



# **An Inspection of the Non-Suspensive Appeals process for ‘clearly unfounded’ asylum and human rights claims**

October 2013 – February 2014



**John Vine CBE QPM**

**Independent Chief Inspector of Borders and Immigration**





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July 2014



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## **Our Purpose**

**We provide independent scrutiny of the UK's border and immigration functions, to improve their efficiency and effectiveness.**

## **Our Vision**

**To drive improvement within the UK's border and immigration functions, to ensure they deliver fair, consistent and respectful services.**



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



Since 2003, the Home Office has had the power to certify asylum and human rights claims that are without substance as 'clearly unfounded'. The objective was to deter people from making unfounded asylum and / or human rights claims by withdrawing the right to appeal whilst they remained in the UK. This is referred to as a Non-suspensive Appeal (NSA), because an appeal against refusal can only be brought after the person has left the UK.

Removing an in-country right of appeal is a significant step. Incorrect use of the certification power can potentially result in people being sent back to countries where they face ill-treatment. Conversely, a failure to certify an unfounded asylum claim may delay removal and result in unnecessary costs to the taxpayer.

This inspection considered how the Home Office was using the certification power.

I found that staff and managers were alive to the potential risks of certifying claims incorrectly. Where applicants were removed, unsurprisingly, this occurred more quickly in cases that had been certified. This underlines the importance of using the power fully.

However, I found that opportunities to make greater use of certification were being missed. In my sample, there was no evidence that almost half of cases from designated countries that were not certified had actually been considered for certification. This is a concern, given the statutory obligation on the Secretary of State to certify such claims unless they are not clearly unfounded.

I have made seven recommendations for improvement.

A handwritten signature in black ink that reads "John Vine .".

**John Vine CBE QPM**  
**Independent Chief Inspector of Borders and Immigration**



# 1. EXECUTIVE SUMMARY

1. In 2003 the then government introduced legislation under which asylum and Human Rights claims that were considered to be ‘clearly unfounded’ could be certified. The effect of these powers was that applicants whose claims had been refused and certified as clearly unfounded could only appeal against the Home Office’s decision after they had left the United Kingdom.
2. Where an applicant is entitled to reside in a ‘designated state’ and the Home Office decides that the claim should be refused, the Secretary of State is under a legal obligation to certify the claim unless satisfied that the claim is not clearly unfounded. In addition, the Home office may certify the claim of people from non-designated countries if their claims are considered to be ‘clearly unfounded’.

## Positive Findings

3. One of the main reasons for the introduction of Non-suspensive Appeals (NSAs) was to facilitate the removal of those making unfounded asylum claims. We found that where claims had been certified and the applicants removed, this occurred more quickly than in cases where claims were not certified.

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*Where claims had been certified and the applicants removed, this occurred more quickly than in cases where claims were not certified*

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4. As applicants may receive asylum support, speedy removals result in savings for the taxpayer. We found that the number of people who had been removed in certified cases had increased in each of the financial years from 2010 to 2013 and constituted over a quarter of asylum removals in 2012/13.
5. We found that both staff and managers were aware of the potential significant consequences for applicants if their claims were incorrectly certified and they were removed as a consequence. The NSA Oversight Team was widely praised for the quality of the training and technical support it provided to decision-makers on cases. Individual appeal outcomes were being reviewed by staff; this is in line with recommendations we have made in numerous previous reports. We noted that there had been only one allowed appeal since 2007.

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*The NSA Oversight Team was widely praised for the quality of the training and technical support it provided to decision-makers*

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6. The Home Office had decided to train all new decision-makers in NSA powers during their initial training and also had plans to train those who had not previously received NSA training. This should increase awareness of the powers and may result in greater use of certification.

## Areas for Improvement

7. There is a legal obligation on the Secretary of State to certify applicants entitled to reside in designated states, unless their claim is not clearly unfounded. However, in 40% of the cases that we sampled in which the Home Office refused and did not certify the application from a person who was entitled to reside in a designated state, we could find no evidence that the Home Office had considered certification before serving its decision. This was particularly striking in cases in which the Home Office was seeking to deport people for criminal offences.

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*In 40% of the cases that we sampled in which the Home Office refused and did not certify the application, we could find no evidence that the Home Office had considered certification before serving its decision*

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8. The Secretary of State may also certify claims from applicants who do not come from a designated state, when satisfied that the claim is clearly unfounded. However, we consider that this power was not being used as often as it could have been. We believe that a formalised process should be introduced, requiring decision-makers to record why certification is not appropriate in cases that are considered on a case-by-case basis. Decisions relating to applicants who are entitled to reside in a designated state, as well as decisions to certify claims on a case-by-case basis, must be approved by an accredited 'Second Pair of Eyes' (SPOE). This process was introduced as a safeguard to allay concerns that claims could be incorrectly certified and the person could be returned to face ill treatment. In 93% of cases in our sample where certification had been considered, the decision had been approved before it was served; however, in 7% of these cases, a decision had been issued to an applicant before it had been authorised by a SPOE. This is a concern, given the importance of this safeguard and the reliance placed on it by the Home Office.
9. The Home Office had not kept up-to-date and accurate records of who had been accredited to act as SPOEs and when they had been accredited. Whilst the Home Office had processes in place to accredit SPOEs, there was a lack of objective standards against which prospective SPOEs could be assessed. There was also no formal process through which the Home Office reaccredited staff after their initial accreditation, to ensure that they continued to possess the necessary skills and knowledge to perform their role.
10. There was a lack of consistent understanding of the role and remit of the NSA Oversight Team. The Home Office needs to determine what role, if any, the team is to have going forward and to then communicate this to staff.
11. Twenty-two people had had their claims refused and certified by the Home Office and had been placed on reporting restrictions. However, eight of these were not reporting as required and the Home Office had not listed them as absconders. This is disappointing, as this information could usefully be used to identify that a person had failed to comply with their reporting restrictions if they were to come to the attention of either the Home Office or the police in the future.
12. Where a claim is certified, an applicant can seek to challenge the lawfulness of the certificate by applying for Judicial Review. Both staff and managers considered that there were few successful Judicial Reviews and that this indicated that decision quality was high. However, the Home Office was unable to supply us with reliable data to show the number and outcome of Judicial Reviews. This is of concern and must be urgently addressed, as this information could be used to improve decision quality.

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*There was a lack of objective standards against which prospective SPOEs could be assessed*

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*The Home Office was unable to supply us with reliable data to show the number and outcome of Judicial Reviews*

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## 2. SUMMARY OF RECOMMENDATIONS

### **We recommend that the Home Office:**

1. Makes full use of the Section 94 certification power to:
  - Certify asylum and / or Human Rights claims from people entitled to reside in designated states unless the Secretary of State is satisfied that such claims are not clearly unfounded; and,
  - Ensure consideration is given to certification in all other asylum and Human Rights cases, and it records the basis for all its decisions on certification.
2. Accredits Second Pairs of Eyes against objective criteria and requires reaccreditation on a regular basis.
3. Takes urgent steps to effectively capture and analyse data on Judicial Reviews in order to improve quality of decision-making.
4. Establishes the reasons for regional variations in certification and ensures that the power is used consistently and appropriately.
5. Takes appropriate action against those who have failed to report.
6. Clarifies the role and remit of the NSA Oversight Team.
7. Maintains a centrally held and accurate record of accredited Second Pairs of Eyes.

# 3. THE INSPECTION

## Scope

- 3.1 The inspection examined the efficiency and effectiveness of the Home Office's use of the Non-suspensive Appeals (NSA) process for asylum and human rights claims. In particular, it looked at whether:
- the Home Office was consistently using processes that were introduced by the Department as procedural safeguards; and
  - applications made by nationals entitled to reside in designated states were being considered for certification consistently between asylum teams, given the statutory obligation on the Secretary of State in respect of these cases.<sup>1</sup>

## Methodology

- 3.2 A range of methods were used during the inspection, including:
- analysis of Home Office management information, policy guidance and process instructions;
  - consultation with stakeholders with an interest in the NSA process;
  - file sampling 120 applications using the Home Office's electronic case-working system, the Casework Information Database (CID). In order to select the files, we asked the Home Office to provide us with details of all asylum and human rights applications in which a refusal decision had been made during the financial year 2012-13. We then randomly chose 40 of each of the following 3 case scenarios to examine: where the:
    - i. applicant was entitled to reside in a designated state and the application was refused and certified as clearly unfounded;
    - ii. applicant was entitled to reside in a designated state and the application was refused but not certified as clearly unfounded; or
    - iii. application was refused and certified as clearly unfounded on a case-by-case basis.
- 3.3 The on-site phase of the inspection took place between 24 January and 12 February 2014 at Yarl's Wood, Leeds, Glasgow, Liverpool, Croydon and London. During that time, we interviewed staff and managers at a range of grades. This is detailed in Figure 1.

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<sup>1</sup> Section 94(3) Nationality, Immigration and Asylum Act 2002

**Figure 1: Composition of Interviewees (by grade)**

<b>Grade (or equivalent)</b>	<b>Number</b>
EO	13
HEO	24
SEO	16
Grade 7	3
Grade 6	4
SCS	2
<b>Total</b>	<b>62</b>

- 3.4 On 24 February 2014, one day after the completion of the on-site phase of the inspection, the inspection team provided feedback on high-level emerging findings to the Home Office.
- 3.5 The inspection identified seven recommendations for improvement to operational service delivery. A full summary of the recommendations is provided on page 8 of this report.
- 3.6 The final version of this report was submitted to the Home Secretary on 21st May 2014.

## 4. Background

- 4.1 The majority of people whose asylum and / or human rights claims are refused by the Home Office can appeal against those decisions to the independent 'Her Majesty's Court's and Tribunals Service (Asylum Chamber)', hereafter referred to as 'the Tribunal'. This right of appeal against a negative decision provides an important safeguard for applicants and the Home Office is unable to remove them whilst their appeals are 'pending'.<sup>2</sup> This is commonly referred to as 'suspending' the Home Office's ability to remove the applicant.
- 4.2 There is one significant exception to this. On 1 April 2003, Section 94 of the Nationality, Immigration and Asylum (NIA) Act 2002 came into force. Under this provision, where the Secretary of State refuses an applicant's asylum and / or human rights claim as being 'clearly unfounded', the applicant is only able to appeal against that decision after they have left the UK. These cases are referred to as Non-suspensive Appeals.
- 4.3 Where a claim has been certified as being clearly unfounded, an applicant is only able to challenge that decision, from within the UK, by applying for the Home Office's decision to be Judicially Reviewed.
- 4.4 In order to certify a claim as clearly unfounded, the Secretary of State needs to be satisfied that the claim cannot, on any legitimate view, succeed. In October 2002, in a court judgment, the House of Lords<sup>3</sup> commented upon manifestly unfounded claims:<sup>4</sup>
- A manifestly unfounded claim is a claim which is so clearly without substance that it is bound to fail; and
  - It is possible for a claim to be manifestly unfounded even if it takes more than a cursory look at the evidence to come to a view that there is nothing of substance in it.
- 4.5 Under Section 94(3),<sup>5</sup> where the Secretary of State refuses an asylum and / or Human Rights claim from a person who is entitled to reside in a 'designated state',<sup>6</sup> she is obliged to certify that claim, unless satisfied that the claim is not clearly unfounded; these are commonly referred to by the Home Office as 'designated cases'. There are 26 countries on the list of designated states (which can be found at Appendix 3), eight of which have only been designated for specific groups. The list has remained unchanged since 2010.
- 4.6 Additionally, the Secretary of State can<sup>7</sup> certify a claim made by a person not from a designated state and whose claim is refused and considered to be 'clearly unfounded'. As there is no obligation

2 Section 78 of the Nationality, Immigration and Asylum Act 2002 prevents the removal of a person from the UK while an appeal is pending and section 104 (1) defines a pending appeal as 'beginning when it is instituted and ending when it is finally determined, withdrawn or abandoned (or lapses under S99)'.

3 R-v- SSHD, ex parte Thangarasa and Yogathas, 2002

4 This applies equally to 'clearly unfounded' claims.

5 Section 94(3), Nationality, Immigration and Asylum Act 2002, states ' If the Secretary of State is satisfied that an asylum claimant or Human Rights claimant is entitled to reside in a State listed in subsection (4) he shall certify the claim under subsection (2) unless satisfied that it is not clearly unfounded.'

6 Section 94(5) provides that the Secretary of State may add a state, or part of a state to the list of designated states if satisfied that there is in general in that state or part state no serious risk of persecution of persons entitled to reside in that state; and, removal to that state or part of persons entitled to reside there will not in general contravene the United Kingdom's obligations under the Human Rights Convention.

