



The Rights of European Citizens and their Spouses to Come to the UK: Inspecting the Application Process and the Tackling of Abuse

October 2013 – January 2014



John Vine CBE QPM

Independent Chief Inspector of Borders and Immigration



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Our Purpose

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

Our Vision

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

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Foreword from John Vine CBE QPM

Independent Chief Inspector of Borders and Immigration



The European legislation which confers the right of free movement across all countries in the European Economic Area (EEA) has primacy over the UK's domestic immigration legislation. EEA nationals and their family members may choose to apply to the Home Office for documents which confirm that they are exercising their free movement rights in the UK.

This inspection examined the efficiency and effectiveness of the Home Office's handling of this European casework, as well as the steps that it takes to identify and tackle abuses, particularly sham marriage. It follows on from, and is linked to, my recent inspection of a sham marriage enforcement operation.¹

For family members who are not EEA nationals, there can be significant benefits in obtaining a residence document, particularly if they would otherwise have no right to be in the UK. The Home Office has identified that abuse of this application route is a growing problem and, in my sample, I found that many of the non-EEA spouses refused residence cards were overstayers. As European law places no restriction on repeat applications, I also saw refused applicants avoiding removal by making new applications, even if they submitted the same evidence as before.

I found significant attempted abuse by non-EEA nationals applying on the basis of marriage or civil partnership with a European citizen. There were sham marriages and marriages by proxy (the couple remained in the UK and both were represented by others at the overseas wedding ceremony). Most of the proxies were found not to have been valid. The highest refusal rate was for non-EEA applicants sponsored by partners who had relatively recently obtained a Western European nationality. I therefore recommend that the Home Office further analyses the level of abuse in these cases.

If the Home Office does not act decisively to identify and tackle these abuses, many of the individuals involved may go on to obtain settlement in the UK on the basis of relationships that are not genuine.

I found that most of the decisions to refuse to issue documents were reasonable. There were effective processes in place to identify forged and counterfeit documents and staff were alive to the risks of fraudulent applications and use of deception. The introduction of interviews had also provided an additional tool for probing suspected sham marriages. However, those practising deception were generally not prosecuted unless organised criminal gangs were involved. I saw no effective sanction to deter abuse at an individual level. Work was underway to improve intelligence on the scale and nature of abuses of free movement, but this remained at an early stage.

In January 2014, the Home Office brought in a new power to remove EEA nationals involved in fraudulent applications, but I remain concerned about the general lack of prosecution and sanction against individuals found to have abused the system. The Home Office needs to match its powers with robust intelligence-gathering, resource allocation and enforcement activity, in order to ensure that significant abuse of this route to remaining in the UK is tackled effectively.

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

John Vine CBE QPM
Independent Chief Inspector of Borders and Immigration

¹ <http://icinspector.independent.gov.uk/wp-content/uploads/2014/01/An-Inspection-of-a-Sham-Marriage-Enforcement-Operation-Web-PDF.pdf>.

KEY TERMS FOR THIS REPORT

EEA	The European Economic Area comprises the member states of the European Union, plus, via separate agreement, Iceland, Liechtenstein and Norway. Switzerland also benefits via another agreement.
Treaty rights	EEA nationals have a right of residence in the UK for longer than three months if they are a worker, jobseeker or student, or a self-employed or self-sufficient person and meet the conditions for residency. This is also referred to as ‘exercising Treaty rights’. There is more information in Chapter 3.
‘The Regulations’	The Immigration (European Economic Area) Regulations 2006 (SI 1003/2006), as subsequently amended. These transpose European Directive 2004/38/EC into UK law and govern UK entry and stay for EEA nationals and their non-EEA family members.
EEA1 application for a registration certificate	EEA nationals can choose to apply to the Home Office for this document as confirmation that they are exercising Treaty rights. EEA1, and EEA2 (below), are the terms used by the Home Office, which we use for convenience.
EEA2 application for a residence card	Non-EEA family members of EEA nationals who are exercising Treaty rights can choose to apply to the Home Office for this to be endorsed in their passport as confirmation of their right to be in the UK. This report concentrates on spouses and civil partners.
Marriage of convenience	Stated in the European legislation as contracted ‘for the purpose of avoiding the effect of one or more provisions of United Kingdom immigration law or the immigration rules’. ²
Sham marriage	Term used in the UK Regulations for a marriage of convenience. Both terms are used interchangeably in this report to refer to marriages and civil partnerships of convenience.
Marriage by proxy (proxy marriage)	At such a marriage ceremony, someone else (often a family member) acts as a ‘proxy’ for a person being married. Both parties to the marriage may be represented by other people. Proxy marriages are legal in some countries and the UK must accept such a marriage if proxy marriage is valid in the country where it was conducted and the process was correctly conducted.

² <http://www.legislation.gov.uk/ukpga/1999/33/section/24>, subsection 5b.

CHAPTER 1: EXECUTIVE SUMMARY

- 1.1 To stay in the UK after an initial three months, nationals of the European Economic Area (EEA)³ must be exercising their right of free movement (their ‘Treaty rights’). They and their family members may apply to the Home Office for a document to demonstrate their status, but this is not mandatory. Such applications are subject to European law and are decided in accordance with the Immigration (European Economic Area) Regulations, not the domestic Immigration Rules.
- 1.2 This inspection examined the efficiency and effectiveness of the application process for EEA nationals seeking registration certificates, as well as for non-EEA partners and spouses applying for residence cards. It also looked at how the Home Office deals with fraudulent applications for European documents, in particular applications through marriages of convenience (sham marriage), and the investigative and enforcement activity that takes place in such cases.⁴

Positive Findings

- 1.3 We assessed decision quality in refusal cases, the only ones where retained evidence enabled us to do so. We were pleased to find that 28 of the 29 decisions to refuse EEA nationals registration certificates were reasonable (97%), with only one unreasonable.⁵ In assessing 55 cases where non-EEA spouses and partners had been refused residence cards, we found 47 (85%) to be reasonable and eight (15%) not.⁶

28 of the 29 decisions to refuse EEA nationals registration certificates were reasonable (97%)
- 1.4 We found that allowed appeals in European cases were being analysed. This was a positive step and in line with recommendations we have made previously on this issue.⁷ Analysing appeal outcomes had enabled the Home Office to continue its robust approach to establishing whether proxy marriages, commonly involved in abuse, were legally valid. Our sample contained mostly Nigerian and Ghanaian proxy marriages. None of the 29 proxy couples had been on the same continent as their wedding ceremony, most having been in the UK at the time. 24 couples (83%) were refused on the basis that the marriages were invalid.
- 1.5 We found an efficient process for identifying forged and counterfeit documents submitted with applications. Both caseworkers and managers were alive to the risks that these posed.

We found an efficient process for identifying forged and counterfeit documents submitted with applications
- 1.6 The marriage interview process had given caseworkers an additional source of evidence on which to make decisions in cases where they suspected a marriage was one of convenience. While there is some room to improve the interview process, we agreed from our observation of eight of these

³ The EEA comprises the member states of the European Union (full list at footnote 15) plus, via separate agreement, Iceland, Liechtenstein and Norway. Switzerland also benefits via another arrangement.

