

**INTERNAL REVIEW OF THE  
GOVERNMENT'S POLICY ON  
REQUIREMENTS TO PROVIDE DNA IN  
VISA AND ASYLUM CASES**

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14 September 2018**

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## INTRODUCTION

1. On 7 June 2018 the Secretary of State for the Home Department was asked two Parliamentary questions relating to the provision of DNA for visa and asylum cases. The Secretary of State replied that “There is no specific requirement for DNA evidence to be provided in immigration cases. It is open to individuals to provide DNA evidence if they choose but this would be on an entirely voluntary basis and where this is submitted, we will consider it”. Official Home Office correspondence then came to light that showed that this statement did not reflect operational practices. A number of applicants have been required to provide DNA.
2. The Home Office has no legal basis for requiring the provision of DNA information in support of an application relating to immigration status. The Home Office may currently request DNA on a purely voluntary basis. The ability of the Home Office to request but not require must be reflected in all relevant guidance. Also, failure to provide DNA voluntarily can in no way be cited as a determinant in an immigration outcome. It is clear from various guidance products, operational practice and in the handling of Parliamentary questions relating to the provision of DNA, that this is not clearly understood across all policy and operational areas.
3. Many types of guidance exist in the Borders Immigration and Citizenship (BICS) System on various IT systems. Work has been carried out over a number of years to simplify and streamline guidance products but there is a great deal of work to do to deliver the improvements in operational assurance that are required. The review found a number of guidance products need clarity or correction in relation to DNA. Greater levels of assurance are required in the production and approval of guidance products.
4. Operational practices are shaped by guidance and an array of other factors such as Information Technology tools and assurance arrangements. The review found that these practices, that are primarily informed by published guidance, that is either unclear or incorrect, has led to a number of applicants being advised that they are required to provide DNA. It is impossible to quantify the exact numbers by virtue of operational practices and supporting business systems. Analysis of available data has been carried out and is set out in this review.
5. Major reforms are required in terms of both policy and operations to deliver improved operational assurance in relation to the provision of DNA. The reform of policy and operations should be developed not from just a legal/compliance perspective. The experience of the applicant, who may be a vulnerable person seeking to reunite with family, should be at the centre of this work.
6. This internal review looks at the law in relation to the use of DNA in immigration cases, reviews recent Parliamentary handing, current guidance, operational practice, training support and assurance arrangements, the practice of intelligence led operations and operational outcomes. The review also considers the need to

review DNA policy before making a number of recommendations. The review terms of reference are at Annex A.

7. The review was conducted between 10 July and 14 September 2018 by reviewing written material (submissions, various guidance documents and information notes, emails, audit material and Independent Commissioner reports) and by speaking to various operational colleagues involved in the implementation of visas and immigration policy; including operational and policy leads. I was assisted by [REDACTED] and [REDACTED] who helped collate much of the information required for the review.

## THE LAW IN RELATION TO THE USE OF DNA IN IMMIGRATION CASES

8. The Home Office has no legal basis for requiring the provision of DNA information in support of an application relating to immigration status. This has been the case since amendments to the UK Borders Act 2007 became law in 2014.
9. Counsel regards the relevant statutory provisions as straightforward. Section 126(1) of the Nationality, Immigration and Asylum Act 2002 states that the Secretary of State may, by regulations, require an immigration application to be accompanied by specified “biometric information”. “Biometric information” for this purpose has the same meaning as is given to it by s. 15 of the UK Borders Act 2007: s. 126(9), 2002 Act. Section 15(1A) of the UK Borders Act 2007 defines “biometric information” as: “(a) information about a person’s external physical characteristics (including in particular fingerprints and features of the iris), and (b) any other information about a person’s physical characteristics specified in an order made by the Secretary of State”. However, an order under s. 15(1A) (b) “must not specify information about a person’s DNA”: s. 15(1B)(b). It follows that these provisions, read together, mean that the Secretary of State may not, by regulations, require an immigration application to be accompanied by information relating to a person’s DNA.
10. The Home Office may currently request DNA, on a purely voluntary basis. The ability of the Home Office to request but not require must be reflected in all relevant guidance. Also, failure to provide DNA voluntarily can in no way be cited as a determinant in an immigration outcome. This must be reflected in relevant guidance and all associated correspondence with an applicant.

