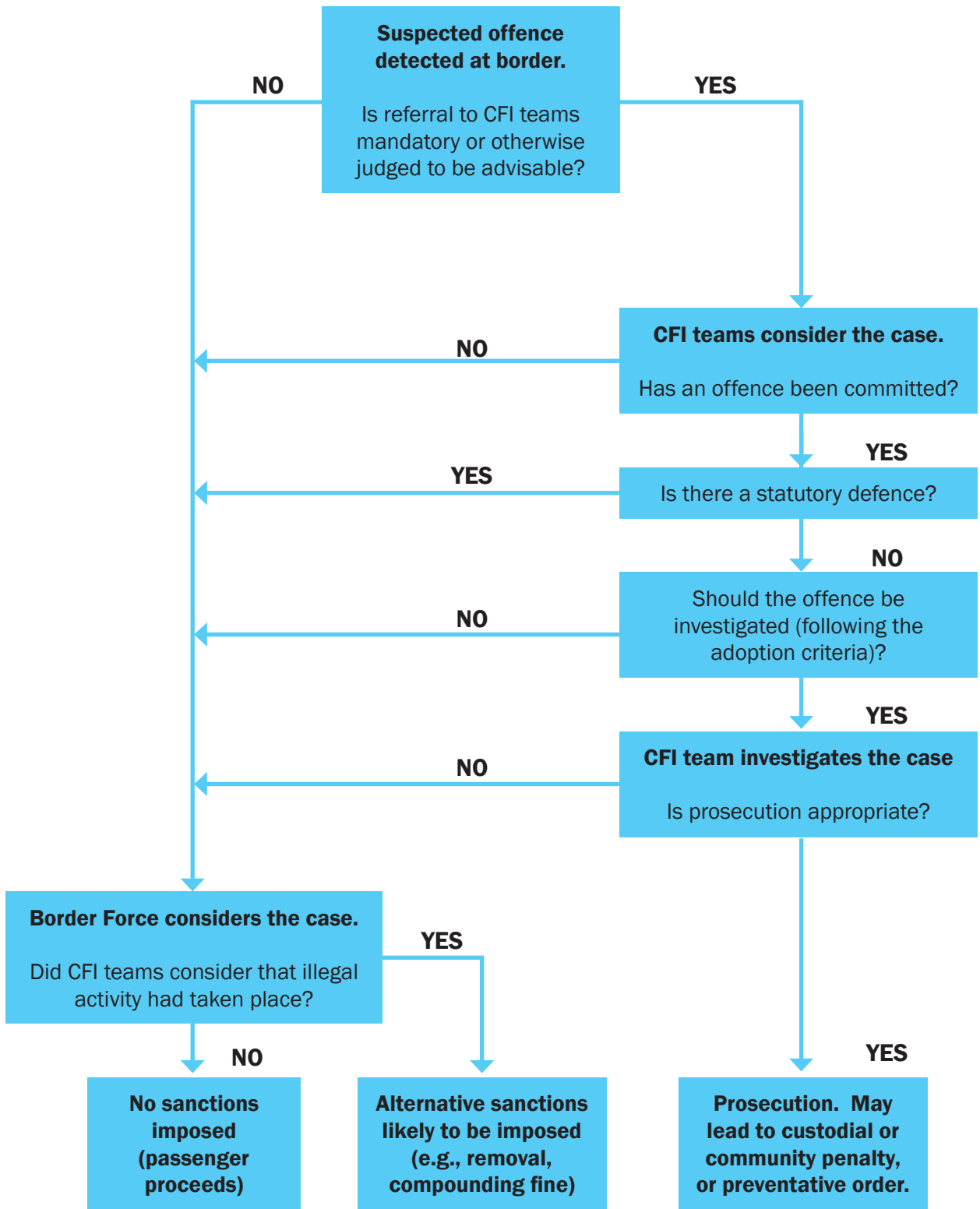
- 4.21 Over the period April 2011 – February 2012, 1,604 suspected offences were referred by Border Force officers to CFI teams at Heathrow, Manchester and Dover. This constituted 56% of all referrals to CFI (Borders) teams during that period.¹⁷
- 4.22 Figure 3 is a simplified flowchart showing the process followed when a suspected offence is detected at the border.

¹⁵ See Immigration and Asylum Act 1999, section 31 (<http://www.legislation.gov.uk/ukpga/1999/33/section/31>)

¹⁶ Internal UK Border Agency management information.

¹⁷ This calculation was based on management information provided by UKBA. This included records of all cases not investigated across all UK ports and data showing the number of offences investigated, broken down by port and offence.

Figure 3: Flowchart showing process followed when a suspected offence is detected at the border



5. Inspection Findings: Operational Delivery – Customs and Immigration Offences

Customs and immigration offences should be prevented, detected, investigated and, where appropriate, prosecuted in accordance with the law.

- 5.1 Border Force and the Agency have considerable powers to investigate passengers suspected of breaching immigration and customs laws at ports across the UK. These powers can lead to prosecution and reflect the importance Parliament has attached to upholding the law in relation to immigration crime and the importation of prohibited goods and illicit cash. There are a number of other ways in which passengers in breach of the law can be dealt with. We looked at what powers were used, the rationale for invoking them and how consistently they were used to handle offences at the locations we inspected.

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Passenger numbers and offences referred to CFI teams

- 5.2 In 2011, the number of passengers entering or transiting through all UK ports where records are kept exceeded 240 million.¹⁸ Heathrow, Manchester and Dover were amongst the busiest ports in the UK and, in total, handled 42% of the total number of UK passengers for the year. Figure 4 below provides a breakdown of the number of passengers across the three ports as a percentage of the total number of passengers recorded in 2011.

Figure 4: Breakdown of passengers across the three ports during 2011

Passenger numbers entering or transiting through the UK during 2011, including via Heathrow, Manchester and Dover Ports		Percentage of passengers from sample ports against UK total
UK Passengers - across all Ports	240,795,683 ¹⁹	100
Heathrow	69,433,230	28.8
Manchester	18,892,756	7.8
Dover	12,769,000 ²⁰	5.3
Three Ports Combined	101,094,986	42.0

Department of Transport Statistical Bulletin; Sea Passenger Statistics 2011

¹⁸ Note: As transit passengers are also recorded, the figures include journeys made to and from the UK ports.

¹⁹ <http://assets.dft.gov.uk/statistics/releases/sea-passenger-statistics-2011/sea-pass-2011.pdf> and http://www.caa.co.uk/docs/80/airport_data/2011Annual/Table_09_Terminal_and_Transit_Pax_2011.pdf

²⁰ This figure represents both departures and arrivals and includes all vehicle drivers and their passengers and foot passengers on ferries and those on cruises and long sea journeys.

Civil Aviation Authority: UK Airport Statistics 2011

- 5.3 Despite the very high volume of passengers entering UK ports, only a small number of individuals encountered by Border Force are referred to CFI teams. Of those referred in 2011, approximately half were subjected to criminal investigation. Those not investigated further were dealt with using alternative sanctions such as administrative removal in immigration cases, or the seizure of goods and cash in customs cases.²¹
- 5.4 From the data provided by the Agency, we calculated that CFI teams handled 2,885 suspected customs and immigration offences for the reporting period April 2011 to February 2012.²² Of these, 46% (1,315)²³ were recorded by the Agency as subject to an investigation that could lead to prosecution by the courts.
- 5.5 The Agency's CFI teams at Heathrow, Manchester and Dover handled more than half of all the cases during this period and 52% of those cases were recorded as appropriate for criminal investigation. This was broadly in line with the national picture. The CFI team at Heathrow handled the most cases (30%) compared to Dover (17%) and Manchester (9%).
- 5.6 Senior managers in the Agency's Crime Directorate told us that, during the period covered in our sample, the CFI team at Heathrow was over-recording the number of customs cases considered appropriate for investigation. At the time it was counting all customs referrals from Border Force as 'adopted' cases, even when a decision was made not to investigate. They claimed that this issue had since been rectified and that Heathrow's practice had been brought into line with other ports.
- 5.7 Whilst we welcome this assurance, we are concerned that inconsistent practices on recording of decisions to investigate had been allowed to develop. We comment in greater depth on this issue in Chapter 8. Figure 5 below provides a breakdown of the suspected offences and the decisions on whether to investigate made by the three CFI teams.

We are concerned that inconsistent practices on recording of decisions to investigate had been allowed to develop

Figure 5: Suspected offences and CFI team decisions

Suspected Offences	Investigated	Not Investigated	Percentage (%) Investigated
Heathrow	503	354	59
Manchester	131	124	51
Dover	200	292	40
Total	834	770	52

- 5.8 The Agency also works with other law enforcement agencies to investigate and prosecute offences detected at ports. Figures covering the period April 2011 to January 2012 showed that the investigation team at Heathrow assisted other agencies in 660 customs related cases. This was 98% of the total number of cases for the three ports.²⁴

21 Initial decisions by CFI teams to conduct criminal investigations are subject to advice provided by the CPS and can change. Additionally, not all passengers referred are subject to alternative penalties where investigators decide that no offence has been committed or there is insufficient evidence of an offence.

