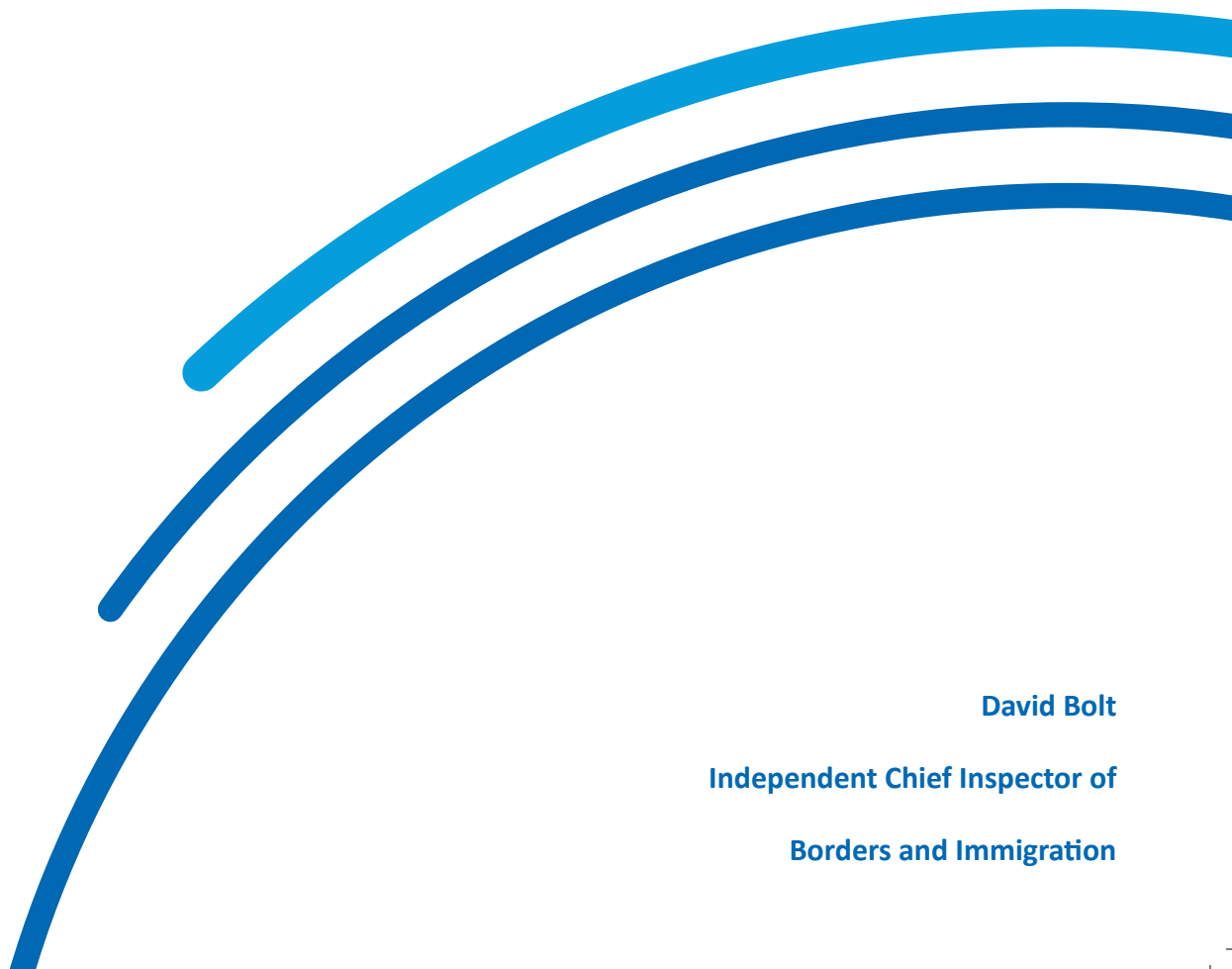




**A re-inspection of the family reunion process,  
focusing on applications received at the Amman  
Entry Clearance Decision Making Centre**

**November 2017 – April 2018**



**David Bolt**

**Independent Chief Inspector of  
Borders and Immigration**



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focusing on applications received at the Amman  
Entry Clearance Decision Making Centre**

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Presented to Parliament pursuant to Section 50 (2) of the UK Borders Act 2007

September 2018



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# Foreword

‘An inspection of family reunion applications’,<sup>1</sup> published in September 2016, made 10 recommendations for improvements to the Home Office’s handling of family reunion applications. The Home Office accepted all 10 recommendations, and in its formal response<sup>2</sup> set out the actions it intended to take to improve performance.

The original inspection looked at the Entry Clearance Decision Making Centres (DMCs) in Istanbul, Amman and Pretoria, chosen because they received the highest number of family reunion applications and also made the most refusals.

Between November 2016 and March 2017, I inspected entry clearance operations in Croydon and Istanbul.<sup>3</sup> This provided an opportunity to check on the progress made in Istanbul towards implementing the recommendations from the family reunion report. ‘An interim re-inspection of family reunion applications received at the Istanbul Entry Clearance Decision Making Centre’ was published in July 2017. It found that Istanbul had improved its handling of these applications, but noted that while the Home Office had made progress towards implementing most of the recommendations, there had been no movement in some areas. I therefore concluded that all 10 recommendations should remain “open”, pending a more comprehensive re-inspection.

This latest ‘interim’ inspection report moves the story forward. It follows my visit to Amman in November 2017, in connection with an inspection of the Vulnerable Persons Resettlement Scheme,<sup>4</sup> where I took the opportunity to discuss the handling of family reunion applications. This was followed by an examination of a sample of applications received at Amman between 1 April and 30 October 2017, and a series of exchanges with the Home Office (UK Visas and Immigration) up to April 2018 to establish the latest position on family reunion applications at Amman and overall.

The report shows that most (8 out of 10) of my original recommendations remain “open”. The Home Office has challenged my conclusion that, after initial efforts to address the issues identified in the 2016 report, this has ceased to be a priority. It has pointed to the revision of guidance in July 2016, and referred to ongoing work on family reunion policy as part of a wider review of its approach to asylum and resettlement strategy. I accept that care is needed when considering changes to policies and practices. However, the pace at which the Home Office is moving is far too slow given the profound impact on the lives of families seeking to be reunited.

This report was sent to the Home Secretary on 26 April 2018.

**David Bolt**

**Independent Chief Inspector of Borders and Immigration**

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<sup>1</sup> <https://www.gov.uk/government/publications/inspection-report-of-family-reunion-applications-september-2016>

<sup>2</sup> <https://www.gov.uk/government/publications/home-office-response-to-the-report-an-inspection-of-family-reunion-applications-january-to-may-2016>

<sup>3</sup> <https://www.gov.uk/government/publications/inspection-report-on-an-interim-re-inspection-of-family-reunion-july-2017>

<sup>4</sup> <https://www.gov.uk/government/publications/an-inspection-of-the-vulnerable-persons-resettlement-scheme>



# 1. Purpose and Scope

- 1.1 This re-inspection examined the progress made by the Home Office towards implementing the 10 recommendations made in 'An inspection of family reunion applications',<sup>5</sup> published in September 2016. It did this in part by examining the handling of family reunion applications received at the Amman Entry Clearance DMC, 1 of 3 DMCs included in the original inspection.
- 1.2 The 10 recommendations are set out at Annex A, together with the Home Office's responses, which were published at the same time as the original report.

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<sup>5</sup> See footnote 1.

## 2. Methodology

2.1 Inspectors asked the Home Office for:

- data for family reunion applications received in 2015, 2016 and 2017
- updates on the responses to the recommendations from 'An inspection of family reunion applications (January-May 2016)'
- file references for family reunion applications that had received a decision from the Amman Entry Clearance DMC, between 1 April and 30 October 2017, broken down by nationality, adult or minor, grant or refusal, and those applications referred for consideration outside the Immigration Rules on the basis of "exceptional circumstances" and/or "compassionate factors"

2.2 Inspectors examined 48 family reunion application case files, selected from the references provided, focusing on:

- record keeping in relation to decisions (retention of relevant documents submitted with the application and completeness of case notes)
- decision quality (correct and consistent application of the Immigration Rules and family reunion eligibility criteria and guidance, and full consideration of the available evidence)
- effectiveness of quality assurance measures
- communications with applicants (issue notes, refusal notices, and requests for additional information)

2.3 Inspectors raised a number of issues in relation to the examined case files and received written responses from the Home Office. The latter are quoted in the report, where relevant.