⁴ Suspected marriages of convenience were also the subject of our short-notice inspection, published in January 2014 (<http://icinspector.independent.gov.uk/wp-content/uploads/2014/01/An-Inspection-of-a-Sham-Marriage-Enforcement-Operation-Web-PDF.pdf>). This concerned an enforcement operation at a register office to disrupt suspected marriages of convenience before they happened.

⁵ One further out of 30 refusals lacked the necessary retained evidence for us to assess it.

⁶ Five cases of the total of 60 lacked the necessary retained evidence for us to assess them.

⁷ For example - <http://icinspector.independent.gov.uk/wp-content/uploads/2013/01/marriage-and-civil-partnerships-FINAL-PDF.pdf>, pages 43-5.

double interviews that they are a useful addition to the investigative stage. We found that recent changes to the Regulations, designed to enable caseworkers to take into account a couple's failure to attend interviews and to enable enforcement against EEA nationals knowingly involved in fraudulent applications, had been implemented collaboratively. They were also strongly supported by staff and had led to a higher interview attendance rate.

- 1.7 Following the development of a backlog of undecided applications between 2010 and 2012, a new management team in European casework had acted to improve capacity by bringing in staff from other parts of the Home Office and from an external employment agency. This had allowed managers to start making significant inroads into clearing the backlog they had inherited and they achieved their target of completely eliminating the backlog of workable cases⁸ by 1 April 2014. Their efforts have been recognised by the recent award of the Customer Service Excellence standard.⁹

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Areas for improvement

- 1.8 We were unable to judge decision quality when residence cards and registration certificates were issued, as most supporting documents had not been retained. An adequate record of the decision-making process should be retained in all cases, not just refusals. This is important, both from an audit perspective and also to allow the Home Office to identify patterns that could point towards abuse. We found that 22% of electronic records had information that was incomplete, unclear or difficult to find. In many cases this included a failure to leave a clear audit trail to show which of the indicators of potential sham marriage had led to an interview being scheduled. The Home Office should improve the recording of this information and use it to ensure that the appropriate cases are being selected for interview.
- 1.9 We found that management information on the performance of European casework was insufficient. While decision outcomes and processing times were analysed, we noted gaps in the collection of information such as whether the local enforcement team was asked to visit the address given by the applicants, whether a visit was made and whether the feedback from it had any bearing on the decision. The Home Office needs robust management information to be able to assure Parliament and the public that its processes are efficient and effective.
- 1.10 Registration certificates for EEA nationals should be issued as close to 'immediately' as the UK's centralised system can achieve (and within the Home Office's own 20-working days target). We found that the 20-day target was achieved in only 32% of our sampled files. This was a poor performance. Where a registration certificate was requested at the same time as the non-EEA partner applied for a residence card ('linked' cases), the decision took four times longer than non-linked requests. This is unacceptable. Such decisions should be made in a timely fashion, as applicants need certainty as to their status in the UK.
- 1.11 We found a similarly poor performance in our sample of non-EEA nationals who had applied for residence cards. The Regulations require these to be issued no more than six months after applications are made. In our sample, 39% of decisions took longer than this.

Management information on the performance of European casework was insufficient

⁸ These are cases where a decision does not depend on receiving information from the applicant or other parts of the Home Office, such as prosecution staff.

⁹ The Customer Service Excellence standard focuses on delivery, timeliness, information, professionalism and staff attitudes. <http://www.customerserviceexcellence.uk.com/>.

1.12 Some cases, where there was suspicion of sham marriage, were not subjected to the appropriate level of scrutiny. Caseworkers ran out of time to conduct interviews with applicants and their sponsors because applications were still being worked on as the six-month deadline approached. A sifting process is needed that would allow residence card applications that require additional scrutiny to be identified upon receipt and decided on the basis of all relevant evidence.

Some cases, where there was suspicion of sham marriage, were not subjected to the appropriate level of scrutiny

1.13 The application form was insufficiently clear on the evidential requirements that had to be met before the Home Office would issue a registration certificate to an EEA national or a residence card to their spouse/partner. Because of this, some applications were refused that otherwise might not have been. Managers agreed that the application process could be improved. The Home Office should therefore make the application process as clear as possible, not least to reduce unnecessary repeat applications and appeals.

1.14 In our sample of non-EEA applicants, 43 of the 60 whose applications were refused (72%) made repeat applications or appealed. This meant that they could not be removed from the UK. Removals are challenging in such cases, because the Home Office is obliged to consider repeat applications even if they raise no new issues. Nonetheless, recent changes to the Regulations give the Home Office greater powers to act against applicants who seek European documents through fraud, including removal of the EEA national sponsors. The Home Office should seek to remove as many refused non-European applicants and their sponsors as it can.

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1.15 Within the investigative stage, we identified that separate interviews of couples could identify discrepancies, but interviewers could encounter well-rehearsed responses. In one case a non-EEA national was issued with a residence card, but might not have been, had the interviews been more probing. We recommend talking to couples together at the end of the interview to observe any lack of interaction, which is a key pointer to a potential sham relationship. We noted that enforcement team visits to couples' addresses were not an efficient use of such an expensive and highly trained resource. We consider that piloting the use of non-arrest trained interviewing staff to undertake some of these visits would release enforcement staff for tasks that do need their powers.

1.16 When we analysed the nationality pairings in our sample of 120 marriage cases (both genuine and sham), we found that 27 of the 76 West European EEA partners (36%) had been born outside Europe and gained a European nationality before coming to the UK. They were often sponsoring non-EEA partners of their own original nationality or a similar cultural background. The refusal rate for this group was higher, at 59%, than overall for EEA2 applicants sponsored by West Europeans (53%). Our findings suggest that the European citizenship route is becoming an increasingly important way into the UK for those whose origins lie outside the EEA, particularly now that the Immigration Rules have been tightened. This was reinforced by the fact that 43% of those who were refused residence cards in our sample were either overstayers or illegal entrants.

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1.17 Based on our analysis of EEA sponsors in our sample, the Home Office needs to gather information on migration to the UK from other parts of the EEA, both of EEA nationals and their non-EEA partners. This would allow the Department to tackle emerging trends of abuse more effectively.

1.18 The Home Office targets sham marriage facilitation and trafficking by organised crime gangs, but there has been little capacity to undertake lower-profile prosecutions to deter individual abuses. We found that many staff, in both casework and enforcement, voiced concern at this historic lack of action. It was disappointing to find that the Home Office was not pursuing those suspected of criminal offences which fell outside its definition of organised crime.

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1.19 Enforcement staff welcomed recent changes to the EEA Regulations designed to facilitate action against those involved in fraud and told us that some EEA nationals involved in deception had already been removed. The Home Office should publicise these new removals as a deterrent.

1.20 We are concerned, however, that there is no strategic initiative to ensure that enforcement teams are resourced (both in staffing and prosecution skills) to implement the prosecution and/or removal of offenders. We refer back to the recommendation in our linked short notice report,¹⁰ that enforcement teams should be adequately resourced for tackling sham marriage.

1.21 There is no concerted end-to-end approach to combating this abuse of Treaty rights and yet all the functions, apart from the wedding ceremonies, sit with the Home Office. We found staff concerned about under-reporting of suspected sham marriages but we also found that formalised co-operation across the relevant Home Office functions was only in its early stages.