22 These calculations were based on management information provided by the Agency. This included records of all cases not investigated across all UK ports and data showing the number of offences investigated, broken down by port and offence.

23 63% of the total number of cases recorded as subject to investigation were handled at Heathrow, Manchester and Dover.

24 UKBA Criminal and Financial Investigation (Borders) performance data April 2011-Jan 2012. Other law enforcement Agencies include HMRC and SOCA.

How offences are handled – investigative decision-making and the reasons for taking action

- 5.9 The Agency has set a benchmark for criminal investigations that prioritises the most harmful offences (serious and organised criminal activity) and promotes the use of alternative sanctions where this is deemed appropriate. This allows Border Force and the Agency to deal with less serious immigration offences administratively by removing people from the UK where possible.
- 5.10 The decision to investigate is a reactive one and starts with the detection of a suspected offence at a port which can then be referred to the respective CFI team. There is no specific guidance or instruction for investigators to make decisions over how to proceed with a case, but factors influencing a decision to investigate include:
- the seriousness of the offence;
 - whether the offence could be linked to more organised criminal activity;
 - evidence of repeat offending ('aggravating factors'); and
 - the extent to which the Agency's functions (to uphold immigration and customs law) can still be met by using alternative sanctions such as seizing goods, cautioning, fining, or removing people from the UK.
- 5.11 We assessed 290 decisions made by CFI teams between April 2011 and March 2012 drawn from each of the locations we inspected. Of these, 132 were made at Heathrow, 88 at Manchester and 70 at Dover. For immigration offences, we compared the ports of Heathrow and Manchester. For customs offences, we examined decisions to investigate at all three ports where recorded. Combined, our sample included 170 cases (59%) in which decisions to investigate were made. In the remaining 120 (41%), investigators advised the use of either alternative sanctions or took no further action.²⁵ Meaningful comparisons were, however, only possible between Manchester and Dover, given that Heathrow had not recorded any non-investigated customs cases in the period covered by the records we reviewed.

Importation/customs-related offences

- 5.12 For customs-related offences, our sample contained 178 decisions made by CFI teams. The most common suspected lead offences fell under the Misuse of Drugs Act 1970 (MDA), Customs and Excise Management Act 1979 (CEMA) and the Proceeds of Crime Act 2002 (POCA), and related specifically to the importation of illicit drugs and cash. Figure 6 sets out the percentage of customs-related cases in our sample which were handled at each port, broken down by suspected offence and the outcome recorded by CFI teams.

²⁵ These were cases where CFI teams decided there was insufficient or no evidence of an offence.

Figure 6: Decisions made on referrals of customs-related cases

Decision to Investigate/Not Investigate	Legislation			
	Misuse of Drugs Act 1971	Proceeds of Crime Act 2002	Firearms Act 1968	Customs and Excise Management Act 1979
Heathrow				
Investigated:	100%	100%	0%	100%
Not Investigated:	0%	0%	0%	0%
Manchester				
Investigated:	78%	47%	100% (2 cases)	100%
Not Investigated:	22%	53%	0%	0%
Dover				
Investigated:	50%	38%	80%	100%
Not Investigated:	50%	62%	20%	0%

- 5.13 Our sample of 178 decisions made by CFI teams included 118 where criminal investigation was considered the most appropriate course of action.
- 5.14 Figure 6 shows that Manchester decided to undertake criminal investigations in a greater proportion of drugs and cash importation offences than Dover. This primarily reflected the higher number of cases where the use of alternative sanctions was deemed appropriate at Dover as compared to Manchester.
- 5.15 At Manchester, 16 cash and seven drug offences were recorded as investigated compared with 15 cash and 12 drugs offences at Dover. Of those not investigated, the figure for Manchester was 19 cash and two drugs offences compared with 24 cash and 12 drugs offences at Dover. Of the 12 drugs offences not investigated at Dover, seven qualified for a compound fine compared with one at Manchester. Thus, proportionately, similar decisions were being taken to handle offences using investigatory and non-investigatory powers.
-
- Similar decisions were being taken to handle offences using investigatory and non-investigatory powers*
-
- 5.16 In our sample of 60 (35%) cases at Dover and Manchester where a decision was made not to investigate, the majority of passengers (40 cases) faced no further action. Without exception, these related to suspected offences under POCA 2002 where the Agency has the power to investigate the importation of cash over £1,000 to determine its source or intended use in the UK.
- 5.17 The Agency's records were adequate in noting the reasons for not investigating. We found that in almost all of these cases, CFI teams noted that following checks, they were satisfied with the evidence passengers gave for importing cash amounts. This demonstrated a robust use of investigatory powers to establish the legality of cash being imported.
- 5.18 In the remaining 20 cases, CFI teams were satisfied that, whilst an offence had been committed, alternative action was appropriate. We found the most common penalties used were the following:

- seizing the goods found; and
- compounding fines.

5.19 The majority of these cases also fell under the Misuse of Drugs Act 1971. Our sample showed that 14 of the 20 cases related to the importation of illicit drugs.²⁶ Where records were explicit, we found that eight concerned the importation of small quantities of Class B drugs. In those cases where the records were sufficient, CFI teams advised the use of alternative penalties appropriately.

5.20 In all of the cases, Border Force seized the drugs and, in four cases, passengers were also offered a compound fine instead of court proceedings. We were unable to determine from the records provided whether fines were also used for the remaining four cases.

5.21 We found that a further four cases potentially met the threshold for a criminal investigation, but decisions were made to seize and report and/or fine and release where passengers were found to be in possession of drugs. Three cases related to the importation of class A drugs where compounding is not permitted.²⁷ One case involved a class B drug offence at Manchester, the quantity of which was 51g, and was 1g over the legal limit for issuing a penalty.

5.22 Of the three cases involving class A drugs, one comprised 5kg of cocaine found on board a ship. The record indicated that no one suspect could be identified and, as a result, the drugs were seized only. In the two other cases, where the offences were detected at Coquelles and referred to investigators at Dover, less than 1g of cocaine was found by Border Force officers. Although the amount involved was small, we were concerned that in one case investigators advised a compound settlement for the offence, given that this was contrary to Border Force's own guidance on the limits for fining. Border Force subsequently informed us that they had revised their guidance to reiterate the point that class A drugs fall outside the scope of compounding.

We were concerned that in one case investigators advised a compound settlement for the offence, given that this was contrary to Border Force's own guidance on the limits for fining

Immigration offences

5.23 We found that the Agency used its powers to investigate suspected immigration offences less than they did for customs-related cases. This was to be expected given that the most serious immigration offences, such as facilitation, which are most likely to be considered appropriate for investigation, did not feature significantly in the records provided to us by the Agency.

5.24 The most common suspected immigration offence in our sample was that under section 2 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. Under section 2, it is an offence for a person at a leave or asylum interview to fail to present to officials his or her immigration document, and, if appropriate, an immigration document in relation to any dependent child with whom that person claims to be travelling or living. Offences under section 4 of the Identity Documents Act 2010 relating to immigration document fraud also featured significantly. However, our sample contained few offences of deception or facilitation under the Immigration Act 1971.

5.25 Figure 7 below sets out the breakdown of immigration cases in our sample and the decisions made on referrals by the CFI teams at Heathrow and Manchester.

²⁶ The remaining six cases comprised offensive weapons and the importation of restricted goods. One of these cases was subsequently taken on for investigation by the police.

²⁷ Border Force Operating Manual, UKBA intranet. According to this guidance, under no circumstances should a compounding fine be offered for Class A drug importation offences.

Figure 7: Immigration referrals and CFI team decisions on investigation

Decision to Investigate/ Not Investigate	Legislation			
	Section 4 Identity Documents Act 2010	Section 2 Asylum and Immigration (Treatment of Claimants, etc.) Act 2004	Section 24A Immigration Act 1971	Section 25 Immigration Act 1971 (facilitation)
Heathrow				
Investigated:	58%	39%	78%	50%
Not Investigated:	42%	61%	22%	50%
Manchester				
Investigated:	53%	36%	0%	100%
Not Investigated:	47%	64%	100% (1 case)	0%

- 5.26 Where records were explicit, we compared categories of offences across the two ports to assess the consistency of decision-making and the powers used. For suspected offences under section 2 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, the majority of passengers in our sample were dealt with administratively, irrespective of whether they arrived at Manchester or Heathrow. We found that CFI teams decided to investigate just over one third (38%) of cases. Comparatively, both ports were consistent in their approach to not pursuing criminal investigations.
- 5.27 In contrast, the majority of cases relating to deception offences under section 24A of the Immigration Act 1971 led to initial criminal investigations. Whilst this offence did not feature significantly in our sample (only eight cases at Heathrow and none at Manchester), 73% of these were recorded by the Agency as investigations.
- 5.28 For the offence of facilitation under section 25 of the 1971 Act, CFI teams decided not to pursue a criminal investigation in 50% of cases. Of the 6% in our sample, we found an even split between the number of cases investigated and those dealt with using alternative sanctions. Similarly, document fraud offences referred under section 4 of the Identity Documents Act 2010 mirrored section 25 offences in how they were dealt with. Our sample showed that CFI teams pursued criminal investigations in 55% of these cases. Whilst Manchester’s CFI team dealt with twice as many cases, we found similar decisions were made at both ports.

