



Home Office

**The Home Office response to the Independent Chief Inspector's report:**

**An inspection of the Non – Suspensive Appeals process for clearly unfounded asylum and human rights claims.**

**July 2014**

The Home Office thanks the Independent Chief Inspector (ICI) for his report and considers that it provides a comprehensive review of the operation of the Non Suspensive Appeals (NSA) process. The report highlights seven clear recommendations for improvement.

The Home Office is pleased to note that the Inspectorate found a number of positives, including that staff and managers were alert to the potential risks to a person's safety of certifying claims incorrectly, that removals had occurred more quickly where claims had been certified which saved on support costs, and that the quality of training and technical support provided by the NSA Oversight Team is good. It is encouraging that the ICI has found the numbers of removals in certified cases has increased year on year, constituting over a quarter of asylum removals for claims made in 2012/13. The report recognises that training all asylum decision makers, once they start their role, will increase awareness which will lead in time to increased use of certification. It is encouraging that the ICI found that staff have reacted positively to previous recommendations that individual appeal outcomes are reviewed to improve the quality of decision making.

We are grateful to the ICI for highlighting areas of work requiring improvement, including recording that certification has been considered in all designated state cases and that steps should be taken to effectively capture and analyse data on Judicial Reviews to improve decision quality. The Home Office has already used the recommendations highlighted by the ICI to strengthen its case working function and improve its current processes.

The Home Office accepts in full six of the seven recommendations made and partially accepts the seventh recommendation.

## The Home Office response to the recommendations:

### 1. Makes full use of the Section 94 certification power to:

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

#### 1.1 Accepted

- 1.2. Asylum Casework Directorate (ACD) has introduced NSA training for all decision makers starting with its inclusion in the new foundation training programme from January 2014. In addition a programme to train all existing decision makers who were not previously trained in NSA casework began in June 2014. This will increase awareness of certification powers and the processes required for dealing with cases from designated states.
- 1.3. We are currently developing a tool for the case information database (CID) which will record whether or not certification is appropriate in all asylum refusals and if not the reasons for this. Whilst this is in development we have introduced a refusal minute sheet which will record the same information. This documentation will also be on CID, ensuring that the basis for any decision is recorded and authorised appropriately.
- 1.4. ACD has been working in partnership with Home Office technology programmes that have been commissioned to improve immigration technologies. Structured Decision Making (SDM) is a pilot of one of these technologies and to date has received a very positive response from a number of parties, including UNHCR, policy and audit teams as well as the decision-makers themselves. At the end of the pilot a full evaluation will be completed to inform a joint business and technology decision about the future use of the tool. This will include consideration of the tool's suitability to assist in the identification of cases suitable for certification and also ensure a consistent approach to casework processes.
- 1.5. We recognise that in order to guarantee that every case that can be certified, is certified, we need to ensure that we have the capacity to enable us to deal with this. We are therefore increasing our second pair of eyes (SPOE) capacity with an ongoing programme of accreditation across UKVI. In ACD we are working towards accrediting all technical specialists and senior caseworkers by the end of 2014 which will give a proportionate number of SPOEs to decision makers across the asylum teams.

#### Criminal Casework

- 1.6. Criminal Casework (CC) aims to make full use of powers to certify claims and so accepts the recommendation that we should make full use of the section 94 certification power to certify asylum and/or human rights claims in cases where the person subject to deportation action is entitled to reside in designated states unless we are satisfied their claim is not clearly unfounded.
- 1.7. We are working with all NSA trained case workers to remind them of the current certification provisions and their responsibility to apply these when making decisions in deportation cases. A schedule of training for untrained decision-makers will be completed by mid-July 2014. Documentation is being updated to ensure there is explicit

consideration of certification in every case. This documentation will also be on CID, ensuring that the basis for any decision is recorded and authorised appropriately.

