Independent Chief Inspector of Borders and Immigration

An inspection of the Administrative Review processes introduced following the 2014 Immigration Act

September — December 2015

David Bolt
Independent Chief Inspector of
Borders and Immigration

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Foreword by David Bolt, Independent Chief Inspector of Borders and Immigration

The 2014 Immigration Act removed the right of appeal to the Immigration and Asylum Tribunal for various types of immigration decision, and replaced it with an administrative review process internal to the Home Office to provide '*a proportionate and less costly mechanism for resolving case working errors*'. In all, the 2014 Act reduced the types of decisions that enjoyed the right of appeal from 17 to four.

During the passage of the 2014 Immigration Bill, some MPs and peers argued that an internal Home Office AR system would not be an effective replacement for an appeal to an Immigration and Asylum Tribunal judge, who was independent of the Home Office. An amendment was made to the Bill during its passage through the Lords, resulting in section 16 of the 2014 Act, which states:

'*Before the end of the period of 12 months beginning on the day on which section 15 comes into force, the Secretary of State must commission from the Chief Inspector* [of Borders and Immigration] *a report that addresses the following matters –*

- *the effectiveness of administrative review in identifying case working errors;*
- *the effectiveness of administrative review in correcting case working errors;*
- *the independence of persons conducting administrative review (in terms of their separation from the original decision-maker)*'.

The Home Secretary commissioned a report addressing the three matters identified in section 16 in June 2015. In addition to these matters, the inspection examined service standards in dealing with ARs, consistency across different areas of the Home Office, organisational learning and cost savings.

While levels of accuracy and consistency varied between in-country, overseas and at the border reviews, the inspection found that overall there was significant room for improvement in respect of the effectiveness of administrative review in identifying and correcting case working errors, and in communicating decisions to applicants.

With regard to the independence of the reviewer, the Home Office had created a separate, dedicated team to handle in-country reviews, but most overseas and at the border reviews were carried out locally, and while the inspection found no indications of bias, it was harder to evidence that overseas and at the border reviewers were truly separate and independent.

In terms of service standards, the Home Office was comfortably meeting the 28 days for responses to administrative review applications, except in a proportion of overseas applications. Meanwhile, there was no systematic feedback to reviewers (or to original decision makers) regarding decisions that had been subject to a successful legal challenge, so organisational learning was at best patchy. Finally, despite arguing that the introduction of administrative reviews would save £261m over 10 years, the Home Office had yet to do any analysis of the cost savings.

The report makes 14 recommendations, grouped under four headings: administrative review applications; consideration of reviews; quality assurance; and learning.

It was sent to the Home Secretary on 4 April 2016.

David Bolt,
Independent Chief Inspector of Borders and Immigration

1. Purpose and Scope

1.1 In June 2015, the Home Secretary commissioned a report from the ICIBI that addressed the three points specified in the Lords amendment to the 2014 Immigration Act (section 16):

- the effectiveness of administrative review in identifying case working errors;
- the effectiveness of administrative review in correcting case working errors; and
- the independence of persons conducting administrative review (in terms of their separation from the original decision-maker).

1.2 In considering these points, the inspection also looked to assess:

- whether administrative reviews were being concluded within Home Office service standards;
- the consistency of approach between in-country, at the border and overseas administrative review functions;
- whether administrative review outcomes were being used to improve the quality of initial decision-making; and
- whether any cost savings had been achieved as a result of the introduction of administrative reviews.

1.3 The inspection involved:

- a familiarisation visit to the AR Team in Manchester, which handles in-country AR requests and the validation process for AR requests at the border;
- sampling of 285 case files (180 in-country; 65 overseas; 40 border);
- examination of management information showing AR volumes and performance;
- review of documentary evidence including material published by the Home Office in support of the 2014 Immigration Act, operational guidance, risk registers and information about the staffing of the AR function;
- consultation with external stakeholders, including the Immigration Law Practitioners' Association (ILPA) and the higher education sector[1]; and
- interviews (between 16 and 25 November 2015) with staff and managers directly involved in the AR process, in Manchester, the Sheffield Visa Section and at Heathrow Airport; with Entry Clearance Managers in New Delhi, Riyadh, Pretoria and Istanbul; and with staff and managers in Litigation Operations, the Tier 4 Premium Sponsor Team, Immigration Policy and the Administrative Review Programme Office.

1.4 The emerging findings were shared with the Home Office on 3 December 2015.

1 Association of Colleges (AOC), Study UK, UK Council for International Student Affairs (UKCISA) and Universities UK.

2. Findings

The reviewers

2.1 The Home Office had taken different approaches to the resourcing of the administrative review (AR) processes for in-country, overseas and at the border ARs. Notwithstanding the Home Office's stated intention to have '*a separate dedicated team of reviewers in each specialist area*',[2] the latter two were absorbed within the business areas responsible for making the original decisions. For overseas ARs this was a continuation of the process already in place, whereby Entry Clearance Managers (ECM) reviewed decisions made by Entry Clearance Officers (ECO) working at the same visa post, except where this function had been 'onshored' to the UK. At the border ARs, the numbers of which were small, became the responsibility of Border Force Higher Officers (BFHO) working at the port/terminal where the original decision was made.

2.2 The Home Office had created a '*separate dedicated*' AR Team in Manchester to handle in-country reviews. The size of this new team was based on planning assumptions about likely numbers of ARs that have proved to be overly pessimistic and, although it was not at full strength at the time of the inspection, and caseworker productivity was lower than hoped, the AR Team was managing ARs comfortably within the 28 day service standard[3] for responses. At the border ARs were also being processed well within the 28 days, as were over 80% of overseas ARs.

2.3 The Home Office's initial thinking had been to use Executive Officer (EO) caseworkers to review in-country AR applications. ECM and BHFO reviewers are one grade higher, although the former believed that with appropriate training and support, reviews could be done by experienced EO-grade ECOs. For resource reasons, the in-country plan was revisited and the AR Team was established with Administrative Officer (AO) caseworkers, which it was argued was appropriate because *inter alia* the original decisions were made mostly by AOs, and because EO (or higher) grade senior caseworkers would provide robust quality assurance and would deal with more complex cases.

2.4 The inspection found that: the bulk of the AOs redeployed into the AR Team had no experience in Points Based System[4] casework and limited experience of other immigration casework, with permanent staff in the minority; that quality assurance was ineffective; and that there was no evidence of cases being identified as complex and passed to EO caseworkers to review.[5] While staff and managers in the AR Team considered the training they had received to have been adequate, file sampling indicated considerable scope to improve their understanding of relevant Immigration Rules, guidance and practice.

2.5 Interviews with staff indicated there was also a need to improve training for at the border reviewers, placing more emphasis on the practical application of policy and guidance, and clarifying the extent to which reviewers can carry out their own verification checks if they have reason to believe these

2 Immigration Bill Statement of Intent – Administrative review in lieu of appeals (Clause 11), published October 2013 – see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/254851/SoI_Administrative_review.pdf
3 Statement of Intent: *'The Home Office will have a service standard of 28 days to complete an administrative review. This is faster than the current average 12 weeks (published statistics for first quarter 2013) it takes for a managed migration appeal to be heard.'*
4 The PBS was introduced in 2008. Most applications from non-EEA migrants are made under the PBS, which is divided into the following tiers: Tier 1 (entrepreneurs and investors), Tiver 2 (skilled workers), Tier 4 (students) and Tier 5 (temporary workers)
5 Following the inspection, senior managers explained that this was due to the fact that, up to August 2015, it was the intention that 100% of AR decisions should be reviewed by senior caseworkers at EO grade or higher.

were not done correctly when the original decision was made. While the quality of the ARs sampled was good, there was no evidence that Border Force Senior Officers were randomly quality assuring 10% of ARs as the QA regime had envisaged.[6]

The effectiveness of administrative review in identifying caseworking errors

2.6 According to Home Office figures, between 20 October 2014 and 31 August 2015, 241 online applications for an AR (relating to in-country and at the border immigration decisions) were rejected as invalid, from a total intake for the period of over 3,000. Overseas ARs could not be made online, and there were no collated figures for the number of rejections.

2.7 File sampling indicated that valid applications were being incorrectly rejected and that the quality assurance process was not identifying and rectifying this. In four of the cases sampled the Home Office had conceded it was wrong, either when informed of the applicant's intention to seek a Judicial Review (JR) or in advance of the JR hearing. Better initial decision making, by applying rules and guidelines correctly, and better quality assurance would have avoided the nugatory effort, cost and distress for the applicant of having to resort to a JR.

2.8 The AR process (including the quality assurance of reviews) for in-country immigration decisions had identified caseworking errors in 15 of 140 sampled cases. In 10 of these, caseworking errors were correctly identified: seven where the original decision to refuse leave was incorrect; and three where one or more reasons for the decision were incorrect or missing. In three cases the reviewer had misidentified errors and had wrongly withdrawn or added reasons when all of the original reasons should have been maintained, and in two cases, although a reason had been withdrawn in each, further reasons should have been withdrawn or added.

2.9 In addition to the 15 cases where the reviewer had identified caseworking errors, the inspection found a further 10 incorrect refusal decisions, according to the Immigration Rules and Home Office guidance, that the reviewer had missed, and six further cases where the decision was correct but one or more reasons were incorrect or missing.

2.10 While not always linked to the failure to identify errors, based on the case record and the AR response, in-country AR reviewers had not given adequate scrutiny to the issues raised by the applicant in over half the cases sampled. There was an over-reliance on the initial refusal decision letter, with AR decision notices reiterating the previous grounds for refusal without addressing the applicant's points.

2.11 In the case of overseas ARs, the reviewer had identified caseworking errors in 23 of the 65 overseas cases sampled. In 20 of these, caseworking errors were identified correctly. In two cases (both Tier 2) the reviewer had withdrawn the original refusal decision when it did not contain caseworking errors and in a Tier 4 case the reviewer withdrew one of the reasons for refusal but failed to identify that the refusal decision should have been withdrawn.

2.12 The inspection identified a further six incorrect decisions that the reviewers had failed to spot, and four other cases where one or more reasons were incorrect or missing. In the absence of a formal quality assurance process, there was no means of identifying mistakes made by the reviewers.

2.13 Based on file sampling, the at the border AR process was working more effectively in terms of identifying (and correcting) caseworking errors. The AR outcome was in line with the Immigration Rules and Home Office guidance in 36 out of 40 sampled cases. In four cases, while the decisions to

6 Following the inspection, Border Force senior managers told us, *'The Border Force assurance process for AR cases was introduced on 1 October 2015, and ports are required to submit a quarterly return to the Operational Assurance Directorate. The earliest that any evidence would have been available, and therefore an assessment could be made of the quality of decision making, was after the first return at the end of January 2016'.*

maintain cancellation were correct, the reviewer should have added or withdrawn reasons. Decision notices were generally of a good quality, particularly compared to those produced by in-country reviewers, and correctly addressed the issues raised by the applicant. A minority of notices should have provided fuller reasoning to explain why the reviewer had maintained the original cancellation decision.

The effectiveness of administrative review in correcting case working errors

2.14 Self-evidently, where the AR process failed to identify caseworking errors, it was ineffective in correcting them. Twenty one of the sampled 140 in-country ARs were ineffective in correcting errors: 18 where the errors were not identified, and three where errors were wrongly identified and reasons for refusal incorrectly amended.

2.15 Correcting errors in the reasons for a refusal where the refusal itself was correct and was maintained at AR is important as these errors may have a bearing on future actions by the applicant and the Home Office. However, the consequences for the applicant are more acute where the reviewer fails to identify and correct errors where the original decision to refuse should have been withdrawn.

2.16 The in-country AR reviewer maintained the original decision to refuse leave in 11 cases when they should have withdrawn it. In five of those cases, the Home Office team responsible for deciding whether to contest a legal challenge accepted that the original decision was flawed and agreed to reconsider following the threat of litigation, and in two cases the Home Office agreed to grant leave after a JR was lodged.

2.17 The Home Office's internal management information about AR outcomes in respect of entry clearance decisions made overseas was unreliable. For example, it understated the number of refusals maintained at AR where errors had been identified in the original decision. This was misleading when assessing the effectiveness of the process.

2.18 Based on file sampling, overseas reviewers correctly withdrew the refusal decision in 14 out of 65 cases, and removed or added reasons correctly in a further six cases where the decision to refuse was maintained. This compared to 12 cases where the reviewer had missed (ten) or incorrectly identified (two) caseworking errors.

The independence of persons conducting administrative review (in terms of their separation from the original decision-maker)

2.19 In-country AR reviewers were geographically separate and in a different management chain from the caseworkers who had made the original immigration decision. The AR Team did not contact the original decision makers about individual cases and, when it was required, obtained clarification on casework issues from Immigration and Border Policy Directorate. In the case of in-country ARs, the Home Office had therefore taken all reasonable steps to satisfy Section 16 of the 2014 Act to ensure '*the independence of persons conducting administrative review (in terms of their separation from the original decision-maker)*'.

2.20 In the majority of sampled cases the overseas reviewer, working at the visa post where the original decision was made, had had no involvement in the decision itself. However, the size of visa posts, the close relationships that often exist, and the shared perspectives and priorities, gave rise to questions about how independent the former can be. In practice, the inspection found no evidence of conscious or unconscious bias and, based on file sampling, overseas reviewers were generally more thorough and effective than their in-country counterparts in identifying and correcting errors. In the two instances where the reviewer had had some involvement in the original decision the review was thorough and errors were identified and corrected. Nonetheless, the lack of obvious separation of reviewer and caseworker meant it was difficult to demonstrate that overseas AR reviews were truly independent, except where they succeeded.

2.21 The proposed 'onshoring' of overseas ARs (from 2016/17) would achieve demonstrable separation and independence. But, there were potential pitfalls. Where this was the case already, in Sheffield, there was a lack of clarity about who ultimately 'owns' the AR outcome, with the final decision appearing to rest with an ECM at the relevant visa post. Also, the Sheffield-based reviewers required staff at post to check any documentary evidence that was held locally and had to rely on this being done thoroughly, which file sampling indicated was not always the case. These weaknesses should be addressed whether or not the proposed 'onshoring' goes ahead.

2.22 Between 6 April 2015 and 30 September 2015, most (75%) at the border AR applications related to decisions to cancel leave made at Heathrow Airport. Border Force managers at Heathrow had made efforts to ensure that AR reviewers were neither involved in authorising the original cancellation of leave decision nor was the line manager for the officer who had made that decision. Nonetheless, for much the same reasons that applied to overseas ARs, the decision to review ARs at the terminal where the original decision was made, however justified in terms of operational efficiency and learning, risked accusations that reviewers were not sufficiently separate from decision makers to be truly independent. Separation was clearer at smaller ports, where reviewers were drawn from another port if a BFHO could not be found who had not been involved in the original decision.

Record keeping

2.23 For rejected online AR applications, there was significant scope to improve record keeping, including correspondence with applicants. In too many cases, neither the CID notes nor the notices of invalidity sent to applicants set out clearly the reasons for rejection, including not recording the deemed date of receipt where this was used to decide that the application was out of time.

2.24 Inadequate record keeping in relation to overseas ARs, specifically CRS notes, meant that the reviewer's reasoning for the AR outcome was not properly explained in over half of the cases sampled, and although the quality of decision notices was higher than for in-country AR applications, around a third of notices failed to address specific points raised by the applicant.

2.25 As with in-country and overseas cases, record keeping for at the border ARs needed to improve. In almost half of the sampled cases (18 out of 40) the reviewer had not recorded their consideration of the issues raised by the applicant on either CID or on the port file.

Charging and cost savings

2.26 A fee of £80 was charged for online (in-country and at the border) AR applications, while overseas applications were free. This anomaly appeared to be due to the difficulty of collecting the fee if it was not paid electronically, rather than because of any differences in the costs of processing applications. The *Statement of Intent* had said that '*The fee will be refunded where the decision is overturned*'. The inspection found that refunds were given where the application was rejected as invalid, or if the AR was successful and the original decision was withdrawn. However, applicants whose ARs were unsuccessful, but who had the original decision withdrawn after threatening or resorting to litigation, did not receive a refund of their AR fee. This was illogical and wrong in principle.

2.27 The Home Office's *Impact Assessment* that accompanied the 2014 Immigration Bill[7] had estimated savings of £261m over 10 years from the introduction of ARs in lieu of appeals. At the time of the inspection, no analysis of actual cost savings had been done, and the Home Office did not have any reliable data in relation to the costs associated with PAPs and JRs, which the *Impact Assessment* had acknowledged were likely to increase as a result of the removal of appeal rights.

7 Published in October 2013 – see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249120/appeals_impact_assessment.pdf

Overview

2.28 Direct comparisons of the performance of the three business areas carrying out AR reviews are difficult, not least because the volumes of in-country, overseas and at the border ARs differ considerably, as do the arrangements for processing them and the scope of reviews. Guidance states reviewers must: '*normally only consider the specific aspects of the decision the applicant or representative challenges in their administrative review request – if it becomes clear during your review that the original decision contained errors which the applicant or representative has not identified, you must also correct those errors*'. In practice, reviewers of overseas and at the border decisions examined the original decision in the round, while in-country reviewers limited themselves to the specific issues raised by the applicant. The latter lacked the knowledge and experience (and grade) to take a more rounded view, and for example had not been trained how to assess an applicant's credibility.