Common reasons for not pursuing an investigation

- 5.29 We found that the most common reasons for not pursuing a criminal investigation were that CFI teams were either not satisfied that an offence had been committed, or considered that a passenger had a ‘statutory defence’ against prosecution. This amounted to 73% of cases at Heathrow and 21% of cases at Manchester. The discrepancy between the figures for the two ports is explained, in part, by the greater proportion of individuals referred for potential investigation who claimed asylum on arrival at Heathrow and who were assessed as having a statutory defence against prosecution.

- 5.30 Under Article 31 of the 1951 United Nations Convention Relating to the Status of Refugees, to which the UK is a contracting party, a refugee who comes directly from a territory where their life or freedom was threatened shall not be penalised for their illegal entry or presence, so long as they can establish that they presented themselves to the authorities without delay and that they have ‘good cause’ for their illegal entry or presence. For instance, if a passenger can satisfy the UK authorities that they breached immigration control in the process of fleeing threats to their life or freedom in their home country, then ‘good cause’ would be demonstrated. Effectively, this means that they have a defence to an offence of illegal entry for which they might otherwise be prosecuted.
- 5.31 Whilst the primary purpose of section 2 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 was to criminalise persons who destroy or conceal documents on arrival in the UK; it also sets out where a statutory defence would apply in such circumstances. It thereby provides protection for genuine refugees who have a reasonable excuse for not being in possession of travel documentation at the time of their entry into the UK. CFI teams assess whether a passenger has a defence against prosecution based primarily on the information obtained during an asylum screening interview at the port.
- 5.32 We also found that CFI teams followed the Agency’s policy to recommend administrative removal as an alternative to criminal investigation in appropriate cases. Our sample showed that 53% of cases at Manchester resulted in a decision to advise the removal of passengers compared with 18% at Heathrow. The records we reviewed did not enable us to determine precisely why Manchester’s figure appeared disproportionately high compared to Heathrow’s. Only seven individuals at Heathrow were assessed as potentially suitable for removal from the UK. The majority of individuals referred for possible investigation at Heathrow claimed asylum and the Agency is legally obliged to consider such applications before it can consider any form of enforcement action.

The most common reasons for not pursuing a criminal investigation were that CFI teams were either not satisfied that an offence had been committed, or considered that a passenger had a ‘statutory defence’ against prosecution

6. Inspection Findings: Operational Delivery – Entry, Stay and Removal Decisions:

Decisions on the entry, stay and removal of people should be taken in accordance with the law and principles of good administration

Introduction

- 6.1 Guidance provided to Border Force officers and CFI teams makes it clear that, in certain immigration cases, ‘full consideration will always be given to the ability to remove the offender from the UK rather than seek a prosecution where this is the most appropriate action.’²⁸ This approach is taken in relation to immigration offences that are deemed less serious, where aggravating factors such as repeat offending or links to organised crime do not apply. The Agency and Border Force’s rationale for this approach is that administrative removal is generally a more cost effective, proportionate and efficient method of dealing with these people rather than using the criminal justice system.
- 6.2 Home Office published data²⁹ shows that, during the 2011 calendar year, there were 10,437 enforced removals of people who had been refused entry at all UK ports (not including the juxtaposed ports).
- 6.3 Statistics provided to us by the Agency showed that, over a similar period of time (April 2011 to February 2012), a total of 619 immigration cases were referred to CFI teams at Manchester and Heathrow airports. Of the 619, a total of 202 cases were investigated further by CFI staff and 417 cases were not investigated.
- 6.4 These statistics indicate that the vast majority of cases that resulted in refusal and removal from the UK were not referred to the CFI teams and, of those that were referred, more than two-thirds were not taken on for investigation.
- 6.5 We reviewed 88 cases electronically and examined 40 of the corresponding paper files, where the CFI teams at Manchester and Heathrow airports decided not to investigate people suspected of immigration offences. We examined what happened to the individuals concerned in order to establish the efficiency, effectiveness and consistency of the process.
- 6.6 Port files are used by Border Force officers to record the actions taken at port whilst dealing with a suspected immigration offender. Electronic records are also entered onto an electronic database called the Case Information Database (CID). We had access to the electronic records held on CID for all of the 88 cases in our sample. However, we were disappointed to have been provided with only 40 of the 88 port files we requested. We comment on this further in Chapter 7.

The vast majority of cases that resulted in refusal and removal from the UK were not referred to the CFI teams and, of those that were referred, more than two-thirds were not taken on for investigation

²⁸ Referral Criteria CFI (Borders), Enforcement and Crime Group, Crime Directorate.

²⁹ <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-tabs-q2-2012/?view=Standard&pubID=1060020>

Asylum and non-asylum cases

- 6.7 Of the 88 cases we examined, 73% (64 cases) involved people who claimed asylum. The UK is obliged to consider any claim for asylum under the 1951 Geneva Refugee Convention and cannot remove an asylum seeker until their claim has been determined or their rights of appeal from within the UK have been exhausted. This is significant as it meant that the option of administrative removal was not open to Border Force and the Agency.
- 6.8 27% (24 people) of the individuals in our sample did not claim asylum. Following the decision by the CFI team not to investigate the individuals for suspected immigration offences, the cases were returned to Border Force officers who were then able to make further enquiries with a view to deciding whether to allow the individuals into the UK or, where the individuals had no status in the UK, to seek to remove them. Figure 8 shows the breakdown of asylum and non-asylum cases between the ports in our sample.

Figure 8: Asylum and non-asylum cases

	Total	Heathrow	Manchester/Liverpool
Asylum	73% (64 cases)	70% (45 cases)	30% (19 cases)
Non-asylum	27% (24 cases)	67% (16 cases)	33% (8 cases)

- 6.9 There was a consistent pattern in the breakdown of asylum and non-asylum cases between the ports. The majority of suspected immigration offenders who were not investigated by CFI teams claimed asylum. Based on our sample, the policy of immediate or rapid removal as an alternative to criminal investigation is not one available to the Agency and Border Force in the majority of cases where individuals suspected of immigration offences are detected at ports.

Immigration offences

- 6.10 The immigration offences most commonly encountered by Border Force in our file sample related to document fraud and individuals who had presented themselves without documents. In cases of document fraud, an individual may have used a legitimately issued document that was altered, or used an entirely forged document. The individual does not have a lawful right to enter the UK and is attempting to enter the UK by fraudulent means. Figure 9 sets out the breakdown of suspected immigration offences in our sample.

Figure 9: Breakdown of immigration offences

	Total	Heathrow	Manchester/Liverpool
Deception	10% (9 cases)	13% (8 cases)	4% (1 case)
Document fraud	48% (42 cases)	46% (28 cases)	52% (14 cases)
Facilitation	1% (1 case)	2% (1 case)	0% (0 cases)
No documents	41% (36 cases)	39% (24 cases)	44% (12 cases)

6.11 There were minor discrepancies between the ports, for example, more individuals seeking to use deception to enter the UK were encountered at Heathrow, and a higher proportion of individuals arrived with fraudulent documents at Manchester and Liverpool. However, all three locations were broadly consistent in the profile of offences encountered. The profile is also consistent with the one we found in cases that were taken on for investigation by CFI teams in Chapter 5.

Non-asylum cases

6.12 Of the 24 individuals in our sample who did not claim asylum, we found that 23 (96%) had their cases resolved:

- 17 people (71%) were refused entry and removed from the UK;
- six people (25%) were allowed entry with valid leave; and
- one person (4%) appealed against removal on the grounds of Article 8 of the European Convention on Human Rights (ECHR) (private/family life).

All three locations were broadly consistent in the profile of offences encountered

6.13 Where individuals were granted leave to enter the UK, this was because further enquiries established that they had lawful residency in the UK. This does not imply that they should not have been referred to CFI teams initially; it is perfectly reasonable for enquiries to be made to establish whether a person has a legal right to stay in the UK. Figure 10 outlines a case study of one such example.

Figure 10: Case study – individual allowed to enter the UK

The person:

- arrived at Manchester Airport and presented a Pakistani passport that contained a stamp allowing them ‘indefinite leave to enter’ the UK;
- was asked to wait at the Airport while enquiries were made about the authenticity of the stamp.