2.4 In November 2017, the Independent Chief Inspector visited the Amman DMC and was walked through the process for dealing with a family reunion application, and discussed the handling of applications with the Entry Clearance Officers (ECO) and Entry Clearance Managers (ECM) involved.

## 3. Summary of conclusions

- 3.1 While the re-inspection's examination and analysis of casework focused exclusively on family reunion applications received and decided at the Amman Entry Clearance DMC, the re-inspection process also probed the Home Office's overall progress against each of the 10 recommendations contained in the 2016 report 'An inspection of family reunion applications (January-May 2016)'.
- 3.2 During 2018-19, the inspectorate will aim to re-inspect the Pretoria DMC's handling of family reunion applications, since this formed part of the original inspection and the DMC is handling an increasing percentage of all applications.
- 3.3 Meanwhile, taken together with the findings from the earlier interim re-inspection of the handling of family reunion applications at the Istanbul DMC, the evidence obtained on this occasion was sufficient to assess whether the Home Office had done enough to "close" the original recommendations, and also to identify where further improvements are necessary.
- 3.4 The interim report published in July 2017 after the re-inspection of the Istanbul DMC noted that improvements had been made since the original inspection, specifically:
  - family reunion guidance had been revised (in July 2016)
  - there were no longer delays in Istanbul obtaining copies of asylum screening and interview records held in the UK
  - evidence relied upon in either refusing or granting applications was retained or, if not, it was referred to in the issue notes or refusal notices, with an explanation of the rationale for the decision
  - correct use was being made of "General grounds for refusal"
  - "exceptional circumstances" or "compassionate factors" were being considered
  - Customer Service Standards were being met, or where cases were marked as 'complex' this was done in accordance with UK Visas and Immigration (UKVI) operational instructions
- 3.5 However, the Istanbul re-inspection also found that while ECM reviews had identified and remedied some errors made by ECOs, record keeping in relation to ECM reviews was poor. This was a concern, as inspectors found that ECOs did not always give full consideration to all of the evidence submitted, and decision quality was mixed. The interim report concluded that more effort was needed to ensure that ECM reviews were effective and were properly recorded.
- 3.6 At the time of the Istanbul re-inspection, inspectors found no evidence of progress against the original recommendations that access to interpreters should be improved to enable ECOs to interview applicants to clarify points of detail, or that the Home Office should review its approach to the use of DNA evidence, including the commissioning and funding of DNA tests. Both recommendations were looking to change the practice of refusing applications rather than deferring a decision to obtain best evidence, which was inefficient and could be traumatic for the applicant.

- 3.7 The Istanbul case file sample was slightly larger (58) than that for Amman (48), but it covered decisions made during an earlier period (1 December 2016 to 28 February 2017). The evidence from Amman confirmed that the previous problem with delays in obtaining the sponsor's asylum interview records at post appeared to have been solved, and Recommendation 1 could be considered "closed".
- 3.8 However, in most other respects, examination of the Amman case files cast doubt on whether the handling of family reunion applications at DMCs had actually improved since the original inspection. Meanwhile, the updated responses from the Home Office to the policy and guidance issues highlighted in the original inspection report suggested that, after the initial efforts to revise family reunion guidance in July 2016 (before the report was issued), this had ceased to be seen as a priority.
- 3.9 This re-inspection has concluded that Recommendations 2-9 remain "open", and to "close" them the Home Office needs to improve:
- the use of interviews to resolve questions or doubts the ECO has about an application, including access to interpreters where necessary
  - record keeping, decision quality, ECM quality assurance and refusal notices
  - timeliness of decisions
  - collection and analysis of relevant data/management information
- 3.10 The Amman case files confirmed that ECOs were alive to and considering "exceptional circumstances" or "compassionate factors" when deciding family reunion applications, addressing one of the key concerns of the original inspection. Accepting that applying essentially subjective judgements to complicated family situations is an inherently difficult business, it is important that the Home Office does what it can, including perhaps seeking expert advice when assessing the vulnerability of applicants who fall outside the Immigration Rules, to ensure that its decisions are informed and sound.
- 3.11 Finally, Recommendation 10 concerned the handling of historic applications from Kuwaiti Bidoons. Bidoon is used as an umbrella term for several groups whose claimed nationality is not accepted by the Kuwaiti state. A Kuwaiti Bidoon by descent either from a stateless or foreign father, or whose ancestors failed to apply for or gain nationality will generally be stateless.<sup>6</sup> The Home Office had dealt with the specific issue identified in the original report, and this recommendation could be considered "closed". However, the handling of the one Amman application in the case sample involving a Kuwaiti Bidoon (sponsor) raised questions about whether Kuwaiti Bidoons are being held to an unreasonably high threshold of documentary evidence of their eligibility for family reunion, given the particular and well-known difficulties they face in this regard.

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<sup>6</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/566157/CIG\\_-\\_Kuwait\\_-\\_Bidoons.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/566157/CIG_-_Kuwait_-_Bidoons.pdf)

## 4. Inspection Findings

### Overall picture of family reunion applications

- 4.1 According to Home Office data provided for this re-inspection, the number of family reunion applications increased from 2015 to 2016 but decreased in 2017 – see Figure 1.

**Figure 1: Family reunion applications received by the Home Office 2015-2017<sup>7</sup>**

Decision Making Centre	2015	2016	2017
Amman	1,676 (20.5%)	1,741 (20.6%)	1,097 (14.9%)
Istanbul	1,719 (21.0%)	1,309 (15.5%)	976 (13.3%)
Pretoria	2,706 (33.1%)	3,380 (39.9%)	3,543 (48.2%)
Sheffield	509 (6.2%)	833 (9.8%)	1,291(17.6%)
Other DMC	1,566 (19.2%)	1,200(14.2%)	448 (6.1%)
<b>Total</b>	<b>8,176</b>	<b>8,463</b>	<b>7,355</b>

- 4.2 Meanwhile, according to the same data, the number of cases with an outcome in each year has remained broadly constant, as has the balance of grants (roughly two thirds) and refusals (roughly one third) – see Figure 2.

**Figure 2: Family reunion applications with an outcome in 2015-2017**

Outcomes	2015	2016	2017
Granted	5,389 (66%)	5,825 (70%)	4,803 (67%)
Refused	2,642 (32%)	2,422 (29%)	2,314 (32%)
Withdrawn	40	34	24
Lapsed	84	15	1
<b>Total</b>	<b>8,155</b>	<b>8,296</b>	<b>7,142</b>

### Interviews and supporting evidence

- 4.3 The original inspection report recommended (**Recommendation 1**) that asylum caseworkers were made aware of the importance of capturing details of the claimant’s family members, and that the process for retrieving interview records was overhauled.
- 4.4 The Home Office responded that “best practice guidance” for asylum caseworkers had been updated and circulated, emphasising the need to obtain full details of the claimant’s family members during the asylum process and setting out why this is important.

<sup>7</sup> Percentages have been rounded and do not sum to 100.

- 4.5 The Home Office also referred to work on the caseworking system that was “underway” to enable those considering family reunion applications to access the details of family members themselves.
- 4.6 The re-inspection of the Amman DMC examined 48 family reunion cases where the decision was made between 1 April and 30 October 2017. In 28 of these cases the applicant provided a copy of their sponsor’s asylum interview record. In a further 17 cases the ECO decision maker requested the asylum interview records from within the Home Office. In all but 2 of these 17 cases the interview records were provided, taking between 1 and 35 days to arrive (average 12 days). It appeared from the interview records seen by inspectors that asylum caseworkers were capturing details of the claimant’s family.

## Conclusion

- 4.7 Given the earlier evidence from the Istanbul DMC, which painted much the same picture, **Recommendation 1 may now be closed.**
- 4.8 However, in the Amman sample there were instances where it was not clear from the record that the information from the asylum interview had been taken into account as required by the relevant guidance:
- “Caseworkers must take into account any other evidence previously available to the Home Office as part of any other application. For example, evidence submitted as part of the asylum claim (statement of evidence form (SEF), witness statements, asylum interview or evidence from any appeal hearing). The fact that family members have been mentioned in the asylum claim is a strong indication that they formed part of the pre-flight family unit.”<sup>8</sup>
- 4.9 Inspectors found 6 refused applications where the asylum interview record was available to the ECO (provided by the applicant or requested from another Home Office business area), but the case file did not record whether the sponsor had named the applicant as a family member. Therefore, inspectors were unable to assess whether the ECO had given appropriate weight to the evidence.
- 4.10 Inspectors also found 8 refusals where the asylum interview record named the applicant as a family member, but the notes made on Proviso<sup>9</sup> and the refusal notice gave no indication that this evidence had been fully considered by the ECO when making the decision. The Home Office assured inspectors that the guidance had been applied correctly, stating:
- “In all cases detailed the SEF would have been acknowledged by ECO (although not in writing) and would be considered as a positive indicator where details of the family reunion applicant have been recorded. Although not referred to in the refusal, all evidenced submitted as a whole was considered when making a decision.”
- 4.11 The Home Office needs to ensure that where evidence has been considered this is properly recorded so that there is an audit trail – Recommendation 4 (below) covers this point.
- 4.12 The original report also recommended (**Recommendation 2**) that access to interpreters should be improved, so that interviewing applicants and/or sponsors was a practicable option, and that guidance was developed to ensure consistent best practice in relation to interviewing.