2.29 Nonetheless, file sampling suggested that reviews of at the border ARs (which were the smallest in number) were generally less likely to result in the wrong outcome than overseas or in-country ARs. While the latter two were broadly similar in terms of the proportion of caseworking errors that reviewers missed, the success rate for overseas ARs was significantly higher in the file sample and according to Home Office management information. The latter put the rates at 22% and 21% for at the border and overseas ARs respectively, but at only 8% for in-country ARs.

2.30 Notwithstanding any comparison with the at the border and overseas success rates, in light of the Home Office's own assessment in July 2013 of the extent of caseworking errors in Managed Migration cases that had been lost at appeal, the 8% in-country figure was much lower than might have been predicted based on the Home Office's Impact Assessment.[8] In the circumstances, it would have been reasonable to expect that the Home Office would look closely at the in-country AR process (including the rejection of applications as invalid) and assure itself of the quality of the decision making, as it had committed to doing in its *Statement of Intent*.[9]

2.31 The inspection found no evidence that the success rate had been questioned, and although in-country decisions were subject to formal quality assurance (unlike overseas and at the border AR decisions), this was focused on process compliance and, based on file sample evidence, was not identifying errors made by reviewers. Meanwhile, judging from the AR Team's local records, opportunities to learn from PAPs and JRs were being missed as they were not all captured.

2.32 In terms of the learning from ARs, there was no systematic feedback to original decision makers from overseas and at the border reviewers.[10] But, in-country AR outcomes were fed back regularly to original decision makers (via their managers). Managers claimed this had resulted in improvements in the processing of grant decisions, but the available data did not demonstrate whether errors in original refusal decisions had decreased as a result of the AR process. Meanwhile, it was unclear whether the AR Team was learning from its own mistakes, since the inspection found that the locally-held data on conceded PAPs and lost JRs was full of omissions.

2.33 Overall, there was a clear and pressing requirement for accurate data covering all aspects of the AR processes for in-country, overseas and at the border ARs. Internally, the Home Office needed this to inform its policy and practice, and to support learning. Externally, it was a prerequisite for reassuring Parliament and the public about the Home Office's handling of challenges to immigration decisions where the right of appeal has been removed.

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8 Managed Migration cases are those where the applicant has applied for an extension of leave in country. The Appeals Impact Assessment showed that in 2012/13, 49% of Managed Migration appeals were allowed and that, '*An internal Home Office review estimated that approximately 60% of the volume of appeals allowed were due to case working errors'*.

9 Statement of Intent: '*Sampling suggests we currently lose approximately 60% of Point Based System appeals due to case working error. We will monitor the overturn rate on administrative review and compare it with the 60% figure currently down to casework error. Where there is a discrepancy we will investigate this. We will also have regular sampling of reviews by team managers which will ensure that any performance or quality issues are identified promptly. Regular reports on the performance of the administrative review process as a whole will be sent to senior management.'*

10 Statement of Intent: *'We will establish feedback mechanisms to ensure that lessons learned are fed back to caseworkers.'*

3. Summary of Recommendations

The Home Office should:

1. In relation to Administrative Review (AR) applications:
   - Make it clear to applicants in published guidance and on the online application form that the deadline for applying for an AR is calculated from the deemed date of receipt of the eligible immigration decision unless the applicant can demonstrate they received this on a later date;
   - Ensure caseworkers take all reasonable steps to check the actual date of receipt of the eligible decision before rejecting applications on the basis that they are out of time;
   - Ensure that CID notes and AR invalidity notices state clearly why an AR application was determined to be invalid; and
   - Where the applicant failed to qualify for a fee waiver, ensure the invalidity notice informs them they may re-apply with the fee within seven days.
2. In relation to the consideration of Administrative Reviews (AR):
   - Provide training for AR reviewers that is consistent with the training provided to original decision-makers;
   - In light of its performance to date, revisit the structure, grading and staffing (in terms of knowledge and experience) of the AR Team in Manchester to ensure its effectiveness in identifying and correcting case working errors;
   - Produce a revised statement about the processes for overseas and at the border AR explaining how independence and separation from the original decision-maker are ensured where there is no *'separate, dedicated team of reviewers'*;
   - Ensure that all AR reviewers address all substantive issues raised by the applicant and that CID (or CRS) notes and decision notices accurately reflect this;
   - Clarify guidance regarding the requirement for reviewers to correct all errors contained in the original decision (not just those identified by the applicant in their AR application), including carrying out further checks where they identify these were not done correctly by the caseworker who made the original decision; and
   - Consider the scope to prioritise the processing of ARs to meet the needs of the applicant in terms of timeliness (as in the case of some Tier 4 AR).
3. In relation to quality assurance (QA) of Administrative Reviews (ARs):
   - Put in place formal, robust QA procedures for all ARs (including decisions regarding the validity of applications) that take account of the grade and experience of the reviewer and the complexity of the original decision; and
   - Record and use the results of QA to improve the quality and consistency of AR outcomes by feeding back to reviewers and their managers.

4. In relation to learning from Administrative Reviews (AR):
    - Capture and feedback in a structured form to original decision-makers the learning from AR where the reviewer has withdrawn the original decisions and/or amended the reasons; and
    - Ensure that all data relevant to demonstrating how the AR system is functioning is captured and used to effect the continuous improvement of both ARs and original immigration decisions, including where Pre-Action Protocols (PAPs) or Judicial Review (JR) cases are conceded and why.

4. The Inspection

Background

4.1 The Immigration Act 2014 ('the 2014 Act') removed the right of appeal to the Immigration and Asylum Tribunal for various types of immigration decision, and replaced it with an administrative review (AR) process internal to the Home Office to provide '*a proportionate and less costly mechanism for resolving case working errors*'.[11] In all, the 2014 Act reduced the types of decision that enjoyed the right of appeal from 17 to four.[12] During the passage of the Bill, the Government informed Parliament that it estimated the changes would save £261m over ten years due to reduced appeals costs.[13]

4.2 Prior to the introduction of the 2014 Act, a system of AR already existed for refusal of entry clearance applications made overseas under the points-based system (PBS).[14] This took the form of reviews by Entry Clearance Managers (ECMs) of decisions made by Entry Clearance Officers (ECOs). The 2014 Act widened the scope of AR to include immigration decisions made in-country and at the border.

4.3 The Explanatory Notes[15] accompanying the 2014 Bill, published on 10 October 2013 and 3 February 2014, stated:

'*Where an application is refused and there is not a right of appeal, the applicant may be able to apply for an administrative review. Similarly, an administrative review may be sought when a person's leave is curtailed or is revoked. The Immigration Rules will set out when an applicant may seek an administrative review. In Schedule 8, Part 4 extends the effect of section 3C and 3D where an administrative review can be sought or is pending. The question of whether an administrative review is pending will be in accordance with the Immigration Rules*'.

When the Home Office subsequently published the Immigration Rules on administrative review, decisions to curtail leave were excluded from the scope of administrative review.

Eligible decisions

4.4 Decisions eligible for AR are shown at Figure 1.

11 Immigration Bill Factsheet: Appeals (clauses 11-13) dated December 2013.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/262789/Factsheet_05_-_Appeals.pdf
12 A right of appeal to the Immigration & Asylum Tribunal remains for applicants who raise asylum or human rights, and for those who apply under the EEA Regulations.
13 Impact Assessment of Reforming Immigration Appeals dated 15 July 2013 stated that savings would be £73m for the Home Office and £187m for HMCTS over ten years due to reduced appeals costs:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249120/appeals_impact_assessment.pdf
14 See footnote 4.
15 See http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0110/en/14110en.pdf (para 73).
and http://www.publications.parliament.uk/pa/bills/lbill/2013-2014/0084/en/14084en.htm (para 77).

Figure 1: Eligible decisions as defined at Appendix AR of the Immigration Rules	
In-country decisions eligible for administrative review	
Decision to grant or refuse Leave to Remain (LTR):	**In respect of applications made on or after:**
as a Tier 4 migrant (or as the partner or child of a Tier 4 migrant)	20 October 2014
as a Tier 1, 2 or 5 migrant (or as the partner or child of a Tier 1,2 or 5 migrant)	2 March 2015
under the Immigration Rules unless it is one of the following types of application: • visitor; • long residence; • partner or child of a member of HM Forces; • under Part 8 (family members); • under Part 11 (asylum); or • Appendix FM (family members – except bereavement and domestic violence applications).	6 April 2015
pursuant to the UK's obligations under Article 41 of the Additional Protocol to the European Community Association Agreement (ECAA) with Turkey	6 April 2015
Decisions at the border eligible for administrative review	
Decision to cancel Leave to Enter (LTE) or LTR where:	**Made on or after:**
there has been such a change in circumstances in the applicant's case since that leave was given that it should be cancelled	6 April 2015
the leave was obtained as a result of false information given by the applicant or the applicant's failure to disclose material facts	6 April 2015
Overseas decisions eligible for administrative review	
Refusal of an application for entry clearance:	**In respect of applications made on or after:**
under the Immigration Rules unless the application was under one of the following categories: • visitor; • short-term student; • partner or child of HM Forces; • Part 8 (family members); or • Appendix FM (family members).	6 April 2015
pursuant to the UK's obligations under Article 41 of the Additional Protocol to the ECAA with Turkey	6 April 2015

What is an administrative review?

4.5 An administrative review is the review of an eligible decision to determine whether the decision was wrong due to a case working error as defined in Appendix AR of the Immigration Rules.[16] The process is designed primarily to provide redress for those whose applications for leave have been refused. However, individuals who have been granted leave in-country may also apply for AR if they consider that the period of their leave or the conditions attached to it have been calculated incorrectly.

4.6 Individuals seeking an AR of an immigration decision must apply to the Home Office. Where the application is accepted as valid, the Home Office works to a service standard of 28 days to complete the review.

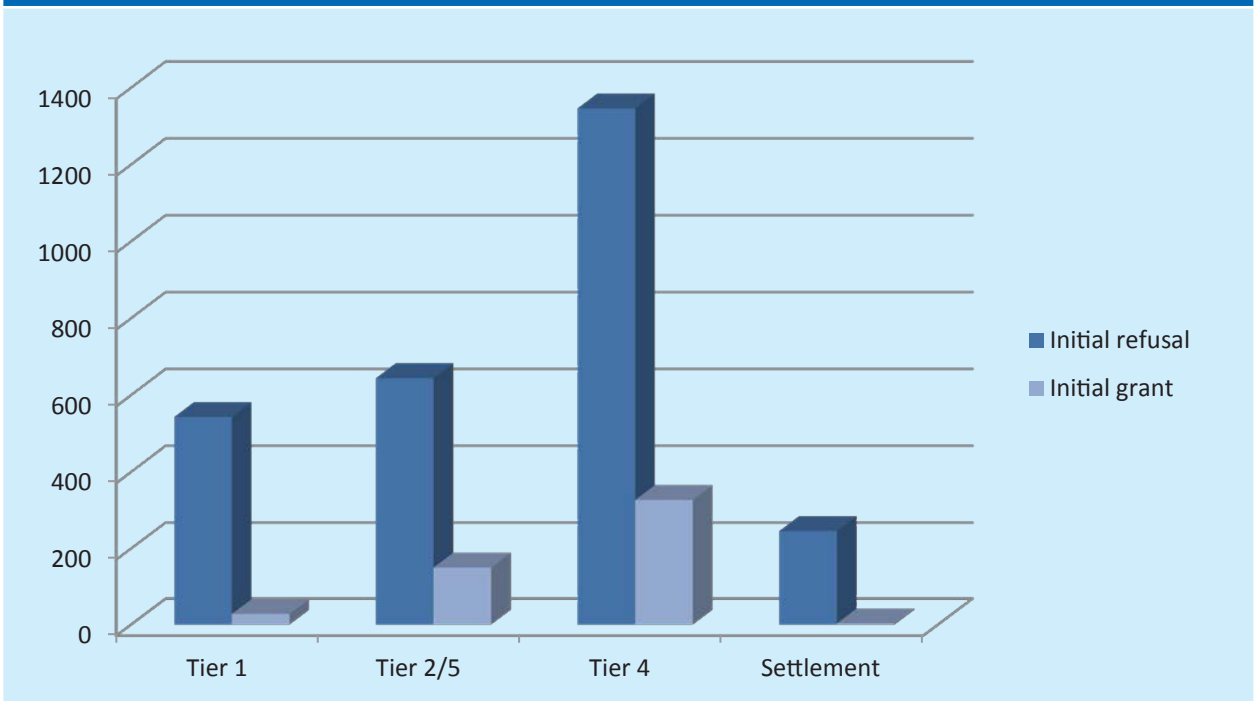
4.7 An AR will have one of four outcomes:

- it succeeds and the eligible decision is withdrawn;
- it does not succeed and the eligible decision remains in force and all of the reasons given for the decision are maintained;
- it does not succeed and the eligible decision remains in force but one or more of the reasons given for the decision is withdrawn; or
- it does not succeed and the eligible decision remains in force but with different or additional reasons to those specified in the decision under review.

Intake

4.8 The Home Office informed us there had been 3,287 requests for an AR in respect of in-country eligible decisions up to 30 September 2015. A breakdown is shown at Figure 2.

Figure 2: AR requests in respect of in-country eligible decisions



16 Appendix AR2.11 defines a case working error as:
- a decision to refuse an application on the basis of false representations or on the basis of a previous breach of immigration law was incorrect;
- a decision to refuse an application on the basis that the date of application was beyond any time limit in the Rules was incorrect;
- a decision in which the Rules, or policy and guidance, have been applied incorrectly; and
- for in-country only, incorrect calculation of period or conditions of leave granted.

4.9 In addition to in-country applications for an AR, there were 568 applications for an AR in respect of overseas eligible decisions between 6 April and 30 September 2015, and 144 applications for an AR in respect of eligible decisions made at the UK border over the same period.

Terms of reference

4.10 During the passage of the 2014 Immigration Bill, some MPs and peers argued that an internal Home Office AR system would not be an effective replacement for an appeal to a Judge of the Immigration and Asylum Tribunal, who was independent of the Home Office. An amendment was made to the Bill during its passage through the Lords,[17] resulting in section 16 of the 2014 Act, which states:

'*Before the end of the period of 12 months beginning on the day on which section 15 comes into force, the Secretary of State must commission from the Chief Inspector* [of Borders and Immigration] *a report that addresses the following matters –*

- *the effectiveness of administrative review in identifying case working errors;*
- *the effectiveness of administrative review in correcting case working errors;*
- *the independence of persons conducting administrative review (in terms of their separation from the original decision-maker)'.*

4.11 On 22 June 2015, the Home Secretary wrote formally commissioning a report from the Chief Inspector that addressed the three points specified in section 16 of the 2014 Act. In accepting, the Chief Inspector indicated that the inspection would also assess:

- whether administrative reviews were being concluded within Home Office service standards;
- the consistency of approach between in-country, border and overseas administrative review functions;
- whether administrative review outcomes were being used to improve the quality of initial decision-making; and
- whether any cost savings had been achieved as a result of the introduction of administrative reviews.

Methodology

4.12 The inspection involved:

- a familiarisation visit to the AR Team in Manchester, which handles in-country AR requests;
- a file sample of 285 cases, broken down as follows:
    - 180 in-country:
        - 100 Tier 4 (students);
        - 40 Tier 2 (skilled workers); and
        - 40 rejected as invalid;
    - 65 overseas:
        - 40 Tier 4; and
        - 25 Tier 2;
    - 40 at the border;

17 Immigration Bill: Explanatory Notes on Lords Amendments: http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0206/en/14206en.htm

- examination of management information showing AR volumes and performance;
- review of documentary evidence including material published by the Home Office in support of the 2014 Immigration Act, operational guidance, risk registers and information about the staffing of the AR function; and
- consultation with external stakeholders, including the Immigration Law Practitioners' Association (ILPA) and the higher education sector.[18]

4.13 The onsite phase of the inspection took place between 16 and 25 November 2015 and consisted of:

- individual and group interviews with staff and managers directly involved in the AR process, in Manchester, the Sheffield Visa Section and at Heathrow Airport;
- telephone interviews with Entry Clearance Managers located in New Delhi, Riyadh, Pretoria and Istanbul; and
- individual and group interviews with staff and managers in Litigation Operations, the Tier 4 Premium Sponsor Team, Immigration Policy and the Programme Office.

A breakdown of staff interviewed is shown at Figure 3:

Figure 3: Staff interviewed (by grade)	
Senior Civil Servant	1
Grade 6	1
Grade 7	6
Senior Executive Officer	5
Higher Executive Officer	22
Executive Officer	16
Administrative Officer	14
Total	**65**

18 Association of Colleges (AOC) Study UK, UK Council for International Student Affairs (UKCISA) and Universities UK.

5. Validating Administrative Review Applications

Background

5.1 Paragraphs 34M to 34V of the Immigration Rules set out the requirements that must be met in order for an application for administrative review (AR) to be valid. The main requirements are that the application must be made:

- in respect of an eligible decision;
- within the specified timescale;[19] and
- in accordance with the relevant application process, including payment of the specified fee.