1.22 Intelligence on the actual extent of sham marriage is much needed, but the planned intelligence hub in Liverpool had yet to receive its new staff when we were on-site. A new intelligence management system to which all staff would have access was also still in its roll-out phase. We welcome the appointment of a single senior manager with responsibility for this particular abuse, but it will clearly be some time before the Home Office develops an understanding of the full scale of sham marriage abuse and a fully co-ordinated approach to tackling it.

It will clearly be some time before the Home Office develops an understanding of the full scale of sham marriage abuse

¹⁰ See footnote 4.

CHAPTER 2: SUMMARY OF RECOMMENDATIONS

We recommend that the Home Office:

1. Decides all linked applications for registration certificates and residence cards in a timely manner.
2. Ensures that residence card applications that require additional scrutiny are identified upon receipt and decided on the basis of all relevant evidence.
3. Makes the application process as clear as possible within the constraints of the European Directive.
4. Analyses existing records to discover if those naturalised as EEA nationals are disproportionately represented in abuse of free movement rights.
5. Speedily removes those who sponsor, or seek to benefit from, marriages of convenience.
6. Collects comprehensive and robust management information on all aspects of European casework.
7. Retains an adequate record of the reasons for its decisions in both issue and refusal cases.
8. Retains a record of the reasons for requesting marriage interviews and uses this information to ensure that appropriate cases are selected for interview.
9. Ensures that couples are spoken to and observed together where the relationship is suspected to be one of convenience.
10. Pilots pastoral/home visits being undertaken by non-enforcement staff who are experienced in interviewing.

CHAPTER 3: BACKGROUND

Free Movement Rights

3.1 The Treaty of Rome (1957) established the European Economic Community (EEC, the predecessor to the EU) and enshrined the principle of freedom of movement for workers across the Community.¹¹ The UK became subject to these provisions when it joined the EEC in 1973.

3.2 In 1992 the Maastricht Treaty expanded these rights:

‘Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect’.¹²

3.3 In 2004 free movement rights were consolidated into the ‘Free Movement Directive’ (2004/38/EC)¹³ (hereafter ‘the Directive’). This was transposed into domestic law via the Immigration (European Economic Area) Regulations 2006 (hereafter ‘the Regulations’).¹⁴ The Regulations govern the entry into, stay in, and expulsion from the UK of European Economic Area (EEA) nationals. The EEA comprises the 28 Member States of the EU,¹⁵ as well as Iceland, Liechtenstein and Norway. Swiss nationals also enjoy free movement rights through a separate agreement.

EEA nationals: registration certificates

3.4 An EEA national may enter the UK if they produce a valid passport or national identity card of an EEA country. They may reside in the UK for three months, so long as they do not become an unreasonable burden on the UK’s ‘social assistance system’.¹⁶

3.5 After three months, an EEA national must be exercising ‘Treaty rights’ to remain in the UK and generally can remain as long as they are exercising those rights. A person exercising Treaty rights would be a:

- worker;¹⁷
- self-employed person;
- self-sufficient person;
- jobseeker; or
- student.

¹¹ http://ec.europa.eu/economy_finance/emu_history/documents/treaties/rometreaty2.pdf, page 21.

¹² <http://www.eurotreaties.com/maastrichtec.pdf>, page 5.

¹³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:en:PDF>

¹⁴ <http://www.legislation.gov.uk/ukxi/2006/1003/contents/made>

¹⁵ Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom.

¹⁶ <http://www.legislation.gov.uk/ukxi/2006/1003/contents/made>, regulation 13(3)(b).

¹⁷ In certain circumstances a person who had been a worker would still be regarded as exercising Treaty rights if they ceased work through incapacity (this also applies to self-employment), or through unemployment.

3.6 Such a person derives their rights directly from EU law. However, they may, if they choose, apply to the Home Office for a 'registration certificate'. This does not confer a right to stay in the UK, but rather confirms that they are exercising Treaty rights here. It is therefore different to applications made by nationals of non-EEA countries under the Immigration Rules, where the Home Office grants someone the right to enter or stay in the UK. A registration certificate, although not mandatory, may nonetheless be useful to EEA nationals as confirmation of their right to work in the UK, or for other purposes such as access to public services.

Non-EEA family members: residence cards

3.7 To facilitate the exercise of free movement rights by EEA nationals, the Directive allows the following family members to reside in the UK:¹⁸

- spouse or civil partner;
- direct descendants (e.g. children, grandchildren) of the EEA national or of their spouse/civil partner who are under 21 or dependent; or
- dependent direct relatives in the ascending line (e.g. parents, grandparents) of the EEA national or of their spouse/civil partner.¹⁹

3.8 If those family members are EEA nationals, they could also apply for registration certificates. They would not need to show that they themselves are exercising Treaty rights, merely that they are a family member of someone who is.

3.9 The same rights extend to family members who are not themselves EEA nationals. They may, if they choose, apply for a 'residence card' as confirmation of those rights. This card must be issued no later than six months after the necessary evidence is presented. Applicants need to show that they are the family member of an EEA national who is a qualified person. The EEA national may form a relationship with a non-EEA national who is already in the UK. Otherwise, to enter the UK the non-EEA national should first obtain a 'family permit' from an overseas visa post, unless they already have a document confirming their rights under the Regulations. In practice, residence cards are useful documents for non-EEA family members, as they demonstrate that they are entitled to be in the UK under EU law and are not subject to the domestic Immigration Rules.

3.10 EEA nationals and their family members may obtain the right to reside in the UK permanently, most commonly if the EEA national has resided in the UK as a qualified person continuously for five years.

The application process

3.11 Applications for registration certificates and residence cards are considered by staff in Permanent Migration, which is based in Liverpool and is part of UK Visas and Immigration. Applicants must pay a £55 fee, but there are otherwise few specific requirements for the manner in which an application is made.

3.12 To receive a registration certificate, an EEA national who applies on the basis that they are exercising Treaty rights must show that they are:

- an EEA national (by submitting their passport or national identity card); and
- exercising Treaty rights (by submitting evidence specific to the relevant Treaty right).

3.13 To receive a residence card on the basis of marriage/civil partnership, a non-EEA family member must show that:

¹⁸ The list of family members relating to students is narrower.