## PARLIAMENTARY QUESTION HANDLING

11. On 7 June 2018 the Secretary of State for the Home Department was asked two Parliamentary questions relating to the provision of DNA for visa and asylum cases. These are as follows:
  - i. *PQ Reference 151250*  
*To ask the Secretary of State for the Home Department, whether it is his policy to require applicants for (a) visas and (b) asylum to provide DNA tests to prove British-born children are theirs.*
  - ii. *PQ Reference 151251*  
*To ask the Secretary of State for the Home Department, in how many cases his Department has required an applicant for a visa or asylum to provide DNA tests to prove that British-born children are their own in the last five years.*
12. The following answer was provided for both PQs on 12 June:

*There is no specific requirement for DNA evidence to be provided in immigration cases. It is open to individuals to provide DNA evidence if they choose but this would be on an entirely voluntary basis and where this is submitted, we will consider it.*
13. PQs 151250 and 151251 were allocated to and drafted by an asylum policy official and cleared by the SCS Head of Asylum and Family Policy in the BICS and Europe Group.
14. The review was advised that as there was no single point of contact for policy in relation to DNA, the asylum policy official consulted with a number of other officials to produce the answer. The policy official was advised by the Security and Identity team in Immigration Enforcement that the Department could not require the provision of DNA. UKVI Central Operations team were also consulted on the draft to comment from an operational perspective.
15. The SCS Head of Asylum and Family Policy in the BICS and Europe Group cleared the draft that was produced, checking with policy leads and finalising the language around it not being policy to require DNA. The Head of Asylum and Family Policy advised the review, "I checked with the guidance/policy experts to ensure that it was accurate representation of the policy/guidance issued. The team confirmed to me that it was correct and that it was the approach, as far as they knew, in operation. On that basis I cleared them."

16. On 18 June 2018 the Secretary of State for the Home Department was asked two further Parliamentary questions relating to the provision of DNA for visa and asylum cases. These are as follows:
- *PQ Reference 154813*  
*To ask the Secretary of State for the Home Department, pursuant to the answer of 12 June 2018 to Question 151251 on Immigration, in how many cases his Department has asked an applicant for a visa or asylum to provide DNA tests to prove that British-born children are their own in the last five years.*
  - *PQ Reference 154814*  
*To ask the Secretary of State for the Home Department, pursuant to the Answer of 12 June to Question 151250 on Immigration, whether it is his Department's policy to request applicants for (a) visas and (b) asylum to provide DNA tests to prove British-born children are theirs.*
17. The following answer was provided for both PQs on 21 June:
- As per the answer on 12 June (UIN 151250 and 151251 refer), the Government does not require specific DNA evidence to be provided in immigration cases.*
18. PQs 154813 and 154814 were also drafted by an asylum policy official and cleared by the SCS Head of Asylum and Family Policy in the BICS and Europe Group.
19. The initial reaction by Family Policy and Asylum policy officials to PQs 154813 and 154814 was that the PQ answers provided for 151250 and 151251 could be used. A draft was sent to the SCS Head of Asylum and Family Policy in the BICS and Europe Group for clearance. The SCS official asked policy officials “Can we say, As per the answer of 12 June – the Govt does not require or request DNA...”. An amended draft was provided to the SCS official and cleared on 19 June. On 21 June, the Immigration Minister questioned whether or not we ever ask for DNA evidence because she recalled seeing something that said we had asked for DNA evidence. There was further correspondence between policy officials noting that DNA could be used in the consideration of cases which led to the final answer that was submitted; the word ‘request’ was removed.
20. After the final answer was submitted, email correspondence on the issue continued. On 25 June the Family Policy lead in the BICS Policy Directorate advised the Asylum Policy lead in the BICS Policy Directorates that, “UKVI do request DNA evidence if they suspect there has been a false paternity claim in a family application. It’s not mandatory, and they cannot refuse based on the applicant’s refusal to provide it, but they do ask if there is doubt as to a

child's British status, or the link of a man to a British child, as a result of a man being registered as the father of the child on the birth certificate." On 26 June an official from the Policy, Innovation Excellence and Strategy (PIES) technical support team in UKVI, advised "We do still request DNA evidence in instances where there are doubts over paternity. We do of course use this as a last resort, as we understand the expense and time involved, however there are various concerns which make it necessary. This could include safeguarding, e.g. child trafficking, or immigration abuse, fraudulently obtaining British passports, and chain migration." Concerns were then expressed by an official in the Asylum and Family Policy Unit that incorrect information may have been provided for the PQ responses.

21. On 29 June, an email from the Head of Family and Asylum support policy to colleagues advised that, "I have just spoken to parly branch, and following the conversation that they had with the Head of Asylum and Family Policy last week the answer was altered and the word 'request' removed, that was the part of the answer that concerned me! The final answer that went out was in line with previous responses that we have sent".