5.2 Published Home Office guidance[20] specifies that applications for an AR in respect of decisions made in the UK or at the border must be made using the online application process, unless the applicant is unable to do so. Applicants must pay a fee of £80, unless they qualify for a fee exemption[21] or are eligible for a fee waiver due to exceptional circumstances.[22]

5.3 Applications for an AR in respect of decisions taken on applications made overseas cannot be made online and are accepted by post or by email, usually to the overseas visa post that handled the application. There were no collated figures for the number of rejections. Overseas applicants are not charged a fee. We were told that this was because the overseas process, which had been in place for several years, involved a paper-based application, which meant it was not possible to charge electronically for the application.

Validation process

5.4 All online applications were received by the Manchester-based AR Team. An Administrative Officer (AO) within its workflow team recorded each application on the Case Information Database (CID), including noting whether the fee had been paid and if the AR deadline had passed. The application was then passed to an AO caseworker to decide whether it was valid. If the caseworker decided the application was invalid it was rejected and a notice of invalidity was sent by post to the applicant.

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19 Paragraph 34R(1) of the Rules states, 'The application must be made:
(a) where the applicant is in the UK and not detained, no more than 14 calendar days after receipt by the applicant of the notice of the eligible decision;
(b) where the applicant is in detention in the UK under the Immigration Acts, no more than seven calendar days after receipt by the applicant of the eligible decision;
(c) where the applicant is overseas, no more than 28 calendar days after receipt by the applicant of the notice of the eligible decision; or
(d) where the eligible decision is a grant of leave to remain, no more than 14 calendar days after receipt by the applicant of the biometric immigration document which states the length and conditions of leave granted.'

20 Home Office guidance on Administrative Review was published on 21 October 2014 and last updated on 4 December 2015: https://www.gov.uk/government/publications/administrative-review

21 A fee exemption applies where the applicant was not required to pay a fee for their original application, or where the applicant has already received an AR outcome, which maintained the decision but added a new or different reason for refusal, providing them with a further opportunity to apply for AR with no fee payable.
22The fee may be waived if the applicant is able to demonstrate that, as a result of exceptional circumstances, they are unable to pay the fee. Home Office guidance specifies that it will rarely be appropriate to grant such an exemption. An example given of exceptional circumstances is where the applicant had been the victim of financial fraud that prevented them from accessing their funds.

Quality of decision making in relation to validity

5.5 The Home Office informed us that there had been 241 rejections by the AR Team of invalid in-country or at the border AR applications between 20 October 2014 and 31 August 2015. We sampled 40 of these, 37 in-country and 3 border AR applications.

5.6 We assessed whether:

- the decision to reject the application was correct, i.e. the decision to treat the application as invalid was in accordance with the Immigration Rules and Home Office guidance;
- the correct reason for rejection had been identified;
- CID notes clearly recorded the reasons for the decision; and
- the notice of invalidity sent to the applicant provided adequate explanation for the decision.

Decisions to reject applications as invalid

5.7 The decision to reject the application as invalid was correct in 28 out of the 40 cases. Twelve cases had been rejected incorrectly:

- six had been rejected for being out of time when they should have been accepted as valid;
- four 'fee waiver' applications had been rejected for 'non-payment' when they should have been provided with further time to pay the fee in line with guidance; and
- two had been rejected because the caseworker concluded that insufficient information had been supplied with the application.

5.8 In addition, there were two cases where although the decision to reject was correct, the caseworkers' reasoning had been faulty. In both cases, the caseworkers had decided wrongly that the application was not in respect of an eligible decision. Both were in respect of eligible decisions, but one was out of time and the other had not paid the required fee.

'Out of time' cases

5.9 Paragraph 34R of the Immigration Rules sets out the deadline for applying for an AR, which in the case of an applicant who is in the UK and not detained is '*no more than 14 calendar days after receipt by the applicant of the notice of the eligible decision'.* Decisions eligible for AR are served in accordance with article 8ZA of the Immigration (Leave to Enter and Remain) Order 2000. 8ZB deals with the "Presumptions about receipt of notice" and states:

(1) Where a notice is sent in accordance with article 8ZA, it shall be deemed to have been given to the person affected, unless the contrary is proved –

(a) Where the notice is sent by postal service –

(i) on the second day after it was sent by postal service in which delivery or receipt is recorded if sent to a place within the United Kingdom;

(ii) on the 28th day after it was posted if sent to a place outside the United Kingdom;

(2) For the purposes of paragraph 1(a) the period is to be calculated excluding the day on which the notice is posted.

(3)For the purposes of paragraph 1(a)(i) the period is to be calculated excluding any day which is not a business day.

(4) In paragraph (3)"business day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday, or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom to which the notice is sent.'

5.10 In five of the six cases rejected as out of time the applicant had in fact met the deadline according to these rules. In three of these cases the Home Office subsequently conceded that the AR application was in time after the applicants had submitted pre-action protocol (PAP)[23] letters.

5.11 In one of the five cases the deadline date based on the deemed date of receipt had been miscalculated. In the other four cases the deadline had been missed if calculated according to the deemed date of receipt, but a check of the Royal Mail's 'Track & Trace' online service showed that the deemed date was not the actual date of receipt and the applicant had applied within 14 days of the latter. An example is given in the case study in Figure 4.

Figure 4: Case Study: Application rejected incorrectly for being 'out of time'

The applicant:

- on 12 June 2015, was refused further leave under Tier 4 and the decision was despatched by recorded delivery on the same day; and
- on 1 July 2015, submitted her AR application, ticking the box to confirm she had applied within 14 calendar days of receiving her decision.

The Home Office:

- on 9 July 2015, rejected the AR application because it was 'out of time';
- informed the applicant in the notice of invalidity that, '*As you are making your application online or by post, it must be made within 14 calendar days of the date on which you received the decision. The request was not made within 14 calendar days of that date*'; and
- advised that she, and her family, were liable to be detained and removed because they had no lawful basis of stay in the UK. The decision was quality assured prior to service.

Chief Inspector's comments

As the applicant's decision was despatched on 12 June 2015, it would have been deemed to have been received two working days later, on 16 June 2015, unless there was evidence to the contrary. This produced a deadline for an AR application of 30 June 2015.

A check of Royal Mail's 'Track & Trace' showed that the applicant had signed for her decision on 17 June 2015, which meant the application deadline was 1 July 2015 and therefore her application was in time.

Removal cannot be pursued while an AR is pending. Therefore, the applicant should not have been informed that she was liable to detention and removal.

This case shows an over-reliance on the deemed date of receipt. Home Office guidance does not specify what checks should be done to establish the actual date of receipt. Staff in the AR Team in Manchester told inspectors they checked the 'Track & Trace' service, but this had not been done in the majority of cases sampled.

23 A pre-action protocol (PAP) letter is normally sent in advance of lodging a Judicial Review (JR) case. It provides the respondent with a specified period, normally 14 days, within which to provide a remedy before commencement of JR proceedings.

5.12 Decision notices sent to applicants did not advise them of the rules regarding the deemed date of receipt, nor that they could be required to prove that their decision was received on a later date. They simply stated: '*You must apply for administrative review within 14 days of receiving the decision*'. Following the inspection, senior managers took action to address this omission. They informed us that: '*the operation in Manchester is now routinely checking for evidence of the actual date of receipt for any case where an application is received 'out of time'. The operation is checking this through using Royal Mail's Track and Trace facility using the Recorded/Signed for or Special Delivery details we hold from when the decision was served*'.[24]

5.13 The sixth case that was wrongly rejected as out of time concerned a Tier 4 student. The student stated on his AR application form that his university's Premium Customer Service manager[25] had advised him by email that the Home Office had accepted it had made an error in refusing his application for leave to remain and that as a result an out of time AR application would be accepted. The caseworker noted on CID that the application was made out of time and that, having consulted with a senior caseworker: '*There does not appear to be any exceptional circumstances that would grant the applicant an out of time Admin Review*'.

5.14 Paragraph 34R (3) of the Immigration Rules states: '*But the application may be accepted out of time if the Secretary of State is satisfied that it would be unjust not to waive the time limit and that the application was made as soon as reasonably practicable*'. A subsequent Judicial Review was conceded by the Home Office on the grounds that this had not been addressed. The original application was reconsidered and the applicant was granted leave.

5.15 When we raised this case with the Home Office, it told us: '*The Premium Services manager could not advise that a late AR would be accepted as it was outside of his remit. It was considered that the applicant had inexplicably delayed in contacting UKVI following their refusal and had not provided a compelling or exceptional reason for the delay…we still believe that the rejection of the Admin Review application on the basis that it was out of time was consistent with policy on Admin Review*'.

Applicants seeking a fee waiver

5.16 Four individuals had applied for a fee waiver in respect of their AR application. The fee may be waived if the applicant is able to demonstrate that, as a result of exceptional circumstances, they are unable to pay the fee. The guidance states:

'*You must consider applications for fee waivers due to exceptional circumstances on a case by case basis and on their own individual merits…*

… If the claim did not meet the high threshold for a fee waiver, you must advise the migrant that the request for a fee waiver has been refused and invite them to pay the fee within 7 working days of the day of the request. If the migrant fails to pay the fee by the end of this period, you must reject the application for non-payment of the fee'.

5.17 The guidance was not followed in the four cases, which were all rejected for non-payment of the fee without an invitation *'to pay the fee within 7 days of the request'*. In two of these cases, the applicant made a further AR application that was accepted. The application in another case was accompanied by the fee but was rejected as out of time, despite having been submitted within seven days of the date of the rejection notice.

24 Email to the inspection team of 21 December 2015.
25 Premium Customer Service managers provide support to Tier 4 sponsors on all aspects of the sponsorship system in exchange for an annual fee.

5.18 The Home Office told us that there was a difficulty in applying the guidance as the online system could not accept a payment unless it was submitted with an application. Therefore, where applications did not qualify for a fee waiver and were rejected for non-payment, applicants were advised to make a fresh application within whatever number of days remained from the original 14 days allowed (not counting the time elapsed between submission of the application and rejection). Following the inspection, senior managers took action to address this. They informed us that: '*In the event that a request for a fee waiver is refused, rather than the application be rejected, the applicant will be sent a letter, which will advise them of the need to pay a fee to the Home Office by resubmitting their application*'.

'Insufficient information' cases

5.19 Paragraph 34U(3)(b) of the Immigration Rules states: *'any section of the online application which is designated as mandatory must be completed as specified'*, but is otherwise silent on what information the applicant is required to provide.

5.20 Two cases in our sample were rejected because the caseworker decided that the applicant had provided insufficient information. One was rejected because: '*the applicant has not submitted any grounds for refusal*', even though the relevant boxes had been checked on the form and the applicant had sent in a covering letter, the receipt of which had been noted on CID. The second case was rejected because: *'sufficient grounds for an admin review have not been submitted*'. The Home Office accepted that this case had been rejected in error.

CID notes

5.21 In 25 of the 40 sampled cases the CID notes failed to explain clearly why the case was deemed invalid. Eighteen of these had been rejected for being out of time. In these cases, there was no chronology recorded to explain how the AR application deadline had been calculated. CID notes did not acknowledge whether or not the applicant had ticked the box declaring that they were applying within the 14 day deadline, and there was no reference to whether a check of 'Track & Trace' had been conducted and the result.

5.22 In three of the four cases rejected for non-payment of the fee there was no evidence in CID notes that the caseworker had given consideration to the grounds raised by the applicant for a fee waiver. In one case the CID notes did not record the reason why the application was deemed invalid.

Notices of invalidity

4.23 In 31 out of 40 cases the notice of invalidity sent by post to the applicant did not provide a clear explanation for rejection of the application. The majority of these were applications rejected for being out of time. The decision notices stated only: '*you have not applied within 14 calendar days*', without explaining to the applicant how the deadline had been calculated.

5.24 In the cases where the applicant had sought a fee waiver none of the notices of invalidity gave an adequate explanation why they failed to qualify and none advised the applicant that they had a further seven days to apply with the fee. We were told subsequently that template letters had since been amended to remedy this.

Quality assurance

5.25 Managers in the AR Team told us that 100% of cases identified for rejection were quality assured before they were rejected. In our sample of 40 cases, 19 contained notes on CID indicating they had been passed to a quality assurer. There were no CID notes from the quality assurer in 14 of these cases, and in the five other cases the notes did not state why the assurer was satisfied that the correct decision had been reached.

5.26 There was evidence on CID that seven of the 12 applications for AR that were incorrectly rejected as invalid were quality assured before service of the notice of invalidity.

Conclusion

5.27 According to Home Office figures, between 20 October 2014 and 31 August 2015, 241 online applications for an AR (relating to in-country and at the border immigration decisions) were rejected as invalid, from a total intake for the period of over 3,000. Overseas ARs could not be made online, and there were no collated figures for the number of rejections.

5.28 File sampling indicated that valid applications were being incorrectly rejected and that the quality assurance process was not identifying and rectifying this. In four of the cases sampled, the Home Office had conceded it was wrong either when informed of the applicant's intention to seek a JR or in advance of the JR hearing. Better initial decision making, by applying rules and guidelines correctly, and better quality assurance would have avoided the nugatory effort, cost and distress for the applicant of having to resort to a JR.

5.29 In terms of deciding whether an AR application was in time, there was an over-reliance on the deemed date of receipt of the eligible decision, with too little effort made to establish the actual date of receipt, either through a check of 'Track & Trace' or by checking with the applicant. In the case of fee waivers, guidance was not being applied in that applicants were not informed they had seven days after a fee waiver rejection to make a fresh application with the required payment. In two sample cases rejection had been on the basis that the applicant had not submitted sufficient information, despite the Immigration Rules requiring only that the mandatory sections of the online application be completed.

5.30 There was significant scope to improve record keeping, including correspondence with applicants. In too many cases, neither the CID notes nor the notices of invalidity sent to applicants set out clearly the reasons for rejection, including not recording reference to the deemed date of receipt where this was used to decide that the application was out of time.

Recommendation

The Home Office should:

Make it clear to applicants in published guidance and on the online application form that the deadline for applying for an AR is calculated from the deemed date of receipt of the eligible immigration decision unless the applicant can demonstrate they received this on a later date.

Ensure caseworkers take all reasonable steps to check the actual date of receipt of the eligible decision before rejecting applications on the basis that they are out of time.

Ensure that CID notes and AR invalidity notices state clearly why an AR application was determined to be invalid.

Where the applicant failed to qualify for a fee waiver, ensure the invalidity notice informs them they may re-apply with the fee within seven days.

6. Administrative Review applications in respect of in-country immigration decisions

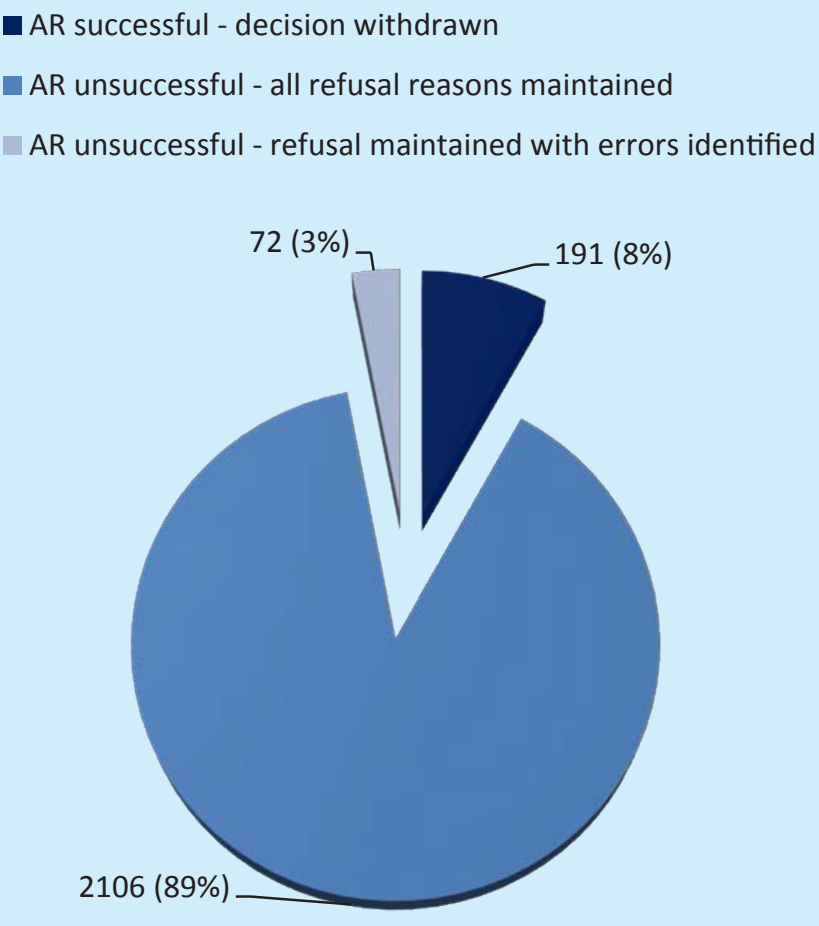
The Administrative Review Team

6.1 The Home Office has created a dedicated Administrative Review (AR) Team in Manchester to carry out all ARs of immigration decisions made in the UK. At the time of the inspection, the AR Team comprised Administrative Officer (AO) caseworkers, who were the same grade as, or in some cases junior to, the initial decision maker, with three Executive Officers (EO) as Team Leaders. Quality Assurance (QA) was provided by senior caseworkers (at EO and Higher Executive Officer grades), and overseen by a Quality Manager (Senior Executive Officer).