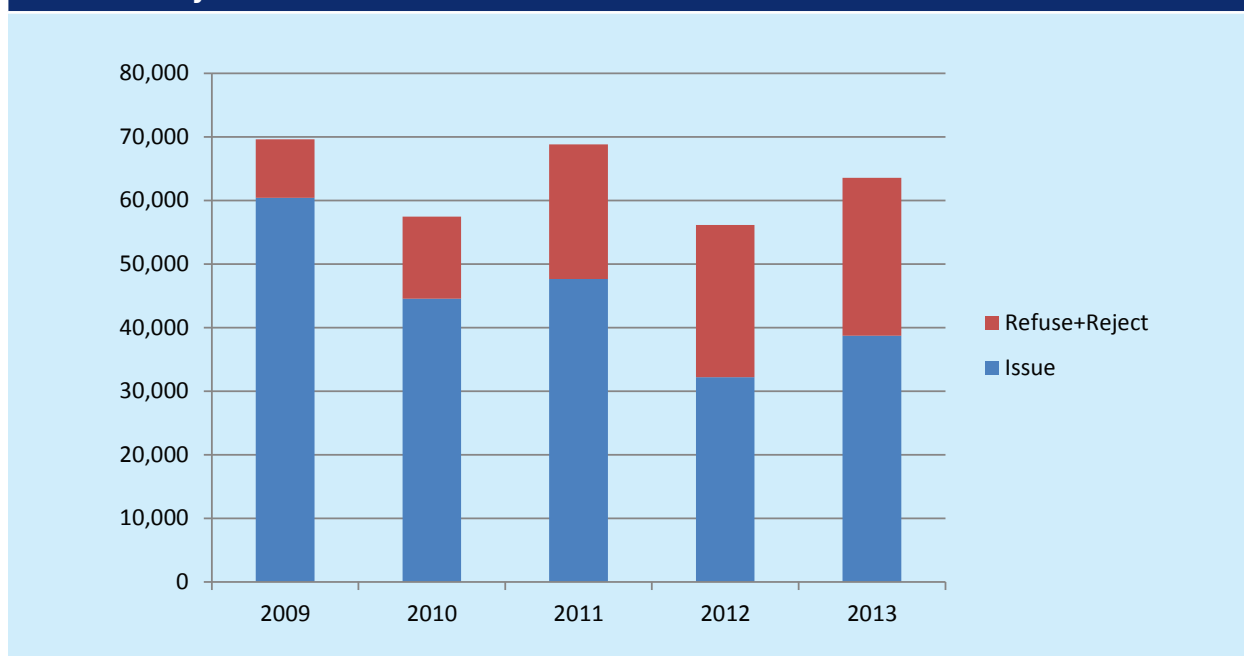
¹⁹ In certain circumstances, other family members ('extended family members') may qualify, but they require Home Office permission.

- the person whom they claim is their spouse/civil partner (their ‘sponsor’) is an EEA national who is exercising Treaty rights (by submitting the same evidence as above);
- they are related to their sponsor (by submitting the marriage/civil partnership certificate – for simplicity, we henceforth refer to these collectively as ‘marriage certificates’); and
- they are the person named on that certificate (by submitting their passport).

Number of decisions on applications

3.14 In 2013, the Home Office made 63,558 decisions on applications for registration certificates or residence cards. Published data does not distinguish between applications for registration certificates and those for residence cards. Figure 1 shows how the number of decisions has varied over time, but has consistently been between 55,000 and 70,000 a year.

Figure 1: Decisions on applications for registration certificates and residence cards in the last five years.



* A refusal was a case which was judged not to meet the requirements of the Regulations, whereas rejections were applications not considered to be valid.

3.15 In 2011 and 2012, applications were ‘pre-sifted’, which led to an initial rejection of many applications on grounds under which, had they been fully processed, they might instead have been refused. The pre-sift has now been discontinued. We place rejections and refusals together in Figure 1 because it is not possible to disaggregate them. A case might still be rejected now, for example, because no fee has been paid.

3.16 However, Home Office management information which we received, covering the period April-September 2013 (the period covered by our sample of case files), shows this split. Figure 2 illustrates this.

Figure 2: Decisions on applications for registration certificates and residence cards, April-September 2013²⁰

Decision result	Number of decisions taken		
	Registration certificates	Residence cards	Total
Issued	7,777 (63%)	8,468 (50%)	16,245
Refused	2,767 (22%)	6,953 (41%)	9,720
Rejected	1,462 (12%)	1,122 (7%)	2,584
Other	357 (3%)	536 (3%)	893
Total	12,363 (100%)	17,079 (100%)*	29,442

*Percentages in this column do not sum to 100 owing to rounding

EEA Nationals in the UK

- 3.17 Only a small proportion of people who could apply for registration certificates actually do so. This means that the people who apply for registration certificates, and the applicants upon whom this report is based, may not be representative of all EEA nationals living in the UK.
- 3.18 The most recent official estimate is that, in 2012, c. 2.6 million UK residents had been born in another EU member state.²¹ In the year ending September 2013, 209,000 EU citizens are estimated to have come to the UK (for the long term).²² Doubling the total figure for registration certificate decisions in Figure 2, to obtain an annual figure, shows that the number of decisions on applications for registration certificates is a fraction of the number of people who might conceivably have applied for them.²³
- 3.19 The Home Office's National Threat Assessment cites European casework as being an area of significant abuse, by people who falsely claim to be, or to be related to, an EEA national exercising Treaty rights. The requirements of the Regulations are less onerous than those of the Immigration Rules. The Government has recently introduced measures to make it easier to take action against abuse (for example, the ability to refuse a registration certificate where there are reasonable grounds to suspect the abuse of a right to reside in the UK and where it is proportionate to do so).²⁴ However, it can act against suspected abuse of free movement only within the constraints of the Directive and the case-law of the European Court of Justice (ECJ).²⁵
- 3.20 One area of abuse is marriages of convenience (sham marriages), where a non-EEA national marries an EEA national purely to benefit from free movement. People suspected of involvement in a sham marriage are likely to be invited to a marriage interview, where both parties are asked the same questions in separate interviews to test whether their relationship is genuine. Alternatively (or sometimes additionally), Immigration Officers may visit their claimed residence to seek evidence of cohabitation. This is known as a 'pastoral visit'.

20 This table contains internal management information provided by the Home Office. It has not been quality assured to the level of published National Statistics so should be treated as provisional and therefore subject to change.

21 <http://www.ons.gov.uk/ons/rel/migration1/population-by-country-of-birth-and-nationality/2012/population-by-country-of-birth-and-nationality-report.html#tab-1-What-do-the-latest-figures-show->. Figures specific to EEA countries are unavailable.

22 <http://www.ons.gov.uk/ons/rel/migration1/migration-statistics-quarterly-report/february-2014/index.html>.

23 The correspondence between the two figures is not exact – for example, the 209,000 figure excludes non-EU countries in the EEA.

24 See Appendix 1, New Regulation 21B(2) <http://www.legislation.gov.uk/ukxi/2013/3032/made>.

25 Formally known as the Court of Justice of the European Union, it rules on matters of Community law.

Previous short notice inspection

- 3.21 This report complements our recent inspection into a sham marriage enforcement operation at Brent Register Office, which was laid before Parliament on 23 January 2014.²⁶ That inspection considered the Home Office's attempts to stop suspected sham marriages before they happen. Its focus was 'Operation Mellor', an initiative started in January 2013, which uses enforcement actions to tackle sham marriages by, for example, disrupting suspicious weddings at register offices. Such an operation would generally follow the submission of a 'Section 24' report to the Home Office by a registrar. This is a statutory duty upon registrars (under Section 24 of the Immigration and Asylum Act 1999) to report to the Home Office any suspicions that a proposed or actual marriage may be a sham.²⁷ Between 14 January and 30 September 2013 the Home Office carried out 500 enforcement operations under 'Operation Mellor', pursuant to Section 24 reports.
- 3.22 This report, linked to that previous one, deals partly with attempts to identify such marriages after they have taken place and when applications for residence cards based upon them have been submitted.

²⁶ See footnote 4.

²⁷ <http://www.legislation.gov.uk/ukpga/1999/33/section/24>.

CHAPTER 4: THE INSPECTION

Terms of Reference

- 4.1 The terms of reference for this inspection were to inspect the efficiency and effectiveness of the Home Office's handling of applications for residence documents under European law, including the abuse of free movement rights, in particular through sham marriages.
- 4.2 To carry out the inspection, we used eight of the Chief Inspector's inspection criteria (see Appendix 4) which are grouped under the themes of:
- Operational Delivery;
 - Safeguarding Individuals; and
 - Continuous Improvement.