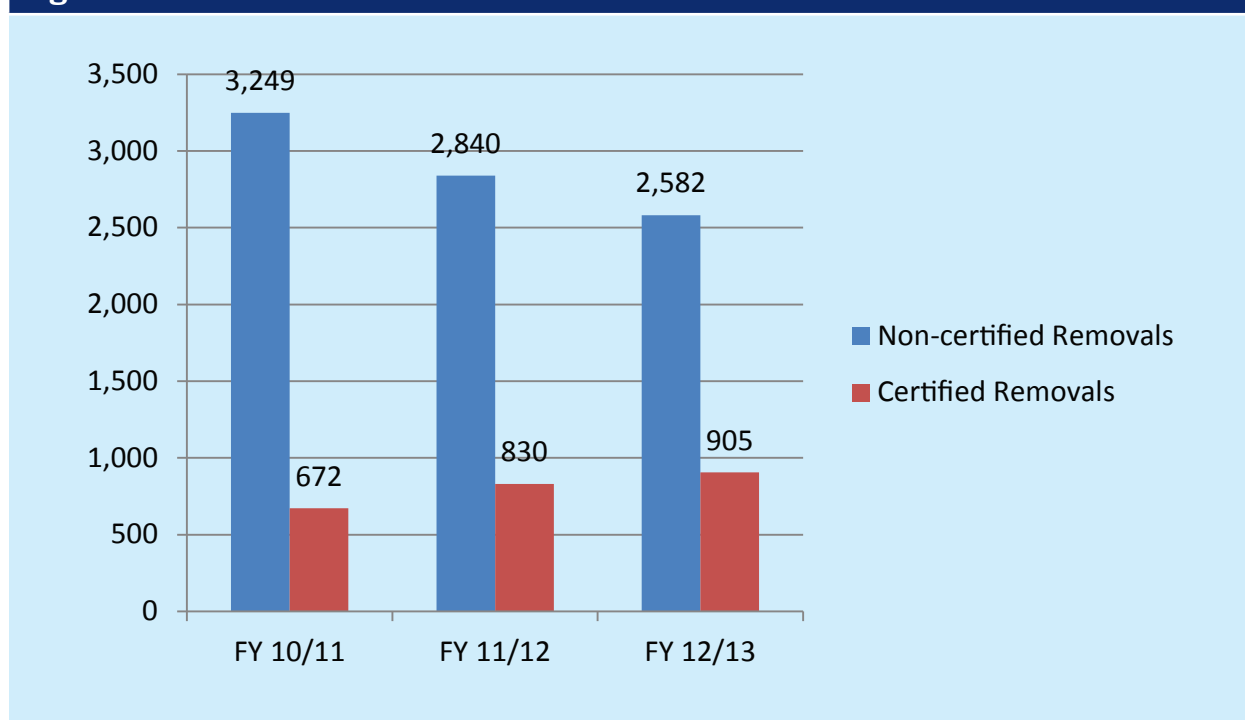
7 Section 94 (1A) and (2)

to certify these cases, unlike for designated cases, this is commonly referred to as ‘case-by-case’ certification.

4.7 The power to certify a claim was introduced at a time when the UK received relatively high numbers of asylum claims.<sup>8</sup> Its introduction was intended to allow the Home Office to remove people whose claims were considered to be clearly unfounded more quickly, mainly to reduce the costs associated with the courts and with maintaining people in the UK whilst they made what were considered to be appeals with no prospect of success. Many believed that the effect of this would be to act as a deterrent to people making unfounded claims. However, the power was highly controversial as it removed the entitlement to an in-country right of appeal, which many people believed was an essential safeguard. The concern for many was that, should the Home Office incorrectly certify a claim as being clearly unfounded, an applicant would be returned to a country where they faced harm before they were able to appeal against the Home Office’s decision.

4.8 The number of claims that the Home Office certified and removed for the financial years between 2010/11 and 2012/13 is recorded in Figure 2. This demonstrates that certified removals are an increasing proportion of asylum removals, rising from less than a fifth in 2010/11 to more than a quarter in 2012/13.<sup>9</sup>

**Figure 2: Number of certified and non-certified removals 2010 – 2013<sup>9</sup>**



<sup>8</sup> Between 1998 – 2002 the number of people applying for asylum annually rose from 46,015 to 84,130: <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmhaff/218/218.pdf>

<sup>9</sup> Figures received from the Home Office on 13th May 2014

### Certified removals as a percentage of Removals FY 2010-2013

	Non-certified Removals	Certified Removals	Certified Removals as % of all removals
FY 10/11	3,249	672	17
FY 11/12	2,840	830	23
FY 12/13	2,582	905	26

### The Home Office's process for handling NSA cases

- 4.9 Given the significance of Section 94, the Home Office introduced specific processes to be used when considering and deciding claims from people who were entitled to reside in designated states and in cases where case-by-case certification was being considered and used. These processes were seen as safeguards to ensure that certification decisions were of a high quality. This is demonstrated by a statement made by a Home Office Minister in the House of Lords shortly before the legislation entered into force:

*'A concern expressed in the House was whether we would have in place procedures that ensured high quality decision-making. So far the procedure has stood up to the test, and we are optimistic about it. All applicants have access to legal advice and have their claims properly considered, with an opportunity to provide any evidence they have to support their claim. All decisions are checked by at least two officers, both of whom have been specially trained on the non-suspensive appeal provisions.'*<sup>10</sup>

- 4.10 The Home Office's processes for considering and deciding on certification can be seen in Appendices 4 and 5.

### Appeal rights

- 4.11 As discussed previously, an applicant whose claim has been refused and certified as being clearly unfounded can only appeal against that decision after they have left the UK. Only a relatively small number appeal from overseas. There had been 114 such appeals since 2007;<sup>11</sup> of these, we were told that one had been successful, which was in 2011. Figure 3 shows the number of applicants whose appeals were certified as being clearly unfounded who appealed in financial years 2011/12 and 2012/13.<sup>12</sup>

**Figure 3: The number of appeals against NSA decisions**

	2011-12	2012-13
Out of Country appeals lodged:	14	27

### Role of the Chief Inspector of Borders and Immigration in relation to the NSA process

- 4.12 Section 111 of the NIA 2002 made provision for the appointment of a 'Certification Monitor' to monitor the use of the certification powers. The Certification Monitor issued two reports, the last of which was published on 27 April 2006.

<sup>10</sup> Hansard, 31 March, 2003, column 1116: <http://www.publications.parliament.uk/pa/ld200203/ldhansrd/vo030331/text/30331-21.htm>

<sup>11</sup> The Home Office were unable to provide us with the number of appeals prior to 2007 due to the poor quality of their data.

<sup>12</sup> Figures received from the Home Office on 13 May 2014.



4.13 The Chief Inspector of Borders and Immigration subsequently took over the role of considering the Home Office's use of Non-Suspensive Appeals under the UK Borders Act 2007,<sup>13</sup> which now places a statutory requirement on the Chief Inspector to:

*'consider and make recommendations about certification under section 94 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (unfounded claim).'*

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13 Section 48(2)(e) of the UK Borders Act 2007

## 5. INSPECTION FINDINGS

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

#### Introduction

- 5.1 We sampled 120 Home Office files, using its electronic database (CID), in order to establish whether:
- asylum and Human Rights claims by those entitled to reside in designated states were being considered for certification as required by the legislation; and
  - procedural safeguards were being adhered to in all cases where decisions on certification had been made.
- 5.2 In addition, we examined the quality assurance mechanisms in place to underpin the certification process, to see if they were sufficiently robust, as well as reviewing Home Office data on appeal and judicial review outcomes to find out if its certification decisions withstood challenge in the courts.

#### Consideration of certification

##### Designated states

- 5.3 The Secretary of State is obliged to certify an asylum or human rights claim from a person entitled to reside in a designated state, unless satisfied that the claim is not clearly unfounded. The Home Office's policy<sup>14</sup> relating to designated cases is that an NSA trained decision-maker should consider the claim. The decision-maker should then put forward a recommendation<sup>15</sup> to a 'Second Pair of Eyes' (SPOE) detailing the decision they propose to make. If they intend to refuse the application, the recommendation should go on to address whether it would be appropriate to certify it as being clearly unfounded.
- 5.4 An accredited SPOE should then consider the recommendation and decide the appropriate outcome. Where the application is to be refused, this should include a decision on whether it should be certified.<sup>16</sup> Under the Home Office's policy, it is only after a SPOE has agreed the 'outcome' that the decision should be served on the applicant. The Home Office informed us that a record of both the recommendation and the authorisation should be retained on CID.
- 5.5 Given the statutory obligations in relation to these cases, we reviewed the Home Office's CID records in 40 cases where the Home Office had:
- considered that the applicant was entitled to reside in a designated state;
  - refused their asylum / Human Rights claim, but

<sup>14</sup> Non Suspensive Appeals (NSA) Certification under Section 94 of the NIA Act 2002

<sup>15</sup> Form ASL 2672

<sup>16</sup> This should be recorded on form ASL 2673

- not certified the refusal under Section 94.

5.6 In 20 cases (50 %), the Home Office had considered whether the claim was clearly unfounded, prior to the decision being issued to the applicant. This was in accordance with the Home Office’s instructions. An example of such a case can be seen in Figure 4 below:

**Figure 4: Case study 1– Certification consideration prior to the decision being issued.**

**The applicant:**

- was a national of India, a designated state;
- claimed asylum on 13 March 2012;
- stated that his family were involved in a land dispute with his father’s cousins and that he feared for his life.

**The Home Office:**

- decision-maker identified that the applicant was entitled to reside in a designated state;
- recommended that the claim should be refused and certified as clearly unfounded on 23 March 2012 and referred the case to an accredited SPOE, who reviewed and agreed the recommendation on 26 March 2012;
- served the decision refusing and certifying the claim on the applicant on the same day;
- removed the applicant from the United Kingdom on 26 April 2012.

**Chief Inspector’s comments:**

- In this case, the decision-maker identified that the applicant was entitled to reside in a designated state and the correct procedure for consideration of certification was followed. The applicant was removed one month after his claim was refused and certified. The handling of the case is an example of good practice.

5.7 However, in 16 cases (40%), we found no evidence that the Home Office had considered the issue of certification before serving its decisions. Of these, six related to applicants whom the Home Office was seeking to deport, as they had been convicted of criminal offences in the UK.

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*In 16 cases (40%), we found no evidence that the Home Office had considered the issue of certification before serving its decisions*

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5.8 In a further four cases (10% of the sample), consideration had only taken place after the decision refusing asylum had been served on the applicant. Such claims cannot be certified retrospectively.

5.9 During the on-site phase of our inspection, we explored the reasons why there was no evidence that certification had been considered in such a high proportion of designated cases. We did this by examining: processes for identifying and allocating cases; compliance with Home Office processes; and quality assurance mechanisms.

**Identification and allocation of cases**

5.10 The majority of designated cases will be easily identifiable from the applicant’s nationality. According to the Home Office’s policy, only decision-makers who have received specific training on NSA legislation and process can consider and make recommendations on certification in these cases.

5.11 However, given that not all decision-makers had received NSA training, we were concerned to find that there was no consistent process in place to ensure that designated cases were identified and allocated only to NSA-trained staff. Some units had defined processes through which staff in the 'workflow' departments would use an applicant's nationality to identify cases that were likely to be designated cases and would only allocate these to NSA-trained decision-makers.

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*There was no consistent process in place to ensure that designated cases were identified and allocated only to NSA-trained staff*

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5.12 In other units there was no such process, meaning that designated cases could be allocated to staff who were not trained in NSA. This created a risk that designated cases might not be identified as such and therefore might not be considered for certification as required under the 2002 Act. As a result, cases that could have been certified would instead be given an in-country right of appeal. Staff and managers recognised this and suggested that the risk of missing designated cases was heightened by an environment in which individuals were under pressure to meet numerical decision targets.

### **Non compliance with Home Office processes**

5.13 In interviews, we asked staff and managers for their views on why 16 of the 40 non-certified designated cases in our sample had not been considered for certification at all. Some suggested that the decision-maker may have considered certification but failed to record that on CID. Without an audit trail, this was impossible for us to evidence.

5.14 The consequence of the failure to follow the Home Office's process is that even if the decision-maker had considered that it was not appropriate to certify the claim, this was not authorised by an SPOE. If decision-makers are incorrectly deciding that cases should not be certified, there is the risk that the Secretary of State is not complying with her obligations under Section 94(3) of the 2002 Act.

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*If decision-makers are incorrectly deciding that cases should not be certified, there is the risk that the Secretary of State is not complying with her obligations under Section 94(3) of the 2002 Act*

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### **Decisions on certification in designated cases: quality assurance and monitoring**

5.15 Decisions not to certify in designated cases must be approved by an SPOE. However, this is dependent on the correct process being followed. Some managers suggested that internal quality assurance, conducted by Senior Caseworkers, would identify cases where certification had not been considered and / or referred to an SPOE. They accepted that this would have to take place before the decision could be served, to mitigate the risk of decisions being made that were not in conformity with section 94 (3).

5.16 Whilst we found that Senior Caseworkers checked all decisions made by less experienced decision-makers, the proportion of decisions that were reviewed decreased as decision-makers became more experienced. Managers told us that some highly experienced staff's decisions were reviewed less frequently by Senior Caseworkers.

5.17 Consequently, we do not accept that the Home Office's quality assurance process removes the risk of a decision being served in a designated case without prior consideration of certification by both the decision-maker and SPOE. If internal quality assurance was sufficiently robust, then we would not have found 16 cases (40% of our sample) where there was no evidence that certification had been considered

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*We do not accept that the Home Office's quality assurance process removes the risk of a decision being served without prior consideration of certification by both the decision-maker and SPOE*

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and a further four in which the decision not to certify was not authorised by a SPOE before decision service.