<sup>8</sup> ‘Family reunion: for refugees and those with humanitarian protection’ [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/541818/Family\\_reunion\\_guidance\\_v2.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/541818/Family_reunion_guidance_v2.pdf)

<sup>9</sup> Server-based case working system in each DMC. A DMC’s Proviso can only be accessed/viewed in that DMC. Meanwhile, Central Reference System (CRS) is a reference system that allows all DMC Proviso records to be viewed in any location.

- 4.13 The Home Office responded that it was establishing a central interpretation capability, and that “plans were being formulated to consolidate decision making for family reunion applications into one team based in the UK”, which would use the central interpretation capability “where any interviews are deemed necessary”.
- 4.14 Meanwhile, it reported that the updated family reunion guidance (in July 2016) included best practice for interviews. This guidance stated:
- “Most family reunion applications are considered on the information provided in the application form, the supporting evidence that the applicant submits and the results of other checks and enquiries about the sponsor and applicant. However, in some cases it may be appropriate to interview the applicant or sponsor either by telephone or in person, depending on the circumstances of the case.”
- 4.15 The guidance recognises the possible practical difficulties in contacting an applicant “residing in a refugee camp”, and stresses that any questioning of an applicant or sponsor regarding proof of relationship should be “appropriate” and done “in a sensitive manner”. However, the overall sense of the guidance is that, other than in those “rare” cases where “exceptional circumstances” or “compassionate factors” may apply, interviews are a last resort. They are to be considered if the caseworker is “still not satisfied” after having made enquiries of the applicant’s or sponsor’s legal representative, where they have one, or where “an application cannot be decided based on the information provided”.
- 4.16 As at November 2017, while some visa application types had been ‘onshored’ to the UK from Amman, family reunion applications and the decisions, were still being considered by the Amman DMC, by 2 experienced and trained ECOs. Of the 12 ECOs at the DMC, 4 in total were trained to consider family reunion applications. However, training for the newer ECOs was limited to visit visas, in line with the plan to move all other applications ‘onshore’.
- 4.17 According to the Home Office, between 2016 and 2017 Amman conducted 2 interviews in connection with family reunion applications. In 1 case the applicant was interviewed, while in the other the sponsor was interviewed.
- 4.18 None of the 48 cases examined for this re-inspection involved an interview. Inspectors judged that an interview would have been of value in 3 of the 48 cases to address discrepancies or provide evidence to assist with a decision. See Case Study 1.

## Case study 1: An application where an interview would have assisted in the decision making

### The applicant, a Syrian national:

- at the beginning of January 2017, turned 18 years of age<sup>10</sup>
- in January 2017, made her first family reunion application to join her spouse in the UK, which was refused
- in July 2017, made a second application, providing the following supporting evidence:
  - the sponsor's asylum interview record
  - a marriage confirmation statement, dated August 2016
  - a family civil status extract, dated September 2016
  - a certificate of marriage, dated August 2016, showing the date of marriage as April 2012
  - a copy of a letter from the legal committee of Harasta City stating that the sponsor's house had burnt down
  - a photograph of a house which had been burnt down
  - images of the applicant speaking to her husband via social media
  - social media contact details (from March 2016)
  - a letter from the applicant's legal representative, which stated the applicant had been unable to provide wedding photos and legal documents as they had been lost during the war in Syria. The letter also explained the difficulty the applicant and sponsor had with demonstrating contact between them, as phones had been lost and basic models of mobile phones did not have internet access (which would have permitted social media contact)

### The Home Office:

- in October 2017, refused the second application, stating in the refusal notice that the:
  - ECO was not satisfied the applicant had provided sufficient evidence to show that the relationship was as claimed or that it was a pre-flight relationship
  - ECO had doubts the relationship was subsisting - the social media contact was considered to demonstrate limited contact and was not sufficient to address concerns that the applicant and sponsor had not seen each other since the sponsor left Syria in 2012
  - evidence provided to demonstrate that their home had been burnt down, or that the burnt down house was the applicant's home, was insufficient
  - ECO did not think that it was credible that the applicant had waited over a year since her sponsor had been granted asylum (May 2015) to make an application

<sup>10</sup> Paragraph 277 of the immigration rules requires applicants who make an application for leave to enter/remain (in any entry route) as the spouse or civil partner of another, to be 18 years of age at the time when the leave would be granted.  
<https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-8-family-members>



#### **Independent Chief Inspector's comments:**

The applicant made her first application within 20 days of turning 18 years of age, before which she would have been ineligible to apply for family reunion. The evidence provided with the second application about the applicant's circumstances pointed to an interview (of the applicant, or the sponsor, or both) as the best and fairest way to resolve any doubts the ECO had about the relationship.

#### **Home Office response:**

"The applicant/sponsor should have been interviewed in this case. Amman will review the application."

4.19 In February 2018, the Home Office told inspectors that:

"As part of UKVI's overall governance approach to consolidation of entry clearance work plans are underway to move these applications into one case working area in the UK, to enable more connect to the primary migrant record and in-country case working systems. Once embedded within Asylum Operations case workers will have access to the same translation facilities that are available to those making decisions on Leave to Remain applications. In the intervening period Decision Making Centres are utilising and sharing staff with language abilities to conduct interviews where necessary."

#### **Conclusion**

4.20 Based on the February 2018 response, and on the evidence from Amman (and that from Istanbul, where there was just 1 interview conducted amongst the 58 sample cases examined), it is clear that there has been no meaningful progress in relation to this issue. Therefore, **Recommendation 2 remains open.**

#### **DNA evidence**

4.21 The original report recommended (**Recommendation 3**) that the Home Office should review its approach to the use of DNA evidence, including to the commissioning and funding of tests where it was unable to verify documents provided by the applicant, and defer decisions rather than refuse applications where the absence of DNA evidence was the only barrier to issuing entry clearance. It recommended updating guidance to clarify the circumstances in which applicants should provide DNA test results with their application.

4.22 Guidance for Home Office staff, updated in July 2016, listed DNA tests among "any number of documents" applicants could submit "to support their claim that they are related as claimed". The full entry under the heading "DNA testing" read:

"The onus is on the applicant and their sponsor to provide sufficient evidence to prove their relationship and satisfy the caseworker that they are related as claimed. As part of this, they may wish to submit a DNA test at their own expense and from an organisation accredited by the Ministry of Justice – HM Courts and Tribunal Service."

4.23 The Home Office's response to the original recommendation stated that:

"The policy regarding DNA evidence is being reviewed by the Home Office, and the outcome of the review should be known by the end of the year.<sup>11</sup> Part of the review is the consideration of allowing applications to be deferred to allow DNA evidence to be submitted, and if the Home Office should commission such testing."

4.24 As part of this re-inspection, inspectors asked the Home Office for an update on the review of the use of DNA evidence. In February 2018, the Home Office replied:

"Those applying for refugee family reunion are not required to provide DNA evidence to prove their family relationship and can rely on other evidence to support their application. Our guidance on considering family reunion applications highlights the challenges that applications may face in obtaining documents to support their application and make clear the types of evidence that can be provided."

4.25 Meanwhile, the guidance available to family reunion sponsors and applicants on GOV.UK remains as published in July 2016.

4.26 In 5 of the Amman cases examined by inspectors for this re-inspection the applicant provided DNA evidence with their application (of these, 3 were granted and 2 refused). There were no instances of the Home Office commissioning or funding a DNA test, nor of the Home Office deferring a decision having encouraged the applicant to produce a DNA test result.

## Conclusion

4.27 The re-inspection was not provided with any evidence that this issue had been reviewed in any meaningful sense. Therefore, **Recommendation 3 remains open.**

## Decision Quality

4.28 The original inspection recommended (**Recommendation 4**) that ECOs should give full consideration to all available evidence in family reunion cases, retaining or detailing the evidence relied upon in the issue or refusal notice, and that the latter and the case record should fully explain the rationale for the decision. It also recommended that the Home Office should ensure that ECM reviews were effective.