Scope

- 4.3 We examined the handling of registration certificate applications made by EEA nationals on the basis of their exercising Treaty rights ('EEA1'). We also reviewed the handling of residence card applications by non-EEA nationals on the basis that they were the spouse or civil partner of an EEA national exercising Treaty rights ('EEA2'). This was to assess:
- the quality and timeliness of decisions made to issue or refuse residence documents in accordance with the legal timescales;
 - the steps taken by the Home Office to investigate people suspected of fraud and deception (using marriage) and, where appropriate, prosecute and/or remove those people; and
 - the quality of information available for making applications, the treatment of people throughout the process and how satisfactory the overall service was.
- 4.4 As we focused on non-EEA spouses and abuse via marriages of convenience (sham marriages), we did not include in our scope the children and wider family members of EEA citizens and any abuses which might arise from those categories, such as fraudulent claims for child benefit.

Methodology

Stakeholder consultation, documentation and case files

- 4.5 We:
- consulted external stakeholders, including those representing applicants and the local register office system;
 - analysed Home Office management information, policy and guidance relating to the handling of EEA registration certificate and non-EEA residence card applications;
 - consulted the legislation, both European (the Directive) and domestic (the Regulations);²⁸ and

²⁸ To help us assess these cases against our criteria, we used the law, policy and guidance at the time these cases were decided.

- requested 180 Home Office cases where decisions on applications were made between 1 April and 30 September 2013.²⁹

4.6 The 180 cases comprised 60 applications each for:

- registration certificates split evenly between issue and refusal by the Home Office;
- residence cards split evenly between issue and refusal by the Home Office where no marriage/civil partnership interview had been scheduled; and
- residence cards split evenly between issue and refusal by the Home Office where a marriage/civil partnership interview had been scheduled.

4.7 Case file numbers were selected at random. Separate to the file sample, we requested an additional four cases where appeals against the initial Home Office decision to refuse documentation had been allowed by Immigration Judges. These were also provided.

The on-site phase

4.8 The on-site phase of the inspection took place between 13 and 24 January 2014. During that period, we interviewed staff and managers across four Home Office Directorates:

- Permanent Migration Directorate: European Casework in Liverpool;
- Immigration Enforcement Directorate: Immigration, Compliance and Enforcement (ICE) teams in Liverpool and Bedford, responsible for carrying out operations at register offices and for doing pastoral visits;
- Immigration Intelligence: staff in London and Liverpool responsible for developing Home Office intelligence capability to prevent and detect immigration offences; and
- International Directorate: Strategic Policy ('Free Movement' team) in London.

4.9 At these locations we interviewed senior, policy and operational managers, and staff with responsibilities for casework, analysis, investigation, forgery detection, intelligence and enforcement. A breakdown of the 62 Home Office staff and managers interviewed is set out below in Figure 3.

Figure 3: Home Office staff interviewed during the inspection	
Administrative Officer (AO)	1
Executive Officer (EO)	22
Immigration Officer (IO)	12
Higher Executive Officer (HEO)	7
Chief Immigration Officer (CIO)	2
Senior Executive Officer (SEO)	5
Immigration Inspector (HMI)	2
Grade 7	8
Grade 6	1
Senior Civil Service	2
Total	62

²⁹ Paper files are kept only for refusal cases, as we discuss in the report.

- 4.10 When in Liverpool, we also observed eight couples being interviewed (16 interviews) and eight real-time assessments of applications.
- 4.11 On 6 February, nine working days after completing on-site interviews, the inspection team delivered high-level emerging findings to the Home Office.
- 4.12 The inspection identified 10 recommendations for improvement.
- 4.13 This report was submitted to the Home Secretary on 7 May 2014.

CHAPTER 5: INSPECTION FINDINGS – DECISIONS AND USE OF RESOURCES

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

5.1 Our file sampling assessed:

- the quality of the decisions made on the applications, where the retained evidence allowed us to do so;
- whether decisions were being made in a timely manner and in line with legal requirements set out in the Regulations; and
- whether adequate records had been retained of the decision-making process in individual cases.

Record-keeping and CID notes

5.2 Where the Home Office refused to issue a registration certificate or a residence card, it returned original evidence to the applicant, but it retained copies in case of an appeal. However, in cases where the Home Office decided to issue a registration certificate or a residence card, evidence was not retained, which meant that we were unable to assess the quality of those decisions.

5.3 While on-site, we explored the reasons for not retaining evidence in issue cases with staff and managers. The main reasons they cited were the extra staff time it would take and the need for extra storage capacity.

5.4 Where evidence is not retained, it is important that notes on the Case Information Database ('CID') are comprehensive. We judged that the CID records in 78% of all the cases in our sample were adequate. We were generally impressed by the use of a standardised final CID note, known locally as the 'magic minute'. This outlined all key aspects of the evidence submitted and the caseworker's consideration.

5.5 Nonetheless, there was room for improvement. While we assessed that CID notes in 22% of cases as a whole were inadequate, the figure was much higher for EEA2 cases than for EEA1s. While CID notes were adequate for all EEA1 issue cases and 90% of EEA1 refusals, we assessed them to be adequate in only 73% of EEA2 issue cases and 65% of EEA2 refusal cases. In some instances, evidence and notes relating to EEA2 applicants were contained only in the CID notes of the sponsor, which was confusing and potentially posed a risk to the speedy retrieval of records.

While CID notes were adequate for all EEA1 issue cases and 90% of EEA1 refusals, we assessed them to be adequate in only 73% of EEA2 issue cases and 65% of EEA2 refusal cases

5.6 We have commented in previous reports³⁰ on the importance of retaining an adequate record of the decision-making process, both from an external audit perspective and also for the purpose of internal assurance. Staff told us that it could be useful if, for example, other units needed to look at a case. They also considered that retaining records of decisions, in issue cases as well as refusals, could be a potentially valuable source of intelligence. It would allow analysis and identification of emerging trends of suspected fraud and, where appropriate, prosecutions to be undertaken. We agree and therefore make the following recommendation.

We recommend that the Home Office:

Retains an adequate record of the reasons for its decisions in both issue and refusal cases.

EEA1 applications: Sample findings

5.7 The main nationalities applying for registration certificates in our file sample are detailed in Figure 4 below.

Figure 4: Nationalities of EEA1 applicants

Nationality	Number of applicants
Portugal	12 (20%)
Spain	9 (15%)
Poland	8 (13%)
France	5 (8%)
Latvia	5 (8%)
Italy	4 (7%)
Lithuania	4 (7%)
Hungary	3 (5%)
Others (one or two each)	9 (15%)
Total	59³¹ (100%)*

*Percentages do not sum to 100 owing to rounding.³¹

5.8 Figure 5 shows that employment was by far the most frequently occurring Treaty right in our sample. Less frequently occurring categories such as self-employment or job-seeking were more likely to be refused (usually for evidence reasons). Figure 5 should be read together with Figure 6 below, which shows that ‘insufficient evidence’ for exercising Treaty rights was the most common reason for refusal.