Border Force:

- was satisfied the person was the rightful holder of the passport but had doubts as to whether the stamp was genuine;
- granted the passenger temporary admission to the UK and retained their passport whilst they made further enquiries;
- subsequently established that the stamp was genuine, confirmed that the person was rightfully allowed indefinite leave to enter the UK and returned the passport using recorded delivery.

Chief Inspector’s Comments:

We are satisfied that Border Force fully explained the reason for their enquiries to the person. Border Force attempted to resolve the matter whilst the person was at Manchester Airport; however, they were unable to do so on that day. Rather than detaining the individual overnight, they made the sensible decision of granting the person temporary admission, in the care of a family member who was confirmed as a British national. The next day, enquiries confirmed that the person was entitled to enter the UK and their passport was securely returned to them. This was good practice.

6.14 The one non-asylum case in our sample concerns a person travelling on a forged identity card who was established as being under the age of 18 and pregnant at the time of arrival in the UK. The port file demonstrated that Border Force officers displayed a good understanding of safeguarding issues and took all appropriate steps to look after her welfare. She was refused entry to the UK but appealed

against the decision under Article 8 of the ECHR. The Agency certified her Human Rights claim as clearly unfounded meaning that the appeal would be heard from abroad. Her legal representatives have challenged this and she remains in the UK.

Timescales for removal in non-asylum cases

- 6.15 In our sample, 17 individuals did not claim asylum and were subsequently removed from the UK. The median time taken to remove these individuals was two days. Of these people, 12 were removed within four days or less; of those 12, three were removed on the day they arrived, six within one day and a further three within four days. It took between six weeks and eight months to remove the remaining five people from the UK.
- 6.16 Those cases where removal took place within four days of arrival typically involved people who had travel documents or passports, or could be removed to the country of their departure. Figure 11 outlines a case study of one such example.

Figure 11: Case study - efficient removal of an individual who did not claim asylum

The person:

- arrived at Manchester Airport at 4pm on 15 August 2011;
- attempted to enter the UK as an EU national by presenting an Italian identity card.

Border Force:

- was not satisfied that the Italian identity card was genuine and rapidly established that it was a counterfeit document;
- searched the person's baggage and found a genuine Albanian passport;
- referred the case to the CFI team, who advised that they would look to prosecute the person if administrative removal failed;
- detained the person overnight and removed them to Albania at 8am on 16 August 2011.

Chief Inspector's Comments:

Border Force dealt efficiently and effectively with this person who had no right to be in the UK. The counterfeit document was detected, a genuine document found and the person was removed within 20 hours of arrival. This case illustrates the potential efficiency of administrative removal as an alternative to lengthy and costly criminal investigation and prosecution.

- 6.17 The five cases where removal took longer typically involved people who either did not have travel documents or who appealed against a decision to refuse them entry. Figure 12 outlines a case study of one such example.

Figure 12: Case study – inefficient removal of an individual who did not claim asylum

The person:

- arrived at Heathrow Airport on 5 July 2011;
- attempted to enter the UK using a Bangladeshi passport containing a vignette that provides indefinite leave to remain in the UK.

Border Force:

- was not satisfied that the person was the rightful holder of the passport and rapidly established that the passport contained a substituted photograph;
- refused the person entry and detained them;
- incorrectly gave them a right of appeal against the decision, and, following legal advice, allowed them to make the appeal which was dismissed on 11 August 2011;
- referred the case to the CFI team, who advised that they would investigate if the appeal was allowed and the person remained in the UK;
- applied for a travel document on 30 July 2011; and
- removed the person on 7 September 2011, having obtained a travel document on 25 August 2011.

Chief Inspector's Comments:

We are disappointed at the administrative failings that led to this person being detained at the taxpayer's expense for such a lengthy period. The individual should not have been given a right of appeal in the first instance.

The delays in obtaining a travel document also added to the time taken to remove this person, a disappointing 64 days after their arrival in the UK.

6.18 Administrative removal was possible in only 18 of the cases we examined (the cases where asylum was not claimed and the individual had no right of lawful residence in the UK). On the basis of the cases we reviewed, the removal of 96 % of these individuals (17) indicates that the policy of pursuing administrative action as an alternative to investigation is an effective one in non-asylum cases.

6.19 Furthermore, a median time of removal in two days across the ports in our sample indicates that the process is generally a cost-effective and efficient one, removing the majority of people quickly without the potential distress and cost of lengthy periods of detention. Where removal took longer, this was to a large extent due to factors beyond the control of Border Force such as appeals and delays in the issue of travel documents by Embassies and High Commissions. As the case study above illustrates, however, there is still room for Border Force to improve its internal processes.

The removal of 96 % of these individuals (17) indicates that the policy of pursuing administrative action as an alternative to investigation is an effective one in non-asylum cases

Asylum cases

6.20 When a person claims asylum and the CFI team has decided not to investigate, the claim for asylum will typically follow one of two routes:

- if the asylum application is one that is likely to be decided quickly (and other eligibility criteria are met) the person will enter the Agency's Detained Fast Track³⁰ (DFT) process and be detained pending the determination of their claim; or
- the person would be granted temporary admission to the UK whilst their claim was determined by an Agency caseowner in the region to which the claimant is allocated.

6.21 Of the 64 people in our sample who claimed asylum, we found that:

- 26 people (41 %) were granted asylum or Humanitarian Protection (a similar status);
- 15 people (23 %) were refused asylum and removed from the UK; and
- 23 people (36 %) had an ongoing asylum claim and remained in the UK.

Granted asylum

6.22 Of the 26 cases in our sample, the median time to grant asylum was 93 days. The quickest was granted within 15 days and the longest took 330 days. Our sample showed that 19 of the granted cases were resolved within the Agency's target of concluding asylum applications within six months, whilst seven of the granted cases exceeded the six month target. Figure 13 outlines a case study as an example of efficient decision-making.

Figure 13: Case study – efficient grant of asylum

The person:

- claimed asylum on arrival at Heathrow Airport at 6pm on 26 December 2011;
- was a Kuwaiti Bidoon national who did not have any travel documents.

Border Force:

- detained the person for one night whilst the initial screening interview was carried out and arrangements to accommodate the person made;
- contacted the CFI team, who did not wish to pursue an investigation.

The Agency:

- transferred the person to accommodation in Leeds on 27 December 2011; and
- granted asylum on 24 January 2012.

Chief Inspector's Comments:

We are pleased at the efficiency demonstrated by both Border Force and the Agency in this case. Border Force promptly completed the screening interview and showed due regard for the person's welfare. The Agency made immediate arrangements for accommodation and efficiently granted the person asylum within 29 days of their arrival in the UK.

³⁰ The Detained Fast Track process involves the detention of the applicant, prior to their asylum decision, in a designated immigration removal centre, with the intention of deciding their claim within two days.

Refused asylum and removed from the UK

6.23 In our sample, 15 people (23% of asylum cases) were refused asylum and subsequently removed from the UK. The median removal time was 73 days. This is significantly longer than the median removal time of two days for non-asylum cases, but that is to be expected given the complexity and level of scrutiny required to determine whether a person qualifies for asylum. People who claim asylum are less likely to have travel documents available, meaning the Agency is more likely to have to obtain travel documentation before removal. This process can be lengthy. The median removal time of 73 days was within the Agency's target for concluding asylum applications within six months.

The median removal time of 73 days was within the Agency's target for concluding asylum applications within six months

6.24 12 people were, at some point during their asylum claim, detained as part of the DFT process. Seven were removed and five remained in the UK. Of those removed, six remained in detention until their removal from the UK.

Ongoing asylum claims

6.25 In our sample, 23 of the people (36% of the asylum cases) remained in the UK without a conclusion to their claim for asylum. Of these ongoing cases:

- nine had an appeal outstanding, or were yet to submit an appeal;
- five had been refused asylum and exhausted all appeal rights; and
- nine had not received an initial decision on their claim.

6.26 Five people in our sample had been refused asylum and also had their appeals against that decision dismissed. This meant that the Agency could, theoretically, remove them to their home country. Three of the people whose appeals had been dismissed were from countries where the UK would not have been able to enforce their removal. One person was in hospital and the fifth person's case had been mismanaged by the Agency, as the case study in Figure 14 demonstrates.

Figure 14: Case study – inefficient management of an asylum claim

The person:

- was a Palestinian who had previously claimed asylum in the UK in 2009. This claim was refused although at appeal it was not possible to determine the person's precise nationality;
- left by their own volition at some point in 2011 (the exact date is not known);
- arrived in November 2011 at Heathrow Airport using a counterfeit Spanish passport and made a new claim for asylum.

The Agency:

- established that the person was not suitable for the DFT process and allocated the case to the unit that dealt with the person's previous asylum claim;
- transferred the case to a new team because the applicant had moved to a new area;
- allowed the person's temporary admission to expire on 17 January 2012;
- did not extend the temporary admission, nor make any progress with the case, despite the person contacting the Agency in January 2012 to ask if any correspondence had been sent;

- held the wrong address and had not updated their records;
- received ‘further representations’ from the applicant’s solicitors, but did not consider them.