4.29 In its response, the Home Office stated that it was reviewing guidance relating to "how decisions are recorded (issue note and refusal notices)" which "will be issued to decision makers later this year. This will make clear how to refer to evidence that has been considered, and which evidence needs to be retained".

4.30 The response also referred to the setting up of UKVI's International Casework and Quality Assurance Team, who were charged with introducing formal quality assurance processes, including mechanisms for feeding back to decision makers and their management teams. It concluded:

"A full analysis of the ECM review process is underway, and will focus on the effectiveness of it. Part of this will be formalising reviews of the quality of the process."

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<sup>11</sup> Refers to 2016.

- 4.31 Inspectors requested details and the outcomes of the reviews of how decisions are recorded, including what evidence needs to be retained, and of the ECM review process. In February 2018, the Home Office responded:

“A refreshed Review to Risk (R2R) process was published in April 2017.<sup>12</sup> In the lead up to publication all DMCs previous R2R’s were reviewed along feedback from a variety of stakeholders to identify cases that should be included. The value of ECM review was also assessed in order to establish whether it was aligned with our operating model. This established that a division into ECM Approval & Full Quality Assurance Review would better focus resources and the risk that a particular cohort presented. Included in this review was the level of detail that was required an ECM should include, refreshed guidance and templates were included in the OPI.<sup>13</sup>

An updated OPI on document retention was published in Feb 2017. OPI’s on minimum standard of issue notes for Tier 4<sup>14</sup> and Visitors have been published, these will be followed by those being granted under Appendix FM and Part 8 of the rules<sup>15</sup> in due course. A revised Family Migration refusal notice that includes hidden text to assist with drafting refusal notices was rolled out in August 2017, its value is being reviewed before being rolled out to other routes.”

- 4.32 The Home Office provided figures for family reunion applications received at Amman for calendar years 2015 to 2017, and figures for cases decided in each year - see Figure 3. These show a marked reduction in 2017 in applications granted as a percentage of cases decided.

**Figure 3: Numbers of family reunion applications received/decided by the Amman DMC between 2015 and 2017**

	2015	2016	2017
Cases decided	1,675	1,737	1,090
Granted	1,246 (74.4%)	1,344 (77.4%)	666 (61.1%)
Refused	418	393	420
Withdrawn	11	0	4
Applications received <sup>16</sup>	1,676	1,741	1,097

- 4.33 Inspectors were satisfied that in roughly two thirds (33 out of 48) of the sample case files from Amman the refusal or grant decision was demonstrably correct according to the Immigration Rules.
- 4.34 However, inspectors had concerns about the remaining 15 cases. In 3 refusal cases inspectors considered that too high a threshold had been applied in respect of proof that the relationship was pre-flight and/or subsisting, or too little account was taken of the applicants’ circumstances.
- 4.35 Inspectors were unable to confirm whether the decision to grant or refuse in the other 12 cases was in accordance with the Immigration Rules as the audit trail (Proviso notes, retained evidence) in these cases was incomplete.

<sup>12</sup> See Recommendation 6.

<sup>13</sup> Operational Policy Instruction.

<sup>14</sup> Tier 4 visas cover visa nationals and non-visa nationals applying for Entry Clearance to study in the UK. Tier 4 is open to those over the age of 4 and is split into Tier 4 General (age 16+) and Tier 4 Child (age 4-18).

<sup>15</sup> Part 8 of the Immigration Rules relates to Family Members. <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-8-family-members>

<sup>16</sup> Cases are not necessarily decided in the same year as the application was received.

- 4.36 Overall, inspectors identified that CRS notes for applications that were granted were, in general, more detailed than those where the application was refused. There were a number of refusal notices where the reasons recorded for not accepting some of the documents submitted were poorly explained. In 2 cases, the applicant had submitted several different documents as evidence of their relationship with the sponsor, but were given no explanation why the Home Office had concluded that these documents did not meet the evidential standard. See Case Study 2.

### Case study 2: An extract from a refusal notice

#### The applicant, a Syrian national:

- in March 2017, applied to join her spouse in the UK

#### The Home Office refusal notice stated:

“As evidence of your relationship you have submitted:

- An extract from the Family Civil Status Register as dated December 2016
- A marriage certificate as dated December 2016
- A Statement of Marriage as dated October 2016.

The documentary evidence that you have submitted does not adequately evidence your relationship. The onus is upon you to satisfy me that you are related as claimed to your sponsor. You have not submitted evidence that would allow me to be satisfied that you are related as claimed to your sponsor.”

#### Independent Chief Inspector’s comments:

The refusal notice does not offer any explanation why the evidence submitted did not allow the ECO to be satisfied that the applicant was related as claimed, and therefore the applicant has no way of understanding how they might remedy this in any future application.

#### Home Office response:

“A standard paragraph detailing the reason as to why Evidential Flexibility<sup>17</sup> was not applied should have been added to the refusal. ECOs have been reminded to use the EF paragraph in all refusals.”

- 4.37 In 4 cases, the refusal notices used a ‘standard’ paragraph to indicate concerns about non-contemporaneous documents submitted with the application. The paragraph read:

“there is no evidence of who issued this document or what documentation, if any, was submitted to the issuing authorities to confirm the authenticity of the birth and family details and whether that authority is the current recognised authority for attesting documents of this nature”

- 4.38 Family reunion guidance does not require applicants to provide evidence of who issued a particular document, and of this being the recognised authority. Nor does it require evidence of how the applicant acquired a particular document. As set out, the ‘standard’ paragraph

<sup>17</sup> ‘Evidential Flexibility’ is a requirement of the Immigration Rules (Para 245AA and Appendix FM-SE (D)) for applications assessed under the Points Based System and Appendix FM (Family Migration) where set documents are required. Evidential Flexibility is not written into the Rules for other routes, although the basic principles apply and the same terminology is often used.

therefore creates an unreasonable expectation. This was raised with the Amman DMC. The DMC confirmed to inspectors that it would no longer use it.

- 4.39 Inspectors also found 8 refusal notices (4 of which had been reviewed by an ECM) that referred to the wrong sub-paragraph in the Immigration Rules for family reunion. These were cases where the ECO was not satisfied that the applicant and sponsor were in a subsisting relationship, or that they intended to live together in the UK.<sup>18</sup>
- 4.40 In all, 28 applications from the sample of 48 cases had had an ECM review. In 9 of these, the reviewer had failed to identify 1 or more errors, including:
- poorly explained refusal decisions
  - factual inaccuracies (for example, incorrect personal details, such as date of birth)
  - references to the wrong paragraph of the Immigration Rules
  - failure to exercise Evidential Flexibility and request additional information or to seek an interview
  - inconsistent decision making between refusal and grant decisions (see Case studies 3 and 4)

## Case studies 3 and 4: Inconsistent decision making

### Case Study 3

#### The first applicant, an Iraqi national:

- in June 2017, applied with her daughter to join her spouse in the UK
- according to Proviso and the refusal notice, the following evidence was submitted with the application:
  - the sponsor's asylum interview record, which confirmed the applicant as his wife
  - photographs of the applicant and sponsor getting married
  - marriage contract, dated February 2010
  - a ration card, dated 2013, naming the applicant and sponsor as family members

#### The ECO:

- refused the application
- issued a refusal notice citing the marriage certificate, and appearing to accept that the relationship was pre-flight, but stating that they were not satisfied that the applicant was in a subsisting relationship with the sponsor as they had not seen each other for over 2 years. The applicant had stated in her application that she had stayed in contact with her sponsor via Whatsapp, but there was no evidence on file to indicate that the applicant had submitted these records with her application

#### The ECM:

- reviewed the decision before the refusal notice was despatched in September 2017

<sup>18</sup> The refusal notices referred to sub-paragraph 352A (iv) rather than sub-paragraph 352A (v).