‘Insufficient evidence’ for exercising Treaty rights was the most common reason for refusal

30 Example - <http://icinspector.independent.gov.uk/wp-content/uploads/2013/10/An-Inspection-into-the-Handling-of-Asylum-Applications-Made-by-Unaccompanied-Children-FINAL.pdf>, and <http://icinspector.independent.gov.uk/wp-content/uploads/2012/11/UK-Border-Agencys-handling-of-legacy-asylum-and-migration-cases-22.11.2012.pdf>

31 One applicant, who claimed EEA nationality, later turned out to have a non-EEA nationality.

Figure 5: Treaty rights claimed within the EEA1 sample			
Treaty right claimed	Decisions to issue	Decisions to refuse	All decisions
Employment	29 (97%)	14 (47%)	43 (72%)
Self-employment	1 (3%)	7 (23%)	8 (13%)
Employment and self-employment	0	1 (3%)	1 (2%)
Formerly employed, became unemployed	0	2 (7%)	2 (3%)
Formerly employed, became incapacitated	0	2 (7%)	2 (3%)
Student	0	2 (7%)	2 (3%)
Jobseeker	0	2 (7%)	2 (3%)
Total	30 (100%)	30 (100%)*	60 (100%)

*Percentages in this column and the next do not sum to 100 owing to rounding

Figure 6: Reasons for refusal within the EEA1 sample	
Reason	Number of refusals
Insufficient evidence of Treaty rights	18 (58%)
Fraudulent evidence of Treaty rights	4 (13%)
Evidence submitted did not demonstrate exercise of Treaty rights ³²	3 (10%)
No evidence of Treaty rights	3 (10%)
No evidence of EEA nationality	2 (6%)
Fraudulent evidence of EEA nationality	1 (3%)
Total	31³³ (100%)

- 5.9 The application form used during our sample period asked those claiming to be in employment to provide ‘at least one’ of an employment contract, employer’s letter or recent payslips. Caseworkers checked that companies existed (on Companies House³⁴ or other websites) and often telephoned them to check the applicant’s employment. In one case,³⁵ upon telephoning a high-profile London restaurant cited as the employer, the Home Office was told that this was about the sixth applicant to have fraudulently claimed to work there.
- 5.10 For self-employment, the form requested ‘at least one’ of: invoices/receipts; an accountant’s letter; or business bank statements, and suggested three additional documents which could be submitted (including evidence of National Insurance payments). Caseworkers told us that they considered self-employment the hardest Treaty right to assess and more prone to fraudulent application than the others.

³² Genuine evidence was submitted which showed that they were not exercising Treaty rights; it was not ‘insufficient’ as additional evidence would not have altered that judgement.

³³ One case had two grounds of refusal. These are counted separately.

³⁴ The main functions of Companies House are to incorporate and dissolve limited companies, to examine and store company information and to make this information available to the public. <http://www.companieshouse.gov.uk/>.

³⁵ This was the sponsor in an EEA2 application, but the same issues arise.

5.11 We assessed whether refusal decisions were reasonable but could not do the same for issue cases, because paper evidence was not retained. A reasonable decision was one which was reasonably open to a decision-maker at the time (i.e. it was justifiable). Of the 29 decisions to refuse which we could assess, we were pleased that we found 28 (97%) to be reasonable, and only one (3%) unreasonable.³⁶ Figure 7 below illustrates a reasonable decision:

Of the 29 decisions to refuse which we could assess, we were pleased that we found 28 (97%) to be reasonable, and only one (3%) unreasonable

Figure 7: Example case study of a refusal decision which we found to be reasonable

The applicant (a Latvian national):

- applied for a registration certificate on the basis of employment;
- submitted a purported letter from her employer containing several spelling and grammatical errors; the name of the company (the same as the author of the letter) was spelt differently on the letterhead to the signatory's name lower down; and
- also submitted an unnamed bank statement with the only substantive deposits coming from an unidentified individual.

The Home Office:

- looked unsuccessfully for the company on Companies House, Google and Yell.com; and
- refused the application because of the problems with the letter and the inability to find the company.

Chief Inspector's comments:

- The Home Office investigated this case thoroughly and made a clearly reasonable decision.

EEA2 applications: sample findings

5.12 We sampled 120 cases, split equally between issues and refusals, where a non-EEA national had applied for a residence card as the spouse or civil partner of an EEA national.³⁷ The breakdown of the non-EEA applicants in our sample is set out in Figure 8 below.

³⁶ In one further case we could not judge because most of the evidence had not been retained.

³⁷ See Chapter 3 - other family relationships apply but are outside the scope of this inspection.

Figure 8: Nationalities of EEA2 applicants	
Nationality	Number of applicants
Nigeria	26 (22%)
Pakistan	21 (18%)
Ghana	10 (8%)
Algeria	6 (5%)
Brazil	6 (5%)
Ukraine	6 (5%)
Bangladesh	5 (4%)
Sri Lanka	5 (4%)
India	3 (3%)
Others (one or two each)	32 (27%)
Total	120 (100%)*

*Percentages do not sum to 100 owing to rounding.

- 5.13 Once an EEA2 applicant has made an application, the Regulations require the Home Office to send them a Certificate of Application ‘immediately’. This provides assurance that the case is being dealt with and demonstrates to potential employers that the applicant is permitted to work pending the decision. We were pleased to note that these were issued in every sampled case. The average interval between application and issue was 16 days.³⁸ As staff in Liverpool generally received applications a few days after their initial submission,³⁹ this was a reasonable interval.
- 5.14 The types of (claimed) partnership that we saw in our sample are set out below in Figure 9.

Figure 9: Types of (claimed) marriage/civil partnership within the EEA2 sample, and outcomes			
Partnership type	Decisions to issue	Decisions to refuse	All decisions
UK marriage	38 (63%)	21 (35%)	59 (49%)
UK civil partnership	3 (5%)	0	3 (3%)
Overseas marriage in person	11 (18%)	9 (15%)	20 (17%)
Overseas marriage by proxy	3 (5%)	26 (43%) ⁴⁰	29 (24%)
Marriage (location unclear)	5 (8%)	2 (3%)	7 (6%)
Marriage (nature unclear)	0	1 (2%)	1 (1%)
Not clear	0	1 (2%)	1 (1%)
Total	60 (100%)*	60 (100%)	120 (100%)

*Percentages in this and the final column do not sum to 100 owing to rounding.

³⁸ All averages cited in this report are medians.

³⁹ Caseworkers are based in Liverpool; applicants initially post their applications to the Home Office’s contractor (which processes the fee) in Durham.

⁴⁰ Read with Figure 10 below – 26 of the 29 applications with proxy marriages were refused, 24 of them specifically for the proxy marriage not being valid.