- 5.18 Given this, we explored what other processes the Home Office used to monitor whether designated cases had been considered for certification. We were told that the NSA oversight team reviewed CID to identify cases where applicants came from a designated state but had not been considered for certification. We found that this work had been undertaken by the oversight team and that it regularly identified instances where consideration had not been given to certification in designated cases. This had been fed back to the relevant case-working unit. Understandably, the work of this team looked at decisions that had already been taken and served on applicants. Whilst this was valuable to managers in identifying errors made by their staff, it did not prevent decisions in which certification had not been considered being issued.

### **Consideration of certification in designated cases involving deportation**

- 5.19 Of the 16 designated cases in which we could not find evidence that consideration had been given to certification, six were cases where the Home Office was seeking to deport the individuals following their convictions for criminal offences. Of these:

- three related to deportation decisions made under the UK Borders Act 2007; and
- three related to decisions made under the Immigration Act 1971.

- 5.20 Foreign nationals may be deported under a number of legislative provisions, including the Immigration Act 1971 (Immigration Act) and the UK Borders Act 2007. The deportation powers that are used, in turn, affect the rights of appeal that are available to people being deported. We noted that guidance which differed, depending on which legislative provisions were used, had been issued to decision-makers. The guidance relating to decisions made under the Immigration Act<sup>17</sup> suggested that it would not be appropriate to certify a claim, even if their claim was clearly unfounded, because the applicant would have an in-country appeal against deportation. The guidance relating to decisions made under the UK Borders Act, however, made clear that consideration should be given to certification.

- 5.21 We found that not all staff in Criminal Casework Unit (CCU) understood the distinction between the 1971 and 2007 Acts. Some believed that it was not possible to certify any claim, irrespective of the legislative provisions being used; others thought that only asylum claims could be certified, meaning that clearly unfounded human rights claims in designated cases could not; whilst others did understand the legislative powers.

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*We found that not all staff in Criminal Casework Unit (CCU) understood the distinction between the 1971 and 2007 Acts*

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- 5.22 In the three cases in our sample decided under the 1971 Act, the claim would never have been certified due to the existing in-country rights of appeal afforded to the applicants. Nevertheless, the decision-maker was required to have considered whether certification was appropriate and to have recorded why it was not.
- 5.23 In order to improve the quality, consistency and speed with which asylum claims were considered in deportation cases, the Home Office's Asylum Casework Directorate (ACD) agreed to consider all asylum claims made on or after 8 July 2013 whilst CCU would retain responsibility for considering any human rights claims relating to Article 8 of the European Convention on Human Rights (ECHR).<sup>18</sup> Some staff and managers within CCU considered that this would increase the likelihood

<sup>17</sup> 'Criminal Casework Directorate: Handling foreign national prisoners who have made asylum claims or who have been recognised as refugees'

<sup>18</sup> The right to a private and family life

of certification being considered, as asylum decision-makers were more familiar with the NSA process. However, as some staff in CCU believed certification did not apply to human rights claims, there is a risk that moving responsibility for the consideration of asylum claims in deportation cases could result in CCU decision-makers thinking that certification is a power that they do not need to consider at all.

## Conclusion

5.24 We do not believe that the Home Office's current processes are sufficiently robust to ensure that all asylum and / or Human Rights claims in designated cases that could be certified are being certified.

5.25 Senior managers in ACD and CCU agreed with our assessment of this risk. ACD senior managers informed us that work was underway to review how designated cases were identified, allocated and monitored in order to ensure that the legal obligations on the Secretary of State were met. They told us that a variety of options were being considered, including the introduction of dedicated NSA casework 'hubs' and the creation of a dedicated national team that would consider claims in designated cases once interviews had been conducted with applicants.

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*We do not believe that the Home Office's current processes are sufficiently robust to ensure that all asylum and / or Human Rights claims in designated cases that could be certified are being certified*

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5.26 We were pleased that the Home Office had recognised the need to review its processes for managing these cases. It needs to implement revisions to its processes swiftly, to ensure that the Secretary of State is meeting her statutory obligations. Senior managers in CCU must also ensure that their staff consider certification on human rights grounds in designated cases where the Home Office is seeking to deport individuals.

## Case-by-case certification

5.27 Under the 2002 Act, the Secretary of State may also certify the claims of people who are not entitled to reside in a designated state on a 'case-by-case' basis, where their claim is considered to be 'clearly unfounded'. Given that the objectives behind the introduction of Section 94 were, in part, to reduce the number of unfounded claims and to ensure the speedy removal of those who made such claims, we examined whether the power was being used on a 'case-by-case' basis as often as it might.

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*Senior managers in CCU must ensure that their staff consider certification on human rights grounds in designated cases*

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5.28 Consideration of certification on a case-by-case basis should take place after a decision-maker has considered the facts of the case and decided that it is appropriate to refuse the claim. The Home Office relies on decision-makers making an assessment of whether the claim is clearly unfounded after they have considered the claim. There is a real risk, however, that opportunities to certify on a case-by-case basis may be missed, given that not all decision-makers are trained in NSA.

5.29 Many staff and managers doubted that decision-makers who had not received NSA training would consider the option of certifying on a case-by-case basis. They suggested that even those who did might not understand the threshold that applied. As a result, senior managers told us that they were not confident that all cases that could potentially be certified on a case-by-case basis were being referred to NSA-trained staff and considered for certification.

5.30 A critical component in identifying clearly unfounded cases is the knowledge and understanding of staff. Given the risk that opportunities to certify may be missed if staff lacked the appropriate expertise, we explored why not all decision-makers had been trained in NSA. We found that the decision not to train all caseworkers in NSA had been taken following the introduction of the New Asylum Model (NAM) in 2007; no-one was able to explain the rationale for this. ACD senior



managers told us, however, that all new decision-makers undertaking induction training from January 2014 would receive NSA training and there were also plans to extend such training to existing staff who had not previously received it.

5.31 There is no requirement for an SPOE to authorise decisions not to certify a claim on a case-by-case basis. Therefore cases that could be certified, but are not, would only be identified before the decision was served if it was reviewed by a Senior Caseworker. As we commented previously, however, not all such decisions were being quality assured.

5.32 The training will undoubtedly give decision-makers greater knowledge about 'clearly unfounded' cases. However, we do not believe that this, of itself, will ensure that consideration is given to certification in all cases. We consider that decision-makers should be required to record their reasons on CID, setting out why they do not believe that the claim is clearly unfounded. Not only will this act as an aide-mémoire to encourage decision-makers to consider certification, but it will provide managers with data to identify whether a consistent approach to certification is being taken.

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*Decision-makers should be required to record their reasons on CID, setting out why they do not believe that the claim is clearly unfounded*

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5.33 Staff and managers told us consistently that where decision-makers considered certification, they took the potential impact seriously, not least because a decision to certify would deprive an applicant of an in-country right of appeal. They would research the objective evidence and case law before making a recommendation that a claim be certified. Where they had any doubts about the suitability of the case for certification, they erred on the side of caution and would not certify it. During the on-site phase of our inspection, we observed instances of staff deciding not to certify claims because they were not satisfied that they met the high threshold required. We were reassured by this approach, given the potential impact on applicants if they are deprived of an in-country right of appeal.

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*We observed instances of staff deciding not to certify claims because they were not satisfied that they met the high threshold required*

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### **We recommend that the Home Office:**

Makes full use of the Section 94 certification power to:

- Certify asylum and / or Human Rights claims from people entitled to reside in designated states unless the Secretary of State is satisfied that such claims are not clearly unfounded; and,
- Ensure consideration is given to certification in all other asylum and Human Rights cases, and it records the basis for all its decisions on certification.

### **Quality assurance of certification decisions: Second Pair of Eyes (SPOE) process**

5.34 All decisions that are to be refused and certified must be approved by a Second Pair of Eyes (SPOE), as must decisions not to certify in designated cases. This assurance process was introduced to allay concerns that incorrect decisions could be made and could lead to a person being returned to face ill treatment, without having the ability to bring an in-country right of appeal.

5.35 According to material provided to us by the Home Office, a SPOE must:

- be of at least a Higher Executive Officer (HEO) grade;
- have undertaken NSA training;
- have been ‘accredited’ by a member of the oversight team or a Regional Lead;<sup>19</sup> and
- have satisfied the oversight team or a Regional Lead of their competence to perform the role.

5.36 To be accredited, a prospective SPOE’s decisions on whether to authorise recommendations regarding certification, along with any suggested amendments to the decision letters, were reviewed by either the NSA oversight team or a Regional Lead.<sup>20</sup> They needed to have five or six decisions, in which they had acted as SPOE, agreed by the oversight team or a Regional Lead before receiving final accreditation. Given that the SPOE process constitutes an important safeguard in NSA cases, we were pleased to find that both prospective and accredited SPOEs considered the accreditation process to be demanding.

5.37 We noted that there was no set of objective standards for the oversight team and Regional Leads when assessing whether the prospective SPOE’s decisions were satisfactory. This was particularly striking given that the Home Office’s quality audit team used a set of ‘standards’ to assess initial decision quality. A similar approach could be used to ensure that consistent standards are applied to prospective SPOEs undergoing accreditation. The Home Office told us it intends to increase the number of SPOEs. Against this background, there is a heightened risk that the work of SPOEs will be of variable quality and the decisions they make will be inconsistent if an objective set of standards is not developed and put in place swiftly.

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*There was no set of objective standards for the oversight team and Regional Leads when assessing whether the prospective SPOE’s decisions were satisfactory*

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**We recommend that the Home Office:**

Accredits Second Pairs of Eyes against objective criteria and requires reaccreditation on a regular basis.

5.38 We examined whether the SPOE process was being followed correctly. To do this we asked the Home Office to provide us with a list of people who were accredited SPOEs, and compared that list<sup>21</sup> with the CID records in the 120 cases that we sampled.

5.39 A SPOE had approved the decision before it was served in 97 of the 104 cases (93%) where there was evidence that certification had been considered. However, we found that a decision had been issued without prior SPOE authorisation in seven of these cases (7%) and in a further four, a SPOE had authorised the decision after it had been sent to the applicant. All of these were designated cases where a decision was made not to certify the claim. One such case is discussed in more detail in Figure 5.

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*A decision had been issued without prior SPOE authorisation in seven of these cases (7%) and in a further four, a SPOE had authorised the decision after it had been sent to the applicant*

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<sup>19</sup> Each of the Home Office’s previous asylum ‘regions’, along with CCD, had a ‘Regional Lead’ for NSA. Following restructuring, the regions no longer exist, though the term Regional Lead continued to be used.

<sup>20</sup> We found that responsibility for accrediting SPOES had moved between the NSA oversight team and Regional Leads over time.

<sup>21</sup> As we go on to discuss in Chapter 9, the Home Office was unable to provide us with a definitive list of people who were accredited as an SPOE



**Figure 5: Case study 2 – Authorisation by a ‘Second Pair of Eyes’ (SPOE) after the decision had been served.**

**The applicant:**

- was a national of Albania, a designated state, and claimed asylum on 9 September 2012;
- stated that his family were involved in a blood feud with another family and that he feared for his life;

**The Home Office:**

- decision-maker correctly identified that the applicant came from a designated state and recommended that the claim should be refused and certified as clearly unfounded on 26 March 2013;
- refused the asylum claim on 26 March 2013 but it was not certified;
- only authorised the decision by an accredited SPOE on 25th November 2013, some eight months after the applicant had been served the refusal decision.

**The Home Office response:**

- accepted that appropriate and timely SPOE action had not been undertaken and stated ‘The requirement to SPOE where not certifying has been reemphasised more than once’;
- suggested that the decision-maker had inadvertently written ‘certify’ rather than ‘not certify’ in their recommendation minute;
- also agreed that SPOE authorisation should not occur retrospectively.

**Chief Inspector’s comments:**

- It is unacceptable that a decision not to certify a designated case was not authorised by an accredited SPOE, before it was served on the applicant.
- It is essential that the recommendations made by decision-makers to SPOEs accurately reflect whether they consider certification is appropriate or not.
- It is concerning that the SPOE process was not correctly followed, given the importance of this safeguard and the assurances that have been given to Parliament.

5.40 In a further three cases, we could find no evidence that the decision on certification had ever been authorised by an accredited SPOE. In two of these cases decisions had been certified, meaning that the applicants lost their right to an in-country appeal. The case at Figure 6 is one example.

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*In three cases, we could find no evidence that the decision on certification had ever been authorised by an accredited SPOE*

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## Figure 6 Case study 3 – Decision to certify taken without authorisation from an accredited SPOE.

### The applicant:

- was a national of India, a designated state;
- claimed asylum on 18 March 2013 on the basis that his family were in a dispute with a local money-lender who had threatened to kill him;

### The Home Office:

- decision-maker refused the claim on 12 April 2013 and recommended it be certified as ‘clearly unfounded’;
- secured authorisation to certify the claim on 12 April 2013, from a SPOE who was not accredited to make the decision at the time it was made;
- removed the applicant to India on 14 August 2013.