Outcomes

6.2 Home Office management information showed that there were 2,717 in-country AR decisions up to 27 September 2015. Of 348 ARs challenging the terms (e.g. the period or conditions) where leave was granted, 281 (81%) were successful. A breakdown of the outcomes from the 2,369 ARs where leave was refused is shown at Figure 5.

Figure 5: AR outcomes in-respect of in country initial refusal decisions



Quality of decision making

6.3 We sampled 140 cases where the AR was completed between 1 April and 31 August 2015:

- 100 refusals of Tier 4 applications for leave; and
- 40 refusals of Tier 2 applications.

6.4 We assessed whether:

- the AR outcome was correct, i.e. in line with the Immigration Rules and Home Office guidance;
- the reviewer had considered the issues raised by the applicant in their AR application fully and in accordance with policy and guidance;
- CID notes recorded clearly the reasons for the reviewer's decision; and
- where the AR was unsuccessful and the initial refusal was maintained, the decision notice responded to the issues raised by the applicant and explained clearly the reasons why the decision had been maintained.

Tier 4 sample

6.5 In our Tier 4 sample:

- five AR applications had been successful and the eligible decision had been withdrawn;
- ninety-five had been unsuccessful and the eligible decision had been maintained, and of these:
    - eighty-nine had maintained all the reasons recorded for the initial refusal;
    - four had withdrawn one or more reasons for the refusal; and
    - two had added a new reason for refusal.

6.6 We found that:

- in 90 of the 100 cases sampled the reviewer had made the correct decision regarding whether the AR application should succeed or not, according to the Immigration Rules and Home office guidance;
- the ten incorrect decisions were all cases where the AR application should have succeeded but did not;
- the outcome was correct in 82 of the100 ARs, including all five that were successful;
- the outcome was correct in 77 of the 95 unsuccessful ARs, including;
    - seventy five of the 89 cases where all the reasons recorded for the initial refusal were maintained; and
    - two of the four cases where one or more reason was withdrawn.

6.7 An example of a successful AR application where the reviewer withdrew the eligible decision is shown at Figure 6.

Figure 6: Case study: Successful AR, reviewer withdrew the eligible decision

The applicant:

- on 20 April 2015, was refused Tier 4 leave because he had failed to demonstrate he had the necessary funds available;
- on 23 April 2015, applied for an AR; and
- stated that the decision maker had miscalculated the funds he required because they had based the calculation on a requirement to hold adequate funds to cover a longer period than the length of the applicant's course of study.

The Home Office:

- identified that the funds requirement had been calculated incorrectly and assessed that the applicant had demonstrated he had the necessary funds to complete his course; and
- on 27 April 2015, withdrew the original refusal decision, and granted the applicant leave to remain until 30 September 2015.

Chief Inspector's comments

This is an example of AR working effectively. It took less than one week from the applicant receiving his refusal decision for the original caseworking error to be identified and corrected.

6.8 The 18 incorrect AR outcomes in our sample of 100 comprised:

- ten cases where the AR should have succeeded and the eligible decision should have been withdrawn (in nine of these cases all the reasons for refusal had been maintained, and in the other case one reason had been withdrawn but the decision to refuse leave had been maintained);
- eight cases where it was correct that the AR did not succeed, but the outcome was incorrect:
  - three where all the reasons should have been maintained (two had had a reason added and one had had a reason withdrawn); and
  - five where one or more reason should have been withdrawn (all reasons had been maintained).

AR applications that should have succeeded

6.9 The ten ARs in our sample that should have succeeded, where the original decision to refuse leave should have been withdrawn, comprised:

- two applicants refused leave on the basis of having overstayed for more than 28 days when this was not the case;
- two applicants refused leave on deception grounds (failure to declare previous entry clearance refusals) when this was not proportionate;
- one applicant refused leave on the basis of insufficient funds when they satisfied the requirement;
- one applicant refused leave because the duration of his studies was miscalculated;
- three applicants who should have been given 60 days to find a new sponsor; and
- one case that was not an eligible decision for an AR, where the applicant should have been afforded a right of appeal.

In all but the final case, the applicant had raised caseworking errors that had not been properly investigated or addressed by the reviewer.

6.10 The two refusal decisions on grounds of overstaying were subject to Judicial Review (JR) proceedings. The Home Office conceded one, and the applicant was granted leave to remain. In the other case, although notes on CID indicated that the Home Office accepted the application had been made in time and would concede the JR, the Judge did not allow the applicant's JR request.

6.11 One of the two cases refused on the basis of failure to disclose previous entry clearance refusals, where the AR should have succeeded, is described in the case study at Figure 7.

Figure 7: Case study: Refusal on 'deception' grounds maintained when it should have been withdrawn at AR

The applicant:

- on 5 June 2015, applied for Tier 4 leave and in response to the question: '*Have you ever been refused entry clearance, leave to enter or leave to remain in the UK?*', ticked '*No*';
- on 1 July 2015, was refused leave on the basis that he had failed to disclose the 'material fact' of his previous entry clearance refusal (according to Home Office records, he had been refused entry clearance on 7 November 2005); and
- on 13 August 2015, applied for an AR stating that he had not intended to mislead the Home Office, had declared the 2005 refusal when granted entry clearance in 2008 and had not realised that he had to do so again in his 2015 application for leave to remain.

The Home Office:

- maintained the refusal at AR, informing the applicant: '*..you did not disclose the accurate information required on your application form and the onus is on you to submit the correct information and you failed to do so*'.

Chief Inspector's comments

Home Office guidance on *General Grounds for Refusal* states with regard to refusing applications on deception grounds: '*You must consider whether an innocent mistake has been made so that a proportionate decision is reached*'.

The AR reviewer should have made an assessment of proportionality in this case. Given that the applicant was granted entry clearance in 2008 and since then had been granted three further periods of leave to remain, it was not proportionate to refuse leave on the basis of deception and the AR should have succeeded and the refusal should have been withdrawn.

Home Office response

The Home Office responded: '*No consideration was given to the proportionality of the decision as the AR guidance on Horizon* [the Home Office intranet] *states: "You are considering whether the correct rules and process were used and whether the decision was more likely than not to be correct, not remaking the decision". On the information available to the original caseworker, they followed the correct rules and guidance and so the decision was maintained at AR*'.[26]

26 Following a subsequent review of the case, the Home Office accepted that the original decision to refuse on deception grounds was not proportionate and that the refusal should have been withdrawn.

6.12 There were three cases where applicants had argued in their AR application that their sponsor had withdrawn their Confirmation of Acceptance for Studies (CAS)[27] in error. The sponsor had informed the Home Office of the error, but the sponsor's licence had subsequently been revoked. In the circumstances, the applicants should have been granted 60 days to obtain a new sponsor. However, all three refusals were maintained at AR, with no evidence that the issues raised by the applicants had been investigated. They each submitted pre-action protocol (PAP) letters and, following review by a litigation caseworker, the Home Office agreed to reconsider the decisions. In two of the three cases the 60 day period was then granted.

6.13 In the separate case refused on the basis of insufficient funds, the applicant was refused leave to remain following his change of sponsor. In this case, the reviewer did not properly investigate or address the issues raised by the applicant in the AR, nor did they acknowledge that the applicant was in receipt of an educational loan which had been accepted as evidence of sufficient funds when the applicant had obtained entry clearance to the UK.

6.14 The case that was not in respect of an eligible decision should have been afforded a right of appeal as the application was made prior to commencement of the AR process. This was conceded by the Home Office following receipt of a PAP letter.

Unsuccessful AR applications that were correct, but with incorrect outcomes

6.15 There were eight cases in our sample where it was correct that the AR did not succeed, and that the decision to refuse leave was maintained, but the outcomes contained errors.

6.16 In five of these cases incorrect reasons for the refusal should have been withdrawn. In each case, issues raised by the applicant as caseworking errors had not been correctly considered and addressed by the reviewer:

- in two cases refusal was maintained on the basis that the applicant had overstayed for more than 28 days when this was not the case;
- in two cases a *General Grounds for Refusal*[28] was misapplied and should have been withdrawn (one was based on failure to declare previous entry clearance refusals and the other on failure to enrol biometrics); and
- in one case the applicant's course commencing more than 28 days after his leave expiry date was given as one of the reasons for refusal when this calculation was incorrect.

6.17 In the other three cases, all of the reasons for refusal of leave should have been maintained, and none added. In these cases:

- two had had new reasons for refusal added incorrectly, and in neither case was the applicant offered a further opportunity to apply for AR in respect of the new reason added, which was not in line with guidance; and
- one had incorrectly withdrawn a refusal ground based on exceeding the five years allowed for degree level study.

27 A Certificate of Acceptance for Studies (CAS) is a unique reference number electronically issued by a sponsor via the Sponsor Management System to an applicant for entry clearance, leave to enter or remain as a Tier 4 migrant.
28 The General Grounds for Refusal are listed in part 9 of the Immigration Rules. A caseworker or entry clearance officer must consider refusing a person on general grounds if there is any evidence in their background, behaviour, character, conduct or associations that shows they should not enter or remain in the UK for one or more of the grounds set out in paragraphs 320 and 322 of the Immigration Rules. The grounds include criminal history, use of deception and failure to comply with conditions of stay previously, among others.

Tier 2 sample

6.18 In our sample of 40 Tier 2 AR applications:

- two had been successful and the eligible decision had been withdrawn;
- thirty-eight had been unsuccessful and the eligible decision had been maintained, and of these:
  - thirty-six had maintained all the reasons for refusal of leave;
  - one had withdrawn a reason for refusal; and
  - one had added a new reason for refusal.

6.19 Based on the Immigration Rules and Home Office guidance, the decision on the AR application was correct in 37 out of the 40 cases, including both successful applications, in which the reviewer had identified and corrected caseworking errors.

AR application that should have succeeded

6.20 One unsuccessful AR application should have succeeded and the eligible decision should have been withdrawn (all reasons for refusal had been maintained). In this case, the applicant had been refused leave on the grounds that he had overstayed for more than 28 days following curtailment of his leave. The applicant argued in his AR application that the curtailment decision had not been served correctly because it had not been sent to his most recent address, which he had provided to the Home Office.

6.21 The change of address notification was recorded in CID notes, confirming the applicant's contention that he had given the Home Office his new address. This meant that the curtailment notice had not been served correctly, and that the applicant's leave had not been lawfully curtailed. The reviewer made no reference to this in maintaining the grounds for refusal.

6.22 We asked the Home Office why this decision was not withdrawn and why the error was not identified by the quality assurer. The Home Office responded: '*The decision was not overturned as we considered that the curtailment notice had been served correctly… Without checking every note on CID against every case, the assurer would not have known about the new address as it was not recorded in the address field*'.

6.23 Two weeks after the AR decision was served the applicant submitted a PAP and the case was reviewed by a litigation caseworker who identified that the curtailment decision had not been lawfully served and withdrew the decision. The individual was subsequently granted further leave.

Unsuccessful AR applications with incorrect outcomes

6.24 Of the 38 unsuccessful AR applications, the outcome was correct in 35 cases, in all but one of which the reviewer had correctly maintained all the reasons for refusal of leave. In that one case, the reviewer had correctly withdrawn the original reason for refusal and had added a new one, again correctly, and had maintained the refusal decision (according to guidance, a second AR should have been offered but was not).

6.25 The three incorrect outcomes included the unsuccessful application that should have succeeded. Meanwhile, in two cases where, correctly, the AR application did not succeed, an incorrect reason for refusal should have been withdrawn and a new reason added (one had all reasons for refusal maintained and one had a reason withdrawn). One of these cases is described at Figure 8.

Figure 8: Case study: Reviewer failed to correct errors in refusal decision

The applicant:

- on 18 June 2015, was refused leave as a Tier 2 migrant;
- the reason given was that she had failed to comply with the conditions attached to her previous Tier 4 student leave, the evidence for this being that the degree certificate she supplied in support of her Tier 2 application had been awarded by a different college from the one that had sponsored her Tier 4 application;
- on 23 June 2015, applied for an AR stating that she had obtained her degree through supplementary online study while still studying at her sponsor college, which was permissible under the previous conditions of her leave.

The Home Office:

- maintained the refusal, having quality assured the AR decision prior to service;
- on 7 July 2015, informed the applicant: '*We have noted your comments from the administrative review which state that you have been studying part time additionally at [college B], however you have failed to provide evidence that you have studied or gained a qualification at [college A], your main college of study. Your application was considered based upon the information provided at the time of application, therefore the decision to refuse your application is correct*';
- on 10 August 2015, following submission of a PAP letter, accepted that the applicant was permitted to undertake supplementary study and agreed to reconsider the refusal decision;
- on 27 August 2015, refused the application again, on the grounds that the applicant's degree was awarded after college B's Tier 4 sponsor licence had been revoked.

Chief Inspector's comments

The initial refusal should have been corrected at AR. Had the reviewer withdrawn the incorrect reason for refusal and inserted the correct one (that the college where she had undertaken supplementary study had had its Tier 4 sponsor licence revoked) the threat of litigation, and the additional costs and delay involved, would have been avoided.

Home Office response

Asked why it had not addressed the supplementary study point and added the revocation reason, the Home Office responded: '*We accept that this should have been addressed in the AR decision notice. We have reinforced guidance to caseworkers to address all points raised in the admin review application…A new decision letter should have been issued and consideration given to the different ground for refusal*'.

Quality of CID notes

6.26 We found that the reviewer's CID notes in 52 out of 140 cases sampled did not provide adequate explanation or reasoning for their decision as to whether the AR application had succeeded or not. In the majority of these cases, the issues raised by the applicant had not been adequately investigated and/or addressed by the reviewer. In many cases, it was not clear from CID notes exactly what point(s) the applicant had raised, with broad statements used, such as: *'the applicant is challenging the rejection on the grounds that there was a failure to apply the Secretary of State's relevant published policy and guidance'*, whereas the applicant had provided specific, detailed reasons in the AR application. Similarly, in some cases the reviewer stated: '*On investigation, I find that the original decision to refuse was correct*', with no detail provided regarding what was investigated and why the issues raised by the applicant had no merit.

Quality of decision notices

6.27 In 71 out of 133 cases where the refusal decision was maintained, the decision notice did not address the issues raised by the applicant and provide a clear explanation of why the refusal decision was maintained. In most of these the reviewer reiterated the original reasons for refusal without acknowledging or addressing issues raised by the applicant. While onsite, we were told by the AR Team that the CID template had been improved in November 2015, so that the issues raised by applicants would be recorded and addressed. Workshops had also been held with a view to improving decision notices. An example of a decision notice that failed to respond to issues raised by the applicant is given at Figure 9.

Figure 9: Case study: AR decision notice failed to respond to issues raised by applicant

The applicant:

- entered the UK with leave as a Tier 4 student until 6 November 2014;
- on 3 November 2014, applied for further leave;
- on 24 November 2014, was served with a refusal decision (made on 20 November 2014);
- on 19 December 2014, made a fresh Tier 4 application;
- on 13 March 2015, the application was rejected because (according to CID notes) it was an *'Invalid application – no passport, photos or signed declaration;*
- on 24 March 2015, the applicant made a further Tier 4 application;
- on 20 May 2015, the further application was refused because the applicant had overstayed by more than 28 days; and
- on 2 June 2015, the applicant applied for an AR, stating that her December application had been rejected incorrectly because she had submitted relevant documents at the time and had been unable to submit her passport because it had been retained by the Home Office.

The Home Office:

- on 8 June 2015, maintained the refusal decision at AR, failing to address the points raised by the applicant in the AR decision notice instead restating the applicant's immigration history and arguing that, as the December application had been rejected and a valid application had not been made until 24 March, she had overstayed for more than 28 days; and
- on 20 July 2015, granted leave, having reconsidered the leave application following notification that a JR had been lodged on 21 June 2015. The caseworker who undertook the review noted on CID: *'Previous application submitted 19 December 2014 should not have been rejected as the documents were sent in'.*

Chief Inspector's comments

This applicant had not overstayed for more than 28 days because her December application was valid. At AR the reviewer should have identified this and withdrawn the refusal decision. Instead, it took notification of a JR before the Home Office corrected its error, incurring costs and delay that could have been avoided had the AR been handled correctly.

Home Office response

The Home Office accepted *'that the AR decision letter should have explicitly addressed the points raised, in particular the legitimacy of the rejection of the December application'* and *'that the JR could have been avoided if the original caseworker that dealt with the rejected application in December 2014 had not missed the passport or signed declaration'.*

Quality assurance

6.29 AR Team managers told us that initially 100% of AR decisions had been subject to quality assurance (QA) by senior caseworkers. Managers had decided on a high level of quality assurance to mitigate the risks of using junior staff, most of whom lacked previous experience of immigration casework, to conduct the reviews. In August 2015, QA was reduced to 50% for decisions made by experienced caseworkers.

6.30 According to the CID record, 79 out of the 140 AR cases sampled had been sent for QA prior to service of the decision notice. In 22 of these cases, there was no note on CID from the quality assurer. Where the quality assurer had made a note on CID it recorded that the case had been passed back to the reviewer to issue the decision, but it did not record what aspects of the decision the quality assurer had checked, and the results of those checks. In four cases, CID notes indicated that an AR reviewer had intended correctly to maintain all reasons for refusal but the quality assurer had incorrectly added or withdrawn reasons.