- 5.15 A case may be refused if the marriage is not valid in UK law.⁴¹ This can arise in the case of overseas marriages, especially marriages by proxy which comprised one quarter of our sample. One or both parties are not present at a proxy ceremony, but are represented by others (usually family members). In our sample, the parties to the marriage were usually in the UK and the proxy ceremony itself was on a different continent. Proxy marriages are not permitted in many countries (including the UK). In countries which permit them, they tend to represent more traditional (or ‘customary’⁴²) practices, existing alongside formal marriage arrangements. Case law has established that the UK must accept a proxy marriage if such a marriage is valid in the country where it took place (and was correctly conducted).
-
- In our sample, the parties to the marriage were usually in the UK and the proxy ceremony itself was on a different continent*
-
- 5.16 On-site, staff raised concerns about proxy marriages. One manager termed them ‘a complete nightmare’ as the documentation is difficult to verify as genuine and/or the marriage may not be legally valid. 83% of all the proxy marriages in our sample (29 cases) were refused because the marriage was considered invalid.
- 5.17 Home Office figures indicate that, between April and September 2013, 14% of decisions to refuse residence cards were because of proxy ceremonies (almost twice as many as those formally designated as marriages of convenience). Most proxy marriages in our sample occurred in Nigeria or Ghana, although caseworkers mentioned seeing many Brazilian cases as well. In a submission to the EU Justice and Home Affairs Council in December 2013, the Home Office noted that ‘*the UK authorities consider that they encounter a disproportionately high number of proxy marriage certificates*’.⁴³ In a ‘spot check’ by the Home Office of week commencing 7 October 2013 (just after our sample period), 19% of submitted marriage documents were by proxy.
-
- 83% of all the proxy marriages in our sample (29 cases) were refused because the marriage was considered invalid*
-
- 5.18 Understandable circumstances for proxy marriage quoted in that submission to the EU (military service, incarceration or inability to travel owing to sickness) would be unlikely to apply in this application process, where both parties are expected to be in the UK. Of course, such a marriage might reasonably predate the exercise of Treaty rights in the UK or there might be family and cultural pressure to use an historically customary process.
- 5.19 Separately, a caseworker must also be mindful of whether a marriage is a marriage of convenience or sham marriage, defined in legislation as contracted ‘*for the purpose of avoiding the effect of one or more provisions of United Kingdom immigration law or the immigration rules*’.⁴⁴ The issue with a sham marriage is not the marriage’s legal validity, as it is with proxy marriages, but rather its genuineness (although caseworkers consider that a proxy marriage may also indicate a sham relationship).
- 5.20 The onus is on the Home Office to show, on the balance of probabilities, that the marriage is not genuine. The Home Office can investigate it only if it has reasons for suspicion. In some instances, the Home Office undertakes interviews to establish whether a marriage between an EEA national and their non-EEA spouse is one of convenience or not. These are discussed in depth later in this report.
- 5.21 Figure 10 sets out the reasons for refusal in our EEA2 sample. Invalid proxy marriage was the highest proportion, bearing out the concerns stated by caseworkers. Providing insufficient evidence of Treaty

41 For example, a concealed pre-existing marriage that has been neither dissolved nor annulled would render a new marriage invalid (the offence of bigamy).

42 Practices reflecting customs accepted by particular demographic groups, particularly in fields such as matrimony or the family, which may be formally recognised by the state.

43 ‘Evidence of Fraud and Abuse of Free Movement in the UK’ (<http://www.publications.parliament.uk/pa/cm201314/cmselect/cmeuleg/83-xxviii/8306.htm>).

44 http://www.legislation.gov.uk/ukpga/1999/33/section/24_subsection_5b.

rights (a neutral reason) and sham marriage (an abuse) were next. Several cases had more than one reason for refusal, so the total in Figure 10 is 88 rather than 60.

Figure 10: Reasons for refusal within the EEA2 sample	
Reason	Number of refusals
Invalid marriage [always proxy]	24 (27%)
Insufficient evidence of Treaty rights	18 (20%)
Sham marriage	18 (20%)
Fraudulent evidence of Treaty rights	11 (13%)
No evidence of applicant's identity	6 (7%)
No evidence of Treaty rights	3 (3%)
Fraudulent evidence of sponsor's EEA nationality	3 (3%)
No evidence of sponsor's EEA nationality	2 (2%)
Evidence submitted did not demonstrate exercise of Treaty rights	2 (2%)
No evidence of marriage	1 (1%)
Total	88 (100%)*

*Percentages do not sum to 100 owing to rounding.

5.22 We assessed the reasonableness of these refusal decisions (again, excluding issue cases for lack of paperwork). We could not judge in five cases, generally for lack of retained evidence. Of the remaining 55, we considered 47 refusals (85%) to be reasonable and eight (15%) unreasonable. Figure 11 describes a reasonable decision.

We considered 47 refusals (85%) to be reasonable and eight (15%) unreasonable

Figure 11: Case study of a reasonable EEA2 refusal decision

The applicant (a Nigerian national):

- applied for a residence card on the basis of marriage by proxy (in Nigeria) to a Slovakian woman, who claimed to be exercising Treaty rights.

The Home Office:

- invited the couple to a marriage interview (there were four reasons, including his history of immigration deception and the proxy);
- agreed to the applicant's request to cancel the first interview because his wife was visiting her sick father overseas; the couple did not attend the rearranged interview;
- refused the application because of:
 - doubts about the wife's employment (although payslips had been provided, the company could not be contacted by telephone or located on the internet); and
 - the marriage being invalid, both because it was registered with the authorities 17 months after it occurred (60 days is the maximum for validity in Nigerian law) and lack of evidence that some pieces of information required for registration (such as the parties' ages and occupations) had been provided.

Chief Inspector's comment:

- This was a well-considered, reasoned decision, for which the caseworker did appropriate research.

5.23 Figure 12 describes another proxy marriage decision, this time unreasonable.

Figure 12: Case study of an EEA2 refusal decision considered unreasonable

The applicant (a Ghanaian national):

- applied for a residence card on the basis of marriage by proxy (in Ghana) to a Portuguese woman.
- supplied a 'statutory declaration' from his father and father-in-law. Such declarations are an optional way (in Ghana) of registering a proxy marriage but must include the parties' place(s) of residence at the time of the marriage. It stated that 'our said son and daughter ... are currently residing in the UK'.

The Home Office:

- refused the application solely because 'The statutory declaration that accompanies your marriage certificate does not state where you and the EEA national (the parties to the marriage) were residing at the time of the marriage.'

Chief Inspector's comments:

- The declaration stated that the couple were living 'in the UK', but the application was refused on the basis that it did not say where they were living. If the Home Office knew that more detailed residential information was required to confirm the validity of the marriage, it should have provided evidence of this. It did not, and we can find no such evidence.

- 5.24 Three of the other unreasonable decisions involved the same issue as shown in Figure 12.⁴⁵ A senior caseworker expressed a view that refusals on this basis were weak. We note that the Home Office later moved to refusing cases of Ghanaian proxy marriage for other reasons, such as the need (in Ghanaian law) for parties to marriage to be of Ghanaian descent.
- 5.25 Despite considering most refusal decisions reasonable, a number of these cases contained elements of poor decision-making. For example, in a handful of cases, caseworkers mixed up the regulations relating to people who had come to the UK in order to seek work with those relating to people who had been in employment before becoming unemployed.
- 5.26 In a separate case, one refusal letter said that a call to the employer having been diverted to an answering machine contributed to being unable to validate that the applicant was in work. There is no evidence that the caseworker tried to telephone again or waited for a response, so an incomplete check was included in the refusal letter.

Appeals analysis

- 5.27 In previous reports,⁴⁶ we have recommended that the Home Office does more to learn from allowed appeals. We were pleased to see that European Casework receives bi-monthly analysis reports from the Home Office's Appeals and Litigation Directorate. There is regular liaison, which has had positive outcomes. For example, the recent changes in how Ghanaian proxy marriages are considered derived partly from appeal feedback. The same was true for Nigerian proxy marriages, where cases were initially refused on the basis that such marriages were invalid in Nigeria, until new information demonstrated the contrary. Caseworkers ought, however, to see appeal determinations in their own cases. This would allow the valuable lesson-learning process to be replicated at the level of the individual staff member.