### Chief Inspector’s comments:

- In this case, the Home Office did not adhere to the undertaking it gave to Parliament, or its own guidance, and allowed a SPOE who was not accredited to authorise the certification decision;
- This is unacceptable. The decision to certify the claim must be made by an accredited SPOE to give Parliament, Ministers and the public assurance that the certification power is being used correctly and appropriately.

5.41 Given the significance of making incorrect decisions, particularly where a decision is certified, we were extremely concerned that the Home Office’s own SPOE policy was not being followed in all cases.

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*We were extremely concerned that the Home Office’s own SPOE policy was not being followed in all cases*

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5.42 Some external stakeholders have previously expressed concern with the SPOE process. Specifically they have suggested that, irrespective of whether or not a decision is correct, a SPOE is likely to agree with the decision-maker’s recommendation. We noted in our file sample that the SPOE disagreed with the recommendation made to them in only one case.

5.43 Decision-makers, SPOEs and managers all considered that the stakeholders who believed the SPOE process was little more than a rubber-stamping exercise were mistaken. They told us that SPOEs formed an independent view on the appropriate outcome in the case. Decision-makers regularly sought the views of SPOEs prior to making a formal recommendation, to see whether it would be appropriate to certify a claim. Staff and managers suggested, given this approach, that it was unsurprising that SPOEs ultimately disagreed with only a small number of recommendations.

5.44 Whilst on-site, we observed instances where decision-makers and SPOEs had such discussions and where SPOEs advised that it would be inappropriate to certify a claim. Given this, we were satisfied with the explanations that we had been given and did not consider that SPOEs were failing to exercise their own judgement when recommendations were made to them. Nonetheless, we believe the Home Office should do more to ensure the quality and consistency of SPOE decisions. Whilst the decisions made by SPOEs were reviewed as part of the Quality Audit Team’s work, there were no formalised process to assess the quality and consistency of SPOE decisions. We believe such a process should be introduced.

## Additional quality assurance checks

- 5.45 In addition to SPOE checks, ACD and CCU had processes in place to review and / or authorise some decisions. These varied between the two business areas, though in both the decisions of less experienced staff were reviewed and / or authorised prior to being served. ACD and CCU also had dedicated teams who were responsible for reviewing quality:
- ACD's Quality Audit Team sampled 5% of all asylum decisions after they had been served on applicants, using pre-defined criteria, and
  - within CCU, managers / senior caseworkers reviewed a minimum of two decisions made by decision-makers each month, using pre-defined 'standards'. Its Casework Quality and Capability Team then dip-sampled 5% of these reviews.
- 5.46 The findings of these reviews were used by managers in both business areas to measure performance.
- 5.47 We found that there was confusion over the purpose of the teams and the checks they undertook. Some staff and managers saw them as a safeguard to ensure that incorrect decisions, including those relating to certification, were not served on applicants. However, others, including senior managers, saw their primary purpose as being to provide data on the quality of decisions, rather than to act as a quality control mechanism. We agree that this is the correct interpretation of their purpose, given that the checks are normally carried out only after a decision has been served on an applicant. Senior managers must ensure that their staff understand this so that they do not place reliance on retrospective checks as a quality control mechanism.
- 5.48 However, we do not consider that the methodologies used by the teams allow them to provide either an effective quality control mechanism or meaningful data on decision quality in NSA cases. The teams review a percentage of the total number of decisions made; however, the percentage of these that will have been certified will be relatively small, limiting the value of the data on NSA cases. We put our concerns to senior managers and welcome the fact that they are now reviewing the methodology used by their respective teams. Nevertheless we consider that a consistent approach to ensuring quality of decision-making in NSA cases across teams is of paramount importance.

## Appeals and Judicial Reviews

### Appeals

- 5.49 The primary purpose of certification under Section 94 is to ensure that any appeal is only made after the applicant has left the UK. The percentage of applicants whose claim had been refused and certified and who then brought an appeal was low when compared to cases that were not certified. Data provided to us by the Home Office<sup>22</sup> showed that in the financial year 2012/13, a total of 27 appeals had been lodged by people whose claim had been refused and certified. During the same period, the Home Office had removed 905 people whose claims had been refused and certified.
- 5.50 Any allowed appeal in an NSA case is a matter of serious concern, given that the individual may be appealing from the country where the UK courts have found them to be at risk of persecution or serious harm. Home Office data showed that since 2007, there had been 114 out-of-country appeals, of which one had been allowed in 2011. Staff and managers considered that the small number of appeals lodged from abroad and the even lower number of allowed appeals was an indicator that the Home Office was exercising the certification power with appropriate caution.
- 5.51 As we have stated in numerous previous reports,<sup>23</sup> the outcome of appeals is an indicator of decision quality and is information that the Home Office should analyse and use to improve initial decisions;

<sup>22</sup> Data provided by the Home Office to the inspection team on 13 May 2014.

<sup>23</sup> An Inspection into the Handling of Asylum Applications Made by Unaccompanied Children (2013)

this applies equally to NSA cases. We were particularly concerned that the oversight team was not aware that there had been an allowed appeal in 2011.

- 5.52 Two of the six applicants in our sample of 80 certified cases who sought to appeal from within the UK were granted permission to do so and had their appeals heard by the Tribunal. In one of the cases, we could find no evidence that the Home Office had highlighted the lack of jurisdiction for the Tribunal to hear the appeal prior to the hearing, nor had the Home Office raised the issue at the hearing itself. In the second case, it was not clear whether lack of jurisdiction had been raised as a preliminary issue.
- 5.53 We recognise that it is the Tribunal which lists appeals. However, the Home Office should ensure that where certified decisions are appealed from within the UK, that the lack of jurisdiction to hear the appeal is communicated to the Tribunal.

### Judicial Reviews

- 5.54 Given that appeals from overseas are rare in certified cases, we asked the Home Office for data on the number and outcome of Judicial Reviews (JRs) where applicants had challenged decisions to certify their claims while still in the UK. We were particularly interested to establish the number of cases where:
- the applicant had been successful (i.e. the certification decision was found to be unlawful);
  - the Home Office had been successful (i.e. the certification decision was upheld); or
  - the Home Office had withdrawn the certificate (i.e. the Home Office decided that an in-country right of appeal should be allowed).

- 5.55 We asked the Home Office for data covering the financial years 2010/11; 2011/12; and 2012/13. The Home Office had considerable difficulty in supplying us with this information. Given the fact that JR outcomes constitute a potentially valuable indicator of decision quality in NSA cases, we were extremely concerned that the Department did not have this data to hand and that we had to clarify our request on numerous occasions before receiving their final response. When the data was eventually provided, the Home Office inserted numerous caveats into its response, indicating that it did not have faith in the reliability of the data.

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*Given the fact that JR outcomes constitute a potentially valuable indicator of decision quality in NSA cases, we were extremely concerned that the Department did not have this data*

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- 5.56 The Department noted that the data depended to a large extent on caseworkers updating CID correctly. It also informed us that there had been no dedicated CID field for JR challenges against certification until June 2011, which explained ‘why the figures for 2010/11 are so low and can be accounted for by a small number of records being backfilled’. This in itself is a concern, given that NSA certification was introduced under the 2002 Act, nine years before the CID update that allowed JRs against such decisions to be captured. It was clear that the Home Office had not previously been gathering data on JR outcomes in NSA cases and using it to monitor and improve the quality of certification decisions.
- 5.57 The data the Home Office eventually provided was difficult to interpret. It encompassed JR outcomes in:
- asylum cases;
  - asylum and human rights cases;
  - human rights cases only; and

- data quality.

5.58 We asked why there was a category recording 'data quality'. The Home Office informed us that these were cases in which certification had been challenged, but there was no 'asylum and / or Human Rights case linked to the JR'. In addition, the data also separately recorded JR challenges that had been dismissed in two different fields. As can be seen from Figure 7, the data provided stated that applicants whose claims had been certified had applied for JR on 496 occasions in the three financial years up to March 2013.

<b>Figure 7 – Judicial Review outcomes: April 2010-March 2013</b>				
<b>Figure 7 JR Outcomes</b>	<b>2010 / 2011</b>	<b>2011 / 2012</b>	<b>2012 / 2013</b>	<b>Grand Total</b>
Dismissed		1		1
JR – Allowed		4	2	6
JR – Closed by the Court (claimant failed to comply with the CPR)		2	1	3
JR – Conceded	1		2	3
JR – Conceded – no fault on behalf of SSHD	1	6	3	10
JR – Conceded – policy		1		1
JR – Conceded – some fault on behalf of SSHD	3	2	4	9
JR – Dismissed	3	3	9	15
JR – Disposed	1	3	8	12
JR – First Orders Dismissed			1	1
JR – PAP Inappropriate			2	2
JR – Permission Adjourned to Oral Hearing		1		1
JR – Permission to Proceed Granted		3	6	9
JR – Permission to Proceed Refused	6	83	67	156
JR – Permission to Proceed Refused –with finding of no merit/renewal no bar		32	55	87
JR – Withdrawn	6	52	51	109
JR – Withdrawn – Notice of Discontinuance served by Claimant		3	10	13
JR – Permission Refused – No Merit		8	13	21
Withdrawn by Appellant	1			1
No recorded outcome		8	28	36
<b>Grand Total</b>	<b>22</b>	<b>212</b>	<b>262</b>	<b>496</b>

- 5.59 Staff and managers suggested that the relatively large number of JRs was unsurprising, as JR was the only way for applicants whose claims had been certified to challenge the Home Office's decision prior to removal. All believed the number of successful JRs against certification was low. They considered that this was an indicator that the Home Office's decisions to certify cases were reasonable.
- 5.60 The Home Office's data indicated that only six JRs were allowed between April 2010 and March 2013. This would appear to support the views expressed above. However, we have been unable to use the JR data to draw conclusions on the quality of certification decisions because it is neither reliable nor comprehensive.
- 
- We have been unable to use the JR data to draw conclusions on the quality of certification decisions because it is neither reliable nor comprehensive*
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- 5.61 We also sought to establish the number of cases where the Home Office had withdrawn<sup>24</sup> its decisions to certify claims following applications for JR. This was on the basis that decisions to withdraw certificates may indicate that the quality of the initial decision was poor. During interviews with staff and managers, they cited a number of reasons why certificates might be withdrawn. These included that fresh evidence could emerge after certification, indicating that the claim was not clearly unfounded; that the decisions to certify had been incorrect; or that a decision was made to give the applicant an in-country right of appeal rather than to incur time and cost by defending a certification decision.
- 5.62 Staff and managers believed that very few certificates were withdrawn because the initial certification decisions had been incorrect. Unfortunately, the data provided by the Home Office did not capture the number of certificates that had been withdrawn by the Department. However, as can be seen from Figure 7, it did record that 23 cases had been conceded by the Home Office. In addition, we noted that the data recorded that 123 JRs had been withdrawn under three separate categories.
- 5.63 Where the Home Office agrees to withdraw a certificate, conceding an in-country appeal right, applicants are likely to withdraw their JR. We asked the Home Office to clarify whether such cases would be recorded as having been 'conceded' by the Home Office or 'withdrawn'. The Home Office informed us that the outcome could potentially be recorded under either heading. It was therefore unable to identify the specific basis for the withdrawal of JRs.
- 5.64 We appreciate that there are various reasons why a certificate may be withdrawn. However, given that some of the decisions will have been withdrawn because the Home Office itself considered them to be incorrect, it is concerning that this information was not being captured accurately. In the absence of reliable data, we are unable to determine either the frequency or basis with which decisions were withdrawn.
- 5.65 The lack of reliable data on the number and outcome of Judicial Reviews is a matter of serious concern to us. Not only does this mean that we are unable to effectively assess the quality of the Home Office's decision-making, but the absence of this information means that the Home Office is, itself, unable to understand where judicial challenges take place and the outcomes of these. This information would, in turn, enable the Home Office to improve the quality of its decisions, which can have such a significant impact on applicants, who may be unfairly deprived of an in-country right of appeal.

**We recommend that the Home Office:**

Takes urgent steps to effectively capture and analyse data on Judicial Reviews in order to improve the quality of decision-making.