#### **What does this tell us?**

22. This detailed analysis of the PQ handling over a three week period suggests that the 7 June PQs 151250 and 151251 were answered without sufficient consultation across both policy and operational areas.
23. Handling of the subsequent PQs 154813 and 154814 of 18 June shows that there was not a common understanding across all policy and operational areas that the Home Office may request DNA on a purely voluntary basis. There was not a common understanding that failure to provide DNA voluntarily can in no way be cited as a determinant in an immigration outcome.
24. The lack of a common understanding should have prompted policy and operational leaders to ensure greater clarity in relation to DNA policy, guidance and operational practices.

## CURRENT GUIDANCE

25. The guidance pertaining to UK Visa and Immigration work is very complex; some 40,000 pieces of guidance exist over seven IT systems. A search for “Immigration rules” on .GOV.UK returns some 41,954 results; a search for “DNA” on .GOV.UK returns some 1,000 results and a search for “Immigration rules DNA” on .GOV.UK returns some 42,784 results.
26. Many types of guidance exist to assist in the application of the law, which includes the immigration rules that are set out in secondary legislation, and departmental policy. These include:
  - Guidance on specific topics, for example, family reunion
  - Operational instruments
  - Assisted Decision Making (ADM) tools
  - Case Officer notes
  - Document Generator (DOCGEN) templates to enable the rapid production of correspondence.
  - Local operational instructions
  - Local IT Hubs which bring together guidance products of most relevance to particular caseworking activities.
27. The guidance on .GOV.UK and Horizon consists of both current and archive material. All guidance must be approved by policy officials and Home Office Legal advisors; policy officials determine which guidance gets archived.
28. Work has been ongoing in various guises since 2005 to simplify guidance products. Work to carry out major legislative reforms stopped after the 2010 General Election. Officials then began focusing their attention on simplifying “GRaFT”, Guidance, Rules and Forms and Templates. GRaFT teams, consisting of operational and policy officials, are currently working on simplification and digital transformation initiatives. Some progress has been made, for example 4,000 templates have been reduced to 1,500 following a recent cleansing exercise and 187 asylum guidance products have been reduced to 100. A Simplification Steering Group is now chaired by Simon Bond and Deborah Chittenden continues to oversee all simplification and assurance work. This group was, until recently, chaired by Glyn Williams.



## GUIDANCE ON SEEKING DNA EVIDENCE FOR IMMIGRATION AND NATIONALITY PURPOSES.

29. In relation to guidance on seeking DNA evidence for immigration and nationality purposes, the review found that various guidance products require either further clarity or correction. Some examples follow, but this is not a complete list given the scale and various types of products that are available.
30. For UKVI asylum cases, the Dublin III Regulation (version) published for Home Office officials on 2 November 2017, states that “it is not essential for DNA evidence to be provided in every case, as within the list annexed to the Implementing Regulation the issue of DNA evidence is mentioned in the context of it being necessary only in the absence of other satisfactory evidence to establish the existence of proven family links that are referred to elsewhere in Articles 11 and 12 of Implementing Regulation (EC) No 1560/2003 as amended by (EU) No.118/2014.” **This guidance needs to make clear that the Home Office can only request DNA; applicants have the right to refuse this request. “Not essential for DNA evidence to be provided” suggests a possible requirement.**
31. For UKVI settlement cases, Home Office Casework instruction “DECIDING FAMILY APPLICATIONS WHERE THERE IS A SUSPECTED FALSE PATERNITY CLAIM” dated September 2015, states that a father of a child can be a man who satisfies prescribed requirements as proof of paternity in the British Nationality (Proof of Paternity) Regulations 2006 (as amended by the British Nationality (Proof of Paternity) (Amendment) Regulations 2015). This can be done in two ways, including the production of DNA evidence. **This guidance needs to make clear that the Home Office can only request DNA; applicants have the right to refuse this request.**
32. For UKVI Gurkha cases, guidance entitled “Gurkhas discharged before 1 July 1997 and their family members” version 1, published for Home Office officials on 28 December 2017, states that “Where the application is made on the basis of the sponsor being the applicant’s biological father, the applicant may be required to provide, at their own expense, evidence of this relationship by means of a DNA test provided through the International Organization for Migration (IOM) as specified by UK Visas and Immigration (UKVI). Where a DNA test has been requested, the application will be refused if a sample has not been paid for and provided, without reasonable excuse, within 4 weeks of the request. **This guidance needs to be corrected to make clear that the Home Office cannot require the provision of DNA.**
33. For UKVI family reunion cases, guidance entitled, “Family reunion: for refugees and those with humanitarian protection” version 2, published on 29 July 2016 states that “Applicants could include any number of documents to support their claim that they are related as claimed”. It makes clear that this could include DNA tests (at the applicant’s expense

and from an organisation accredited by the Ministry of Justice – HM Courts and Tribunal Service). **Applicants can infer from this that DNA is not mandatory; the guidance does not make this clear.**