## Case Study 4

### The second applicant, a Palestinian national:

- in June 2017, applied with her daughter to join her spouse, a Syrian national, in the UK
- according to CRS and the issue notes, the following evidence was submitted with the application:
  - the sponsor's asylum interview record, which confirmed the applicant and daughter as family members
  - photographs showing the sponsor and applicant as a pre-flight couple
  - Marriage Certificate, which gave the date of marriage as August 2009
  - Marriage Statement, dated November 2016
  - extract of family civil status

### The ECO:

- in October 2017, noted on Proviso  
"Documents as issued to Syrian Nationals are not verified. Wife and Child detailed in sponsors Screening Interview. Photo evidence of couple pre-flight. Evidence of contact – REQUESTED"

### The applicant:

- in response to the request for evidence of contact, provided Whatsapp records for October 2016 to July 2017

### The ECM:

- reviewed the application before it was granted in October 2017

### Independent Chief Inspector's comments:

The evidence submitted in these 2 cases was similar. In both cases, the ECO appeared to be satisfied that the applicant had formed a pre-flight relationship with their sponsor, but concluded that the evidence of a subsisting relationship was insufficient. However, additional information was requested only in the second case, resulting in different decisions.

ECM reviews need to be more effective in ensuring that decision makers not only make accurate and reasonable decisions, but that they are consistent in their approach.

## Conclusion

- 4.41 The nature of these applications argues for particular attention to be paid to decision quality, including ensuring that in every instance the case file records and communications are accurate and complete, and that ECM reviews are routine and rigorous. Based on the findings from the Amman case files, together with the findings from the earlier Istanbul re-inspection, the Home Office has yet to demonstrate that it has responded effectively to the original recommendation. Therefore, **Recommendation 4 remains open.**

4.42 Statistically, the Amman sample size (48 case files) was not large enough to assure the overall quality of decisions made at the Amman DMC. Given the significant reduction in the percentage of granted family reunion applications from 2015 and 2016 to 2017, in responding to Recommendation 4, the Home Office should take steps to ensure that the reasons for this are understood and are sound.

### “General grounds for refusal”, “exceptional circumstances” or “compassionate factors”

- 4.43 The original report recommended (**Recommendation 5**) that the Home Office should review guidance in relation to “general grounds for refusal”, and to “exceptional circumstances” and “compassionate factors”, and ensure that the guidance was clear and was being applied consistently by decision makers.
- 4.44 The Home Office reported that the updated guidance issued in July 2016 had clarified the use of “general grounds” for refusal of family reunion applications, and had more clearly explained how and when “exceptional circumstances” or “compassionate factors” should be considered. The Amman file sample produced just 1 case where “general grounds for refusal” were used, correctly, to refuse an application where a false birth certificate had been submitted as part of the supporting evidence.
- 4.45 The Home Office provided figures for 2015, 2016 and 2017 for family reunion applications referred to UKVI’s Referred Casework Unit (RCU) for consideration of the granting of Leave Outside the Immigration Rules (LOTR) because of “compassionate or compelling circumstances” – see Figure 4. While the numbers are small, the overall increase in referrals since 2015 suggests that the updated guidance had had some effect. Of the 36 LOTR cases at the Amman DMC since 2016, 24 involved adult (over-18) dependents, mostly female, who would be left without immediate family when the other applicants moved to the UK. The others were widowed mothers, siblings with disabilities, and orphans.

**Figure 4: Family reunion applications referred to RCU for consideration of LOTR due to “compassionate or compelling circumstances” 2015-2017**

Decision Making Centre	2015	2016	2017
Amman	8	12	24
Istanbul	8	19	39
Pretoria	8	2	9
Sheffield	0	1	5
Other DMC	10	20	4
<b>Total</b>	<b>34</b>	<b>54</b>	<b>81</b>

4.46 The Amman case files examined for this re-inspection were from the period 1 April to 31 October 2017, meaning that the ‘new’ guidance had been in place for at least 8 months. Amongst the 48 cases in the Amman file sample, the visa section had identified 12 that they believed required consideration for LOTR. Of these, 5 were refused and 7 were granted LOTR.

4.47 The 5 refusals were all members of the same family: a mother, father and 3 minor children, who had applied to join their 17-year old son/sibling, who had been transferred to the UK under the 'Dublin III' arrangements<sup>19</sup> and was subsequently granted refugee status in the UK. The application focused on the sponsor's close ties to his family and the impact of separation (psychological trauma and self-harm), plus the difficulties the family faced living in a third country.

4.48 The decision maker recognised the compassionate elements in this case, and showed sensitivity when referring the application to RCU. A note on Proviso from RCU stated "On balance, and subject to the usual checks, grateful if you could issue [HO Reference] LOTR 33m c1A to all five applicants."

4.49 However, Amman DMC decided to refuse the application. Inspectors asked for an explanation, and were told:

"The referral from RCU stated the case was borderline, given the uncommitted response from RCU a referral was made to the ECM, we then referred back to RCU, given no response after a 3 week wait a decision was made on the application."

4.50 Of the 7 applicants granted LOTR, 1 was a 12-year old minor who had applied to join his sponsor brother. The other 6 were adults aged between 18 and 22, all of whom were unmarried and had applied with other family members who fell within the Rules to be granted, and all of whom were considered to be dependent on, or to require support from, those family members or from their sponsor.

4.51 The files demonstrated that decision makers had carefully, and compassionately, considered each applicant's individual circumstances and the impact the family's departure would have on them. For example, notes on Proviso:

"Applicant is not married, is unemployed and family are supported by charities. The whole family is registered as a family unit by UNHCR. He resides with the family and is completely reliant on his family for support. Whilst the applicant does not currently meet the Rules; due to the current situation in the region, and the likelihood of the app finding himself in exceptional circumstances as a young single male should his mother and siblings travel to join the sponsor, consideration of Leave Outside the Rules is requested."

4.52 However, inspectors identified other cases in the sample that they believed should also have been considered for LOTR, where the age of the applicant appeared to have carried more weight than their particular circumstances.

4.53 The first involved a 26-year old male who applied with his family to join his father in the UK. The applicant provided a medical report, stating that he suffered from anxiety. His family was assessed as meeting the Immigration Rules and their applications were granted. He was refused. Inspectors asked why this applicant was not granted LOTR, since his circumstances were similar to 2 of the 7 applicants who had been granted LOTR – all were unmarried, unemployed and would be left alone in the region. The Home Office responded:

"[refusal case] was not referred for leave to remain outside of the rules by the ECO. The amount of supporting evidence submitted with all 3 applications was different as where the circumstances ... [issue cases] are significantly younger"

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<sup>19</sup> Unaccompanied asylum seeking children are transferred to the UK to have their asylum claims considered from 'Dublin' countries under the 'Dublin III Regulation', which determines which EU member state must examine an application for asylum. Unaccompanied minors with a family member, sibling or relative legally present in a Member State may have their application considered in that State. States must also assess the 'best interests' of the child by considering the child's wellbeing and social development, safety and security considerations and family reunification, taking into account the view of the child. In this instance, the 17-year old was encountered in Greece, but the boy's aunt was resident in the UK.



4.54 In the second case, a 19-year old Syrian female applied to join her father in the UK, along with her mother and siblings, including her 20-year old married sister and the latter's 2-year old daughter. The applications from the mother and younger siblings were granted, and the 19-year old was granted LOTR. Meanwhile, the 20-year old and her daughter were refused.

4.55 The 20-year old sister had explained in her application that her husband had been missing for 2 years and that she was living with her mother and siblings. Her father's asylum interview record, from 2015, stated she was married. However, it did not mention that her husband was missing, which may not have been the case at the time or may not have been known to the sponsor.

4.56 Inspectors asked the Home Office why no consideration was given to granting LOTR for the 20-year old and her daughter, and whether the applicant was given an opportunity to produce additional evidence or invited to interview to address the ECO's concerns that she had established an independent life.

4.57 The Home Office responded that consideration had been given to Exercising Evidential flexibility, but it had been concluded that this would not have progressed the case:

“Given the father's SEF interview [asylum interview record] it was considered that the applicant had formed an independent family as she was married, whereas the applicants sister was unmarried and had provided documentation demonstrating she was still part of her direct family unit.”

4.58 The original inspection report had highlighted a particular issue with spouses applying for family reunion who were under 18 years of age and therefore did not meet the eligibility criteria. Amongst the 48 Amman case files examined for this re-inspection, there were 2 applicants who were refused as they were spouses who were under 18 years of age. There was no evidence in either case that LOTR had been considered, and 1 of the refusal notices used the somewhat circular argument that because the applicant (now aged 17¼ years) had not applied 2 years earlier when her husband had been granted asylum in the UK this called their marriage into question.

4.59 In September 2016, the Home Office stated that:

“Guidance on how to consider applications from spouses that are under 18 is currently being reviewed and will be published later in the year.”