<sup>24</sup> The consequence of this was that the applicant would be given an in-country right of appeal

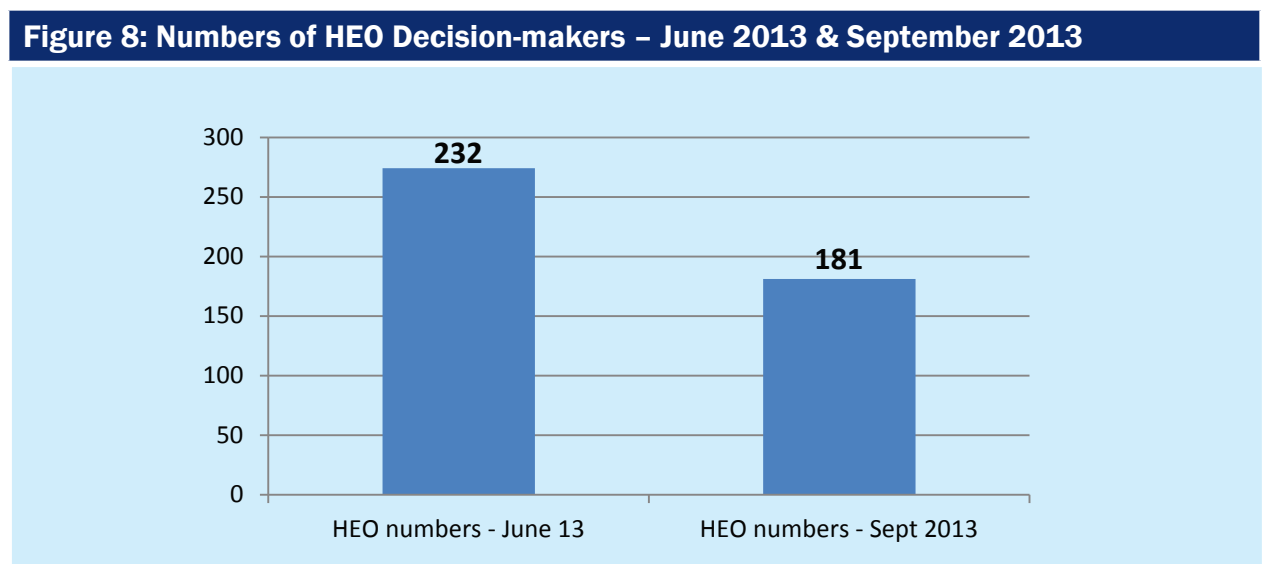


# 6. INSPECTION FINDINGS: ALLOCATION OF RESOURCES

## Resources should be allocated to support operational delivery and achieve value for money

### Structural changes to the organisation of asylum casework

- 6.1 Following the introduction of the New Asylum Model (NAM) in 2007, asylum applications<sup>25</sup> were considered by 'case owners', who were of the Higher Executive Officer (HEO) grade. The model envisaged that case-owners would manage the case from a point shortly after the applicant claimed asylum until the claim was concluded, either through a grant of leave, or the applicant's removal.
- 6.2 Following a review of the operating model for asylum in 2012, the UK Border Agency's Board decided to move away from a structure based on HEO case owners. The new structure saw staff at the more junior Executive Officer (EO) grade focus on interviewing applicants and making decisions on their asylum claims, with tasks such as presenting appeals falling to others. Senior managers shared this proposal with staff in the final quarter of 2012. Due to the prospect of their roles disappearing, large numbers of HEO case-owners applied for and secured jobs elsewhere. This can be seen in Figure 8 below:



\*Figures have been rounded

<sup>25</sup> Except those made in cases where the Home Office was seeking to deport the applicant, which were considered by the Criminal Casework Unit

6.3 It was clear that the loss of experienced HEO case-owners had had a negative impact on ACD's ability to make timely decisions on asylum applications. A number of staff described it as a 'haemorrhaging' of resources and at least one went further, characterising the loss of so many HEOs within such a short period as 'a self-inflicted wound'.

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*The loss of experienced HEO case-owners had had a negative impact on ACD's ability to make timely decisions on asylum applications*

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6.4 Many of those who left were NSA trained and some had been accredited SPOEs. The Home Office was caught off guard by the speed and number of HEO departures and unable to recruit EOs quickly enough to prevent a build-up of cases awaiting decision. In September 2013, the new Director of Asylum decided to put the restructure on hold<sup>26</sup> and to seek to retain the HEOs who remained as senior decision-makers, leaving the new EOs to focus on less complex cases. Despite this announcement, in February 2014 approximately 13,500 applications were awaiting an initial decision and that number was still rising.

6.5 As the Home Office had not considered these applications, it was not possible to establish how many might potentially go on to be certified under the NSA provisions. However, Home Office data<sup>27</sup> showed that in the financial year 2012/13 claims made by nationals of designated states comprised 14.7 per cent of the overall intake. Senior managers agreed that it was reasonable to assume that the applications awaiting decision would contain a similar percentage of designated cases. This means there could be over 1,900 such cases in the backlog. There will also be applications awaiting decision that may be suitable for certification on a case-by-case basis.

6.6 Certification under section 94 is less likely in cases where individuals wait a long time for initial decisions on their applications. This is because people develop ties in the UK over time, strengthening the Article 8 ECHR (the right to a private and family life) aspects of their claims. This, in turn, may make it inappropriate to certify such cases as 'clearly unfounded'. When we put this to senior managers, they accepted that cases that had been waiting for a decision for a lengthy period were less likely to be certified than those that were decided quickly. This meant that some applicants in the backlog, whose cases could have been certified if a timely decision had been made, were likely to be given an in-country right of appeal when decisions on their claims were eventually taken. It meant that people whose claim could have been certified and removed, would potentially build up in-country rights, which could make it harder to refuse their applications. This demonstrates the importance in dealing with such claims expediently, as delays such as those described will almost invariably lead to additional financial costs on the public purse which otherwise would not have occurred.

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*People whose claim could have been certified and removed, would potentially build up in-country rights, which could make it harder to refuse their applications*

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### **Recruitment of new staff**

6.7 The Home Office had been actively recruiting staff to replace the case owners who had left. At the time of our inspection, senior managers anticipated that the majority of these would be in post by April 2014. There would be a complement of 409 decision-makers, all of whom would be trained in NSA.<sup>28</sup> The plan was for 70% of decision-makers to be EOs and 30% HEOs. The Home Office had recruited more than the complement of 409 decision-makers due to forecasted natural wastage.

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26 Email from the Director of Asylum to ACD staff, 11 September 2013

27 Thematic Inspection: Non-suspensive Appeals system presentation.

28 We were told that new staff who undertook training from January 2014 would receive NSA training as part of their initial training, whilst a programme of training was underway to train those in post who had not received training previously. We were told that all ACD decision-makers would be trained in NSA by April 2014.



- 6.8 Following the decision to place the previous restructuring plan on hold, extensive operational modelling took place to determine the appropriate number and grade of staff and how they would be utilised. As a result of this modelling, senior managers were confident that they would have sufficient trained staff to clear the backlog on or before 31st March 2015, whilst also ensuring that almost all new claims were decided within six months. It was clear that a considerable amount of thought had gone into these plans. Nevertheless, we believe that achieving the targets senior managers have set will be challenging, given the number of outstanding cases, the level of asylum intake and the relative inexperience of so many of ACD's decision-making staff.
- 6.9 When we conducted our on-site interviews, the Home Office was prioritising the use of its resources by focussing on particular types of cases. We were regularly told by staff that there was a focus on cases where applicants had been waiting the longest and, in particular, cases that were likely to result in the applicant being granted leave. There were two reasons for prioritising cases in this way:
- applicants granted leave would not be entitled to asylum support, which the Home Office paid, therefore it would save cost; and
  - grants were likely to take less time than refusals, which tended to be more complex, therefore it was easier to achieve productivity targets by prioritising such cases.
- 6.10 We appreciate that until there are sufficiently trained and mentored decision-makers, the Home Office will have to prioritise the use of its resources. However, it is essential that, when determining priorities, all factors are considered. Prioritising cases in this way could exacerbate the risk that cases in the backlog that could potentially be certified will not be certified when they are decided because the applicants will have had time to develop family or communities ties in the UK.

# 7. INSPECTION FINDINGS: SAFEGUARDING INDIVIDUALS

All individuals should be treated with dignity and respect and without discrimination in accordance with the law.

## Consistency of approach

- 7.1 People making asylum and / or human rights claims are entitled to expect that their applications will be considered fairly and consistently and that they will receive a decision within a reasonable period of time. Consequently, applicants should expect the same outcome in their case, irrespective of which of the Home Office's business areas, or which of the Home Office's former immigration regions considered the claim.
- 7.2 In our file sample, we found that compliance with the requirements of the NSA process was much more limited in deportation cases handled by CCU than in asylum cases decided by ACD. There was evidence that certification had only been considered in one of the seven designated cases handled by CCU which were not ultimately certified (14%). By comparison, of the 33 cases designated cases that were not certified and had been considered by ACD, we found that consideration had been given in 23 (69.7%). Whilst this was a better performance, this still meant there was no evidence of consideration of certification in almost a third of those cases.
- 
- Certification had only been considered in one of the seven designated cases handled by CCU which were not ultimately certified (14%)*
- 
- 7.3 Home Office data suggested that even where designated cases had been considered within ACD, there were potentially some inconsistencies of approach. We noted that the percentage of designated cases that were certified varied widely between the Home Office's former regions.
- 7.4 Figure 9 sets out the percentage of designated cases refusals that were certified under Section 94 by the Home Office's former immigration regions April-October 2013.

**Figure 9: Percentage of designated state refusals certified (%)**

Former immigration region:	Percentage (%) of Designated State refusals certified
Scotland & Northern Ireland	26.6 %
Wales & South West	35.8 %
London & South East	42.3 %
Midlands & East England	44.5 %
North West	45.4 %
North East, Yorkshire & Humberside	51.4 %
Detained Fast Track	60.1%

- 7.5 We noted that of the 16 designated cases in our sample where there was no evidence that consideration had been given to certification prior to the decision being served, seven (44%) of the applicants were Albanian. This was particularly striking given that the next most prevalent nationality was India with three cases (19%).
- 7.6 Staff and managers told us that the NSA Oversight Team had issued instructions reminding SPOEs of the legal obligations to consider Albanian claims for certification. Possible explanations given to us for the failure to consider the issue in some Albanian cases included that decision-makers may have forgotten that Albania was a designated state due to relatively large numbers of claims being made by Albanian nationals, and / or that decision-makers may have considered certification and decided it was not appropriate, but failed to record this on CID.
- 7.7 It is not possible for us to determine why consideration was not given to certification in the Albanian cases we sampled, but without any formal record being made on CID, the presumption must be that certification was not considered in these cases. The Home Office must therefore take steps to ensure that applications from all designated cases are being considered appropriately and consistently. Not only will this ensure that the Secretary of State is meeting her legal obligations, but it will ensure that applicants are being treated equally.
- 7.8 We also found that the rate at which applications were certified on a case-by-case basis varied significantly between asylum teams in different regions. This can be seen from Figure 10.

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*The Home Office must take steps to ensure that applications from all designated cases are being considered appropriately and consistently*

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**Figure 10: The average percentage of case-by-case refusals certified between April and October 2013**

Regions	Average (%)
Scotland & Northern Ireland	0.9
Wales & South West	5.0
London & South East	2.7
Midlands & East England	1.3
North West	2.9
North East, Yorkshire & Humberside	2.8
Detained Fast Track	1.5

- 7.9 Staff and managers gave us a range of possible explanations for these variations. These included the nationality mix of cases at each location; staff experience; conflicting operational priorities at locations; and staff training. We were disappointed that no central analysis had been done to establish the reasons for these variations.
- 7.10 We believe that the absence of a process requiring decision-makers to record why they decided not to certify a claim on a case-by-case basis will hinder any attempts by the Home Office to identify whether a consistent approach to case-by-case certification exists.

**We recommend that the Home Office:**

Establishes the reasons for regional variations in certification and ensures that the power is used consistently and appropriately.

**Undecided applications**

- 7.11 We commented in the previous chapter on the sharp rise in the number of asylum cases awaiting decision following the loss of experienced staff in 2013. Home Office data showed that where a person made an asylum claim that had not been decided within 30 days of it being made, the eventual time that it took to make a decision had increased year-on-year for the last two financial years. This was the case for both decisions that were certified and those that were not, as can be seen from Figure 11:

**Figure 11: Average time to decide asylum applications (days)**

	Certified Applications			Non-Certified Applications		
	2010/11	2011/12	2012/13	2010/11	2011/12	2012/13
No of applications made	1046	1122	1527	15080	16826	19026
No of decisions made > 30 days (%)	480 (46%)	491 (44%)	700 (46%)	4995 (33%)	6377 (38%)	4658 (25%)
Average number of days for a decision made > 30 days	81	86	94	82	84	113

7.12 Given that the number of applications undecided was increasing, we believe that the number of people waiting for a decision will also increase, as will the average length of time that it takes the Home Office to make a decision. We recognise that the Home Office has plans to clear these cases. However, given the anxiety and uncertainty for applicants and their families that decision-making delays cause, it is essential that decisions are made as quickly as possible.