34. For UKVI European route cases, the Guidance EEA family permit: EUN02, published 13 November 2013, states that “DNA tests may be used as a last resort, but only where all other means of establishing the relationship have been exhausted and there is demonstrable doubt in respect of the authenticity of the claimed relationship”. **Applicants can infer from this that DNA is not mandatory; the guidance does not make this clear.**
35. In UKVI nationality casework, Home Office Casework instruction “DECIDING FAMILY APPLICATIONS WHERE THERE IS A SUSPECTED FALSE PATERNITY CLAIM” dated September 2015. States that a father of a child can be a man who satisfies prescribed requirements as to proof of paternity in the British Nationality (Proof of Paternity) Regulations 2006 (as amended by the British Nationality (Proof of Paternity) (Amendment) Regulations 2015). **This can be done in two ways, including the production of DNA evidence. This guidance needs to make clear that the Home Office can only request DNA; applicants have the right to refuse this request. This is also the case for Nationality Notice 04/15, The British Nationality (Proof of Paternity) (Amendment) Regulations 2015.**
36. In relation to suspected false paternity claims, The British Nationality (Proof of Paternity) (Amendment) Regulations 2015 came into effect on 10 September 2015 and amend the British Nationality (Proof of Paternity) Regulations 2006. **The Guidance sets out that DNA evidence (amongst other evidence) can be used to support a paternity claim. But, it is not clear that it can only be provided on a voluntary basis.**
37. In relation to HM Passport Office activity, specifically the application for passports outside the UK, guidance exists “DNA Procedures for International Applications” which makes clear that the provision of DNA is voluntary and that applicants are able to provide other documentary evidence of a familial link. The guidance sets out how examiners should respond to applications they refuse, where the applicant failed to provide DNA evidence.
38. Overall, the review found that the guidance products used inconsistent language and often failed to provide the clarity needed. Given this and the volume and number of types of guidance available, case officers would likely come across conflicting advice. The review was advised that this sometimes resulted in local guidance products being produced.
39. Case management system support tools are also a source of incorrect guidance. UKVI operate a Case Information Database (CID). CID includes a “DOCGEN” system to enable the rapid production of correspondence. DOCGEN has a very large number of letter templates that can be accessed by case officers. Some letter templates in DOCGEN use wording that makes clear that DNA is required. For example, further enquiries letter templates

ICD4890 to ICD4893. All templates on DOCGEN should be approved by policy officials.

40. Guidance helps deliver structured and consistent decision making. But, it should be noted that case officers deliver by making informed judgements. In the development of new guidance consideration should be given to the balance between guidance and the empowerment of case officers to make judgements.

## OPERATIONAL PRACTICE

41. Operational practices are shaped by the various types of guidance that exist, the quality and accessibility of guidance, the information technology systems that are available to particular teams, the relationship that operation teams have with policy officials, local training, ongoing support arrangements and assurance mechanisms and performance metrics.
42. The guidance products are available on a number of systems. All products that are available to the public should be on .GOV.UK. Publicly available and internal Home Office material should be on Horizon. Horizon and .GOV.UK are very difficult to navigate because of the scale of documents, lack of structure and limited search functionality. To compensate for this, UKVI officials in Sheffield have established a local IT Hub that brings together guidance from the .GOV.UK website and Horizon to compensate for this. The review was advised that local team leaders ensure that this is kept up to date.
43. UKVI officials overseas are unable to access Horizon. They have to rely on local IT hub arrangements and .GOV.UK website. The review was unable to determine the extent to which the 250 visa application centres align in terms of ensuring access to guidance products.
44. In terms of case management, in the UK, UKVI operate a Case Information Database (CID) through which a very large number of immigration cases are managed every year (over 100,000). Case officers can communicate with case subjects there by letter, email or via telephone. All phone calls should be logged on CID and the review was advised that case officers typically follow up with an email.
45. Paper files of correspondence are held in parallel with the electronic files stored on CID. Case reference numbers enable the reconciliation of electronic and hard copy records.
46. CID was first introduced in 2001 for UK based staff. Overseas offices use a different caseworking system called "Proviso".
47. CID includes a "DOCGEN" system to enable rapid production of correspondence. DOCGEN has a very large number of letter templates (1,500) that can be accessed by case officers. These templates can only be searched by document reference number (e.g. ICD 4890) not by letter type. Local subject matter experts are relied upon to identify the appropriate templates.
48. Policy officials play a key role in producing and approving guidance for operational officials to follow. Senior policy officials, informed by Home Office legal advisors, approve all guidance. Policy officials should ensure with operational officials that it is sufficiently clear and can be applied consistently.