4.60 Inspectors asked for sight of the review. In response, in February 2018, the Home Office wrote:

“Those who apply for entry clearance as a spouse who are under 18 years of age would be refused under the Immigration Rules, but we would go on to consider whether there are exceptional circumstances such that refusal would breach their human rights because it would be unjustifiably harsh. A child may be granted in their own right but only where adequate arrangements have been made for the child's care in the UK. This cannot be with their spouse given our duty under section 55 to protect their welfare and best interests. Our family reunion guidance already covers exceptional circumstances but we are in the process of reviewing the guidance and will make the position clearer. The review of the policy guidance has not yet been finalised because we are in the process of reviewing our wider approach to family reunion as part of our wider Asylum and Resettlement Strategy.”

- 4.61 Inspectors discussed the issue of spouses under the age of 18 with the United Nations High Commissioner for Refugees (UNHCR) in Amman. Managers there were responsible for the interviewing and referral of refugees to the Home Office for resettlement in the UK under the Vulnerable Persons Resettlement Scheme ('the Scheme'), and were experienced in identifying 'exploitative' relationships, such as forced and under-age marriages, or marriages where there was a significant age gap.
- 4.62 Within the Scheme, the Home Office relies on UNHCR's expertise to identify and refer the "most vulnerable" refugees, in effect inviting UNHCR to make the 'best interests' assessment for any under-18s. With UNHCR's agreement, it might be possible to extend this 'service' to spouses who apply for family reunion who are under-18 (but over 16 to comply with the right to marry under UK law), and potentially to other particularly non-straightforward cases where the applicant is over-18 and their vulnerability is a consideration. This may be preferable to defaulting to the eligibility criteria or relying on an ECO to consider whether "exceptional circumstances" or "compassionate factors" apply.

### Conclusion

- 4.63 Although the number of cases was small, the evidence from the re-inspection of Istanbul DMC was that decision makers were making correct use of the revised guidance on "general grounds for refusal", and greater use of "exceptional circumstances" and "compassionate factors".
- 4.64 The evidence from Amman confirmed that decision makers there were alive to these considerations. The fact that inspectors formed a different view in some cases does not mean that the Amman decision makers reached incorrect decisions, but it does point to the inherent difficulty of applying essentially subjective judgements to unusually complicated family situations.
- 4.65 The Home Office has promised to provide greater clarity in respect of spouses aged under 18. Therefore, while recognising its efforts to address the concerns expressed in the original inspection, pending this greater clarity, plus some reassurance that age is not given undue weight when considering the vulnerability of family members over the age of 18, **Recommendation 5 remains open.**

### 'Review to Risk'

- 4.66 The original inspection report recommended (**Recommendation 6**) that the Home Office should reconsider whether its 'Review to Risk' approach to assurance gave sufficient weight to the potential humanitarian protection consequences of family reunion refusals, ensuring that trends and issues associated with particular nationalities were being identified and monitored.
- 4.67 The Home Office responded that the 'Review to Risk' strategies of its regional teams were refreshed regularly, but noted that these teams had been tasked with carrying out more analysis of family reunion cases to help ensure that the right balance is struck between reuniting eligible families in the UK and refusing those that do not satisfy the Rules.
- 4.68 In response to this re-inspection, in February 2018 the Home Office stated:

"The refreshed R2R was introduced in April 2017. After a bedding in period a limited central audit of ECM approval/Full Quality Assurance was undertaken in November 2017

(which included Family Reunion cases) the results were passed onto individual Decision Making Centres. IT limitations are such that the audit cannot cover all categories listed on R2R, work is ongoing to allow an audit to be run on all categories in the R2R at a local/central level. There was nothing contained within the audit that indicated that any categories should be added/removed to the R2R however feedback is currently being assessed as to refinements to the case working process of recording the ECO/M action. Decision making centres, including Amman, have reviewed the contents of the audit, alongside their own feedback mechanisms to feed into any refinements to the R2R process and improve decision quality.”

- 4.69 Inspectors also asked for copies of the risk profiles in use in the Amman DMC for identifying and mitigating the risks posed by family reunion applicants. The Home Office responded that:

“There are no separate risk profiles for Family Reunion. We do not consider them necessary given the nature of the applications. Only Bidoons get extra scrutiny and the reasons for this are contained in the Chief Inspectors original report.”

### Conclusion

- 4.70 In its responses, the Home Office has not addressed the specifics of the recommendation, and the description of what has been done to date and what remains ongoing offers little comfort, especially in light of the findings under ‘Decision Quality’, which demonstrate that ECM reviews are not delivering the required level of quality assurance. Therefore, **Recommendation 6 remains open**, and the Home Office needs to reflect on whether its response to this challenge is sufficiently serious and urgent.

### Timeliness of decisions

- 4.71 The original inspection report recommended (**Recommendation 7**) that the Home Office should review its internal processes, in particular the ‘hand offs’ between different functions, to reduce the time taken to deal with family reunion applications.
- 4.72 The Home Office response referred to plans “to consolidate decision making for family reunion applications into one team based in the UK” which would mean decision makers “will have easier access to the initial application of the family reunion sponsor, and this will help to reduce any unnecessary ‘hand offs’”.
- 4.73 As noted above (under ‘Interviews and supporting evidence’), at the time of the re-inspection Amman was still making family reunion application decisions.
- 4.74 Guidance on GOV.UK in relation to “Customers applying for settlement from outside the UK” states that “95% of settlement applications [will receive a decision] within 12 weeks of the application date and 100% within 24 weeks of the application date (where 1 week is 5 working days).”
- 4.75 The guidance describes what should happen “if we can’t make a decision within the service standards”. It states: “If there is a problem with your application or if it is complex, we will write to explain why it will not be decided within the normal standard. We will write within the normal processing time for the 8 week standard and within 12 weeks for the 6 month standard. The letter will explain what will happen next.”<sup>20</sup>

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<sup>20</sup> <https://www.gov.uk/government/organisations/uk-visas-and-immigration/about-our-services>

- 4.76 In response to the re-inspection, the Home Office provided data on its performance against the service standard for family reunion applications decided in 2015, 2016 and 2017 – see Figure 5.

**Figure 5: Family reunion applications decided at Amman DMC performance range against the service standards (2015-2017)**

<b>2015</b> (9 months at 100%)	<b>2016</b> (7 months at 100%)	<b>2017</b> (5 months at 100%)
95.6 – 100%	85.3 – 100%	75.36 – 100%

- 4.77 Figure 6 shows a breakdown of the timeliness of decisions in the 48 applications from Amman examined by inspectors.

**Figure 6: Days taken to provide a decision in 48 family reunion applications decided at the Amman DMC between April and October 2017**

<b>Decision</b>	<b>Refusals (28 out of 48)</b>	<b>Grants (20 out of 48)</b>
Shortest time taken	28 days	12 days
Longest time taken	76 days	73 days
Average	41 days	42 days
Number outside service standards	1	2

- 4.78 Of the 2 applications that were granted outside the service standards, 1 had been deferred to allow the applicant to provide additional information, while the other had been deferred as it had been referred to another part of the Home Office for consideration of LOTR. The application that was refused outside of service standards was also marked as deferred while the Amman DMC requested additional information. There was no indication from the case files for the 2 grants and 1 refusal that any of the applicants had been written to with an explanation “why [the application] will not be decided within the normal standard”.
- 4.79 The Home Office provided figures for 2015, 2016 and 2017 for family reunion applications where the Amman DMC had deferred a decision to request additional information from the applicant – see Figure 7.

**Figure 7: Family reunion applications deferred by the Amman DMC to await requested additional information (2015-2017)**

	<b>2015</b>	<b>2016</b>	<b>2017</b>
Total applications deferred	12	31	38 <sup>21</sup>
Outcome - Refused	2	0	7
Outcome - Granted	10	31	29

<sup>21</sup> The other 2 applications were refused but were awaiting an appeal decision.

## Conclusion

- 4.80 **Recommendation 7 remains open.** The Amman file sample was too small to draw any firm conclusions about the timeliness of decisions made at the DMC, but did point to a need to improve communication with applicants where the service standards are not going to be met, especially when the delay is of the Home Office's making. Meanwhile, from the year-on-year data, performance against service standards appears to be getting worse, which is not explained by the increase in deferrals to request additional information. Whether the 'onshoring' of family reunion decisions to a single UK-based team is the answer remains moot until this move takes place.

## Marking cases as 'complex'

- 4.81 The original report recommended (**Recommendation 8**) that the Home Office should ensure that family reunion applications were not wrongly recorded as 'complex', setting them outside the Customer Service Standards in terms of receipt to response time, when delays were of the Home Office's making.
- 4.82 The Home Office responded that it believed that the current guidance was clear, but it undertook to review and reissue it.
- 4.83 None of the 48 Amman family reunion case files examined had been marked as 'complex', so inspectors were unable to test whether the guidance was being followed correctly at the DMC.
- 4.84 However, the Home Office provided figures for family reunion applications that had been marked as 'complex', together with the decision or status – see Figure 8.