Chief Inspector’s Comments:

We accept that addresses can be entered incorrectly – the person contacted the Agency and provided them with a new address, asking if correspondence had been sent out. The lack of any response from the Agency is unacceptable.

The failure of the Agency casework teams to accept ownership and responsibility for the case is unacceptable. The Agency should be able to manage this system and allow for a person to change their location. The temporary admission should have been updated; correspondence should have been sent to the person; the file should not have been placed in hold with no future action identified.

As of 14 September 2012 there had been no further actions taken beyond those identified above. Irrespective of the complexity of the case, the absence of any effort to progress this case is unacceptable.

6.27 We were disappointed to find that nine individuals in our sample had not yet received an initial decision on their asylum claim. The average (mean) ongoing time was 323 days, with a median of 328 days. In the oldest case, a decision had been outstanding for 472 days and in the shortest for 264 days. All of the nine had passed the six month mark, falling well outside the Agency’s target to conclude most cases, including any appeals, within six months. Figure 15 below details one such example where the delay in deciding the asylum claim was unacceptable.

We were disappointed to find that nine individuals in our sample had not yet received an initial decision on their asylum claim. The average (mean) ongoing time was 323 days, with a median of 328 days

Figure 15: Case study – no initial asylum decision

The person:

- claimed asylum on arrival at Heathrow Airport on 11 October 2011;
- presented a Malian passport but claimed to be a national of the Ivory Coast.

Border Force:

referred the case to the Agency who decided the asylum case was suitable for the DFT and detained the person overnight;

granted the person temporary admission following uncertainty over the person’s true nationality.

The Agency:

- suspected that the person was an Ivorian national in possession of a genuinely issued Malian passport, albeit one that was fraudulently obtained;
- recorded on 29 December 2011 that the Malian passport should have been sent to the Malian Embassy to establish if it was genuine;
- failed to record any further action on the CID.

Chief Inspector's Comments:

Whilst the disputed nationality issue is a complex one, it should not have prevented the Agency from making a decision on the person's claim for asylum. It would have been reasonable for the Agency to assess the claim based on the risks faced in both Mali and the Ivory Coast. It is surprising that it took the Agency so long to reach the conclusion that the passport should be verified by the Malian Embassy. What is even more disappointing is that, from the electronic notes on CID, it is not clear whether the passport ever reached the embassy. The Agency had not followed up the matter and had not progressed the asylum claim since January 2012.

It is unacceptable that, as of 14 September 2012, the individual had been waiting for 339 days without a decision on their asylum claim.

- 6.28 In many instances, the data available to us did not provide a clear rationale for why the cases were taking so long to resolve. The minutes recorded on the Agency's CID database were generally insufficient and did not allow us to draw any conclusions regarding the reasons for delay.
- 6.29 Other than in exceptional circumstances, taking longer than six months to make an initial decision on an asylum claim is unacceptable.

We recommend that the UK Border Agency:

- makes initial decisions on asylum claims in line with its own published standards and ensures that reasons for any delay are properly recorded and communicated to claimants.

Referral and re-referral to CFI teams

- 6.30 All of the 88 cases that we looked at had been referred to CFI teams. The initial referral had typically been made by a Border Force Officer who had encountered the person on the primary arrivals control (passport control).
- 6.31 Given that we know 100% of the cases in our sample were referred to CFI teams, we would have expected to find that 100% were recorded as such on either the port file or electronic records.
- 6.32 Whilst 83% of cases (73 cases) in our sample were documented as being referred to a CFI team, in 17% of cases (15 cases) there was no record that the referral took place. We would expect that a referral to a CFI team would have been recorded in the minutes of the case to demonstrate that Border Force officers had considered the potential for investigation of suspected immigration offences.
-
- The fact that individuals are not being re-referred when their circumstances change is a concern*
-
- 6.33 We found evidence that CFI teams regularly requested that cases be re-referred to them if the individual's circumstances changed or if removal did not take place within a short timescale, for example, following refusal of asylum or removal from the DFT process. CFI teams request the re-referral because grounds may remain to investigate the original suspected immigration offence.
- 6.34 We found specific evidence that cases were re-referred to a CFI team in only 6% (5 cases) of our file sample. We were surprised to find that none of the individuals who claimed asylum were re-referred to a CFI team once they had exhausted their appeal rights, nor were any of the six individuals who were initially placed within DFT process, but later dropped out of it. This was despite the fact that, in two of the six DFT cases, the CFI team had indicated a potential interest in investigating the individuals.

6.35 The fact that individuals are not being re-referred when their circumstances change is a concern. This means that similar cases are not being treated in a consistent way. CFI team decisions not to investigate document fraud and destruction offences are often made because the individual appears to have a statutory defence against prosecution or because their case is deemed straightforward and/or likely to result in prompt removal. However, when these circumstances change, placing the individuals on the same footing as those who are investigated, there is little evidence that re-referral takes place.

6.36 We found no evidence of any clear guidance or policy on when re-referral should take place. Whilst we found that CFI teams did ask for re-referrals, we found no evidence to indicate whether this was in line with Agency policy or not. Irrespective of whether the Agency wants re-referrals to take place, all evidence indicates that they are not. We believe the Agency needs to put in place a clear policy on the issue.

We found no evidence of any clear guidance or policy on when re-referral should take place

We recommend that the UK Border Agency:

- ensures that there is clear guidance or policy on when a re-referral to CFI teams should take place in immigration cases and communicates this to Border Force and Agency staff.

7. Inspection Findings: – Safeguarding individuals

Functions should be carried out having regard to the need to safeguard and promote the welfare of children

Personal data should be treated and stored securely in accordance with the relevant legislation and regulations

Balancing the duty to safeguard children and to uphold immigration and importation rules at ports

- 7.1 Under section 55 of the Borders, Citizenship and Immigration Act 2009, Border Force and the Agency are required to have regard to the need to safeguard and promote the welfare of children in carrying out their statutory functions. In practice, both organisations must consider the circumstances surrounding a suspected offence and take account of the safety and needs of children when deciding the most appropriate action to take.
- 7.2 There is no specific reference to the handling of offences where children are involved in the Agency's policy on criminal investigations. Consequently, there is no guidance to help CFI staff investigate matters relating to children under 18 years old. Instead, CFI teams are expected to adhere to the law, the Agency's current policy for criminal investigations, and safeguarding guidance in weighing up the factors in an individual case.³¹
- 7.3 Where data was explicit, we were satisfied that the duty to safeguard children was considered by Border Force when referring cases. However, an examination of the records did not allow us to determine in how many other cases consideration had been given to the section 55 duty and, if necessary, what steps were subsequently taken to put adequate safeguards in place when handling suspected offences.

Where data was explicit, we were satisfied that the duty to safeguard children was considered by Border Force when referring cases

The handling of cases involving children and families

- 7.4 Only 4% (12) of cases referred to CFI teams by Border Force involved children. Of the 290 decisions made by CFI teams which we reviewed, only two cases (less than 1%) related to children, both of whom were unaccompanied. In our sample of port files, we saw nine cases out of 88 (10%) involving families, and only one case involving an unaccompanied child.

³¹ Whilst in law, children over the age of criminal responsibility could be subject to prosecution, CFI teams would not consider this as a first option. Where cases involve children unaccompanied by adults, CFI teams would consider pursuing an investigation only in 'exceptional circumstances', e.g., where the age of the person is being disputed.

- 7.5 No suspected customs offences involving children or families were referred to CFI teams. Of the 12 immigration offence cases we examined,³² none resulted in a full investigation at the point of referral. In 11 cases, it was also clear from records that removal powers were not used. In the remaining case, the record did not specify whether the Agency used its powers to admit the passenger temporarily to the UK or pursue a removal. However, the record was clear that, as the suspected offender in this case was a ‘minor’, the case would not be investigated.³³
- 7.6 Amongst the 12 cases we saw, the most common set of circumstances presented to CFI teams were cases where passengers suspected of entering the UK without immigration documents claimed they had done so to seek asylum. Nine cases featured in our sample, eight of which were treated as families with dependent children.
- 7.7 Where there was a correlation between the type of offence and a claim for asylum, CFI teams decided not to conduct a criminal investigation, irrespective of the port the families arrived at. The records did not provide clear reasons for not pursuing criminal investigations. Nor did they provide assurances that checks had been carried out to confirm that the children present were legitimately linked to the family groups with which they travelled.
- 7.8 Given the lack of data on file and on the Agency’s database, we were unable to determine exactly why investigations were not pursued and if CFI teams felt it was in the best interests of children not to conduct a criminal investigation. In two cases, where the reasons were explicitly recorded, we found the presence of children was considered to be a significant factor in not pursuing an investigation.
- 7.9 In one of these cases, a 17 year old child in the advanced stages of pregnancy had travelled alone to the UK using a false identity card. In line with the Agency’s guidelines on the referral of offences detected at ports, the case was passed to a CFI team. Both the health and the age of the child were taken into account in the decision not to investigate. The file recorded the following:

‘Contacted CFI & spoke to [the investigator].....advised that they are unlikely to pursue any action due to the fact the [passenger] is 7 mths [sic] pregnant & possibly a minor. Advised that if anything else significant comes from speaking to her then ring back’

In the other case, the file simply said:

‘HIPU (Heathrow Immigration Prosecution Unit) decided NOT to prosecute as passenger has children with her’

- 7.10 Children over the age of criminal responsibility are potentially subject to prosecution. However, the Agency confirmed that whilst each case is based on its merits, it would normally consider investigating children suspected of committing offences only in exceptional circumstances. The Agency told us there were no plans to create separate guidance for children suspected of offences or in the company of adults suspected of having committed offences.