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*Given the anxiety and uncertainty for applicants and their families that decision-making delays cause, it is essential that decisions are made as quickly as possible*

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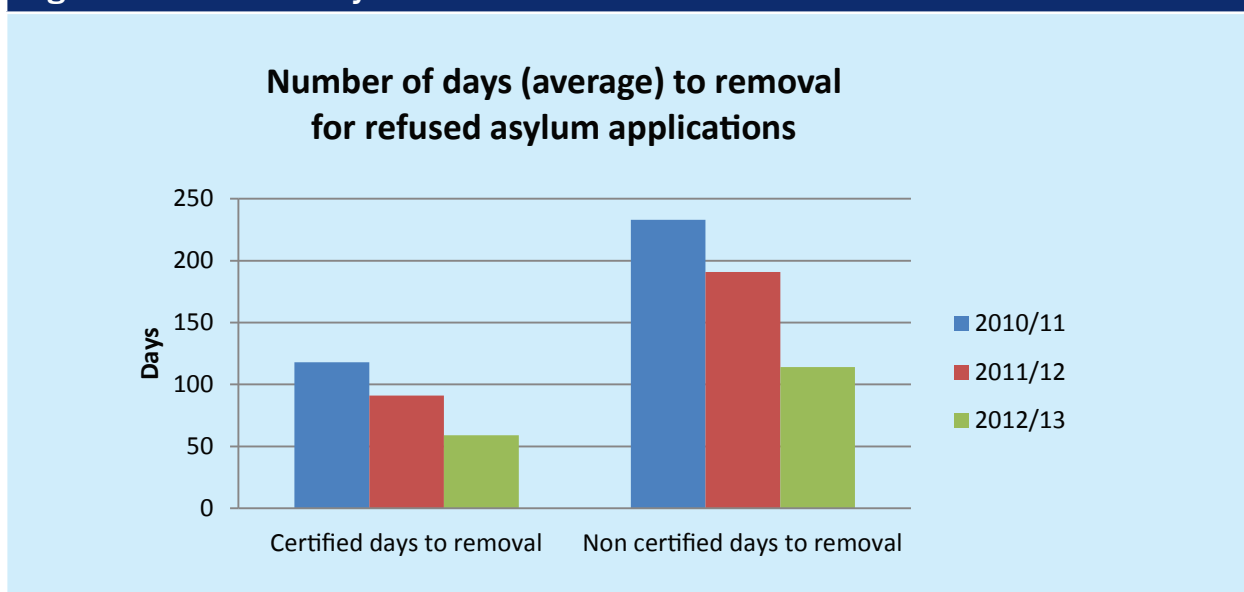
## 8. INSPECTION FINDINGS: ENFORCEMENT POWERS

Enforcement powers should be carried out in accordance with the law and by members of staff authorised and trained for that purpose.

### Removal

- 8.1 One of the main objectives behind the introduction of the NSA provisions was to accelerate the removal of those making clearly unfounded claims. It was hoped that this in turn would reduce the associated costs for asylum support.<sup>29</sup> Home Office data shows that asylum removals in certified cases take place more quickly than in cases where asylum claims are not certified. This is shown in Figure 12, which records the number of days to removal for refused asylum claims (average for removed applicants only).

**Figure 12 Number of days taken from refusal to removal**



- 8.2 The figures indicate that removals in NSA cases had become faster on average, with the time to removal falling by approximately 50% between 2010/11 and 2012/13. This shows that where certification is used, it has resulted in applicants being removed more quickly.

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*Removals in NSA cases had become faster on average, with the time to removal falling by approximately 50% between 2010/11 and 2012/13*

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<sup>29</sup> Section 95 of the Immigration and Asylum Act 1999 provides the power to support asylum-seekers and any dependants who are destitute. Such support consists of financial assistance, accommodation or both. Section 95 support eligibility normally stops when the asylum claim and any appeal is finally determined, but continues if the person has children in their household at the time when their claim or appeal was finally determined as refused. Section 4 of the Immigration and Asylum Act 1999 provides the power to support other failed asylum-seekers who are destitute, but support is only provided if there is a temporary legal or practical barrier that prevents the person from leaving the UK.

- 8.3 We also reviewed the outcomes<sup>30</sup> of the 80 decisions that had been refused and certified in our file sample. Of these, we found that the applicant had been removed, or had chosen to leave the UK, in 46 cases (57.5 %).
- 8.4 As in the Home Office data, our sample showed that removal took longer in cases where the claim was not certified. Removal was also less likely to have occurred in those cases. In the 46 certified cases in which a person had been removed, this took an average of 83 days. Eight of the 40 applicants (20%) whose claims had been refused but not certified had subsequently been removed. However, this took an average of 120 days, nearly 40 days longer than for removals in certified cases.
- 8.5 Destitute asylum seekers who do not have children are only entitled to support until their claim and any appeal is finally determined. In cases that are certified, this will be when the Home Office serves its decision.
- 8.6 The Home Office informed us that the average support cost for a single applicant, whose claim had not been certified, was £16.18 per day.<sup>31</sup> On the basis of this figure, the Home Office informed us that applications from singles whose claims were refused but not certified had the following additional support costs compared to the average single applicant whose claim had been certified:
- 2010/11 £1698.90
  - 2011/12 £1650.36
  - 2012/13 £1035.52
- 8.7 There are likely to be additional, indirect financial benefits if the Home Office removes those with no entitlement to remain in the UK at the earliest possible opportunity. These include costs associated with:
- maintaining contact with people until they are removed; and
  - considering and responding to further submissions which applicants may submit based on their changing circumstances.
- 8.8 It is clear that where the Home Office uses section 94 certification and applicants are removed, this results in quicker removals and savings for the taxpayer. These findings reinforce the importance of ensuring that all cases that can potentially be certified are identified and that they are certified where it is appropriate to do so.

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*Where the Home Office uses section 94 certification and applicants are removed, this results in quicker removals and savings for the taxpayer*

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### **Applicants who are not removed**

- 8.9 As we have explored in one of our previous reports,<sup>32</sup> it is not always possible for the Home Office to remove all applicants whose claims have been refused. Reasons for this include: difficulties in securing travel documents for the purpose of removal; legal challenges; and the tendency of some individuals to submit further representations following refusal of their claims. The Home Office maintains contact with those who have been refused but are not detained, by asking them to report at specified times to either one of its own reporting centres or a police station.
- 8.10 In our sample, 34 claims were refused and certified but had not resulted in removal or voluntary departure from the UK. Of the 34 applicants:

<sup>30</sup> As of 31 January 2014

<sup>31</sup> Home Office presentation to inspection team, 18 December 2013

<sup>32</sup> An Inspection of the Emergency Travel Document process

- one had subsequently been granted leave to remain in the UK;
- three were in immigration detention and so were not required to report;
- eight had absconded; and
- 22 had had reporting restrictions.

8.11 We found that of the 22 applicants who had existing extant reporting restrictions:

- 13 were reporting to the Home Office, as they were required to do;
- one was not reporting but the Home Office was taking action in the case; but
- eight were not reporting, as they were required to do, and the Home Office had not listed them as absconders. We could see no evidence that the Home Office had been taking any action in order to ensure the applicants resumed reporting or to list them as absconders.

8.12 We were extremely concerned that no action was being taken in these eight cases, which constituted more than a third (36.4 per cent) of the 22 in which reporting restrictions had been set. Where people fail to report, we would expect the Home Office to take active steps to investigate the reasons to encourage them to comply and, where appropriate, to list them as absconders.<sup>33</sup> Where a person is listed as an absconder, it ensures that if they come to the attention of the Home Office or police in future they will be identified as not complying with reporting restrictions.

8.13 An example of such a case can be seen in Figure 13.

#### **Figure 13: Case study 4 – Not listing a person who failed to report as required as an absconder**

##### **The applicant:**

- was a Lebanese national who applied for asylum on arrival in the UK in April 2012; and
- last reported as required in June 2012.

##### **The Home Office:**

- refused and certified the asylum application in May 2012;
- applied for an Emergency Travel Document (ETD) in June 2012;
- last sent a reporting reminder form (ISE343) to the applicant in October 2012;
- had not listed the applicant as an absconder.

##### **Chief Inspector's Comments:**

- Despite the applicant having last reported in June 2012, the Home Office had not listed them as an absconder. When we asked the Home Office about this case, it informed us that prior to listing the applicant it needed to carry out a compliance visit to the applicant's address; however, this had not been undertaken.

<sup>33</sup> A person identified as an absconder should be listed as such on both CID and the Police National Computer.



8.14 The failure to take effective action against absconders is likely to hinder the Home Office's ability to remove them at a later stage should they come to the attention either of its own enforcement staff or the police. However, of further concern is that the Home Office uses data on the rate of absconding to inform Ministerial authorisations to discriminate on the basis of nationality.<sup>34</sup> Consequently, if the Home Office fails to take appropriate action to correctly record people as being absconders, data that informs decisions on those authorisations is also likely to be unreliable.

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*The failure to take effective action against absconders is likely to hinder the Home Office's ability to remove them at a later stage*

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**We recommend that the Home Office:**

Takes appropriate action against those who have failed to report.

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<sup>34</sup> Paragraph 17 of Schedule 3 of the Equality Act 2010

# 9. INSPECTION FINDINGS: CONTINUOUS IMPROVEMENT

The implementation of policies and processes should support the efficient and effective delivery of border and immigration functions.

## The NSA Oversight Team

- 9.1 The NSA Oversight Team was established in 2003 to oversee and monitor the Home Office's use of certification powers in designated state cases. Historically, their remit included providing technical advice to caseworkers and informing the Home Office's strategic approach to certification matters.
- 9.2 The role and remit of the Oversight Team has changed since its formation. At the time of the on-site phase of our inspection, the Oversight Team consisted of two full-time Senior Executive Officers. The focus of the team's work was on providing technical assistance to decision-makers considering complex NSA cases. It had also conducted significant amounts of training, and provided information and updates on NSA trends and developments in case law to relevant business areas.
- 9.3 Staff and managers across all of the locations that we visited were complimentary about the technical advice and support provided by the Oversight Team. Decision-makers and SPOEs were particularly complimentary about the prompt and considered advice that the Oversight Team provided in response to technical queries that were raised with them.
- 
- Staff and managers were complimentary about the technical advice and support provided by the Oversight Team*
- 
- 9.4 It was clear that the Oversight Team had been proactive in sharing information about trends and outcomes in individual cases, in an effort to improve decision quality and ensure greater consistency. This is in line with recommendations we have made about other areas of casework in numerous reports.<sup>35</sup> One way that the Oversight Team shared knowledge was through the delivery of 'case conferences'. At these events, which were attended by NSA leads from across the country, developments in NSA case-working were discussed with the intention of sharing best practice. The last of these had occurred in October 2013. We were surprised to find that these were the first such events to be held for a number of years, given that all those to whom we spoke considered that case conferences were an excellent way to share relevant information on NSA.
- 9.5 There was a lack of a consistent understanding about the role and remit of the Oversight Team. Consequently there were differing expectations about the service that the Team should provide. Whilst some staff considered that the Oversight Team's primary function was to provide technical support on complex cases, others thought the Team should have a more strategic remit. They suggested that
- 
- There was a lack of a consistent understanding about the role and remit of the Oversight Team*
- 

<sup>35</sup> An inspection of applications to enter and remain in the UK under the Tier 1 Investor and Entrepreneur categories of the Points Based System (2013)

the Oversight Team should focus less on training and providing advice in individual cases and more on ensuring quality and consistency in NSA decisions.

- 9.6 The Oversight Team had undertaken some work to monitor the quality and consistency of decision-making. However, as its role included training staff, its focus had, understandably given the significant number of experienced decision-makers who had left, been on delivering NSA training to new decision-makers and accrediting SPOEs.
- 9.7 Senior Managers recognised that there was a need for greater strategic oversight of the NSA process, including the quality and consistency of decision-making. They told us of a number of measures that had been introduced, which they hoped would provide for this. This included increasing the capacity of the Oversight Team to enable it to monitor and assess the consistency of decision-making by removing responsibility for delivering training from the team.
- 9.8 We believe that this will go some way to enabling the business to do this. However, if it is to be the Oversight Team who take responsibility for monitoring and assessing the consistency of decision-making, it is important that it has clear objectives setting out what is expected of it and that it has sufficient resources to undertake this work. For the team to deliver this, both the team and the wider business need to understand what the team's role is and what is expected of it.

#### **We recommend that the Home Office:**

Clarifies the role and remit of the NSA Oversight Team.

#### **Analysis of appeal and Judicial Review (JRs) trends and outcomes**

- 9.9 Systematic analysis of appeal and Judicial Review outcomes, whether allowed or dismissed, is vital if the Home Office is to assess and improve the quality of its initial decisions. Indeed this is something that we have made numerous recommendations on in previous reports.<sup>36</sup> Given the potential impact for individuals whose claims are certified as being clearly unfounded, we believe that this is particularly important for these cases.

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*Systematic analysis of appeal and Judicial Review outcomes, is vital if the Home Office is to assess and improve the quality of its initial decisions*

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- 9.10 While the Home Office was monitoring out-of-country appeals, we were concerned that the data they initially provided to us was inaccurate and that the oversight team was not aware there had been an allowed appeal in 2011. As previously discussed, we found that the Home Office had not been accurately capturing data on the number and outcome of JRs in certified cases. We believe that until effective processes are introduced which ensure that accurate data is captured and evaluated, the Home Office will be unable to effectively identify areas for improvement or to promote best practice.

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*Until effective processes are introduced, the Home Office will be unable to identify areas for improvement or to promote best practice*

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- 9.11 Where JRs had been identified, the outcomes of these were often shared with the decision-makers, the oversight team and, in some cases SPOEs. Whilst this feedback was welcomed, there was a lack of a strategy to ensure that this occurred in all cases and to ensure that this information was being used strategically.