Training and guidance

6.31 AR Team caseworkers received training on Points Based System (PBS) applications from staff in the Temporary Migration Directorate,[29] and were supported by Temporary Migration floorwalkers when the AR Team was first established. Caseworkers and AR Team managers considered that the training was adequate.

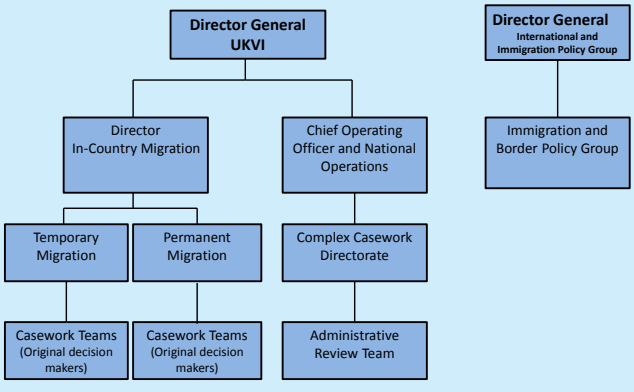
6.32 Caseworkers told us that local guidance was available, such as desk aids, in addition to the AR policy guidance. They considered that the guidance available was generally good.

Independence of the reviewer in terms of separation from the original decision-maker

6.33 All applications for AR in respect of in-country immigration decisions were considered by the AR Team in Manchester, part of UKVI's Complex Casework Directorate. The original immigration decisions were ones that had been taken by caseworking teams within the Temporary Migration and Permanent Migration Teams, based in Sheffield and Liverpool respectively.

6.34 Staff in the AR Team told us that in order to maintain the required separation they did not have any contact with the original decision making teams regarding individual cases. Where the AR Team required clarification on casework issues, it liaised with the Policy Team within Immigration and Border Policy Directorate (IBPD). The organisational structure is shown at Figure 10.

Figure 10: Diagram showing where original decision makers, the AR Team and Immigration and Border Policy Directorate fit within the organisational structure



29 Temporary Migration Directorate handles all in-country applications for limited leave to remain.

6.35 None of the AR applications in our sample of in-country immigration decisions had been handled by staff who had been involved in the initial decision making process.

Conclusion

6.36 AR reviewers were geographically separate and in a different management chain from the caseworkers who had made the original immigration decision. The AR Team did not contact the original decision makers about individual cases and, when it was required, obtained clarification on casework issues from Immigration and Border Policy Directorate. The Home Office had therefore taken all reasonable steps to satisfy Section 16 of the 2014 Act to ensure '*the independence of persons conducting administrative review (in terms of their separation from the original decision-maker)*'.

6.37 With regard to *'the effectiveness of administrative review in identifying case working errors*', the AR process (including the quality assurance of reviews) for in-country immigration decisions had identified caseworking errors in 15 of 140 sampled cases. In 10 of these, caseworking errors were correctly identified: seven where the original decision to refuse leave was incorrect; and three where one or more reasons for the decision were incorrect or missing. In three cases the reviewer had misidentified errors and had wrongly withdrawn or added reasons when all of the original reasons should have been maintained, and in two cases, although a reason had been withdrawn in each, further reasons should have been withdrawn or added.

6.38 In addition to the 15 cases where the reviewer had identified caseworking errors, the inspection found a further 11 incorrect refusal decisions, according to the Immigration Rules and Home Office guidance, that the reviewer had missed, and seven further cases where the decision was correct but one or more reasons was incorrect or missing.

6.39 While not always linked to a failure to identify errors, based on the case record and the AR response, AR reviewers had not given adequate scrutiny to the issues raised by the applicant in over half the cases sampled. There was an over-reliance on the initial refusal decision letter, with AR decision notices reiterating the previous grounds for refusal without addressing the applicant's points.

6.40 Most staff in the AR Team had no previous experience of Points Based System casework and limited experience of immigration casework. While staff and managers considered the training they had received to have been adequate, file sampling indicated considerable scope to improve their understanding of relevant Immigration Rules, guidance and practice. There was no evidence from the files sampled that the quality assurance regime (checking 100% of ARs completed by inexperienced reviewers and 50% by experienced ones) had added any value.

6.41 With regard to *'the effectiveness of administrative review in correcting case working errors*', self-evidently, where the AR process failed to identify them it was ineffective in correcting caseworking errors. Twenty one of the sampled 140 in-country ARs were ineffective in correcting errors: 18 where the errors were not identified, and three where errors were wrongly identified and reasons for refusal incorrectly amended.

6.42 Correcting errors in the reasons for a refusal where the refusal itself was correct and was maintained at AR is important as these errors may have a bearing on future actions, both by the applicant and the Home Office. However, the consequences for the applicant of the reviewer failing to identify and correct errors where the original decision should have been withdrawn are more acute.

6.43 In eleven cases the AR reviewer maintained the original decision to refuse leave when they should have withdrawn it. In five of those cases, the Home Office accepted that the original decision was flawed and agreed to reconsider following the threat of litigation, and in two cases the Home Office agreed to grant leave after a JR was lodged. These decisions were not taken by the AR Team, but by staff responsible for reviewing whether the Home Office should contest a legal challenge.

7. Overseas Applications for an Administrative Review

Background

7.1 Since 2008[30], Entry Clearance Managers (ECM) have reviewed decisions made overseas by Entry Clearance Officers' (ECO)[31] regarding entry clearance applications where the applicant has challenged the decision. Generally, the ECM reviewer will be at the same visa post as the ECO decision-maker, but some ECMs are based in Sheffield.[32]

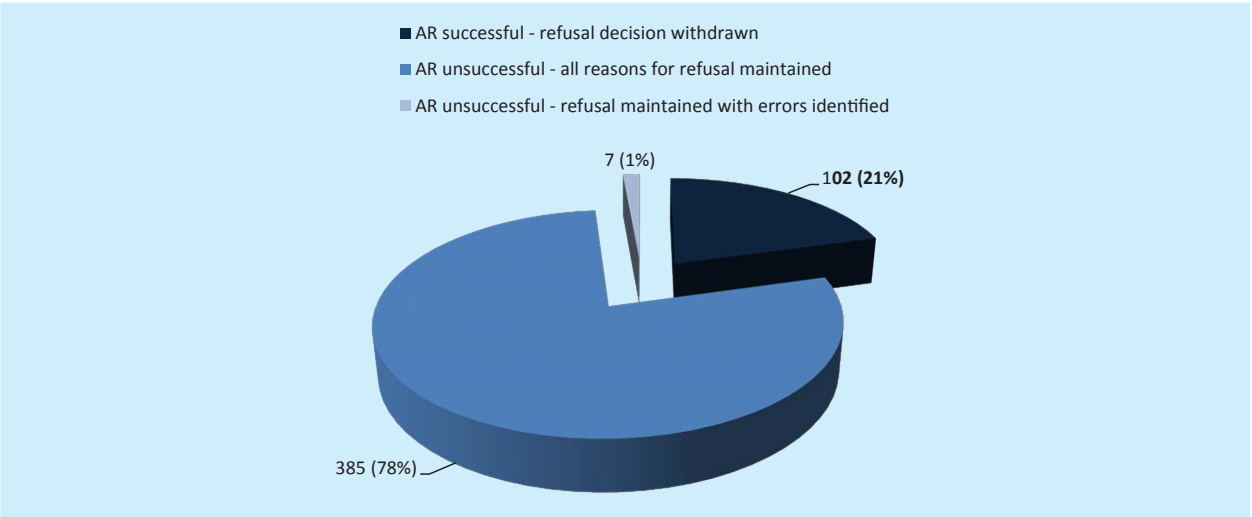
7.2 The 2014 Immigration Act defined an eligible decision for AR as a refusal of an application for entry clearance that was made on or after 6 April 2015, including refusals of applications made under the European Community Association Agreement (ECAA) with Turkey. Unlike in-country decisions, where the conditions or duration of leave attached to grant decisions are eligible for AR, only refusal decisions for overseas applications for leave are eligible for AR.

Outcomes

7.3 Home Office management information showed that between 6 April 2015 and 30 September 2015 it had received 568 applications for an AR of an overseas decision to refuse entry clearance. In the same period, it had made16,060 overseas eligible decisions.

7.4 By September 2015, 494 overseas ARs had been decided. Figure 11 represents the management information (MI) the Home Office provided to us about the outcomes of these 494 ARs. However, the reliability of this MI was called into question by our sampling. In 65 sampled cases we identified nine where errors had been identified but the refusal decision had been maintained, while the Home Office MI showed only seven such cases amongst the 494.

Figure 11: AR outcomes in respect of decisions made on overseas applications



30 The PBS was introduced in 2008. Most applications from non-EEA migrants are made under the PBS, which is divided into the following tiers: Tier 1 (entrepreneurs and investors), Tier 2 (skilled workers), Tier 4 (students) and Tier 5 (temporary workers).
31 Entry Clearance Officer (ECO) is equivalent to Executive Officer (EO) grade. Entry Clearance Manager (ECM) is equivalent to Higher Executive Officer (HEO) grade.
32 At the time of our inspection, ARs in respect of decisions made by Abu Dhabi, Islamabad, New York and Paris, were considered by ECMs at the UK Visa Section.

Quality of decision making

7.5 We sampled 65 AR applications made in respect of overseas immigration decisions, comprising:

- 40 Tier 4 eligible decisions made between 6 April and 31 August 2015; and
- 25 Tier 2 eligible decisions made during the same period.

7.6 We assessed whether:

- the AR outcome was correct, i.e. in line with the Immigration Rules and Home Office guidance;
- the reviewer had considered the issues raised by the applicant in their AR application fully and in accordance with policy and guidance;
- CRS[33] notes recorded clear reasoning for the reviewer's decision;
- where the AR application was unsuccessful and the refusal was maintained, the decision notice responded to the issues raised by the applicant and explained clearly why the decision had been maintained; and
- the reviewer was independent in terms of their separation from the original decision maker.

Tier 4 sample

7.7 In our Tier 4 sample:

- ten ARs had been successful and the eligible decision had been withdrawn;
- thirty had been unsuccessful and the eligible decision had been maintained, and of these:
- twenty five had maintained all reasons for refusal; and
- five had withdrawn one or more reasons for refusal.

7.8 We found that:

- in 35 of the 40 cases sampled, the reviewer had made the correct decision regarding whether the AR application should succeed or not, according to the Immigration Rules and Home Office guidance;
- the five incorrect decisions were all cases where the AR application should have succeeded but did not;
- the outcome was correct in 32 of the 40 cases sampled, including all 10 that were successful;
- the outcome was correct in 22 of the 30 unsuccessful ARs, including:
    - eighteen of the 25 cases where all the reasons recorded for the initial refusal were maintained; and
    - four of the five cases where one or more reasons were withdrawn.

Decisions that should have been withdrawn

7.9 There were five cases in our sample where the original refusal decision was maintained when it should have been withdrawn:

- three were refused on the basis of insufficient funds, when the applicant met the requirements of the Immigration Rules;

33 Central Reference System – a database containing case records for entry clearance applications made overseas.

- one was refused on deception grounds, when this was not proportionate; and
- one was refused on grounds of not being a genuine student, when the evidence, on the balance of probabilities, did not justify this decision.

7.10 In all three cases refused on the basis of insufficient funds the reviewer had not fully investigated specific caseworking errors identified by the applicant in their AR application.

7.11 The first case concerned misapplication of the guidance concerning availability of funds for an adult dependant. The applicant had supplied her husband's bank statements showing that he could support himself, but these had not been taken into account by the ECO. The applicant raised this in her AR application, but it was not addressed by the reviewer.

7.12 The second case concerned misapplication of the guidance relating to an educational loan. The applicant's loan facility satisfied the Immigration Rules, but the reviewer maintained the refusal. This decision was later overturned when the applicant's sponsor contacted the visa post and the Operations Manager (a Senior Executive Officer) reassessed the case.

7.13 Details of the third case are given in the case study at Figure 12.

Figure 12: Case study: Refusal that should have been withdrawn at AR

The applicant:

- on 14 May 2015, was refused Tier 4 student entry clearance on the grounds that he did not meet the funds requirement because the bank statement he submitted was not dated within one month of his application; and
- on 21 May 2015, applied for an AR, stating he had submitted three bank statements, two of which were dated within one month of his application date and showed the required level of funds.

The Home Office:

- conducted the AR at the UK Visa Section in Sheffield, where it did not have access to the applicant's supporting documents;
- asked the decision making post in Islamabad to check the applicant's file and was told that there was only one bank statement; and
- upheld the refusal on that basis.

Chief Inspector's comments

The file held locally in Islamabad contained the three bank statements. The reviewer in Sheffield was reliant on other staff checking the applicant's file thoroughly and this was not done.

Home Office response

The Home Office responded: '*Having reviewed the application it is clear that the bank statement in the applicant's name provided at the time of application covered the period 08/11/2014 to 16/04/2015 and therefore our decision should have been conceded/withdrawn…Where the applicant is adamant that further documents were supplied, the remote reviewer should ask post to check the file…There are safeguards in place but they failed in this instance. It is clear from CRS the remote reviewer requested post to check the application for a bank statement dated until 16/04/2015 but unfortunately the ECA [Entry Clearance Assistant] who conducted the check appears to have failed to conduct a full check of the application*'.

Note

The Home Office later stated that it had introduced measures in Islamabad to address the issues highlighted by this case.

7.14 In the case refused on deception grounds, the applicant stated in her Tier 4 application that she intended to travel alone. Checks revealed that her husband, previously a student in the UK, had applied for a visit visa and, if issued, would be in the UK at the same time. The ECO interpreted this as deliberate deception. In the AR application the applicant stated she had made a mistake in interpreting the questions on the visa application form. Based on their own record, the reviewer too readily dismissed the applicant's claim to have misunderstood the visa application form and did not address this in their response to the applicant maintaining the refusal.

7.15 In the case refused on the basis that the ECO did not accept that the applicant was a genuine student, the ECO argued that the applicant had failed to show any meaningful research into his chosen university and had failed to provide a credible explanation of why he was not continuing his studies in Pakistan. This was not an accurate overall assessment of the answers given by the applicant at interview, who displayed a typical level of knowledge of his (post-graduate) course and chosen university, and gave a credible reason for wishing to study in the UK, by comparison with other students who were granted visas. Since the standard of proof in visa applications is 'balance of probabilities', the original decision to refuse was disproportionate, and the reviewer should have identified this and overturned the refusal.

Decisions maintained correctly but with errors

7.16 There were three cases in our sample where the decision to maintain the refusal was correct but there were errors in the reasons stated that should have been corrected by the reviewer.

7.17 In the first case, a family member's immigration status in the UK was included in the grounds for refusal, which was irrelevant in terms of assessing whether the applicant met the Immigration Rules. The applicant raised this in their AR application, but the reviewer did not address the point. This error was corrected by the Home Office when the file was called for sampling.

7.18 In the second case, the ECO had included in the refusal grounds that the applicant had applied to take a pre-sessional course,[34] the purpose of which was to improve the applicant's English to the required level before commencing a degree course, when the applicant's English was already of the required standard, which argued against her credibility. The ECO's statement was factually incorrect, as the applicant did not already have the standard of English required. The applicant raised this in their AR application, but it was not addressed by the reviewer and the refusal reason was maintained when it should have been withdrawn.

7.19 In the third case, the ECO had argued that, based on an estimate of future salary, it would take the applicant over 11 years to recoup the money spent on his proposed studies in the UK. This argument was impossible to evidence and should have been withdrawn at AR. Meanwhile, there was evidence on file that supported refusal on financial grounds, which the reviewer should have added but did not.

Tier 2 sample

7.20 In our Tier 2 sample:

- six ARs had been successful and the eligible decision had been withdrawn;

34 A pre-sessional course is one that prepares a student for their intended full time course of study in the UK. This will usually be supplementary English Language training or some instruction in the British education system. Leave can be granted to cover the pre-sessional course and the main course of study where certain requirements are met.

- nineteen had been unsuccessful and the eligible decision had been maintained, and of these:
    - seventeen had maintained all reasons for refusal;
    - one had withdrawn a reason for refusal; and
    - one had added a reason for refusal.

7.21 We found that in 22 of the 25 cases sampled the reviewer made the correct decision regarding whether the AR application should succeed or not, according to the Immigration Rules and Home Office guidance; of the three incorrect decisions: two cases were where the AR application succeeded but the refusal decision should have been maintained, and one case was where the AR application should have succeeded but did not; the outcome was correct in 21 of the 25 ARs, including four of the six that were successful; the outcome was correct in 17 of the 19 unsuccessful ARs, including:

- fifteen of the 17 cases where all the reasons recorded for the initial refusal were maintained; and
- one case where a reason had been withdrawn; and
- one case where a reason had been added.

Decision that should have been withdrawn

7.22 In one case, the reviewer maintained the original refusal decision when it should have been withdrawn. The applicant was refused under *General Grounds for Refusal* on the basis that he had used deception in a previous entry clearance application. The ECO highlighted discrepancies between bank statements submitted in support of entry clearance applications made in 2009 and 2011. In his AR application the applicant challenged the deception finding. The case notes and decision letter indicated that the reviewer had not addressed or investigated this point. The decision was later withdrawn following receipt of a pre-action protocol (PAP) letter.