Making appropriate and timely referrals to child welfare agencies

- 7.11 The duty to safeguard children cannot be met in isolation. Both Border Force and the Agency are expected to work with child protection and welfare agencies to meet the duty by sharing relevant

³² Nine cases were handled at Heathrow and three at Manchester ports. There were no children-related cases from the port of Dover in our review.

³³ A local instruction issued by the CFI team to staff at Heathrow states that ‘minors’ suspected of section 2 offences will not be prosecuted. Whilst it is not clear whether this instruction has been shared with other investigation teams, the Agency told the inspection team that this guidance has been adopted from legal instructions underpinning vulnerable people suspected of committing offences against section 2 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

information.³⁴ Local authorities are primarily responsible for assessing children's needs and taking appropriate action. The Agency plays a contributory part in safeguarding children by identifying risk indicators and referring relevant information to the most appropriate agencies.

7.12 Border Force guidance on safeguarding children who arrive at ports is clear in setting out how to make a referral.³⁵ In two cases, information supplied to us by the Agency was conclusive in recording steps taken and we saw sufficient evidence of timely information-sharing to the appropriate child welfare agencies. In one of these cases, the Agency referred a 17 year old attempting to leave the UK to the UK Human Trafficking Centre for an assessment as to the likelihood of her being a victim of trafficking. In the other case, we saw adequate arrangements made to meet the healthcare needs of the child whilst in the care of port officials.

7.13 We were unable to establish what, if any, steps were taken to ensure the safety and well being of children accompanying adults in all the cases we sampled. Whilst it may be the case that evidence was apparent to officers dealing with each case that the children were related or legitimately travelling with adults, this was not made explicit in the records. We would expect to see an audit of contact with children and assurance documented in line with both Border Force and the Agency's guidance on keeping children safe.

We would expect to see an audit of contact with children and assurance documented in line with both Border Force and the Agency's guidance on keeping children safe

We recommend that the UK Border Agency and Border Force:

- ensure that an audit of all contact with children is documented in line with guidance on keeping children safe.

7.14 The Agency's legal obligation to safeguard children did not form an integral part of this inspection. However, and as published in our most recent inspection plan, we intend to conduct a more detailed thematic inspection of the Agency's duty of care to unaccompanied children in 2013.

File management and the storage and handling of personal data

7.15 We expect Border Force and the Agency to comply with the requirements of the Data Protection Act and related legislative frameworks when handling personal data. In addition, Border Force and the Agency should use good practice guidance in treating and storing data held on files.

We were unable to satisfy ourselves that there was a clear audit trail in all cases

7.16 We assessed the handling of personal data and the storage of information whilst carrying out our inspection. We requested 109 paper files in total but only 40 (37%) were received by the inspection team by the agreed deadline of 10 August 2012. Our own audit showed that of these, 14 files (17%) could not be located by Border Force or the Agency. This was either because there were no file reference numbers with which to begin a search, or files were recorded as in storage but subsequently hard copies could not be found.

Requesting and retrieving information on file

7.17 The type and location of files requested has had a bearing on the Agency's ability to retrieve and share information with inspection teams. Where files comprise applications from individuals in short term contact with the Agency and were stored in one location, we have generally obtained adequate and

³⁴ The Agency's instruction to staff on 'Keeping Children Safe' also states that, conversely, where immigration matters arise from child welfare cases, there is an expectation on local authorities and the police to refer relevant information to the Agency.

³⁵ Border Force Operating Manual, Home Office intranet

timely information. However, where files are stored in multiple locations and/or relate to individuals in long term contact with the Agency, it has not always been possible to obtain the information in full and in a timely fashion.

- 7.18 As a consequence of seeing only 37% of the paper files requested for this inspection, we were unable to satisfy ourselves that there was a clear audit trail in all cases. In addition, we were unable to confirm in all cases that any personal data held was in accordance with the relevant legislation.
- 7.19 This is the fifth time we have raised the issue of file management, storage and retrieval in our reports. The Chief Inspector also highlighted this issue in his annual report for 2010/11 in which he commented:

'I continue to experience difficulties in obtaining accurate or timely information from the Agency. There have been occasions where case files cannot be accessed because they are filed incorrectly or, in some cases irretrievably lost'

- 7.20 The 40 files we did receive were generally were kept in good condition. The files were presented in a logical order and contained comparatively few duplicate documents. The management of personal data was also good with no original documents found on files.
- 7.21 The Agency's overall management of file storage and retrieval needs to be improved to ensure requests are consistently met. This is to guarantee that information contained on files, irrespective of their location, is shared with those who have a right to access that information in a timely way.

The Agency's overall management of file storage and retrieval needs to be improved to ensure requests are consistently met

We recommend that the UK Border Agency and Border Force:

- ensure that file retention and retrieval processes are managed so as to enable information to be provided efficiently to authorised recipients.

8. Inspection Findings: – Continuous Improvement

The implementation of policies should be continuously monitored and evaluated to assess the impact on service users and associated costs

Risks to the efficiency and effectiveness of the agency should be identified, monitored and mitigated

Management information

- 8.1 High quality management information is essential to all operational functions. It allows managers to align resources with priorities, evaluate performance, and make any necessary improvements. Our inspection has enabled us to assess the quality of management information collated by CFI teams.

Non-investigated cases

- 8.2 Cases that have been referred to CFI teams but not ‘adopted’ by them for investigation are recorded in one central spreadsheet. Cases from Heathrow on that spreadsheet, unlike those from the other two ports, included no customs offences. Senior managers told us that this was because, at the time the information was collated, Heathrow CFI teams were using a different definition of ‘adoption’ for suspected customs offences. They were classifying all customs cases referred to them as ‘adopted’ even if they subsequently decided not to investigate them.

- 8.3 As a result, we were unable to examine decisions made by the Heathrow CFI team not to investigate suspected customs offences. This limited the comparisons we could make on the handling of customs offences across the three ports in Chapter 5. More importantly, it is unclear whether or not the Agency had adequate management information available on decisions not to investigate suspected customs offences at Heathrow. The Agency has since informed us that Heathrow has aligned its approach with other ports. This should result in more accurate information on decisions not to investigate individuals for customs offences and allow the Agency to determine whether the approach taken at Heathrow is consistent with other ports.

It is unclear whether or not the Agency had adequate management information available on decisions not to investigate suspected customs offences at Heathrow

- 8.4 The spreadsheet did record the reasons why immigration cases were not investigated at both Heathrow and Manchester. However, at both ports the information captured was very limited. Decisions for non-investigation at Heathrow included ‘Statutory Defence Section 31’ and, at Manchester, the following explanation was given more than once: ‘Refused and removed’. Both ports

also recorded the relevant (suspected) offence, and Heathrow recorded the nationality of the suspect, but there was no specific information about the cases. Whilst this was sufficient information to record basic trends and considerations, it did not allow us to assess the rationale for the decisions by the CFI teams not to investigate individuals for specific immigration offences.

- 8.5 The reasons given for not investigating suspected customs offences at Manchester and Dover were more comprehensive. They were particularly extensive where individuals had been referred on the suspicion of having committed cash offences. The reasons usually included evaluations of the checks done to establish the origins and purpose of the cash; the documentation provided by the passenger; their personal circumstances; and other relevant factors. This information enabled us to understand the rationale for decisions and to assess whether policies had been applied correctly. For example, in one case the CFI team in Manchester gave the following explanation of its decision not to investigate:

'Non adoption. Cash appears to be legitimate. Full Arena checks done on passenger, father, uncle, business, home address mobile telephone numbers provided – no hits of interest. Mobile numbers link to property business [business name given]. Passenger had attempted to declare cash and had done so previously.' [sic]

- 8.6 This summary set out the key considerations and provided assurance that the appropriate action had been taken. We believe that the Agency should adopt a similar approach when recording the reasons why it does not investigate immigration cases. This would ensure that there is a clear audit trail of the decision-making process in such cases. That is important to provide assurance to Parliament, stakeholders and the public that policy is being applied correctly and consistently.