49. Regular dialogue and consultation with operational colleagues is essential on such things as the development of new guidance, the effectiveness of current guidance and the potential impact of such things as legal challenges, court judgements and new domestic legislation.
50. The review was advised that:
- For some teams monthly meetings are happening between operations and policy. Since Windrush, the relationship was getting closer.
  - Policy changes can come in rapidly with short deadlines to implement. Also calls from operational officials to renew guidance can be met with a slow response. This can lead to local interim arrangements.
  - Guidance can be complicated and ambiguous; with insufficient clarity over the action individuals should be taking in particular cases. Local experienced officials provide advice in these areas and local procedural guidance can evolve from this.
  - Joint policy and operations special projects teams have been established to drive innovation and improvements in UKVI activity.
  - New guidance can be cascaded in a number of ways to operational colleagues.
51. The review highlighted a clear need for policy officials to better understand operational practices and to own the end-to-end development and implementation of policies and associated guidance.
52. Busy operational teams have a key role to play in informing the development of policy and guidance. The reform of policy and guidance should be developed not from just a legal/compliance perspective. The experience of the applicant, who may be a vulnerable person seeking to reunite a family, should be at the centre of this work.

## TRAINING, SUPPORT & ASSURANCE ARRANGEMENTS

53. UKVI has well established training, support and assurance arrangements for operational delivery across the organisation. These fall into four broad categories:
- Local business level assurance
  - Second line business assurance
  - Third line business assurance, and
  - Independent assurance
54. At the local level, assurance is provided by ensuring that new staff receive mandatory structured training and are mentored in various decision making processes. For example, for asylum caseworkers, there is a five week training course for new decision makers plus six months of mentoring. Support and assistance is readily available; decision quality is reviewed by team leads, lead caseworkers and technical specialist teams provide expert assistance. The technical specialist teams are similar to the Chief Caseworker Units that were established as part of the Home Office response to Windrush.
55. The focus on training tends to be for new starters and continuous professional development relies on cascades of information. There is a very high level of demand for training given that caseworker teams have a relatively high staff turnover rate. The impact of this is particularly acute given the complexity of the UKVI system and the fact that it can take up to six months to train and assure the standards of case officers. Team leaders in Sheffield attribute the high staff turnover rate to an “internal market” in the local area between UKVI, DFE and DWP offices.
56. There are 250 Visa Applications Centres across the world. The review has not covered the local level assurance arrangements of these groups.
57. Second line assurance is provided by an Operational Assurance and Security Unit (OASU). OASU carries out targeted assurance reviews that very much focus on decision quality by local business units.
58. Third line assurance is provided by Internal Audit who have recently produced reports on the following:
- Case files and Correspondence Management (KIM),
  - Passports and Visas Overseas Working Processes and Decision Quality,
  - Data Quality- CID and Removals,
  - Effectiveness of Assurance for Overseas Operations: UKVI & HMPO, and
  - Review of Home Office Borders and Immigration Guidance.

59. On the Internal Audit review of Home Office Borders and Immigration guidance, there are two outstanding actions that are of most notable relevance to this review.
- i. UKVI International to ensure that a strategy is developed for accessing guidance, forms and letter templates for those overseas which reduces the risk of incorrect versions being used
  - ii. UKVI should ensure that they provide guidance from one controlled source and link in with the UKVI International long-term strategy
60. The Independent Chief Inspector of Borders and Immigration (ICIBI) provides independent assurance, of specific aspects of operations and produces an annual report. ICIBI has carried out a number of inspections across the Borders and immigration system. In the Inspection of Asylum Intake (April-August 2017), a recommendation was made to conduct a thorough training needs analysis (TNA) for all staff and managers involved in the asylum process; review and deliver training in light of TNA results, amending guidance, mentoring and performance management as necessary and putting in place the means to evaluate changes. The Home Office response to this was very operationally focused. Training is required end-to-end for policy, strategy, legal and operational officials.
61. In the conduct of assurance activity as described above, it is assumed that all published guidance is correct given it has been authorised by senior policy officials and Home Office legal advisors. Greater levels of assurance are required in the production and approval of guidance products.