- 1.8. In addition, the Immigration Act 2014 provides new powers to certify Article 8 claims. As part of preparation to implement these new powers CC is providing additional training to all its case working staff.
- 1.9. The process of transferring new asylum claims from CC to ACD commenced on 9 July 2013. Guidance was issued in support of the new process and this was then revised and re-published in December 2013.
- 1.10. Following the formal national review of the process which took place in March 2014 and further to subsequent submissions to the Director General and Minister, a number of changes have now been made to the process to ensure optimum efficiency going forward.
- 1.11. The changes took effect on 1 May 2014 and are summarised below:
  - Responsibility for conducting the full asylum interview has reverted to CC Immigration Officers who will ensure ACD standards are met. This will ensure more timely action on interviews by port staff before cases are referred.
  - All new referrals from CC to ACD will be processed by ACD colleagues in Liverpool, reducing the number of parties involved in the process and enabling a bespoke ACD team of senior decision makers to process our new asylum claims more quickly.
  - ACD will assume responsibility for any section 72 considerations which arise in a case being transferred to ACD but CC will request rebuttals from the Foreign National Offender (FNO) before transferring the case. This will enable ACD to draft their asylum consideration in the appropriate manner. Training has been delivered by CC to support this.
  - Both CC and ACD staff will contribute to the consideration of whether section 94 certification is feasible in cases being transferred, to ensure that our national commitments on increasing certification are met. Training has been delivered by CC to support this. Further training within CC on certification is underway.
  - A new and simplified pro-forma for the referral and return of cases being transferred is being introduced, reducing duplication.
  - A new service level agreement (SLA) has been reached with ACD to improve productivity. It has been agreed that new referrals made under the revised process will be returned to CC within 14 calendar days of receipt of the referral by ACD.
- 1.12. Revised guidance has been issued reflecting these changes and outlining the steps that must be taken before transferring a case to ACD. A new referral and return pro-forma has also been introduced
- 1.13. We are confident that the new process and SLA will ensure due diligence is applied to consideration of section 94 whilst ensuring that the process does not delay the consideration of deportation action.

## **2. Accredits Second Pair of Eyes against objective criteria and requires reaccreditation on a regular basis.**

### **2.1 Accepted in part**

- 2.2 We recognise the concerns raised by the Chief Inspector in relation to Second Pair of Eyes accreditation. A set of objective criteria has been produced along with a formal system for completing the accreditation process. This was rolled out across UKVI and Immigration Enforcement (IE) in June 2014 and will make the process of becoming an accredited SPOE consistent across all units. This process will also be included within the Asylum Instruction for NSA casework.
- 2.3 Once accredited a SPOE will regularly utilise and develop their skills. The basic provisions for certification and the process followed do not alter significantly enough to require a full reaccreditation programme for all SPOEs on a regular basis, and therefore we do not accept this aspect of the recommendation. However any accredited SPOE who has not been actively working in the area of certification for an extended period of time will require reaccreditation before they are allowed to SPOE decisions again.
- 2.4 In addition to this the NSA oversight team will dip sample a selection of cases from SPOEs with assistance from the NSA leads. The exact number of cases to be checked is still to be determined, however it is considered that each SPOE will be checked at least twice a year in addition to any formal quality audit checks that take place.

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

### **3.1 Accepted**

- 3.2 The litigation command was formed in April 2013, bringing together litigation teams from across UKVI and Immigration Enforcement, to ensure a more consistent and professional approach to managing our litigation. We will continue to bring remaining areas of litigation into the command, which will improve our oversight of Judicial Reviews (JR). As part of this transition of work into the command, we will be managing all new asylum litigation by October 2014. This will put us in a good position to capture and analyse data relating to asylum JRs, including NSA certification.
- 3.3 We are updating our IT (CID) and management information (MI) systems to improve our ability to report information relating to JRs, including our ability to accurately report data on all NSA JR challenges. We aim to have the database updated by December 2014.
- 3.4 We will address data quality concerns by updating litigation guidance to reiterate the importance of updating CID records accurately, particularly in relation to NSA cases.
- 3.5 Once our IT database has been updated, we will produce quarterly reports for each area of the business setting out the main reasons we withdraw or lose JR cases. As an interim measure, we are looking at using local data relating to cases managed in the litigation command to create a report on withdrawn cases. We will prioritise asylum, and look to include data on the number of NSA cases which we have withdrawn.
- 3.6 We will use these reports to improve the quality of the initial asylum decision, including ensuring we are using section 94 certification appropriately.