Decision maintained correctly but with errors

7.23 Our sample contained one case where the decision to maintain the refusal was correct but some of the reasons should have been withdrawn. This application was refused on the grounds that the ECO did not accept there was a genuine vacancy that the applicant would be filling. The refusal had been made under paragraphs 245HB(m) and (o) of the Immigration Rules, which related to Ministers of Religion. However, the applicant had applied as a Tier 2 general migrant, so these were not the correct paragraphs and should have been withdrawn.

AR succeeded but decision should have been maintained

7.24 In two cases, the reviewer withdrew the refusal decision when it should have been maintained. In the first of these, the applicant was refused under *General Grounds for Refusal* on the basis of having overstayed previously in the UK for over 90 days, and of failing to meet the English Language requirement. The reviewer had withdrawn both grounds. The applicant had met the English Language requirement, so the reviewer was correct to withdraw the latter grounds, but the first grounds should not have been withdrawn, and the refusal decision should have been maintained.

7.25 This error occurred because the reviewer miscalculated the period of overstaying at less than 90 days, where the ECO had calculated it correctly. The applicant's previous leave had expired on 13 January 2015. She had put in a fresh application on 10 March 2015, but had then withdrawn this and made a voluntary departure on 3 July 2015. The ECO had correctly calculated the period of overstaying as extending from 14 January 2015 to 3 July 2015. The ECM reviewer had wrongly calculated the period of overstaying from 14 January 2015 to 10 March 2015.

7.26 In the second case, the visa application was refused on the basis that the applicant had used deception by failing to declare a previous entry clearance refusal on her visa application form. The reviewer withdrew the refusal decision, having accepted that the applicant had made an innocent mistake. However, the applicant had also failed to provide correct details of previous passports, and this further evidence of deception meant that the refusal should have been maintained on the basis that, on the balance of probabilities, there had been an intention to deceive.

Quality of CRS notes

7.27 In 38 of the 65 cases sampled, the CRS[35] notes did not contain the reviewer's reasoning for their decision. The Home Office stated that it was standard practice for the reasons for upholding a decision to be set out in full in the 'Points Summary Document' within the AR decision notice, and that recording these reasons elsewhere would be duplication. However, the notes accompanying the AR training for ECMs state: '*it is important that the notes clearly address the areas covered in the template*'.

Quality of decision notices

7.28 In 17 of the 49 sampled cases where the refusal was maintained, the AR decision notice did not address all of the issues raised by the applicant. There were examples of good practice from some visa posts which produced detailed AR notices that quoted Home Office guidance to address issues raised by applicants. But, in some cases the AR decision notice failed to address the detailed issues raised by the applicant and instead simply reiterated the reasons given in the original refusal notice.

Quality assurance

7.29 The Home Office told us there was no set quality assurance process for overseas AR decisions, and there was no evidence that any of the cases in our sample had been quality assured. Some managers told us they looked at most AR decisions but did not formally quality assure them or make any record of having looked at them.

7.30 While onsite, a senior manager told us of plans to centralise international post-decision casework and decision quality (DQ) functions in the UK during 2016/17. Staff and managers were generally supportive of this development, but stressed that effective feedback loops would need to be in place. The Home Office subsequently informed us that the objective was to '*create a new DQ team to ensure consistency, build a centre of expertise, and allow closer monitoring of emerging trends and thematic reviews. There is also scope for this DQ team to inform and pursue global process and decision quality improvements*'.[36]

Independence of the reviewer in terms of separation from the original decision-maker

7.31 Fifteen of the 65 overseas cases sampled were for visa refusal decisions made in Islamabad where the AR reviewer was in Sheffield. Managers in Sheffield said that they liaised with the visa post that had made the visa refusal decision once they had made their decision on the AR application. However, there was a lack of clarity as to whether the AR outcome was 'owned' by Sheffield or by the post. In some cases, an ECM at the post, who had not been involved in the original decision, might review the AR decision before it was served. A process map which formed part of the entry clearance AR guidance stated: '*In the unlikely event that a decision is not accepted by the post, post amends letter and contacts Sheffield outlining final decision and reasons*'.

7.32 Fifty of the 65 cases sampled were reviewed by an ECM based at the visa post where the original decision was made. In 48 of these the reviewer had not been involved in the decision to refuse the visa application, and to that extent was separate from the original decision maker, albeit they worked within the same unit. The AR succeeded in one of the two cases where the reviewer had been involved in the initial decision making process.

35 Case Reference System (CRS) is the database used for applications made for UK visas from overseas.
36 Home Office response to supplementary evidence request dated 3 December 2015.

Conclusion

7.33 The Home Office's internal management information about AR outcomes in respect of entry clearance decisions made overseas was unreliable. This was misleading when assessing the effectiveness of the process.

7.34 With regard to *'the effectiveness of administrative review in identifying case working errors'*, the AR reviewer had identified caseworking errors in 23 of the 65 overseas cases sampled. In 20 of these, caseworking errors were identified correctly. In two cases (both Tier 2) the reviewer had withdrawn the original refusal decision when it did not contain caseworking errors and in a Tier 4 case the reviewer withdrew one of the reasons for refusal but failed to identify that the refusal decision should have been withdrawn. The inspection identified a further six incorrect decisions, according to the Immigration Rules and Home Office guidance, that the reviewers had failed to spot, and four other cases where one or more reasons were incorrect or missing. In the absence of a formal quality assurance process, there was no means of identifying mistakes by the reviewers.

7.35 With regard to *'the effectiveness of administrative review in correcting case working errors'*, the reviewer correctly withdrew the refusal decision in 14 of the 65 sampled cases, and removed or added reasons correctly in a further six cases where the decision to refuse was maintained. This compared to 12 cases where the reviewer had missed (ten) or incorrectly identified (two) caseworking errors.

7.36 Inadequate record keeping, specifically CRS notes, meant that the reviewer's reasoning for the AR outcome was not properly explained in over half of the cases sampled, and although the quality of decision notices was higher than for in-country AR applications, around a third of notices failed to address specific points raised by the applicant.

7.37 In the majority of sampled cases the reviewer working at the visa post where the original decision was made had had no involvement in the decision itself. However, the size of visa posts, the close relationships that often existed, and the shared perspectives and priorities gave rise to questions about how independent the former can be. In practice, the inspection found no evidence of conscious or unconscious bias and, based on file sampling, overseas reviewers were generally more thorough and effective than their in-country counterparts in identifying and correcting errors. In the two instances where the reviewer had had some involvement in the original decision, the review was thorough and errors were identified and corrected. Nonetheless, the lack of obvious separation of reviewer and caseworker meant it was difficult to demonstrate that overseas AR reviews were truly independent, except where they succeeded.

7.38 The proposed 'onshoring' of overseas ARs (from 2016/17) would achieve demonstrable separation and independence. But, there were potential pitfalls. Where this was the case already, in Sheffield, there was a lack of clarity about who ultimately 'owns' the AR outcome, with the final decision appearing to rest with an ECM at the relevant visa post. Also, the Sheffield-based reviewers required staff at post to check any documentary evidence that was held locally and had to rely on this being done thoroughly, which file sampling indicated was not always the case. These weaknesses should be addressed whether or not the proposed 'onshoring' goes ahead.

8. At the border cases

Background

8.1 A decision made at the UK border is eligible for administrative review (AR) where: *'a decision is made on or after 6th April 2015 to cancel leave to enter or remain with the result that the applicant has no leave to enter or remain, where the reason for cancellation is:*

- *there has been such a change of circumstances in the applicant's case since that leave was given that it should be cancelled* (cancellation under paragraph 321A(1)); and
- *the leave was obtained as a result of false information given by the applicant or the applicant's failure to disclose material facts* (cancellation under paragraph 321A(2))'.[37]

8.2 The Immigration Rules specify that a decision to cancel leave must be authorised by a Border Force Higher Officer (BFHO) or a Border Force Senior Officer (BFSO).[38] In practice, it is normally a Border Force Officer (BFO) who makes the initial judgement, since the immigration control points are manned by BFOs.

8.3 Administrative reviews at the border are conducted by BFHOs. At the time of our inspection, there was no dedicated resource for AR at the border, and ARs fell to the BFHO rostered on to casework duties[39] to complete. As for in-country and overseas ARs, the Home Office works to a 28 day service standard to respond to an AR in respect of a decision made at the border.

Outcomes

8.4 The Home Office informed us that between 6 April 2015 and 30 September 2015 144 AR applications had been lodged in respect of eligible decisions made at the border. The majority of these (108) related to decisions made at Heathrow Airport: 56 at Terminal 4, 25 at Terminal 3, 14 at Terminal 2 and 13 at Terminal 5. No other port had received AR applications in double figures.

8.5 Of the 144 applications, 24 had been rejected as invalid. Of the 96 valid ARs where the outcome was recorded at the time of our inspection, 21 had been successful and the decision to cancel leave had been withdrawn, and 75 had maintained the decision to cancel leave. The Home Office had not collected information about the reasons in the 75 maintained decisions, or whether any new reasons had been added or original reasons withdrawn by the reviewer.

Quality of decision making

8.6 We sampled 40 AR cases in respect of eligible decisions made to cancel leave at the border up to 31 August 2015. We assessed whether:

- the AR outcome was correct, i.e. in line with the Immigration Rules and Home Office guidance;

37 Appendix AR 4.2.
38 Paragraph 10 of the Immigration Rules states: *'The power to refuse leave to enter the United Kingdom or to cancel leave to enter or remain which is already in force is not to be exercised by an Immigration Officer acting on his own. The authority of a Chief Immigration Officer or of an Immigration Inspector must always be obtained'*.
39 Casework duties for BFHOs involve the management of cases where further action is required. For example, a passenger who has not been granted leave to enter immediately on arrival and is subject to further enquiries, or a passenger who has been refused leave to enter and has submitted further representations.

- the reviewer had considered the issues raised by the applicant in their AR application fully and in accordance with policy and guidance;
- CID notes (and/or the port file) recorded clear reasoning for the reviewer's decision;
- where the AR application was unsuccessful and the eligible decision maintained, the AR decision notice responded to the issues raised by the applicant and explained clearly the reasons for maintaining the decision; and
- the reviewer was independent in terms of their separation from the original decision maker.

8.7 Of the 40 AR applications we sampled:

- eight had been successful and the eligible decision had been withdrawn;
- thirty-two had been unsuccessful and the eligible decision had been maintained, and of these:
    - twenty-four had maintained all reasons for refusal;
    - five had withdrawn one or more reasons for refusal; and
    - three had added a new reason for refusal.

8.8 The inspection found that the outcome was correct in 36 of the 40 cases sampled, including all eight cases where the eligible decision had been withdrawn:

- in 21 cases the reviewer had correctly maintained all reasons for refusal;
- in 15 cases, the reviewer had identified and corrected caseworking errors;
    - in eight of which the reviewer had withdrawn the original decision; and
    - in seven which the reviewer, while maintaining the cancellation decision, had either withdrawn incorrect reasons (four cases) or added new reasons (three cases).

An example of a case where the reviewer correctly withdrew the original decision is shown at Figure 13.

Figure 13: Case study: reviewer withdrew original decision

The applicant:

- On 16 May 2015, holding a multi-entry visit visa, sought leave to enter for six weeks as a visitor;
    - producing a letter stating she was 26 weeks pregnant;
    - informing Border Force that she would be visiting her brother-in-law and his wife;
    - claiming that her husband was due to join her on 14 June 2015; and
    - that they would return to Nigeria together on 29 June 2015.

Border Force:

- referred her to the Port Medical Inspector on arrival, who assessed her as 32-36 weeks pregnant;
- accompanied her to an ATM to seek evidence of her ability to support herself financially, and established she had only £185 in her bank account;

- cancelled her leave to enter on the basis that she had made false representations and that her circumstances had changed, because she had stated in her visa application that she would be travelling to the UK with her husband on 16 June 2015 for two weeks and would have £1,200 for the trip; and
- granted temporary admission.[40]

The applicant:

- On 29 May 2015, submitted an AR application, in which she:
  - provided evidence of an ultrasound scan conducted in the UK showing she was 27 weeks pregnant;
  - stated that her husband had transferred money to her on the day of the trip, which did not show in her account until the following day; and
  - stated she had travelled to the UK early because she had been given leave from her job, but she would still be joined by her husband and return to Nigeria with him.

The Border Force reviewer:

- considered each of the points raised by the applicant in her AR;
- concluded that the grounds for cancellation should not be maintained; and
- on 5 June 2015, withdrew the decision to cancel the applicant's leave to enter.

Chief Inspector's comments

This is an example of the AR process working effectively and efficiently. The reviewer considered each of the points raised by the applicant thoroughly and produced the correct outcome.

8.9 In all 32 cases where the reviewer maintained the cancellation of leave to enter or remain, this was the correct decision. However, in four of these cases there were errors the reviewer should have corrected:

- three should have withdrawn reasons (all reasons had been maintained); and
- one should have added new reasons (one reason had been withdrawn).

8.10 Of the three cases where reasons should have been withdrawn, two were where the original decision maker had cancelled leave in accordance with paragraph 321A(2) (provision of false information or failure to disclose material facts). They had then incorrectly applied paragraph 320(5), which states that leave to enter is to be refused due to *'failure, in the case of a visa national, to produce to the Immigration Officer a passport or other identity document endorsed with a valid and current United Kingdom entry clearance issued for the purpose for which entry is sought'*. This reason should have been withdrawn by the reviewer. The Home Office agreed and said that they would feed this back to the port concerned.

8.11 In the third case, the applicant's visit visa had been cancelled because he had accessed private medical treatment in the UK during previous visits, which Border Force argued constituted a change of circumstances. The initial decision notice stated that he did not have the relevant entry clearance to access private medical treatment. It also noted that the applicant failed to provide any evidence he had paid for his treatment and consequently had accessed public funds. The Immigration Rules had changed and a separate medical visa was no longer a requirement of entry, so this reason should have been withdrawn. However, the reviewer was correct to maintain the decision to cancel leave because the applicant had failed to pay for his treatment until after his leave was cancelled, which cast doubt on his intention to pay.

40 Temporary admission may be granted to a passenger pending a decision on their application for leave to enter or to a passenger who has been refused leave to enter pending the outcome of any appeal or pending their removal from the UK. They are subject to certain conditions including a requirement to report back to the port at a designated date and time.

8.12 The case where a new reason should have been added concerned a Tier 1 entrepreneur, whose leave had been granted on the basis of running a home improvement business, but who was found instead to have taken up employment in an office work capacity. The reviewer should have added the reason that, as a Tier 1 entrepreneur, the applicant was not permitted to take up employment (paragraph 245DE(b)(iii)), and explained why they did not accept the applicant's claim to be self-employed.

Quality of CID and port file notes

8.13 In 20 of the 40 the cases sampled the reviewer had not recorded their reasoning in CID notes. In all but two of these cases the reviewer had not recorded their reasoning on the port file either.

Quality of decision notices

8.14 In 23 of the 32 cases where the decision to cancel leave was maintained, the AR decision notice addressed all of the issues raised by the applicant and provided a clear explanation of the reasons for the maintaining original decision.

8.15 In the nine cases where the decision notice was deficient, either the notice failed to address all of the issues raised by the applicant or the explanations given for the decision were inadequate or unclear. For example, in a case involving the cancellation of leave due to a change of circumstances, the AR application stated that the applicant had declared his employment to the Home Office, so this was not a change of circumstances, and that the cancellation decision was unlawful as it had not been authorised by a Border Force Higher Officer (BFHO). The reviewer failed to respond to either of these points in the AR decision notice, and simply repeated the wording of the original cancellation decision.

Quality assurance

8.16 We were informed by the Home Office that 10% of at the border AR decisions were quality assured by a Border Force Senior Officer (BFSO). We asked the Home Office for the percentage of random sampling completed by each port, but were told that no central record was kept.[41] There was no evidence, either from CID notes or from the port files, that any of the 40 cases in our sample had been randomly selected for quality assurance.

8.17 However, the records showed that six of the eight cancellations of leave that were withdrawn at AR had been referred to a BFSO before service of the AR decision notice. In the other two cases (one where all reasons were withdrawn and one where one reason was withdrawn) there was no evidence that the decision had been referred to a BFSO.

8.18 Border Force staff at Heathrow told us that all AR decisions to withdraw the original cancellation decision were authorised by a BFSO. They were unclear about the quality assurance process where the AR maintained the original decision.

Training and guidance

8.19 For Border Force staff at Heathrow, training on ARs consisted of a two to three-hour presentation. When we inspected, not all staff who carried out ARs had received the training, and those who had attended the presentation told us they considered it had been inadequate as it had focused on legislation and policy, rather than dealing with the practical aspects of reviewing cancellation decisions.

8.20 Staff new to dealing with ARs relied on the BF Operations Manual, which they found useful, and consulted their colleagues. However, the Operations Manual did not include guidance on completing CID, and staff had fed this back.

8.21 Neither the training nor the BF Operations Manual addressed whether AR reviewers should carry out their own verification checks or should limit their considerations to the information available to

41 See footnote 6.

the original decision maker. This led to inconsistency, with some reviewers carrying out verification checks and others not.