## THE PRACTICE OF INTELLIGENCE LED OPERATIONS

62. Intelligence led operations play an important role in maintaining the integrity of the UK visa and immigration system. They can provide indicators of potential abuse, make intelligence referrals and improve current and past case working decisions through the revisiting of cases following a referral.
63. Operation Fugal was established in April 2016. This was a joint Immigration Intelligence, Human Rights and Complex Casework (HRCC) and Removals Casework (RCCD) activity established to identify the nature and scale of any paternity based abuse.
64. Immigration Enforcement Immigration Intelligence report “False Paternity Claims associated with Human Rights applications: Operation Fugal” reference 2016/254, entitled and dated 7 September 2016 provides detailed further background. Importantly, it identifies the characteristics and drivers associated with fraudulent paternity claims, suggesting mitigating action where appropriate.
65. The report made a number of key judgements. In relation to DNA, the following judgement was made:

“Legislative constraints present a significant barrier to the addressing of paternity based abuse, particularly the inability to expand and enforce mandatory DNA testing. This is applicable to both United Kingdom Visas and Immigration (UKVI) process and that of key stakeholders including Her Majesties Passport Office (HMPO) and the General Registry Office (GRO)”.
66. This review was shown the DNA request process maps for Operation Fugal and non-Fugal cases. The review found no evidence of discrimination. The false paternity claims report 2016/254 gives a good insight into the way in which intelligence may result in greater scrutiny of some nationalities. For example, a website may exist that encourages paternity based abuse within a particular nationality community. This knowledge could result in greater focus on applications from some nationalities.
67. As described on page 13, teams exist that can be tasked to provide additional safeguards against any potential discrimination. Independent operational assurance reviews should be carried out regularly on all intelligence led operations covering authorisations to proceed, compliance with guidance, discrimination and data protection issues.



## OPERATIONAL OUTCOMES

68. The review has established that it is impossible to quantify the exact numbers of cases for which applicants have been advised that they are required to provide DNA. Communications with applicants or their representatives can be via letter, email and telephone. All phone calls should be logged on CID and the review was advised that case officers typically follow up with an email. But, precise transcripts of conversations are not kept.
69. Operational officials provided the review with the following advice on case numbers:

*Analysis of available data shows that UKVI requested DNA evidence using the inappropriate wording in 398 cases within the overall Op Fugal (suspected paternity abuse) cohort of 591. Of these, 83 applications were refused and 7 within this number were refused solely for not providing the DNA evidence. A further 6 instances have been identified where the refusal is not solely based upon the non-provision of DNA evidence but it is referenced. These 13 are being reviewed. Due to the limitations of the caseworking database (CID) it is not possible to identify any other instances within the Human Rights and Family route where DNA evidence has been requested, but it is almost certain that there will be some. BICS Policy are in the process of drafting new DNA casework guidance that will be applicable to all future UKVI cases. An interim operational instruction will be issued to provide decision makers with appropriate guidance and will be used to review all outstanding Op Fugal cases.*

*Within the Gurkha concession, management information shows that since the policy was introduced in January 2015 through to July 2018, 51 cases have been identified where DNA was requested from applicants at their own cost. This number represents 1.7% of the 2937 applications received over the operation of this policy from January 2015 to date. In 4 cases, which were from the same family unit, the application was refused solely for not providing the requested DNA evidence. These cases have been reconsidered as they were refused for not supplying DNA when requested. A decision has now been made to issue visas subject to the family concerned sending in their passports and us completing security checks. Operational staff have written to the family but they have yet to receive a response.*

*Beyond this, the limitations of CID mean that it is not possible to establish further data on DNA requests or the use of inappropriate wording.*

70. An anonymised example Op Fugal letter is at Annex B. This is one example of where UKVI have required, not requested, the provision of DNA.

## THE VIRTUE OF DNA

71. During the course of the review, it was clear that whilst the Home Office should only request DNA typically after a number of lines of enquiry have been followed, there may be some merit in having powers to request DNA earlier or require the provision of DNA. For example it may help to reduce processing times and remove unnecessary uncertainty and turmoil for families that may have been separated for some time. But, powers to request DNA may also potentially put family members at risk should, the paternity of a child be disproved through a DNA test.
72. The ICIBI's Inspection of family reunion applications (January-May 2016) that was laid before parliament in September 2016 described the importance of DNA. The report states, *"the inspection found that the Home Office was too ready to refuse applications where it judges that the applicant had failed to provide sufficient evidence to satisfy the eligibility criteria, when defending a decision to allow the "missing" evidence might have been the fairer and more efficient option. This was particularly the case when the key piece of evidence was a DNA test establishing the relationship to the sponsor was as claimed, and the Home Office's withdrawal of commissioned and funded testing in 2014 appeared to have been a major cause of the increase in first-time refusals for certain nationalities"*.
73. The report made ten recommendations. Recommendation three of the report was for the Home Office to review its approach to DNA evidence in family reunion cases, including
- *"Funding to commissioned DNA testing where the Home Office is unable to verify documents provided by the applicants.*
  - *Defer rather than refuse where the absence of DNA evidence is the only barrier to issue 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"*
74. The Home Office accepted all ten recommendations, the formal response to recommendation three was:
- "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.*
75. It is understood that policy officials are still currently considering the potential opportunities and risks of changing our policy and, by definition, legislation relating to the acquisition and use of DNA information.