<sup>36</sup> An inspection into the handling of asylum applications made by unaccompanied children 2013; An inspection into applications to enter, remain and settle in the UK on the basis of marriage and civil partnerships 2013

## Accreditation process and refresher training

- 9.12 From interviews with staff and managers, we could find no evidence of a formal process for NSA-trained staff to undertake regular refresher training to ensure that they continued to demonstrate required levels of competency. Some decision-makers we interviewed thought that refresher training would not increase their knowledge. However, the majority told us that they thought it would be beneficial, as it would give them greater confidence in their decision-making skills, especially as considerable periods of time, sometimes measurable in years, could pass before they were required to make certification recommendations. Indeed, during our interviews with NSA-trained staff, we found that some had forgotten the process that they were required to follow when dealing with NSA cases.
- 9.13 We were particularly concerned that the Home Office did not have an up-to-date list of accredited SPOEs when we requested this information. They provided us with three different versions, but even the third was not accurate, as it:
- recorded the dates that some SPOEs had received training / been accredited as not known;
  - detailed some people as ‘SPOEs’, despite their being EOs,<sup>37</sup> when the policy requires that they be at least a grade higher; and
  - did not record the names of people whom the Home Office subsequently told us had been accredited.
- 9.14 Given the importance of the SPOE process, we would have expected the Home Office to have had an accurate and up-to-date register of all staff who had been accredited as SPOEs. This list could then have been used to determine whether only those who had been accredited as SPOEs were authorising decisions, as required.
- 9.15 We also found that the Home Office did not have a formal process requiring those who had been accredited as SPOEs to be re-accredited, to ensure that they continued to meet the required standards. It was noticeable that the Home Office’s own records indicated that some SPOEs had been accredited as long ago as 2002, when the certification power was first introduced.
- 9.16 Some staff and managers told us that they did not consider such a process necessary, as SPOEs were regularly using their knowledge, which in turn ensured that it was up to date. However, others suggested that, given the significance of the SPOE role, any process that required them to objectively demonstrate their knowledge would be beneficial. Given the significance of the role, we believe that there is a need for a formalised process through which SPOEs are regularly re-accredited using objective criteria. This is particularly important given the length of time since some SPOEs were accredited.
- 9.17 The SPOE process is regarded by the Home Office as a key safeguard to ensure that the power is used appropriately. Given the potential consequences of making incorrect decisions, which could result in applicants being returned to a country in which they face harm, we believe that it is essential that the Home Office does all it can to ensure that the SPOE accreditation process is robust and consistent. Equally important is that the Home Office takes steps to ensure that SPOEs continue to possess the skills and knowledge to undertake this important role. An accurate record of who is accredited to act as a SPOE, including when each individual was authorised to undertake this role, should also be kept.

### We recommend that the Home Office:

Maintains a centrally held and accurate record of accredited Second Pairs of Eyes.

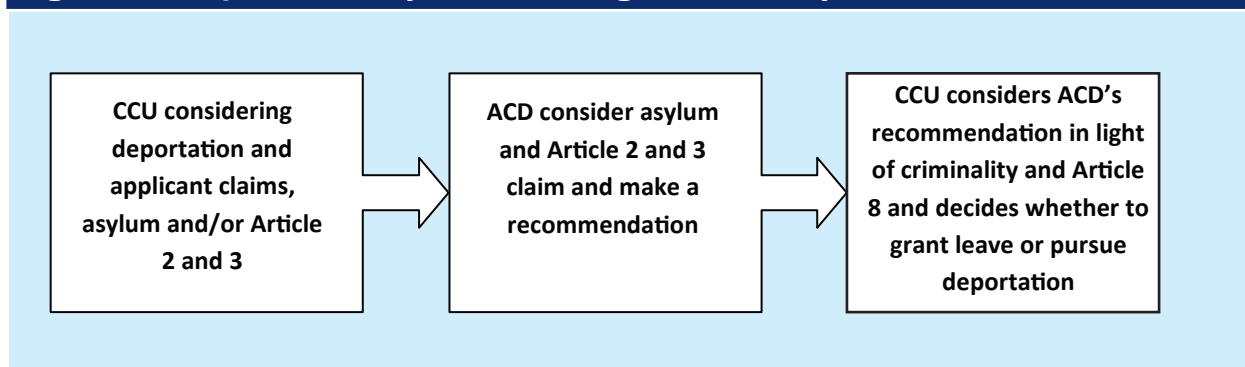
<sup>37</sup> We noted that some EOs had been accredited only for when they acted in a temporary capacity in the higher grade, though this was not the case for all of the people listed

## Criminal Casework

- 9.18 Claims for asylum and / or protection under Articles 2<sup>38</sup> and 3<sup>39</sup> of the ECHR that were raised by people whom the Home Office was seeking to deport, if made after 8 July 2013, are handled by ACD rather than CCU. This process was introduced with the intention of improving the quality, consistency and speed with which the case was dealt with.
- 9.19 We recognise the importance of making high-quality, consistent and timely decisions. However, we have some concerns that an unintended consequence of this process could be that it will take longer for the Home Office to make deportation decisions. We heard that, as a result of the process, where a person who was being considered for deportation made such a claim, the following steps would be taken:
- CCU would consider deportation, but if an applicant claimed asylum as a reason why they should not be deported, would pass the case to ACD;
  - ACD would consider the claim and make a recommendation on whether leave should be granted, or if the claim should be refused, refer the case back to CCU; and
  - CCU would then decide whether to grant leave or pursue deportation action.

These steps are shown in Figure 14, which records the process of asylum cases being considered by CCU.

**Figure 14 The process of asylum case being considered by CCU**



- 9.20 Previously, such claims would have been considered within CCU. Some staff whom we interviewed said that decisions were taking longer as a result of this process. We did not examine that specific issue. However, it was surprising that there was no Service Level Agreement between ACD and CCU governing the length of time that it would take for such cases to be considered. Plans for one were being developed when we were on-site and we welcome this initiative.
- 9.21 We previously expressed concern<sup>40</sup> about delays in considering whether people should be deported and the potential for it to result in additional costs. The Home Office therefore needs to carefully monitor whether this process is having an adverse impact on the time in which it considers whether deportation is appropriate.

38 Article 2; Everyone's right to life shall be protected by law

39 Article 3: No one shall be subjected to torture or to inhuman or degrading treatment or punishment

40 A thematic inspection report of how the UK Border Agency manages foreign national prisoners 2011

# Risks to operational delivery should be identified, monitored and mitigated.

## Maximising the use of Section 94

- 9.22 Managers at all levels recognised that high-quality and consistent decision-making was particularly important, both to ensure that people were not being deprived of an in-country right of appeal where one existed and to assure Ministers and the public that this contentious power was being used appropriately. Managers had recognised the risks associated with poor-quality and inconsistent decision-making; however, for the reasons discussed earlier in this report, we do not believe that enough has been done to mitigate those risks.
- 9.23 It is particularly important that the Home Office ensures that all designated cases are considered for certification. Not only is this a statutory obligation on the Secretary of State, but if cases that could be certified are given in-country rights of appeal, the taxpayer is likely to incur additional costs, as the individuals will remain in the UK for longer even if they are eventually removed.

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*It is particularly important that the Home Office ensures that all designated cases are considered for certification*

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## Resources

- 9.24 The decision by ACD senior managers to put restructuring plans on hold in September 2013 was sensible following the loss of many experienced case-owners. However, it was unfortunate that the risk of losing staff, and its potential to create a backlog of cases awaiting decision, was not anticipated when the restructuring plans were first drawn up. Better risk management and planning would have allowed the Home Office to take early action to mitigate the risk of staff attrition through recruitment and other measures. We have commented on poor change management in previous reports.<sup>41</sup> It is vital that the Home Office learns lessons from the mistakes made in 2012/13, when planning future changes to the way it deals with asylum cases.

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41 An inspection of the UK Border Agency's handling of legacy asylum and migration cases; <http://icinspector.independent.gov.uk/wp-content/uploads/2012/11/UK-Border-Agency's-handling-of-legacy-asylum-and-migration-cases-22.11.2012.pdf>

# APPENDIX 1: ROLE AND REMIT OF THE INDEPENDENT CHIEF INSPECTOR OF BORDERS AND IMMIGRATION

1. The role of the Independent Chief Inspector of Borders and Immigration was established by the UK Borders Act 2007 to examine the efficiency and effectiveness of the UK Border Agency. The initial remit was to consider immigration, asylum and nationality issues, but this was subsequently widened when the Borders, Citizenship and Immigration Act 2009 gave the Chief Inspector additional powers to look at customs functions and contractors employed by the Agency.
2. On 26 March 2013 the Home Secretary announced that the UK Border Agency was to be broken up and, under a new package of reforms, brought back into the Home Office reporting directly to Ministers. The Chief Inspector continues to inspect UK immigration functions previously carried out by the Agency and immigration and customs functions exercised by Border Force, as well as contractors employed by the Home Office to deliver any of those functions.
3. The Chief Inspector is an independent public servant, appointed by and responsible to the Home Secretary.

# APPENDIX 2: CORE CRITERIA

The criteria used in this inspection were taken from the Independent Chief Inspector's Core Inspection Criteria. They are shown below.

## **OPERATIONAL DELIVERY**

- Decisions on the entry, stay and removal of individuals should be taken in accordance with the law and the principles of good administration.
- Resources should be allocated to support operational delivery and achieve value for money

## **SAFEGUARDING INDIVIDUALS**

- All individuals should be treated with dignity and respect and without discrimination in accordance with the law.
- Enforcement powers should be carried out in accordance with the law and by members of staff authorised and trained for that purpose.

## **CONTINUOUS IMPROVEMENT**

- The implementation of policies and processes should support the efficient and effective delivery of border and immigration functions.
- Risks to operational delivery should be identified, monitored and mitigated.