The reasons given for not investigating suspected customs offences at Manchester and Dover were more comprehensive

Investigated cases

- 8.7 Some of the documentation on investigated cases was comprehensive, notably the reports to the CPS on drugs cases. These tended to include a full account of the proceedings and of any interviews with the suspect, and a full legal evaluation of the evidence. This is because the CPS requires a greater weight of evidence.

- 8.8 However, we found that information was incomplete or insufficient for some other investigated cases. Whilst some of the entries for cash cases were extensive, setting out the quantity of the cash, the investigations undertaken, and the reasons for seizing the money, others were much less comprehensive. In one case at Heathrow, for example, the CFI team simply recorded that: 'He [the suspect] was in the UK illegally and the cash was his savings from working illegally.'

We believe that the Agency should adopt a similar approach when recording the reasons why it does not investigate immigration cases

- 8.9 In 22 of the 60 (37%) investigated cash cases which we reviewed, we found that the amount of cash detected and seized by Border Force was not recorded. This is significant as the amount of money may be indicative of the nature and gravity of the conduct. The Agency's own policy is that only cases involving sums of cash exceeding £1,000, where there are reasonable grounds for suspicion, should be referred. In cases where the sum was not stated, we were unable to determine whether the policy had been followed.

- 8.10 The documentation on investigated immigration cases, supplied to us by the Agency, varied in quality at both Heathrow and Manchester. Some forms set out the key considerations and provided considerable supporting documentation, whereas others were much less detailed.

8.11 In addition, the forms used at Heathrow include a field asking whether there was a trace of the suspect on the Home Office Warnings Index (WI). This field was not included on the forms used at Manchester. In 12 of the 33 (36%) Heathrow cases which we sampled, the WI field was not completed. It is important to record these checks as they can contribute to decisions on whether to adopt the case for investigation, for example, if a search of the WI reveals that the individual is a repeat or persistent offender. It is disappointing that this important information was not recorded in over a third of the Heathrow cases in our sample and we are concerned that CFI teams were not capturing WI traces at all on some of their forms.

8.12 Management information was inadequate. More comprehensive management information would help to identify trends and indicate whether decisions to investigate and not investigate are being taken consistently and in accordance with policy. It would also allow the Agency to plan and allocate resources in a more efficient and effective manner.

we found that information was incomplete or insufficient for some other investigated cases

8.13 The Crime Directorate senior managers we interviewed accepted that the management information held on the work of CFI teams was insufficient. They informed us that Crime Directorate had appointed an individual to oversee the production of management information, and that the Agency's National Operations Database ('NOD' - the main IT system for enforcement) would be used to capture more detailed management information. Both of these changes are welcome, and we expect them to deliver much needed improvements.

We recommend that the UK Border Agency:

- ensures that decisions whether or not to investigate suspected immigration and customs offences are clearly documented.

We recommend that the UK Border Agency:

- implements a management information strategy on customs and immigration offences to enable it to analyse trends and performance and to direct future activity.

Evaluation of policies

8.14 One of the principal advantages of comprehensive and consistent management information is to permit effective evaluation of policies. Whilst it is not the role of the Agency to evaluate Government policy, there are operational policies which would benefit from assessment to ensure that they meet the Government's intended aims. We asked Crime Directorate managers for evidence of routine evaluation and monitoring of policy implementation, and we received no evidence that this occurs. The only evaluation of which we have learnt was a pilot scheme to divert passengers from the criminal justice system.

Management information was inadequate. More comprehensive management information would help to identify trends and indicate whether decisions to investigate and not investigate are being taken consistently and in accordance with policy

8.15 The Agency's policy sets out a preference for removal rather than prosecution in certain immigration cases. The referral criteria to CFI teams state that: 'Full consideration will always be given to the ability to remove the offender from the UK rather than to seek a prosecution where this is the most appropriate action.'³⁶

³⁶ UKBA Criminal and Financial Investigation (Borders) Referral Criteria, Version 11, 1 May 2012

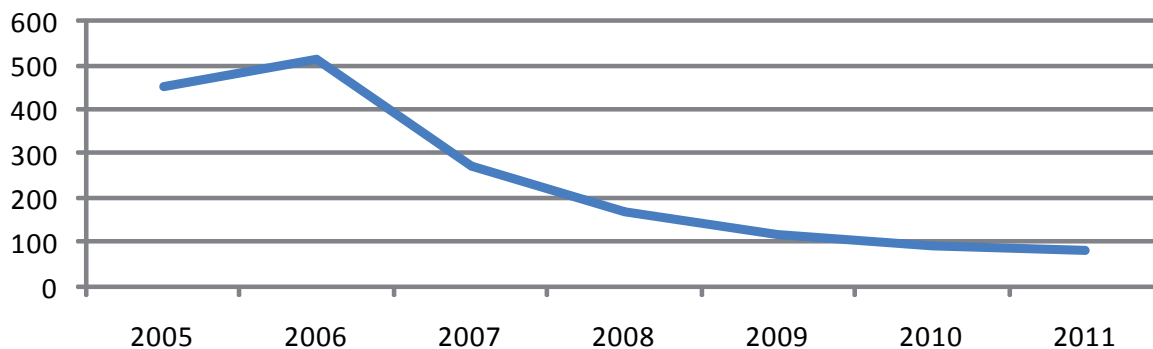
- 8.16 This position was understood by many of those we interviewed. We had a clear sense from those interviews that managers and staff worked to the position that removal was the default option for less serious immigration offences. The exceptions were where the suspected offence fell within one of the Agency's high harm categories, the suspected offender was a repeat offender, or removal was not possible. This was on the grounds that removal is more cost effective than prosecution. Prosecutions are costly to the taxpayer, whereas a removal is paid for by the airline that brought the individual to the UK.
- 8.17 We do not necessarily disagree with this view. The resources of the criminal justice system are inevitably limited, and more serious cases must be prioritised. Cost is a relevant factor for the Agency in deciding how to deal with cases and removal can be a simple and practical solution. Our own sampling of port files where decisions had been made by CFI teams not to investigate suspected immigration offences found that removals generally took place within two to four days where the individuals did not claim asylum. Parliament has, however, put in place criminal offences for these types of behaviour, with the possibility of custodial sentences, so the practice of opting for the use of removal rather than criminal investigation and prosecution should be supported by a robust analysis and evaluation process. This would give Parliament and the public confidence in the approach taken.
- 8.18 Some individuals suspected of committing immigration offences at ports will not be removable. For example, swift removal is unlikely if the individual arrives with no documents, is of disputed nationality, or comes from a country that will re-document its nationals only if they wish to leave the UK. It is therefore important for CFI teams to record whether a suspect is thought to be removable. This is not currently recorded on a systematic basis in case documentation; instead, such decisions are being made based on the experience and knowledge of the staff concerned. Whilst their advice on removability may be correct in many cases, it is important that these assessments are properly recorded so that a clear audit trail of the assessment process is available in all cases.
- 8.19 Of the 126 suspected immigration offences that we encountered in our sample, 52 (41%) were recorded as falling within section 2 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (entering the UK without a passport or other immigration document).³⁷ This was a higher figure than for any other immigration offence in our sample.
- 8.20 Section 2 makes it an offence for a person at a leave or asylum interview to fail to present to officials his or her immigration document, and, if appropriate, an immigration document in relation to any dependent child with whom that person claims to be travelling or living. This offence was introduced to deal with asylum seekers who destroyed their travel document en route to the United Kingdom, with a view to frustrating their eventual removal in the event that their claim failed.
- 8.21 Of the 52 section 2 cases that were referred to CFI teams by Border Force officers, 20 (38%) were considered appropriate for criminal investigation. Figure 16 below shows the trend in terms of section 2 convictions between 2005 and 2011.

It is important that these assessments are properly recorded so that a clear audit trail of the assessment process is available in all cases

³⁷ <http://www.legislation.gov.uk/ukpga/2004/19/section/2>

Figure 16: Convictions for section 2 offences (in England and Wales)³⁶

Number of convictions in England and Wales for section 2 (AITC Act 2004) offences



8.22 There has been a substantial fall in the number of successful section 2 prosecutions since 2006. This may be attributable partly to the decline in asylum intake since that time.³⁹ This is relevant because section 2 offences are normally committed by individuals arriving in the UK for the purpose of claiming asylum. However, the Agency and Border Force told us that they believed that the primary factor was the High Court judgment in the case of *Thet* which had limited the circumstances in which individuals could be prosecuted under section 2.⁴⁰ Nonetheless, given the continuing focus of border CFI teams on section 2 investigations, the Agency and the Home Office may wish to conduct an evaluation to establish whether the introduction of the offence has acted as a deterrent to the destruction of documents by individuals arriving in the UK.