Independence of the reviewer in terms of separation from the original decision-maker

8.22 The Border Force Operations Manual states, '*The Higher Officer undertaking the AR must not be the Higher Officer who authorised the decision or the line manager of the officer who took the decision. Any Senior Officer who is involved in the process (e.g. to agree to overturn the decision) must not be the line manager of the Higher Officer who authorised the decision. How this will operate in practice will be a port decision, based on resources and local conditions*'.

8.23 Ahead of the introduction of AR, ports were asked to prepare options papers covering how they would handle the process and how they would ensure independence in terms of separation between the original decision maker and reviewer. The options considered at Heathrow Airport included creation of a central team to deal with ARs from all terminals. Another option considered was that each AR would be reviewed at a different terminal from the one where the original decision was made. However, senior managers opted to review ARs at the terminal where the decision had been made, as this would mean that case files would not need to be moved between terminals, which risked them being misplaced, and because it would make feedback on AR reviews quicker and more effective.

8.24 The size of the Border Force operation at Heathrow meant it was possible to find BFHOs to act as AR reviewers who worked at the terminal where the leave had been cancelled but who had not authorised the decision and did not line manage the officer who had made the decision. Managers told us that at smaller ports, if there was no BFHO available who had not been involved in the original decision, the AR would be passed to a BFHO at a different port/terminal to complete the review.

8.25 In interviews, Border Force staff at Heathrow showed a good awareness of the Operations Manual guidance on ensuring the independence of the reviewer. From our file sample, we saw examples of BFHOs identifying that they had authorised the original decision to cancel leave, or were the line manager of the officer who had made the decision, and passing the AR to a colleague to undertake the review.

Conclusion

8.26 Based on file sampling, the AR process was working more effectively at the border in terms of identifying and correcting caseworking errors than the in-country and overseas processes. The AR outcome was in line with the Immigration Rules and Home Office guidance in 36 out of 40 sampled cases. In four cases, while the decisions to maintain cancellation were correct, the reviewer should have added or withdrawn reasons. Decision notices were generally of a good quality, particularly compared to those produced by in-country reviewers, and correctly addressed the issues raised by the applicant. A minority of notices should have provided fuller reasoning to explain why the reviewer had maintained the original cancellation decision.

8.27 As with in-country and overseas cases, record keeping needed to improve. In almost half of the sampled cases (18 out of 40) the reviewer had not recorded their consideration of the issues raised by the applicant on either CID or on the port file.

8.28 Interviews with staff indicated there was a need to improve training for at the border reviewers, placing more emphasis on the practical application of policy and guidance, and clarifying the extent to which reviewers can carry out their own verification checks if they have reason to believe these were not done correctly when the original decision was made.

8.29 While the quality of the ARs sampled was good, there was no evidence that Border Force Senior Officers were randomly quality assuring 10% of ARs as the QA regime had envisaged.[42]

8.30 'At Heathrow, Border Force managers had made efforts to ensure that AR reviewers were neither involved in authorising the original cancellation of leave decision nor were the line manager for the officer who had made that decision. Nonetheless, for much the same reasons that applied to overseas ARs, the decision to review ARs at the terminal where the original decision was made, however justified in terms of operational efficiency and learning, risked accusations that reviewers were not sufficiently separate from decision makers to be truly independent. Separation was clearer at smaller ports, where reviewers were drawn from another port if a BFHO could not be found who had not been involved in the original decision.

42 See footnote 6.

9. Comparison of AR performance in country, overseas and at the border

Introduction

9.1 We compared AR performance across in-country immigration decisions to refuse or grant leave, overseas refusals of leave, and cancellations of leave at the border, and where this varied we looked at why this was the case. In particular, we considered differences in AR processes and feedback mechanisms.

Percentage of AR applications that succeed

9.2 The Home Office *Statement of Intent* in relation to administrative review in lieu of appeals published in October 2013 stated that: '*the proposed process in-country mirrors the approach taken overseas*' and '*Administrative Review does make a difference. In Entry Clearance cases in 2012 the initial decision was overturned in 21% of cases*'.[43]

9.3 Home Office management information for 1 April to 30 September 2015 showed the percentage of successful ARs, those where the refusal or cancellation decision was 'withdrawn' (also described as 'overturned'):

- 21% overseas (102 out of 487);
- 22% border (21 out of 96); and
- 8% in-country (191 out of 2,369).

9.4 In our file sample of 245 ARs, 31 (12%) were successful and the original decision was withdrawn. However, two of these should not have succeeded, while 17 unsuccessful ARs should have done, and the total should have been 46 (19%). The breakdown by AR type was:

Figure 14: Breakdown of number of successful ARs identified and missed in each sample

	Sample size	Successful	Succeeded incorrectly	Missed	Percentage that should have succeeded
Overseas	65	16	2	6	26%
At the border	40	8	0	0	20%
In-country	140	7	0	11	13%
Total	245	31	2	17	19%

43 Statement of Intent: Administrative review in lieu of appeals (clause 11) dated 10 October 2013.

In addition, of 40 in-country and at the border AR applications judged invalid, 12 were actually valid.

Identification of caseworking errors

9.5 The *Statement of Intent* also stated: '*Sampling suggests we currently lose approximately 60% of Points Based System appeals due to case working error. We will monitor the overturn rate on administrative review and compare it with the 60% figure currently down to casework error. Where there is a discrepancy we will investigate this*'.

9.6 This followed on from an *Appeals Impact Assessment*, produced by the Home Office in July 2013, which had stated that 49% of Managed Migration[44] appeals were allowed in 2012/13 and, '*an internal Home Office review estimated that approximately 60% of the volume of appeals allowed are due to case working errors. The Administrative Review process when set up is intended to resolve such errors*'.[45]

9.7 Home Office management information (MI) showed that of 2,369 AR decisions made up to 30 September 2015 in respect of in-country refusals, 263 (11%) contained caseworking errors. The comparable figures for overseas and at the border ARs were not included in the MI.

9.8 File sampling provided the following breakdown of caseworking errors identified and corrected (including successful ARs); reasons added or withdrawn incorrectly; and caseworking errors missed:

Figure 15: Breakdown of number of caseworking errors identified and missed in each sample

	Sample size	Errors correctly identified	Reasons added or withdrawn incorrectly	Errors missed
Overseas	65	20	2	10
At the border	40	15	1	4
In-country	140	10	3	21
Total	245	45	6	35

Scope of AR consideration

9.9 The published Home Office guidance on AR stated:

'*You must: normally only consider the specific aspects of the decision the applicant or representative challenges in their administrative review request – if it becomes clear during your review that the original decision contained errors which the applicant or representative has not identified, you must also correct those errors..*'.[46]

9.10 The inspection found that the in country AR Team considered only the issues raised by the applicant, whereas reviewers of overseas and at the border decisions considered whether the original decision was correct, without limiting this to the specific issues raised by the applicant.

44 Managed Migration cases are those where the applicant has applied for an extension of leave in-country.
45 Appeals impact assessment: Impact Assessment of Reforming Immigration Appeal Rights dated 15 July 2013: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249120/appeals_impact_assessment.pdf
46 UKVI guidance entitled 'Administrative Review' version 6.0 dated 3 December 2015: https://www.gov.uk/government/publications/administrative-review

9.11 The Immigration Rules provided for applicants to be interviewed[47] where necessary, for example to test credibility, prior to making a decision to grant or refuse leave. Interviews are common practice overseas and at the border. Reviewers of overseas and border cases told us they assessed whether interview evidence was sufficiently strong to support the refusal, particularly whether the correct process had been followed and the interview had been fair to the applicant. If not, they would withdraw the decision, or in some overseas cases re-interview. A number told us that they had withdrawn decisions at AR due to problems with the interview evidence.

9.12 Staff in the AR Team in Manchester told us they had not had any specific training on assessing credibility. The interview transcript was available on file if an interview had been conducted, but they did not review it in detail and, generally, they felt that assessing interview evidence was outside their remit.

9.13 Some stakeholders expressed concern that 'the genuine student rule'[48] was being applied unfairly in Tier 4 cases, and that these cases were not being corrected at AR. Eighteen of the 40 Tier 4 refusals we sampled had been refused because the Entry Clearance Officer had not accepted that the applicant was a genuine student. Two of these refusals were withdrawn at AR because the reviewer considered that the evidence did not support a refusal on credibility grounds. Of the 16 refusals maintained by the reviewer, we found one that should have been withdrawn on the basis that the interview evidence showed, on the 'balance of probabilities', that the applicant was a genuine student.

Processing times

9.14 The Home Office had a service standard of 28 calendar days for the processing of AR applications. The AR Team informed us that 98% of in-country AR applications received a decision within 28 days, which was borne out in our sample, in which 139 of the 140 AR applications were decided within 28 days. The single application that missed the internal target was processed in 33 days, but the applicant was informed within 28 days that there would be a delay in processing their application. Processing time for the remaining applications ranged from 1 to 28 days, with an average of nine days.

9.15 The Home Office processed 64 of the 65 sampled overseas ARs within its internal 28 day target, taking on average 17 days. One case, which required policy advice, took 29 days. Meanwhile, Home Office management information for 6 April to 30 September 2015 showed that 84% of overseas ARs were processed within 28 days.

9.16 ECM reviewers told us that some posts processed AR applications in strict order of receipt, while others prioritised Tier 4 ARs where the start date for the course of study was imminent. Some stakeholders told us that Tier 4 applicants were deterred from applying for an AR because of the length of time it took for a decision and the fact that a fresh visa application could not be made while an AR was pending. They advised applicants to put in a fresh Tier 4 application if the course start date was imminent.

9.17 The Border Force Operations Manual states that a decision on an AR application should be made within 28 calendar days. All of the ARs sampled were processed within 28 days, with an average processing time of six days.

Decision notices

9.18 The quality of decision notices where the AR was unsuccessful and the original decision was maintained varied between the in-country AR Team and overseas and at the border reviewers. In more than half (71 out of 133) of such sampled in-country cases the decision notice failed to address all of the relevant issues, and was overly reliant on the original decision maker's record of their decision, often merely repeating it. Decision notices for overseas and at the border unsuccessful ARs

47 Applicants who apply for leave to enter or remain, either overseas or in the UK, can be required to attend an interview to assess whether they meet the requirements of the Rules under which they are applying. This does not just apply to Tier 4 applicants, all applicants whose leave is cancelled at the border are subject to an interview.

48 Paragraphs 245ZV(k) and 245ZX(o) of the Immigration Rules state that the Entry Clearance Officer or the Secretary of State must be satisfied that a Tier 4 applicant is a genuine student before granting leave to enter or remain.

were generally better at addressing the points raised by the applicant, but here too a high proportion failed to address all of the applicant's points (17 out of 49, and 9 out of 32 respectively).

Quality Assurance and feedback to original decision makers

9.19 In-country ARs were formally quality assured. Quality assurance was done by senior caseworkers (EOs and an HEO), and overseen by a Quality Manager (SEO). There had been 100% quality assurance of AR decisions up to August 2015, which had then reduced to 50% for experienced reviewers. However, file sampling indicated that quality assurance was not working.

9.20 The head of the AR team met weekly with the Quality Manager to discuss issues and trends. No formal Quality Assurance Report was produced, although at the time of the inspection there were plans to introduce one in line with the report produced elsewhere in the Complex Casework Directorate.

9.21 We were told that successful in-country AR applications, where the original decision was withdrawn, were fed back straightaway to the decision maker's team leader. All errors were recorded on a tabulated worksheet and shared with the caseworking teams ahead of a fortnightly teleconference during which trends were discussed. The teleconference was chaired by the head of the AR Team and attended by senior representatives from those UKVI business areas responsible for decisions subject to AR.

9.22 Internal Home Office data showed categories of error as a percentage of total errors, but did not show whether ARs were improving the quality of original decision making. However, managers in Temporary Migration told us they believed feedback from AR outcomes had improved original decision making, for example, feedback on cases that had been granted an incorrect duration of leave had led to the introduction of a 'second pair of eyes' check on biometric residence permits (BRPs), with a view to reducing errors.

9.23 At the time of the inspection, there was no formal quality assurance process in place for refusals of leave overseas or cancellations of leave at the border, nor was any analysis done of AR outcomes. We were told that some overseas visa posts identified trends and fed back to decision makers and their line managers, but we found no evidence of any sharing of such information within the overseas network or with other business areas.

9.24 There was no routine sharing of Border Force's AR results between ports or terminals. At the time of our inspection, Border Force told us that: '*Given the low numbers of AR applications received, Border Force needed to wait until there was sufficient data to allow meaningful analysis. This will be now done over the next few months*'.[49] However, Border Force staff at Heathrow told us that at individual terminals some themes had been identified from ARs. For example, one terminal had identified that the quality of its interviewing was inadequate in some cases and had provided further training.

Feedback from litigation

9.25 Applicants seeking to challenge an AR decision may apply for a Judicial Review (JR). If deemed admissible by the High Court, the JR considers whether the decision should be reversed on grounds of *illegality, irrationality (unreasonableness), procedural impropriety,* and/or *legitimate expectation*. Generally, a JR is preceded by service to the Home Office of a pre-action protocol (PAP) letter in which the applicant (in practice their legal representative) sets out the grounds for challenge, the remedy sought, and the timescale for the Home Office to respond (normally 14 days) before the JR is lodged.

9.26 Litigation Operations, part of UKVI, responds to PAPs and JRs for in-country AR cases, and to JRs for overseas cases. PAPs in respect of overseas ARs are dealt with by whichever visa post made the refusal decision. At the border, PAPs and JRs are handled by the port or terminal at which the decision was made.

49 Border Force response to our evidence request dated 16 October 2015.

9.27 In July 2015, Litigation Operations established a feedback mechanism with the in-country AR Team. Litigation senior caseworkers were under instruction to feedback emerging issues and trends to the AR Team Quality Manager. We were told that formal feedback teleconferences between Litigation Operations and the AR Team had been scheduled to commence from 8 December 2015. Managers from Border Force and International Directorate had been invited to attend these meetings to discuss common themes and share best practice.

9.28 The AR Team maintained a local spreadsheet which captured details of PAPs and JRs, including whether the AR decision was conceded, maintained or reversed. The spreadsheet provided no details of the grounds for challenge, or the reasons for conceding. As at 4 December 2015, the spreadsheet contained details of 32 PAP cases and 7 JR cases showing the outcomes as:

- The decision to refuse was maintained in 28 PAP cases and five JR cases;
- The decision to refuse was withdrawn in three PAP cases and two JR cases; and
- The decision to reject the AR application was maintained in one PAP case.

9.29 We compared this spreadsheet to our in-country file sample. In our Tier 4 sample of 100 cases, 38 AR decisions had been challenged through a PAP and/or JR. Only two of these appeared on the spreadsheet. In our Tier 2 sample of 40 cases, 11 had been challenged, only one of which appeared on the spreadsheet. The spreadsheet did not contain details of the eight Tier 4 cases and four Tier 2 cases that had been conceded by the Home Office due to an incorrect AR decision, nor did it contain the four cases in our sample of 'invalid' applications that had been conceded at PAP/JR because they had been rejected incorrectly.

9.30 No central records were kept of PAPs and JRs challenging ARs in respect of decisions made overseas or at the border.

Conclusion

9.31 Direct comparisons of the performance of the three business areas carrying out AR reviews are difficult, not least because the volumes of in-country, overseas and at the border ARs differ considerably, as do the arrangements for processing them and the scope of reviews. Reviewers of overseas and at the border decisions examined the original decision in the round, while in-country reviewers limited themselves to the specific issues raised by the applicant. While the in-country reviewers lacked the knowledge and experience (and grade) to take a more rounded view, and for example had not been trained in how to assess an applicant's credibility, their approach was not in line with guidance, and it increased the risk that any follow-up litigation would succeed.

9.32 Nonetheless, file sampling suggested that reviews of at the border ARs (which were the smallest in number) were generally less likely to result in the wrong outcome than overseas or in-country ARs. While the latter two were broadly similar in terms of the proportion of caseworking errors reviewers missed, the success rate for overseas ARs was significantly higher in the file sample and according to Home Office management information. The latter put the rates at 22% and 21% for at the border and overseas ARs respectively, but at only 8% for in-country ARs.

9.33 Notwithstanding any comparison with the at the border and overseas success rates, in light of the Home Office's own assessment in July 2013 of the extent of caseworking errors in Managed Migration cases that had been lost at appeal, the 8% in-country figure was much lower than might have been predicted. In the circumstances, it would have been reasonable to expect that the Home Office would look closely at the in-country AR process (including the rejection of applications as invalid) and assure itself of the quality of the decision making, as it had committed to doing in its *Statement of Intent*.

9.34 The inspection found no evidence that the success rate had been questioned, and although in-country decisions were subject to formal quality assurance (unlike overseas and at the border AR decisions),

this was focused on process compliance and, based on file sample evidence, was not identifying errors made by reviewers.

9.35 In terms of learning from ARs, there was no systematic feedback to original decision makers from overseas and at the border reviewers. But, in-country AR outcomes were fed back regularly to original decision makers (via their managers). Managers told us this had resulted in improvements in the processing of grant decisions, but the available data did not demonstrate whether errors in original refusal decisions had decreased as a result of the AR process. Meanwhile, it was unclear whether the AR Team was learning from its own mistakes, since the inspection found that the locally-held data on conceded PAPs and lost JRs was full of omissions.