## RECOMMENDATIONS

76. Policy and operational officials are taking action to ensure clarity for operational officials on when and how DNA can be sought and used in the processing of applications. A number of cases are being reconsidered at pace.
77. This review has identified a number of policy and operational issues that must be addressed in order to deliver greater operational assurance for the Home Office Borders, Immigration and Citizenship (BICS) system. Fundamental reforms are required.
78. The review recommends the following in priority order:
  - i. Work by operational officials to reconsider a number of cases that have been handled incorrectly should continue at pace.
  - ii. In relation to DNA, clarifications and corrections should be made to all types of guidance. As part of this, various documents generator (DOCGEN) templates must be corrected.
  - iii. Consideration should be given to identifying a single SRO for ensuring end-to-end assurance in relation to requests involving DNA.
  - iv. The departmental risk of the issues identified in this review should be quantified.
  - v. Policy officials are currently considering the potential opportunities and risks of changing our policy and, by definition, legislation relating to the acquisition and use of DNA information. They should be set a deadline for this work.
  - vi. A thorough training needs analysis (TNA) for staff and managers should be carried out across the BICS system. This should include policy, strategy, legal and operational officials.
  - vii. Policy and Operational officials should consider other cross cutting issues for which the Department would benefit from the appointment of an SRO to deliver end-to-end assurance.
  - viii. Greater rigour must be applied in the development of guidance in partnership with operational officials and in the formal approval of guidance by policy and legal officials. Guidance for operational commands should be short, clear and concise and provide absolute clarity over requirements and importantly where case officer judgements can and should be made. Consistent language must be used. Letters to applicants or their representatives must be clear, concise and take into account international translation issues.

- ix. Arrangements should be made to ensure a single source of truth for guidance. Strict configuration controls should be put in place in UK and overseas offices. Urgent consideration should be given to making improvements to .GOV.UK and Horizon arrangements. New guidance products and amended guidance products must be cascaded effectively and consistently.
- x. Information Technology systems supporting the dissemination of guidance and the conduct of operations must be brought up to date to enable efficient, effective processing, case tracking and management information relating to all case activity and communications. Funding should be identified for this. The plans to replace the Case Information Database (CID) should be reviewed informed by this review.
- xi. All policy officials must develop an improved understanding of operational activity; as a minimum, weekly meetings should be held to discuss issues and opportunities. Local innovations should be shared and applied across the BICS system.
- xii. The Simplification Steering Group terms of reference should be reviewed to ensure adequate focus is placed on end-to-end assurance.
- xiii. Independent assurance mechanisms must be applied regularly to ensure guidance aligns with the law, is clear, concise and easily accessible by operational colleagues around the world. The Operational Assurance and Security Unit (OASU) could play a key role here, beyond their current local decision quality focus.
- xiv. Independent operational assurance reviews should be carried out regularly on all intelligence led operations covering authorisations to proceed, compliance with guidance, discrimination and data protection issues.
- xv. Recommendations that are made by Internal Audit and the Independent Chief Inspector of Borders and Immigration (ICIBI) must be completed promptly.
- xvi. As part of the Home Office People Plan activities, consideration should be given to how we can reduce staff turnover in operational teams. Reduced staff turnover should result in increased operational assurance.
- 79. In delivering these recommendations consideration should be given to establishing and appropriately resourcing a formal programme of change given the scale and complexity of the reform work.

## ANNEX A: REVIEW TERMS OF REFERENCE

### 1. Aim

Further to recent Parliamentary questions about the Government's policy on requirements to provide DNA in visa and asylum cases, it has become apparent that the Home Office has been requiring DNA evidence in some cases, contrary to our policy. The Immigration Minister has asked the Permanent Secretary to commission an urgent review to understand the facts and identify remedial action.