Consistency of referrals

8.23 The referral criteria for immigration offences state that all facilitation and trafficking offences identified at the border, and those cases where the volume of offences indicated serious and organised immigration crime, should be referred to CFI teams. They also state that investigation will be considered for section 2 offences, other listed document offences, offences of deception and other suspected offences where there has been a breach of current immigration legislation.⁴¹

8.24 Aside from serious categories such as facilitation, this leaves considerable scope for discretion. In particular, the guidance is unclear on whether certain types of offences should or should not be referred to CFI teams by Border Force. We found differing views among Border Force staff on the approach they would adopt if they encountered an individual they suspected was seeking to commit an immigration offence at port.

8.25 Some staff told us that they would seek to return individuals suspected of document fraud to the country from which they had departed, without referral to the CFI team, if they did not claim asylum. One member of staff was of the view that there was no need for CFI involvement in this type of case, but that documents should be sent to the forgery team to establish whether they had been forged or tampered with. Three Border Force officers gave the example of Albanian nationals arriving with Greek or old-style Italian ID cards, as a category of cases where they would seek to remove the

³⁸ Ministry of Justice statistics.

³⁹ Since 2004 the number of asylum claims has been: 2004 – 33,960; 2005 – 25,712; 2006 – 23,608; 2007 – 23,431; 2008 – 25,932; 2009 – 24,487; 2010 – 17,916; 2011 – 19,865 (Home Office Immigration Statistics, April – June 2012).

⁴⁰ *Soe Thet vs Director of Public Prosecutions* [2006] EWHC 2701 (Admin), 19 October 2006, provides that a reasonable excuse is not having a genuine passport because it was not possible to obtain one in the country of origin.

⁴¹ UKBA Criminal and Financial Investigation (Borders) Referral Criteria, Version 11, 1 May 2012

individuals without referring to CFI teams.⁴² The rationale given for not consulting the CFI team was that experience suggested they would not be interested in non-asylum cases where removal was an option.

- 8.26 Our document review and file sampling were limited to cases that were referred to CFI teams. We were therefore unable to determine how many individuals suspected of committing immigration offences were not being referred to CFI teams because Border Force decided to remove them instead.
- 8.27 Other Border Force staff told us that they would refer all cases that potentially fell within the CFI referral criteria. One member of staff told us that, since the Independent Chief Inspector's report on border security,⁴³ staff had been referring more cases to CFI teams because they did not want to risk missing individuals of concern.
- 8.28 CFI team managers and senior managers within the Crime Directorate were consistently of the view that they would expect all document fraud cases to be referred for consideration of potential investigation. They told us that such referrals could be made by way of a telephone call and were concerned that potentially valuable intelligence was being lost as a result of decisions made by Border Force staff to remove individuals without prior contact with CFI teams. One CFI team manager at Heathrow told us that investigators were better placed than Border Force officers to decide whether a case should be taken on as they had the relevant expertise.
- 8.29 We consider that, whilst it is not necessarily wrong to have an element of discretion within the referral process, the current guidance and approach within Border Force leave too much scope for inconsistency. There is a risk that Agency and Border Force senior managers have an incomplete picture of the amount of immigration crime that is being committed at the border or any emerging trends.
- 8.30 We believe there is a need for greater clarity on the circumstances in which cases of suspected document fraud and document destruction should be referred to CFI teams by Border Force. We appreciate that there is a balance of risk management which needs to be struck. On the one hand, there is a risk of losing intelligence by not making a referral (even if the suspected offender is not in fact investigated, useful intelligence may be uncovered). On the other hand, there is a risk that referring all cases would place additional resource pressures on Border Force and the Agency, for little extra benefit, given that the majority of referrals do not currently result in investigations.

We recommend that the UK Border Agency and Border Force:

- clarify and communicate to staff the circumstances in which suspected immigration offences should be referred to CFI teams.

⁴² All three officers mentioned Greek cards, two mentioned Italian ones.

⁴³ 'An investigation into border security checks', February 2012.

Appendix 1 – Inspection Criteria

The criteria used in this inspection are shown below.

Inspection Criteria used when inspecting the handling of prosecutable customs and immigration offences at ports

Operational Delivery

1. Decisions on the entry, stay and removal of people should be taken in accordance with the law and the principles of good administration.
2. Customs and immigration offences should be prevented, detected, investigated and, where appropriate, prosecuted.

Safeguarding Individuals

7. Functions should be carried out having regard to the need to safeguard and promote the welfare of children.
8. Personal data should be treated and stored securely in accordance with the relevant legislation and regulations.

Continuous Improvement

9. The implementation of policies should be continuously monitored and evaluated to assess the impact on service users and associated costs.
10. Risks to the efficiency and effectiveness of the Agency should be identified, monitored and mitigated.

Appendix 2 – Glossary

Term	Description
A	
Administrative removal	The process by which foreign nationals with no entitlement to remain in the UK are removed.
Agency	Refers to the UK Border Agency.
Alternative sanctions	Sanctions applied by Border Force officers to immigration and customs offenders as an alternative to a criminal prosecution. These include administrative removal for immigration offenders, and compounding fines for drugs offenders.
Asylum claim	Application to be granted 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, you must have a well-founded fear of persecution in your home country.
Audit trail	Chronological list of events.
B	
Border Force	A separate operational command within the Home Office, responsible for frontline operations at air, sea and rail ports.
C	
Criminal and Financial Investigation (CFI) teams	Criminal and financial investigation teams, within the Crime Directorate of the UK Border Agency. The CFI (Borders) teams are responsible for the investigation of all immigration, cash and non-fiscal customs offences detected at the border.
Compounding fine	Alternative to prosecution which those arrested for importation of small quantities of Class B or C drugs may be offered. Compounding fines are made under section 152a of the Customs and Excise Management Act 1979.
Crime Directorate	A directorate within the UK Border Agency, which investigated suspected customs and immigration offences with a view to prosecution.
Criminal investigations	Investigations into suspected customs and immigration offences committed at the border, carried out by CFI teams with a view to prosecution.
Crown Prosecution Service (CPS)	The Government department responsible for prosecuting criminal cases investigated by the police in England and Wales.

D	
Data Protection Act 1998 (DPA)	The Data Protection Act requires anyone who handles personal information to comply with a number of important principles. It also gives individuals rights over their personal information.
Detained Fast Track (DFT)	An accelerated asylum case management process operated by the UK Border Agency whereby certain applicants (assessed by the Agency as making asylum claims that can be decided 'quickly') are detained in Immigration Removal Centres for the duration of their claims. Decisions to grant or refuse asylum are expected to be made within three days of an applicant's arrival in the DFT. Appeals against the Agency's decision are also accelerated and are significantly faster than decisions made in the community.
F	
Facilitation	The offence of knowingly (or with reasonable cause to believe) doing an act which facilitates the commission of a breach of immigration law by an individual who is not a citizen of the European Union. The offence is contained in section 25 of the Immigration Act 1971.
H	
HMRC	Her Majesty's Revenue and Customs. Government department which collects and administers taxes, and enforces and administers border and frontier protection, amongst other functions.
Home Office	The Home Office is the lead government department for immigration and passports, drugs policy, crime, counter-terrorism and police.
I	
Immigration rules	The rules laid down by the Home Secretary as to the practice to be followed in regulating the entry into and stay in the United Kingdom of people required by the Immigration Act 1971 to have leave to enter. Statements of the rules and of changes to them are laid before Parliament under section 3 of the Immigration Act 1971. The current version of the immigration rules is at: http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/
In-country cases	Cases discovered within the UK, not at the border.
Independent Chief Inspector of Borders and Immigration	The role of the Independent Chief Inspector was established by the UK Borders Act 2007 to examine the efficiency and effectiveness of the UK Border Agency. The Chief Inspector is independent of the UK Border Agency and reports directly to the Home Secretary.
J	
Juxtaposed controls	UK immigration controls located in France and Belgium where immigration checks are conducted on passengers before they travel to the UK. There are no further immigration checks once they arrive in the UK.
M	
Management information	Data which provides information about business/operational effectiveness and can be used to inform management decisions.

P	
Port	A point of legal entry to the UK, including airports, seaports and the channel rail terminals.
Port files	Files created by Border Force (and its predecessors) containing paperwork related to a person's immigration case at port.
Proceeds of Crime Act 2002	Act of Parliament. Section 294 of the Act allows for the seizure of cash which is recoverable property (i.e., obtained through unlawful conduct) or intended by any person for use in unlawful conduct.
R	
Referral criteria	Guidance used by Border Force staff and CFI teams to determine which suspected offences should be investigated.
S	
Statutory defence	A defence, prescribed in law, which a person suspected of a customs or immigration offence may make. This includes, for example, duress and, in some cases, the fact that an asylum claim was made shortly after arrival in the UK.
U	
United Kingdom Border Agency (UKBA or the Agency)	Executive Agency of the Home Office responsible for border control, enforcing immigration and customs regulations.
W	
Warnings Index	A database, available to the UK Border Agency, of names of those with previous immigration history and those of interest to detection staff, police or matters of national security.

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