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

**4.1 Accepted**

- 4.2 It is accepted that the previous regional case working model led to a variation in certification rates, however the new national ACD model is already addressing consistency across casework within each geographical area. The national command is working towards consistent case working processes which include NSA casework.
- 4.3 We held the first in a series of workshops to look at the variation in certification rates across ACD on 20 March 2014. The workshop was attended by senior managers, NSA leads, policy, quality auditors and business strategy to gain a business wide viewpoint. The workshops are aimed at improving consistency in the use of certification in the geographical locations and seek to make recommendations on how to improve the use and efficiency of certification. The next workshop will be held in September 2014 and will assess the impact of the training programme and the refusal minute prompts.
- 4.4 We are also currently considering options for centralising the NSA casework function in ACD further by having a dedicated team processing these cases. This will eradicate the issue of designated state cases not being considered for certification as the unit will be set up to consider all designated state cases.
- 4.5 The ACD Quality Audit Team (QAT) has produced a summary report focussing on NSA decision making in asylum casework for the financial year 2013/14. This was received in late June 2014 and will be analysed with recommendations for improvements communicated to the asylum teams before the end of July 2014. Quarterly reports highlighting instances of certification being missed will be provided by QAT; the first of these will be produced in July 2014. Once received, the report will be analysed for common themes and will be shared with the case working teams to encourage consistency.

**5. Takes appropriate action against those who have failed to report.**

**5.1 Accepted**

- 5.2 We agree with the Chief Inspector's view that appropriate action should be taken against those who fail to comply with reporting restrictions. We are taking forward a range of pre-emptive measures to tackle non-compliance of individuals. These include conducting meaningful reporting events to gain more information from reportees when they are compliant, this will assist in tracing should the individual fail to report in future. Work is ongoing to ensure staff understand the guidance, apply it consistently, know exactly what action they are required to take and when. A programme of training sessions is underway to reinforce the message and promote consistency.
- 5.3 As part of a wider project within reporting centres, the Department's continuous improvement team has been tasked to review the "fail to report" process and to identify how we can deal more efficiently with a person who fails to report.
- 5.4 Finally, the Home Office has developed a dedicated National Absconder Tracing Team, and recruitment is underway to provide resource to focus on tracing those who are identified as absconders and undertake appropriate enforcement action.

## **6. Clarifies the role and remit of the NSA Oversight Team.**

### **6.1 Accepted**

- 6.2 As noted in the report, the NSA oversight team has devolved responsibility for undertaking NSA training across the business to the dedicated training teams in UKVI and IE. However, the team has final approval of all training materials. This has allowed the team to focus on ensuring quality and consistency in NSA decisions. It is accepted that at the time of the inspection, this new focus and role for the team had yet to be communicated consistently across UKVI and IE.
- 6.3 As stated in the report it is recognised that the team needs greater strategic oversight of the NSA process and this is what we have moved towards in 2013/14. This year (2014/15) the team will build on this further and deliver upon these new strategic objectives and improve communication of the team's remit. The team will be given clear objectives setting out what is expected of it, which will in turn be communicated to the business.

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

### **7.1 Accepted**

- 7.2 The NSA oversight team keeps an up to date and accurate record of all those trained to make NSA decisions and those who have been accredited to work as a SPOE. These records are held in a directorate/team format so we can easily see how many trained staff are in each team and also how many SPOEs they have available to assist in identifying training gaps.
- 7.3 At the time of the inspection this record was held as a live document and reflected the numbers of trained staff and accredited SPOEs working in each business area at that point in time. The ICI had however requested lists for SPOEs who were working in the financial year 2012/13, in accordance with their file sample and this proved difficult to provide given the number of staff moves amongst the teams and also staff losses.
- 7.4 To ensure that we can easily access historical data on trained staff in the future we have now implemented a quarterly audit system to capture staff moves and updates in training. We can now more accurately reflect those who would be accredited as SPOEs at set data points. This system has been in place since October 2013 and each business area is responsible for updating the NSA team with any changes in the number of their trained staff.