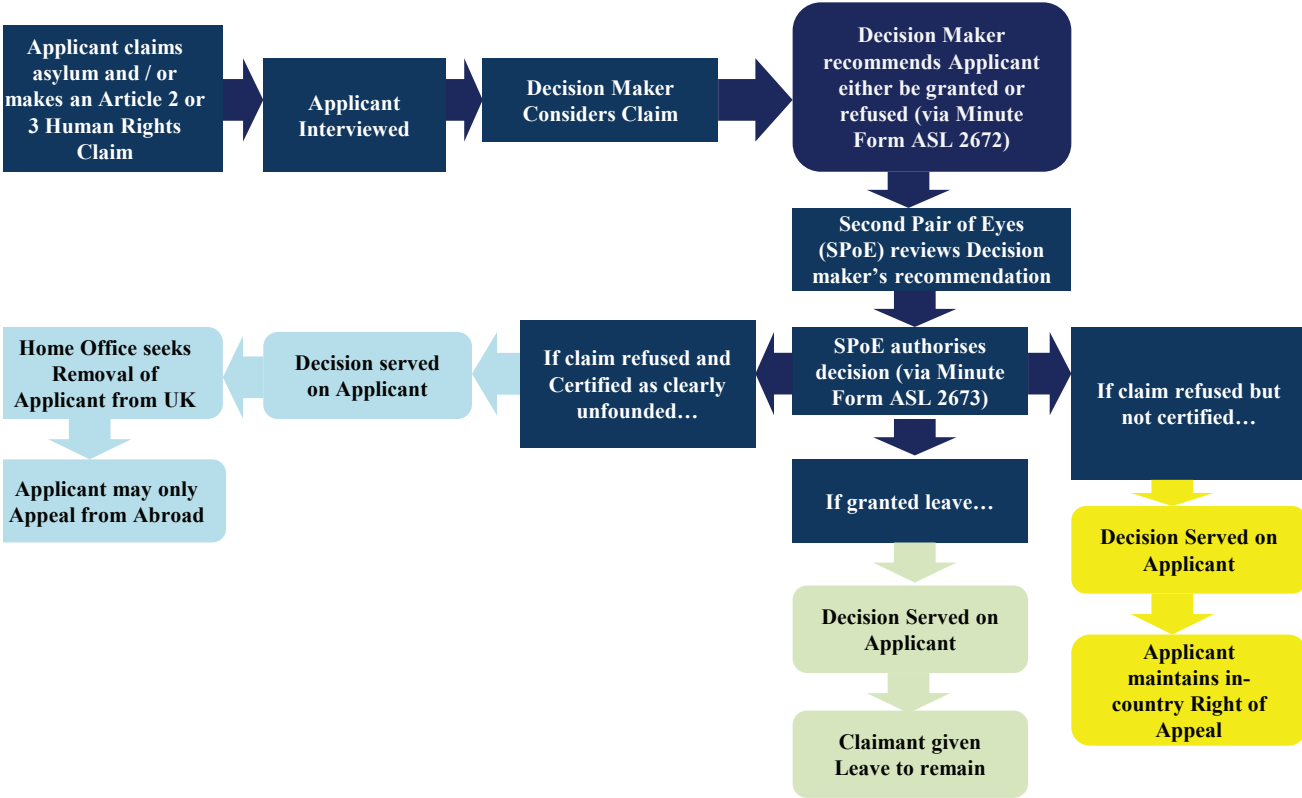


# APPENDIX 3: THE DESIGNATED STATES

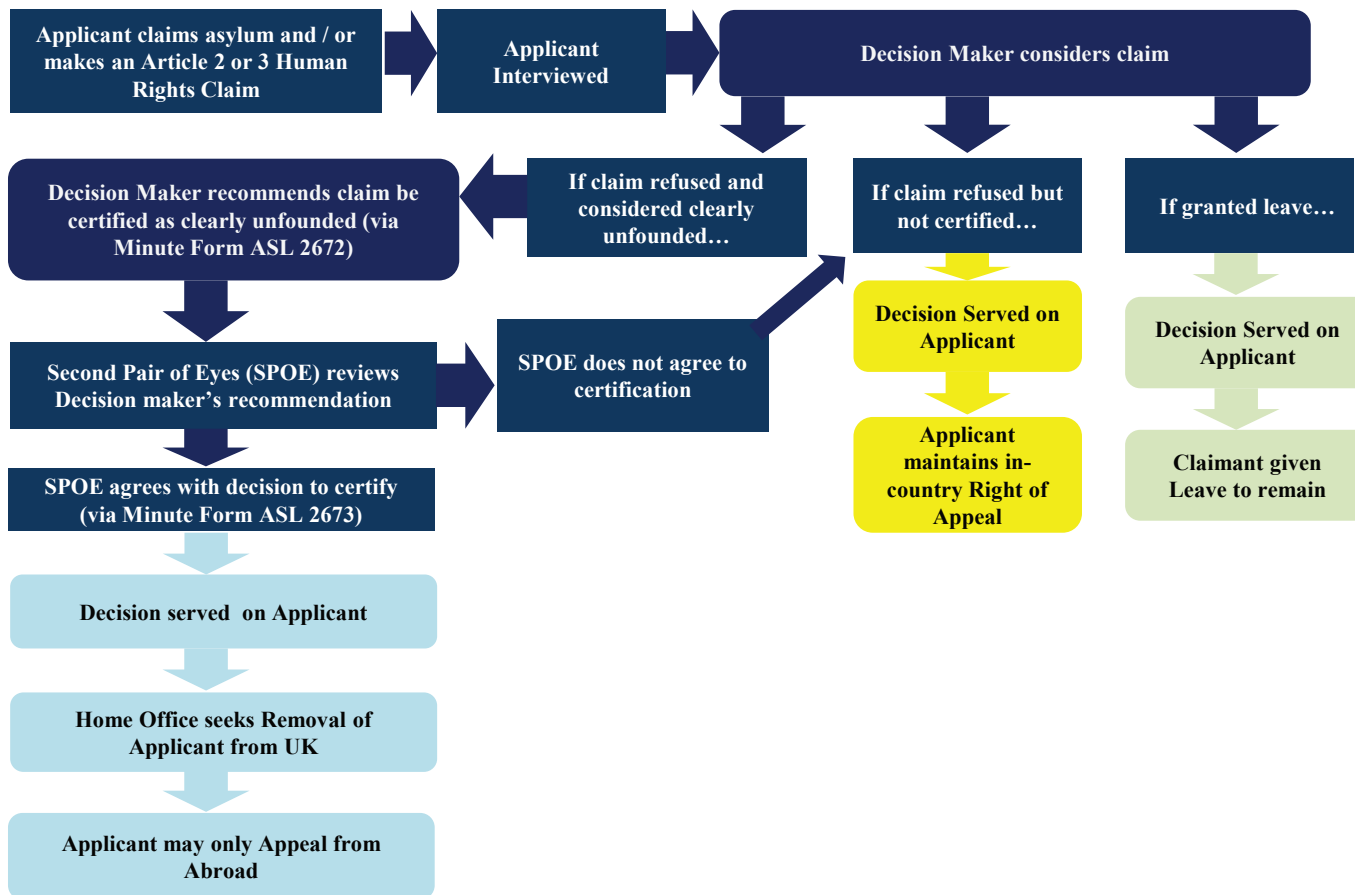
1. Section 94(4) of the Nationality, Immigration and Asylum (NIA) Act 2002 contains the list of designated states. There are currently 26 states on the designated states list and these are as follows:
  - Republic of Albania
  - Jamaica
  - Macedonia
  - Republic of Moldova
  - Kosovo
  - Bolivia
  - Brazil
  - Ecuador
  - South Africa
  - Ukraine
  - India
  - Mongolia
  - Ghana (in respect of men)
  - Nigeria (in respect of men)
  - Bosnia-Herzegovina
  - Gambia (in respect of men)
  - Kenya (in respect of men)
  - Liberia (in respect of men)
  - Malawi (in respect of men)
  - Mali (in respect of men)
  - Mauritius
  - Montenegro
  - Peru
  - South Korea
  - Serbia
  - Sierra Leone (in respect of men).
  
2. It should be noted that where countries have ‘in respect of men’ bracketed, this means that only males from those particular states may be certified and these states are therefore known as ‘partially designated’ states. This recognises the different situation faced by women in some countries. The definition of men in relation to the Act is any male over 18 and there is no obligation to certify a claim from a male under 18 from one of these states.

3. When Section 94 was initially introduced, just 10 states made up the designated states list, all of which have subsequently become part of the European Union and as a result have since been removed from the list.

# APPENDIX 4: DESIGNATED CASE FLOW CHART



# APPENDIX 5: CASE-BY-CASE FLOW CHART



## APPENDIX 6: GLOSSARY

Term	Description
<b>A</b>	
Absconder	A term used by the Home Office to describe a person who they have lost contact with, who has breached reporting restrictions or bail conditions and / or who they are unable to make contact with at their last known address.
Accreditation	The process by which a caseworker of HEO grade or above can act as an accredited Second Pair of Eyes to authorise certification decisions
Accredited Second Pair of Eyes (SPoE)	A senior caseworker, who must be of at least HEO grade, accredited to consider recommendations made by NSA trained officers as to whether a claim should or should not be certified.
Article 2 (European Convention of Human Rights)	A person may claim that their removal or deportation would breach Article 2, where it would place their life at risk.
Article 3 (European Convention of Human Rights)	A person may claim that their removal or deportation would breach Article 3, where it would place them at risk of torture or inhuman or degrading treatment or punishment.
Article 8 (European Convention of Human Rights)	A person may claim that their removal or deportation would breach Article 8, where it would interfere with their family and private life.
Asylum	Protection given by a country to someone who is attempting to escape persecution in their own country of origin. To qualify for refugee status in the UK, an individual must apply to the Home Office for asylum and demonstrate that they meet the criteria as set out in the Refugee Convention.
Asylum Casework Directorate (ACD)	The Home Office Directorate responsible for considering asylum claims
Audit trail	Chronological list of events.
Automatic deportation	The UK Borders Act 2007 introduced a legal obligation on the Secretary of State to make a Deportation Order against some foreign national prisoners.
<b>C</b>	
Case-by-case certification	The certification of asylum and Human Rights claims made on the basis of the specific nature of the claim and without the applicant being a national or entitled to reside in a designated state.

Casework	The Home Office term for the decision-making process used to resolve applications (for example applications for asylum or British citizenship).
Casework Information Database (CID)	The Casework Information Database is an administrative tool used by the Home Office to perform case working tasks and record decisions.
Certification	The process by which an asylum and / or human rights claim is certified as 'clearly unfounded'
Certification Monitor	A role of the Chief Inspector of Borders and Immigration. Under the UK Borders Act 2007, the Chief Inspector must monitor the use of certifications.
'Clearly unfounded'	To certify an asylum and / or Human Rights claim under section 94 of the Nationality, Immigration and Asylum Act 2002, the Secretary of State needs to be satisfied that the claim cannot, in any legitimate view, succeed. Any such claim that is so clearly without substance that it is bound to fail may be certified as 'clearly unfounded'.
Cohort	The total number of intake of asylum cases for each month during the course of the year.
Conclusion of case(s)	An asylum application is concluded when, following a decision to grant an applicant a form of leave to remain in the UK, the decision is served; or, following refusal, an applicant is removed from the UK.
Criminal Casework Unit (CCU)	Formerly the Criminal Casework Directorate (CCD). CCU is responsible for managing cases involving foreign national prisoners on behalf of the Home Office. CCU considers whether a person should be deported from the UK, having committed a criminal offence.
<b>D</b>	
Decision-maker	An official, usually at Executive Officer level, responsible for considering asylum and / or Human Rights claims.
Deportation	The process used to remove some foreign national prisoners who have committed criminal offences in the UK. People who are deported can only apply to return to the UK after they have successfully applied to have the Deportation Order revoked.
Designated state	A list of states listed under Section 94(4) of the Nationality, Immigration and Asylum (NIA) Act 2002. The Home Secretary is obliged to certify an asylum and / or human rights claim from a person entitled to reside in a designated state unless satisfied that it is not clearly unfounded. There are currently 26 states on the designated states list (See Appendix 3).
<b>E</b>	
Emergency travel document (ETD)	A document to allow people who do not have a passport to travel to their country. ETDs are issued by a person's Embassy or High Commission.
Enforcement	A Home Office term used to refer to all activity that takes place within the UK to enforce the immigration rules. In addition to the work done by arrest teams, this includes areas such as asylum, citizenship, detention and removal.
Enforced removal	A person or person(s) who has/have no leave to remain in the UK who physically leaves the UK through enforcement by Home Office staff.

European Convention of Human Rights 1950	A convention to protect Human Rights and fundamental freedoms.
Executive Officer	Lower management grade. Equivalent grades exist in the UK Border Agency and Border Force, including Officer and Immigration officer.
<b>F</b>	
Further submissions	The term given to asylum or human rights grounds submitted to the Home Office by those who have already made an unsuccessful asylum or human rights claim, and who ask for their claim to be re-considered.
<b>G</b>	
Grade 7	Senior manager, subordinate to Grade 6, superior to a Senior Executive Officer.
Grade 6	Senior manager, subordinate to the Senior Civil Service, superior to Grade 7.
<b>H</b>	
Hard copy file	Each application has a unique file that contains case paperwork.
Higher Executive Officer (HEO)	A management grade. Equivalent grades exist within the Home Office, including Higher Officer and Chief Immigration Officer.
Home Office	The Home Office is the lead government department for immigration and passports, drugs policy, crime, counter-terrorism and police.
Human Rights Act	Legislation, which took effect on 2 October 2000, which meant that the UK's domestic courts could consider the European Convention of Human Rights.
<b>I</b>	
Independent Chief Inspector of Borders and Immigration	The role of the Independent Chief Inspector of Borders and Immigration was established by the UK Borders Act 2007 to examine the efficiency and effectiveness of the Home Office. The Chief Inspector is independent of the Home Office and reports directly to the Home Secretary.
<b>J</b>	
Judicial Review (JR)	The means by which a person or people can ask a High Court Judge to review the lawfulness of the Home Office's decision to certify an asylum and / or human rights claim.
<b>L</b>	
Leave to Remain	Permission given to a person to reside in the UK for a designated period.
<b>M</b>	
Ministerial authorisation	An authorisation, approved by ministers, which allows Immigration Officers to give greater scrutiny to certain nationalities. A new Ministerial authorisation for nationality-based differentiation – covering entry clearance, border control and removals – came into force on 10 February 2011 under the Equality Act 2010. The new authorisation allows International Group to differentiate on the basis of nationality in the entry clearance visa process.

<b>N</b>	
New Asylum Model (NAM)	The previous end-to-end case management system for processing asylum applications made after 4 March 2007. Following the restructuring of asylum case work, this model is no longer in use.
Non-suspensive Appeal (NSA)	The term used to describe the policy of certifying a claim as clearly unfounded. A decision to certify means that the Home Office can remove the applicant, who can then appeal only from outside the UK, and therefore the appeal does not ‘suspend’ removal.
NSA-trained officer	A caseworker, usually of EO grade, who has received training to make recommendations as to whether or not a claim is certifiable under the Non-Suspensive appeals process.
<b>P</b>	
Presenting Officer	The person representing the Home Office (the Respondent) at appeal.
<b>Q</b>	
Quality Assurance Framework	An internal quality assurance programme operated by the Home Office.
Quality Audit Team	
(QAT)	The team that conducts the internal quality assurance programme operated by the Home Office.
<b>R</b>	
Recommendation	Upon considering an asylum and / or human rights claim, an NSA-trained officer may make a recommendation to an accredited SPOE as to whether or not that claim should be certified as clearly unfounded.
Removal	The process by which a person or person(s) voluntarily, through assistance or through enforcement by UK Border Agency staff, physically leaves the UK after a failed asylum application.
<b>S</b>	
Second Pair of Eyes (SPoE)	See ‘Accredited Second Pair of Eyes’
Section 94	The statutory provision contained within the Nationality, Immigration and Asylum Act 2002 for certifying certain asylum and / or human rights claims as clearly unfounded.
SPoE list	A list of all ‘Second pair of eyes’ accredited to authorise certification decisions.
Senior Case Worker	The Home Office term for an official, usually at Senior Executive Officer level, responsible for a team of caseworkers.
Senior Executive Officer (SEO)	A management grade, subordinate to Grade 7. Equivalent grades exist within the Home Office, including Senior Officer and Her Majesty’s Inspector.
Suspensive Appeal	An appeal exercised within the UK, where the appellant has the right to remain in the UK until the appeals process has been concluded.



U	
<p>United Kingdom Border Agency (UKBA)</p>	<p>The agency of the Home Office which, following the separation of Border Force on 1 March 2012, was responsible for immigration casework, in-country enforcement and removals activity, the immigration detention estate and overseas immigration operations. The UK Border Agency was been a full executive agency of the Home Office since April 2009.</p> <p>The UK Border Agency was broken up by the Home Secretary on 26 March 2013 and its functions returned under the direct control of the Home Office. Since 1 April 2013 the UK Border Agency ceased to exist</p>

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