**Figure 8: Family reunion applications marked 'complex' 2015-2017**

	2015	2016	2017
No. of applications	151	225	47
Grants	135	197	19
Refusals	15	20	24
Withdrawn	1	0	0
Deferred 'complex'	0	4	4
Appeal dispatched	0	4	0
Appeal received	0	0	0

## Conclusion

- 4.85 The figures show that in 2017 something changed at the Amman DMC; possibly in the nature of the family reunion applications received, or in the approach to or threshold for marking applications as 'complex'. The re-inspection was not able to examine this, so while no applications were found to have been wrongly recorded as 'complex', and while the significant reduction in 'complex' cases in 2017 is a broadly positive sign, **Recommendation 8 remains open**, pending more conclusive evidence.

## Appeals and reapplications

- 4.86 The original report recommended (**Recommendation 9**) that the Home Office should reduce the number of family reunion appeals and reapplications by ensuring that guidance to applicants clearly signposted what evidence they should provide with their application, and by getting the decision ‘right first time’.
- 4.87 The Home Office responded that its guidance for family reunion applicants, updated in July 2016, contained “clear guidance on what evidence applicants can consider submitting with their application, and in common with all UKVI guidance it will be reviewed periodically to ensure that it is up to date and effective.” As at March 2018, there had been no further revisions to the guidance.
- 4.88 For this re-inspection, inspectors asked the Home Office for data covering 2016 and 2017, broken down by nationality, for family reunion reapplications received at the Amman DMC following an initial refusal decision, along with the outcome of the reapplications.
- 4.89 The Home Office caveated its response:
- “This data is subject to inaccuracies. The DMC is able to view through Proviso the actual number of reapplications as confirmed by biometric matches, these results are recorded in a free text format that cannot be collated in the format requested. The data provided is based on biographical similarities, these similarities can occur between different individuals especially within the FR cohort where many individuals do not hold an officially issued/ recognised identity document (and so it is not possible to filter the data using a travel or identity document reference number). If required and sufficient time is allocated we can review the applications identified (once we obtain a VAF number) to ascertain whether these are reapplications or applications by individuals with similar biographic details.”
- 4.90 Of the sample of 48 applications examined by inspectors, 28 were refused and 20 granted. Of the 28 refused applications, 8 were reapplications after the original application was refused. Of the 20 that were granted, 3 were reapplications.
- 4.91 At the time of the re-inspection, an appeal had been lodged in respect of 13 of the 28 refused applications/reapplications, of which 12 were pending and 1 had been allowed. In total, half (24) of the case files within the sample contained a reapplication or an appeal.
- 4.92 Home Office data indicated that the combined total for appeals lodged in calendar years 2016 and 2017 in respect of family reunion applications refused at the Amman DMC was 234.

## Conclusion

- 4.93 The fact that the data is “subject to inaccuracies”, and is not recorded in a form that can be readily interrogated, makes it impossible to form a clear picture of reapplications and appeals, and to know with any certainty whether the numbers are reducing. The guidance is correct in stating that “there is no requirement in the Immigration Rules for specified evidence to support a family reunion application”. However, to place “the onus” on the applicant and their sponsor “to provide sufficient evidence to prove their relationship and satisfy the caseworker that they are related as claimed” without at least signposting what is likely to be considered “sufficient” does little to encourage ‘right first time’ applications. Therefore, **Recommendation 9 remains open.**

## Kuwaiti Bidoons

4.94 The original inspection identified an issue with historic family reunion applications received in Amman from applicants claiming to be Kuwaiti Bidoons. The recommendation (**Recommendation 10**) concerned responding to these applicants quickly should they seek information about their applications.

4.95 In response, the Home Office stated:

“All of the applications highlighted in the report have now had a decision. If a similar situation were to happen now, these cases would fall into the ‘complex case handling’ arrangements, which includes contacting the applicants to explain what is happening with their application when there will be a delay in processing it.”

4.96 The re-inspection did not re-examine the historic cases. Instead, it sought details of more recent applications from applicants claiming to be Kuwaiti Bidoons, and data on how many such applications were marked as ‘complex’ as at February 2018, to which the answer was 4.

4.97 There were only 2 cases among the 48 case files examined for this re-inspection where either the sponsor or the applicant was a Kuwaiti Bidoon. One of these is described at Case Study 5.

### Case study 5: Application from the spouse of a Kuwaiti Bidoon

#### The main applicant, an Iraqi national living in Iraq:

- in April 2017, applied, with her children, to join her Kuwaiti Bidoon spouse in the UK – this was a reapplication
- according to CRS and the refusal notice, the following evidence was provided with the application, some of which appeared to be in response to the initial refusal notice:
  - a copy of the sponsor’s asylum interview record, in which applicant and children are recorded as family members
  - a statement from the sponsor:
    - highlighting the difficulties Bidoons have in acquiring documents
    - confirming he and the applicant were married in Kuwait in June 2003
    - stating that the children were born in Kuwait, but were denied official documentation to confirm their birth
    - explaining that once the family resettled in Iraq they obtained Iraqi documentation for the children, which could be obtained only by stating that the children had been born in Iraq due to Iraqi nationality laws
  - a civil registration document, issued in Iraq, showing that the applicant and sponsor were married
  - photographs of the applicant and sponsor on their wedding day
  - the applicant’s certificate of Iraqi Nationality
  - DNA evidence confirming the children are related as claimed to the sponsor
  - telephone records confirming regular (every few days) contact between applicant and sponsor between May 2016 and March 2017
  - flight details showing that the sponsor visited Basra in March 2017
  - a copy of the sponsor’s Home Office-issued travel document and residence permit

### **The Amman DMC:**

- in July 2017, issued a refusal notice for the applicant and her children, indicating that the ECO:
  - doubted the relationship between the applicant and sponsor, as no documentary evidence, such as a certificate of marriage or contract, had been provided
  - stated that no evidence had been provided that the applicants and the sponsor had formed a pre-flight family
  - doubted whether the sponsor and applicant(s) had met when the former had visited Iraq in March 2017

### **Inspectors queried:**

- whether it was reasonable:
  - to expect the applicant to provide documentation from the Kuwaiti authorities, given that it was widely accepted that Bidoons did not have status in Kuwait
  - not to accept the asylum interview record as evidence of a pre-flight family
  - not to interview the applicant/sponsor or request additional information as a way of possibly resolving their doubts
  - not to give greater weight to the DNA evidence
- and, whether the application met the 'balance of probabilities' threshold

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

- "Bidoons are able to provide a Certificate of Marriage issued by the Imam, this type of documentation is submitted with the majority of our Bidoon cases. Therefore it is reasonable for the ECO to expect the applicant to provide a document
- given the discrepancies in the documentation that was provided in this case where the birth certificates state the children were born in Iraq yet the applicant and sponsor had stated the children were born in Kuwait by their own admission, the SEF in isolation cannot be relied upon. It also raises the question about what was presented to obtain Iraqi nationality documentation.
- No consideration to interview the applicant was given; enough doubt was placed on the application with regards to the discrepancies relating to the documentation submitted by the applicant. Whilst the interview could have tested the relationship given the official documents that had been submitted with the application had already casted doubts over how "truthful" the applicant and sponsor were.
- This was the applicants 2nd application, it was considered that the applicant would have most likely had submitted all documentation available to them, therefore were unlikely to have been able to submit further info under EF.
- The sponsor had submitted evidence of an entry stamp into Iraq in his passport, No reference was made in any of the evidence presented with the application regarding this visit, there were no photographs submitted demonstrating the sponsor and the applicants met during this visit. Furthermore the contact records did not contain any transcripts and were typed records indicating dates and times only and therefore of limited evidential value.



- DNA testing results were made available in this application, however given the discrepancies regarding the birth certificates and lack of marriage confirmation, this cast doubts on what/authenticity of documentation to confirm the applicants ID at the time the testing took place. Furthermore the DNA testing does not show the child applicants were related to the mother only the sponsor, again this casts doubts over the subsisting relationship of the wife / sponsor.
- The children still have to form part of the family unit before the sponsor left, Furthermore the best interest of the child also has to be considered, given the children have been living as a family unit with their claimed mother for a significant period of time.”