9.36 Overall, there was a clear and pressing requirement for accurate data covering all aspects of the AR processes for in-country, overseas and at the border ARs. Internally, the Home Office needed this to inform its policy and practice, and to support learning. Externally, it was a prerequisite for reassuring Parliament and the public about the Home Office's handling of challenges to immigration decisions where the right of appeal has been removed.

Recommendations

The Home Office should:

Provide training for AR reviewers that is consistent with the training provided to original decision-makers.

Ensure that all AR reviewers address all substantive issues raised by the applicant and that CID (or CRS) notes and decision notices accurately reflect this.

Clarify guidance regarding the requirement for reviewers to correct all errors contained in the original decision (not just those identified by the applicant in their AR application), including carrying out further checks where they identify these were not done correctly by the caseworker who made the original decision.

Consider the scope to prioritise the processing of ARs to meet the needs of the applicant in terms of timeliness (as in the case of some Tier 4 ARs).

Put in place formal, robust QA procedures for all ARs (including decisions regarding the validity of applications) that take account of the grade and experience of the reviewer and the complexity of the original decision.

Record and use the results of QA to improve the quality and consistency of AR outcomes by feeding back to reviewers and their managers.

Capture and feedback in a structured form to original decision-makers the learning from ARs where the reviewer has withdrawn the original decision and/or amended the reasons.

Ensure that all data relevant to demonstrating how the AR system is functioning is captured and used to effect the continuous improvement of both ARs and original immigration decisions, including where Pre-Action Protocols (PAPs) or Judicial Reviews (JR) cases are conceded and why.

10. Resourcing for Administrative Reviews

Introduction

10.1 The inspection examined the resourcing of the AR process in each of the three business areas, noting the *Statement of Intent* reference that: *'We will have a separate dedicated team of reviewers in each specialist area'*. We also looked at the practice of charging for ARs, and whether any cost savings had been achieved as a result of their introduction in lieu of appeals, again noting relevant references in the *Statement of Intent* and *Impact Statement*.

Planning assumptions for the in-country AR Team

10.2 The AR Team in Manchester was established in October 2014. The Business Case, dated November 2014, stated that staffing was based on a predicted intake of 25,638 AR applications per year, of which 11,185 were expected to be in respect of Tier 4 decisions. The AR Team told us that the planning assumptions included that 100% of refusal decisions would result in an AR. No assumptions were made in respect of grant decisions.

10.3 When we inspected, the AR Team had received far fewer ARs than predicted. As at 27 September 2015, there had been 3,235 AR applications (including 250 that were rejected as invalid and 26 that were withdrawn). Of these, 1,639 were in respect of Tier 4 decisions, equivalent to 51% of all Tier 4 refusals (according to Home Office internal figures) rather than the assumed 100%. In addition, there had been 500 AR applications in respect of grant decisions.

AR Team staffing levels

10.4 Eligible decisions for in-country ARs were phased in between 20 October 2014 and 6 April 2015:

- Phase 1: for Tier 4 applications made on or after 20 October 2014;
- Phase 2: for Tiers 1, 2 and 5 applications made on or after 2 March 2015; and
- Phase 3: for all other eligible applications (including certain settlement applications) made on or after 6 April 2015.

10.5 Recruitment to the AR Team was staged, with the plan to be at full strength by 6 April 2015. The staff budgets reflected the staged implementation: in 2014/15 the budget was £829,502; and in 2015/16 it was £1.3m. See Figure 16.

Figure 16: Planned number of AR Team staff in post at key stages

Staff in post	20 October 2014	31 December 2014	2 March 2015	6 April 2015
Grade 7	1	1	1	1
SEO Quality Manager	1	1	1	1

HEO Senior Caseworkers/ Team Leaders	1	2	4	4
EO Senior Caseworkers	1	2	4	6
AO Caseworkers/ Admin Team Members	7	15	33	37
AA	1	1	2	2
Total	**12**	**22**	**45**	**51**

10.6 As at 14 October 2015, the AR Team had 44 staff in post: 12 permanent staff; 16 on fixed-term appointments (FTA); and 16 agency staff. The agency staff were converted to FTAs (six months) towards the end of 2015. All the staff and managers in the AR Team to whom we spoke considered that the team had enough staff. However, at the time of our inspection, managers had identified a risk that they could lose the experienced FTA staff if they were unable to offer them permanent positions, as other parts of the Civil Service were recruiting in the North West of England.

10.7 The AR Team had developed plans to deal with the expected seasonal increase in AR applications arising from the 'surge' in Tier 4 visa applications made in early summer (in advance of the start of the new academic year). All caseworking staff in the AR Team had been trained on Tier 4 cases, as had some staff in the Complex Casework Team in Manchester, who normally dealt with further leave applications, in case they were required to assist.

Grading, experience and supervision of in-country reviewers

10.8 We were told that prior to establishing the AR Team the Programme Office charged with setting up the framework for the AR process had given assurances to the Home Office's Internal Audit team that in-country ARs would be reviewed by Executive Officer (EO) caseworkers. However, no additional funding was found for the AR Programme, and UKVI had to create the AR Team from within its existing budget. Senior managers in UKVI subsequently decided that Administrative Officer (AO) caseworkers would act as AR reviewers, because:

- funding for the implementation of AR was limited;
- a recruitment freeze was in place;
- the grade of AR reviewer was not specified in legislation or policy;
- AO caseworkers in the Older Live Cases Unit (OLCU)[50] in Manchester were due to become available;
- decisions on in-country applications for leave were normally made by AO caseworkers and consideration at AR would be no more complex; and
- EO (or higher) grade senior caseworkers would provide robust quality assurance.

10.9 The AO reviewers initially redeployed to the AR Team had limited immigration experience and no experience of PBS decision making. This was despite a statement made to the Lords during the passage of the 2014 Immigration Bill that: '*We expect some of our most experienced staff to be among those undertaking administrative reviews*'.[51]

10.10 Senior managers reviewed the position in February 2015, ahead of the introduction of Phases 2 and 3 of the eligible decisions, and decided to continue to use AO reviewers except for 'complex' cases. The record of this decision stated: '*It has been agreed that any "complex" cases will be actioned at EO level,*

50 Caseworkers in the Older Live Cases Unit (OLCU) were responsible for reviewing older asylum and migration cases.
51 Committee 2nd Sitting: House of Lords 5 March 2014 Column 1357.

this is low numbers for Tier 4 but will cover off the Balance of Probability cases which are carried out in Sheffield at EO level. The Quality team has been increased in number to ensure robust checking is in place for cases initially done at EO level in Permanent Migration'.

10.11 During our inspection, we saw no evidence that 'complex' cases were being actioned by EO caseworkers.[52] It was unclear as to which '*Balance of Probability*' cases senior managers had been referring, Staff and managers told us that decisions to refuse Tier 4 applicants on the basis they were not genuine students, and Tier 2 applicants on the basis of not filling genuine vacancies, both of which involve consideration of the balance of probability, were reviewed by AOs.

10.12 Caseworkers deciding whether to grant or refuse Tier 4 applications had a productivity target of 8 cases per day for online applications and 5.5 to 6 per day for postal applications. When the AR Team was established, caseworkers were set a productivity target of 5 AR decisions per day, which translated to 15-20 Tier 4 decisions per week (new starters were trained on Tier 4 cases and expected to reach the productivity target in 3 months) and 10-15 Tier 1, 2 and 5 decisions. Managers told us that it had quickly become apparent that this was *'not achievable'*. At the time of the inspection, the AR Team productivity rate was 2.3 to 2.6 cases per day. Managers told us that as staff were new, the focus had been on ensuring that decision quality was high, before trying to increase productivity.

Staffing overseas ARs

10.13 No '*separate dedicated team of reviewers*' was created to deal with ARs in respect of entry clearance refusals made overseas. At the time of the inspection, most reviews were completed by an Entry Clearance Manager (equivalent to a Higher Executive Officer) based at the visa post where the original refusal decision had been made. There were some exceptions. AR applications in respect of decisions made in Abu Dhabi, Islamabad, New York and Paris were reviewed by the UK Visa Section in Sheffield. There were plans to extend 'on-shoring' to all overseas ARs in 2016/17, with the establishment of a UK-based Decision Quality Team, the planning for which was not inspected.

10.14 Decisions to grant or refuse entry clearance overseas are made by Entry Clearance Officers (ECO, equivalent to Executive Officer), one grade below Entry Clearance Managers (ECM). However, AR reviewers generally saw no reason why experienced ECOs could not carry out ARs given the appropriate training, knowledge, independence and oversight.

10.15 The Home Office told us there were no set benchmarks for overseas ARs. The Sheffield Visa Section told us that, depending on the complexity of the cases, an ECM was expected to be capable of completing 15 reviews in a day. This was generally regarded as achievable.

Staffing ARs at the border

10.16 There was no *'separate dedicated team'* dealing with ARs in respect of cancellations of leave at the border. ARs were reviewed by Border Force Higher Officers (BFHO, equivalent to Higher Executive Officer). Decisions to cancel leave at the border must be approved by a BFHO, although the initial decision will normally be made by a BF Officer (equivalent to Executive Officer). Border Force staff told us that there were enough BFHOs to cope with the volume of ARs.

Charging for ARs and refunds

10.17 Applications for an in-country or at the border AR had to be made online unless the applicant was unable to do so. There was a fee for online applications of £80. The fee was refunded if the application was rejected as invalid, or if the AR was successful and the original decision withdrawn, but not where the AR was unsuccessful but conceded following receipt of a PAP or reversed at JR. Where the reviewer added a new reason for refusal, the applicant was entitled to submit a second AR without paying a further fee.

52 See footnote 5.

10.18 There was no fee for overseas AR applications. Senior managers told us this was primarily because there was no mechanism for applicants to apply and for payment to be collected electronically. Consideration was being given to finding a technical fix that would enable charging to be introduced.

10.19 Stakeholders raised concerns about the policy of charging applicants a fee in cases where the Home Office had granted leave but had made an error in the period or the conditions applied to the leave. This affected in-country cases only. Although they accepted that a refund was given if the Home Office had made an error, stakeholders considered it unfair that applicants were required to pay in order to correct a Home Office error and then wait for a refund, which could take several weeks.

10.20 Stakeholders pointed out that under the pre-AR system, if there was an error on the Biometric Residence Permit (BRP), an email could be sent to the Home Office and the error would be corrected without charge. The Home Office told us that biographical errors on BRPs were still corrected without charge, and that the AR process applied only to instances where the applicant challenged the period of leave granted or the conditions. These constituted caseworking errors and, as such, were subject to AR.

Cost savings

10.21 The *Impact Assessment* estimated cost savings of £261m over 10 years from the introduction of ARs in lieu of appeals. The Home Office informed us that no cost benefit analysis had been done since the introduction of ARs and that they were: '*working on getting an up to date appeals cost model with a view to informing this work in the future*'.

10.22 The *Impact Assessment* acknowledged that the number of JRs was likely to increase as a result of the removal of various appeal rights. Therefore, we asked the Home Office for data on the PAPs received and JRs in respect of decisions that had become subject to AR, the costs incurred in dealing with these, and whether any comparative analysis had been done of volumes and costs pre- and post the introduction of ARs.

10.23 We were told in December 2015: '*We have been trying to extract some data on this over the last few months relating to JRs. However, there are some caveats that we have to apply to the data that may not make it the best data to publish. At best the data shows decisions that could be subject to Admin Review that have subsequently had a JR lodged on them. What is not clear is whether the JR is specifically linked to the specific decision or some subsequent action that has been taken in the case (such as enforcement action). It has been agreed that although the information is not ready at the current time, work will continue on this between Admin Review, PRAU* [Performance Reporting and Analysis Unit] *and Litigation Ops to determine a method through which the required data can be extracted. A meeting will be scheduled early in the New Year to discuss the tracking of this type of litigation in the longer term.*'

Conclusions

10.24 The Home Office had taken different approaches to the resourcing of the AR processes for in-country, overseas and at the border ARs. Notwithstanding the Home Office's stated intention to have *'a separate dedicated team of reviewers in each specialist area',* the latter two were absorbed within the business areas responsible for making the original decisions. For overseas ARs this was a continuation of the process already in place, whereby Entry Clearance Managers reviewed decisions made by Entry Clearance Officers working at the same visa post, except where this function had been 'onshored' to the UK. At the border ARs, the numbers of which were small, became the responsibility of BFHOs working at the port/terminal where the original decision was made.

10.25 For in-country ARs, the Home Office had created a *'separate dedicated'* AR Team in Manchester. The size of this new Team was based on planning assumptions about the likely numbers of ARs that have proved to be overly pessimistic, and although it was not at full strength at the time of the inspection, and caseworker productivity was lower than hoped, the AR Team was managing ARs comfortably within the 28 day service standard for responses. At the border ARs were also being processed well

within the 28 days, as were over 80% of overseas ARs. Overall, AR applicants were receiving a decision much quicker than they would have done under the appeals process, which were reported as taking on average 12 weeks .

10.26 The Home Office's initial thinking had been to use Executive Officer (EO) caseworkers to review in-country AR applications. At ECM and BFHO, overseas and at the border reviewers are one grade higher than this, although the former believed that with appropriate training and support reviews could be done by experienced EO-grade Entry Clearance Officers. For resource reasons, the in-country plan was revisited and the AR Team was established with Administrative Officer (AO) caseworkers, which it was argued was appropriate because *inter alia* the original decisions were mostly made by AOs, and because EO (or higher) grade senior caseworkers would provide robust quality assurance and would deal with more complex cases.

10.27 The inspection found that the bulk of the AOs redeployed into the AR Team were inexperienced in immigration casework with permanent staff in the minority, that quality assurance was ineffective, and that there was no evidence of cases being identified as complex and passed to EO caseworkers to review.

10.28 A fee of £80 was charged for online (in-country and at the border) AR applications, while overseas applications were free. This anomaly appeared to be due to the difficulty of collecting the fee if it was not paid electronically, rather than because of any differences in the costs of processing applications. The *Statement of Intent* had said that: *'The fee will be refunded where the decision is overturned'*. The inspection found that refunds were given where the application was rejected as invalid, or if the AR was successful and the original decision was withdrawn. However, applicants whose ARs were unsuccessful but who had the original decision withdrawn after threatening or resorting to litigation, did not receive a refund of their AR fee. This was illogical and wrong in principle.

10.29 The Home Office's *Impact Assessment* that accompanied the 2014 Immigration Bill had estimated savings of £261m over 10 years from the introduction of ARs in lieu of appeals. At the time of the inspection, no analysis of actual cost savings had been done, and the Home Office did not have any reliable data in relation to the costs associated with PAPs and JRs, which the *Impact Assessment* had acknowledged were likely to increase as a result of the removal of appeal rights.

Recommendation

The Home Office should:

In light of its performance to date, revisit the structure, grading and staffing (in terms of knowledge and experience) of the AR Team in Manchester and ensure it is fit for purpose; and

Produce a revised statement about the processes for overseas and at the border ARs explaining how independence and separation from the original decision-maker are ensured where there is no '*separate, dedicated team of reviewers*'.

Appendix 1: Role and Remit

Legislative Framework

The role of the Independent Chief Inspector of Borders and Immigration (until 2012, the Chief Inspector of the UK Border Agency) was established by the UK Borders Act 2007. Sections 48-56 of the UK Borders Act 2007 (as amended) provide the legislative framework for the inspection of the efficiency and effectiveness of the performance of functions relating to immigration, asylum, nationality and customs by the Home Secretary and by any person exercising such functions on her behalf.

The legislation empowers the Independent Chief Inspector to monitor, report on and make recommendations about all such functions. However, functions exercised at removal centres, short-term holding facilities and under escort arrangements are excepted insofar as these are subject to inspection by Her Majesty's Chief Inspector of Prisons or Her Majesty's Inspectors of Constabulary (and equivalents in Scotland and Northern Ireland).

The legislation directs the Independent Chief Inspector to consider and make recommendations about, in particular:

- consistency of approach;
- the practice and performance of listed persons compared to other persons doing similar activities;
- the procedure in making decisions;
- the treatment of claimants and applicants;
- certification under section 94 of the Nationality, Immigration and Asylum act 2002 (c. 41) (unfounded claim);- the law about discrimination in the exercise of functions, including reliance on section 19D of the Race Relations Act 1976 (c. 74) (exception for immigration functions);
- the procedure in relation to the exercise of enforcement powers (including powers of arrest, entry, search and seizure);
- practice and procedure in relation to the prevention, detection and investigation of offences;
- the procedure in relation to the conduct of criminal proceedings;
- customs functions have been appropriately exercised by the Secretary of State and the Director of Border Revenue;
- the provision of information;
- the handling of complaints; and- the content of information about conditions in countries outside the United Kingdom, which the Secretary of State compiles and makes available, for purposes connected with immigration and asylum, to immigration officers and other officials.

Appendix 2: Inspection Criteria

This inspection used five of the inspectorate's ten criteria:

1	Decisions on the entry stay and removal of individuals should be taken in accordance with the law and the principles of good administration.
3	Resources should be allocated to support operational delivery and achieve value for money.
5	All individuals should be treated with dignity and respect and without discrimination in accordance with the law.
9	The implementation of policies and processes should support the efficient and effective delivery of border and immigration functions.
10	Risks to operational delivery should be identified, monitored and mitigated.

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