### 2. Objectives

The proposed programme of work should explore:

- i. State the law;
- ii. State what our published guidance and any unpublished guidance said;
- iii. State what letters said to applicants;
- iv. State what caseworking practice was actually followed;
- v. Establish if possible how many cases may have been wrongfully decided and recommend remedies;
- vi. Comment as to any discrepancies between law, policy guidance and caseworking practice and make recommendations as to how to avoid such discrepancies (short and longer-term remedies);
- vii. Comment as to the practise of intelligence-led operations as revealed by this case and whether adequate safeguards are in place to avoid discrimination;
- viii. Identify root causes and recommend actions to be taken to address those causes.

### 3. Timing

The lead for this programme of work will provide a full analysis of the issues and a final report that addresses the objectives at para 2, to the Permanent Secretary by the end of August 2018.

### 4. Team

The review will be led by Richard Alcock, Director OSCT.

## ANNEX B: AN ANONYMISED EXAMPLE OP FUGAL LETTER



UK Visas and Immigration

PO Box 3468

Sheffield

S3 8WA

**Fax** Available on request

**Web** [www.gov.uk/uk-visas-immigration](http://www.gov.uk/uk-visas-immigration)

[REDACTED]

Our Ref [REDACTED]

Your Ref [REDACTED]

Case ID [REDACTED]

Date **Error! Reference source not found**

**Please note a reply is required by 03 February 2017**

Dear **Error! Reference source not found**.

Re: [REDACTED]

Thank you for your client's application for leave to remain in the UK.

To help me consider the matter, please send me the following documents. Please send **ORIGINAL** documents as photocopies are **NOT** acceptable for the purpose of deciding your client's application.

Documents required:

1. Divorce certificate to show [REDACTED] is no longer married to [REDACTED]
2. Documentary evidence to confirm that your client's dependant children reside with your client at her current address. This should be on official headed paper and be from your client's children's school, nursery, health visitor, GP or Local Authority.
3. If [REDACTED] does not reside with [REDACTED] then please provide documentary evidence to confirm that he has contact with [REDACTED] This should be on official headed paper and be from your client's child's school, nursery, health visitor, GP or Local Authority. The letter should confirm what contact your [REDACTED] has with [REDACTED], for example whether has attended appointments with them and whether he is listed as one of their emergency contacts.
4. DNA test to prove that [REDACTED] is the father of [REDACTED]. We can only accept a DNA test report from an organisation accredited by Her Majesty's Court Service (HMCS), a list of which can find on the HMCS website: <http://www.justice.gov.uk/courts/paternity-testing>

The following evidence must also be provided:

- Copies of the sample documents used to generate the DNA tests. These should include the details of the providers, photographs of the same, the details of the individual who took the samples and their signature to outline they were correctly taken

- Copies of the ID documents provided in support of the DNA test or photos taken of the applicant's by the sample taker which should be certified

Our aim is to make a decision on your client's case promptly. To enable us to do this it is **essential that your client uses the enclosed return label and ensure the information reaches us by 03 February 2017**

If your client fails to produce the information requested within the time that has been given, I must warn you that the application will be considered on the basis of the information currently available. Please be aware that under S-LTR.1.7. of Appendix FM of the Immigration Rules, an application for limited leave to remain will be refused on grounds of suitability where the applicant has failed without reasonable excuse to comply with a requirement to provide information.

For up-to-date turn-around times on particular applications, can I please ask that your client visits our website [www.gov.uk/uk-visas-immigration](http://www.gov.uk/uk-visas-immigration) for the current timescales.

Yours faithfully,

[REDACTED]  
UK Visas and Immigration

## GUIDANCE NOTE

Your client must provide documentary evidence of cohabitation or to show the length or residence in the UK in the form of official letters or documents, addressed to your client and/or your client's spouse if your client is providing evidence that your client is in a genuine and subsisting relationship.

The current requirement is to provide at least 3 documents per year from different official sources. These should be addressed to your client and his/her partner jointly or in both your client's names. If your client does not have enough items in their joint names your client may also provide items addressed to each of you individually if they show the same address for both of you. Items of correspondence or other documentary evidence from the sources listed below would be acceptable. The dates of these should spread over the whole period in question.

Your client's application could be delayed or even refused if your client does not provide enough evidence of this kind.

Examples of acceptable types of letters and documents

- letters or other documents from government departments or agencies, for example HM Revenue and Customs, Dept for Work and Pensions, DVLA, TV Licensing
- letter or other documents from your client's GP, a hospital or other local health service about medical treatments, appointments, home visits or other medical matters
- bank statements/letters
- building society savings books/letters
- council tax bills or statements
- electricity and/or gas bills or statements
- water rates bills or statements
- mortgage statements/agreement
- tenancy agreement(s)
- telephone bills or statements
- letter's from schools, nursery