**Independent Chief Inspector’s comments:**

Given the known situation of Bidoons in Kuwait, it seems unreasonable to base a family reunion refusal on the absence of particular Kuwaiti documentation, especially if this is not prescribed in the eligibility criteria/guidance. Overall, the tests applied in this case appear to be some way in excess of the ‘balance of probabilities’, and too many assumptions are made, not least the assumption that it was in the children’s ‘best interests’ to refuse their applications.

**Conclusion**

- 4.98 Based on the Home Office’s response to the original report, **Recommendation 10 may be closed.** However, Case Study 5 suggests that an unreasonably tough line is being taken with at least some Kuwaiti Bidoon applications. In light of the previous difficulties, the Home Office should ensure that the tests applied to Kuwaiti Bidoon applications are and are seen to be appropriate.

# Annex A: Full list of Recommendations and formal Home Office Responses from ‘An Inspection of family reunion Applications (January – May 2016)’

## Recommendation 1

In relation to the asylum screening and interview records, ensure that:

- Asylum caseworkers are aware of the importance of capturing details of the claimant’s family members; and,
- overhaul the process for retrieving interview records, so that they are made available in good time to whoever needs them.

## Home Office Response: Accepted

Best practice guidance for asylum caseworkers has been updated and circulated, emphasising the need to obtain full details of the claimant’s family members during the asylum process and setting out why this is important.

Work is underway to change the method of recording the details of the asylum claimant’s family members on the caseworking system in a way that will negate the need to obtain a file readover or copy of the interview record, as those considering family reunion applications will be able to see the details of the family members on the caseworking system.

For cases prior to this change, the method of obtaining the relevant details is being reviewed, to ensure that delays are minimised.

## Recommendation 2

Ensure that interviewing of family reunion applicants and/or sponsors is a practicable option for Visa Sections by improving access to interpreters, and review and provide guidance regarding the use of interviews to ensure best practice is consistently applied.

## Home Office Response: Accepted

UKVI is establishing a central interpretation capability. Plans are being formulated to consolidate decision making for family reunion applications into one team based in the UK. Once this has happened, decision makers will use this central interpretation capability where any interviews are deemed necessary. Prior to decision making being consolidated in the UK, the current regional management teams are looking at better ways of working together to assist with the provision of interpreting staff from one region to another.

The family reunion guidance that was published in July 2016 includes best practice for interviews. Masterclasses explaining the guidance and how to implement it are scheduled for autumn 2016.

### **Recommendation 3**

Review its approach to DNA evidence in family reunion cases, including:

- funding for commissioned DNA testing where the Home Office is unable to verify documents provided by the applicant; and
- deferral rather than refusal where the absence of DNA evidence is the only barrier to issuing entry clearance; and
- update guidance so that it accurately reflects the approach and applicants are clear in what circumstances they should provide DNA testing results with their application.

### **Home Office Response: Accepted**

The family reunion guidance that was published in July 2016 includes specific detail on the provision of DNA evidence.

The policy regarding DNA evidence is being reviewed by the Home Office, and the outcome of the review should be known by the end of the year. Part of the review is the consideration of allowing applications to be deferred to allow DNA evidence to be submitted, and if the Home Office should commission such testing.

### **Recommendation 4**

In terms of decision making in family reunion cases:

- ensure that ECOs give full consideration to all available evidence;
- ensure that evidence relied upon in the decision is either retained or properly evidenced in the issue notes or refusal notice;
- ensure that the case record and/or refusal notice fully explains the rationale for the decision;
- ensure that ECM reviews are effective.

### **Home Office Response: Accepted**

Guidance on considering family reunion cases was published in July 2016, and has been circulated to all decision makers. Masterclasses explaining the guidance and how to implement it are scheduled for autumn 2016. These masterclasses are where policy experts discuss with decision makers how to approach the consideration of family reunion applications.

Guidance relating to how decisions are recorded (issue note and refusal notices) is being reviewed and will be issued to decision makers later this year. This will make clear how to refer to evidence that has been considered, and which evidence needs to be retained.

UKVI's International Casework and Quality Assurance Team has been set up, and part of the team's remit is introducing formal quality assurance processes. These processes will include feedback mechanisms to decision makers and their management teams. This will be done using a formal digital process and will allow management teams to interrogate databases for information based on themes, posts and individuals.

A full analysis of the ECM review process is underway, and will focus on the effectiveness of it. Part of this will be formalising reviews of the quality of the process.

### **Recommendation 5**

In relation to family reunion applications, review, issue clear guidance, and ensure consistent application by decision makers of:

- 'General grounds for refusal' (paragraph 320 of the Immigration Rules) might apply;
- 'exceptional circumstances' or 'compassionate factors', in particular (but not limited to) when considering applications from spouses under the age of 18.

### **Home Office Response: Accepted**

Guidance has been issued to decision makers to clarify that the General Grounds for Refusal apply to family reunion applications.

Guidance has been revised and published to more clearly explain how and when exceptional and compassionate circumstances are to be considered. Guidance on how to consider applications from spouses that are under 18 is currently being reviewed and will be published later in the year.

### **Recommendation 6**

Reconsider whether assurance based on a 'Review to Risk' approach gives sufficient weight to the potential humanitarian protection consequences of family reunion refusals. In particular, ensure trends and issues associated with particular nationalities are identified and monitored.

### **Home Office Response: Accepted**

The 'Review to Risk' strategies of the regional teams are refreshed regularly. In future reviews, more emphasis will be given to ensuring that part of these reviews includes a more holistic view of the cases to be reviewed. This will include better acknowledgment of the need to strike a balance between ensuring that those entitled to be reunited with family in the UK are allowed to do so, whilst refusing those that do not satisfy the rules. Regional teams have been tasked with carrying out more analysis of family reunion cases, to help ensure that this balance is right.

### **Recommendation 7**

Review its internal processes, in particular the 'hand offs' between different functions, to reduce the time taken to deal with family reunion applications.

### **Home Office Response: Accepted**

Plans are being formulated to consolidate decision making for family reunion applications into one team based in the UK. Once this has happened, decision makers will have easier access to the initial application of the family reunion sponsor, and this will help to reduce any unnecessary 'hand offs'. Prior to decision making being consolidated in the UK, the current regional management teams are looking at better ways of handling these applications to ensure that cases are dealt with expediently, with the minimum of systemic delays.

### **Recommendation 8**

Ensure that family reunion applications are not wrongly recorded as 'complex' when delays are of the Home Office's making.

#### **Home Office Response: Accepted**

Guidance is clear that cases must not be marked as complex in these circumstances. It is being reviewed and will be reissued. Performance against processing times is closely monitored, including the number and reasons for cases being marked as 'complex'. Regional directors have to account for these cases in performance discussions, and close scrutiny of complex cases is inbuilt into the performance reporting system. The instruction for staff regarding complex cases is being revised and will be reissued.

### **Recommendation 9**

Reduce the number of family reunion appeals and reapplications by ensuring that guidance to applicants clearly signposts what evidence they should provide with their application, and getting the decision 'right first time'.

#### **Home Office Response: Accepted**

Guidance for family reunion applicants was updated and published in July 2016. It contains clear guidance on what evidence applicants can consider submitting with their application, and in common with all UKVI guidance it will be reviewed periodically to ensure that it is up to date and effective.

### **Recommendation 10**

In relation to those Kuwaiti Bidoon family reunion applications from 2013 – 2015 where the Home Office has not implemented the Judges' ruling or its own undertakings to issue entry clearance, ensure that it responds quickly when reasons for the delay are sought by those affected and that it provides as much information as it reasonably can, bearing in mind the sensitive nature of the investigation.

#### **Home Office Response: Accepted**

All of the applications highlighted in the report have now had a decision. If a similar situation were to happen now, these cases would fall into the 'complex case handling' arrangements, which includes contacting the applicants to explain what is happening with their application when there will be a delay in processing it.

## Annex B: Role and remit of the Independent Chief Inspector

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
- whether 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
- 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

In addition, the legislation enables the Secretary of State to request the Independent Chief Inspector to report to her in writing in relation to specified matters.

The legislation requires the Independent Chief Inspector to report in writing to the Secretary of State. The Secretary of State lays all reports before Parliament, which she has committed to do within eight weeks of receipt, subject to both Houses of Parliament being in session. Reports are published in full except for any material that the Secretary of State determines it is undesirable to publish for reasons of national security or where publication might jeopardise an individual's safety, in which case the legislation permits the Secretary of State to omit the relevant passages from the published report.

As soon as a report has been laid in Parliament, it is published on the Inspectorate's website, together with the Home Office's response to the report and recommendations.

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