We were pleased to see that European Casework receives bi-monthly analysis reports from the Home Office's Appeals and Litigation Directorate

- 5.28 Compared with areas of immigration casework, such as asylum, the proportion of refused applicants who go on to appeal is low. Home Office figures indicate that fewer than 5% of people refused registration certificates and fewer than 20% of people refused residence cards appeal (this appeals data relates to a cohort of refusal decisions which does not correspond exactly to our file sample period). In our file sample, we note that a larger proportion of applicants appealed. This is, in part, because it is less costly for applicants to make a further application for a registration certificate or residence card than to challenge the Home Office decision by appealing to the Tribunal.
- 5.29 However, where applicants do appeal, the allowed appeal rate is relatively high. In the period of our file sample, 31% of EEA1 appeals were allowed and 35% dismissed. For EEA2 this was 30% allowed and 48% dismissed. We were told that the main reason for allowed appeals was appellants putting new evidence before Immigration Judges, which the original decision maker did not see. Not all of this risk could be mitigated, as people's employment situations can change from day to day. However, later in this report we highlight our concern about the apparent mismatch between what the application form asks for in terms of evidence and caseworkers' expectations of what will be submitted.

Decision timeliness

- 5.30 We assessed the intervals between application and Home Office despatch of the decision for both EEA1 and EEA2 cases. We did this both with reference to the requirements of European law and against the Home Office's own internal targets. The Home Office aimed to decide EEA1 cases in 20 working days and was required to decide EEA2 cases within six months.

⁴⁵ As did two others, but one had further reasons for refusal and in the other we could not assess reasonableness because not all evidence had been retained.

⁴⁶ See footnote 7.

EEA1 applications

- 5.31 The Regulations require the Home Office to issue registration certificates ‘immediately’ upon application and production of evidence that satisfies the necessary legal requirements. ‘Immediately’ is not defined and varies in practice between EU member states. In some countries, literal immediacy is achieved by applying at the local town hall. In the UK’s centralised postal system, with its initial fee collection, literal immediacy is impossible, so the Home Office has for some time had a target to decide applications within 20 working days. Figure 13 shows the interval between application and decision for EEA1 cases in our sample.

Figure 13: Decision timings for applications in EEA1 sample

Case type	Average time between application and decision (calendar days)
All cases	55
All issues	31
All refusals	82
Cases where the application was linked to an EEA2 application	145
Cases where the application was not linked to an EEA2 application	36

- 5.32 Only 32% of the cases in our sample met the Home Office’s 20 working day target. This was a poor performance, caused by the Home Office dealing with a backlog of applications which had built up after staffing capacity had been allowed to fall significantly below required levels.

Only 32% of the cases in our sample met the Home Office’s 20 working day target. This was a poor performance

- 5.33 The Home Office considers that ‘immediately’ does not apply to refusals, and Figure 13 shows the difference that this makes. We agree that the wording of the Regulations justifies this interpretation. Exceeding 20 days should, however, be avoided where possible, not least because, if a case is delayed beyond 20 days for further investigation, that investigation may result in a registration certificate being issued.
- 5.34 Figure 13 also shows that cases linked to an EEA2 application took on average four times as long to decide as those which were not. These extended intervals for linked cases affected both issues and refusals. The average time to decide such applications was 145 days, which cannot be termed ‘immediate’. The longest interval was 461 days.
- 5.35 The Home Office told us that this was because linked EEA1 and EEA2 cases were decided together, by the same caseworker, in the longer EEA2 timescale of up to six months. It clearly makes sense to decide such cases together. This is more efficient. Issues such as Treaty rights are also common to both and, since the new regulation 21B came into force in January 2014,⁴⁷ it has been possible to remove EEA nationals from the UK if they have been involved in abuse of Treaty rights. Waiting for the results of the EEA2 application would make sense in cases where abuse is suspected. We note, however, that it was not possible to remove EEA1 applicants on this basis during the period of our file sample, to which the 145 day figure relates.
- 5.36 This does not, however, permit the Home Office to ignore the need to decide EEA1 cases ‘immediately’. If the Home Office is to decide linked EEA1 and EEA2 cases together, then, rather

⁴⁷ See Appendix 1 or <http://www.legislation.gov.uk/ukxi/2013/3032/made>.

than delay the EEA1 case, as now, it should bring forward the EEA2 case, such that it is decided in as close to an EEA1 timescale as practically possible. This would require linked cases, especially those where a marriage interview may be necessary, to be identified early, rather than considering cases in date order, as now.

We recommend that the Home Office:

Decides all linked applications for registration certificates and residence cards in a timely manner.

EEA2 applications

- 5.37 The Regulations require residence cards for EEA2 applicants to be issued no later than six months after receipt of application and documents. The Home Office considers this to apply to both issues and refusals and sets a six month target for decision in all such cases. This is not entirely within the spirit of the Regulations or the Directive, which clearly envisage six months as a maximum timescale for decision rather than the norm.
- 5.38 In our sample, the average period between application and decision was 167 days (within six months). However, 47 of the 120 cases (39%) took more than six months to decide; the longest interval was 309 days. Our requested sample contained a disproportionate number of cases where marriage interviews were scheduled, which added to timescales, but we noted that the relevant percentage of all residence card decisions was also high at 34%. Since six months is a long period, this was not an acceptable performance.
-
- 47 of the 120 cases (39%) took more than six months to decide; the longest interval was 309 days*
-
- 5.39 New staff to deal with European casework arrived in early 2013. They focused on clearing the backlog of all workable cases⁴⁸ over six months old by the end of March 2014, a goal which they achieved. Our sample spans the periods before and after those new staff arrived.
- 5.40 While we welcome the Home Office's belated efforts to clear the backlog of cases, action to do so has had an impact on caseworkers' ability to give appropriate scrutiny to some more recent applications. In our sample period this meant that newer cases were picked up well after they should have been started. Ensuring that those cases were also processed within six months often left insufficient time for all the possible stages of investigation.
- 5.41 Most notably, 10 cases in our sample were noted as having insufficient time to schedule a second marriage interview after the first had not taken place (a second is supposed to be scheduled in such instances). In an eleventh case, there was no time even to conduct a first interview. In four of these 11 cases, a residence card was issued; in the other seven the applications were refused on grounds other than sham.⁴⁹
- 5.42 It was routine to give applicants a minimum of four weeks' notice of interview, which compounded these difficulties. We could not establish why this period was the standard, when some couples could surely attend earlier. In some cases suspicions which led to the couple being invited to interview could not be investigated in the time available. Figure 14 is one such example.

⁴⁸ These are cases where a decision does not depend on receiving information from the applicant or other parts of the Home Office, such as prosecution staff.

⁴⁹ One case was refused partly because non-attendance was taken as proof that the marriage was sham. That was not in line with policy at the time.

Figure 14: Case study of a potential sham marriage case having to be decided on the submitted application only

The applicant (a Pakistani national):

- applied on 22 December 2012 for a residence card based on his (UK) marriage to a Lithuanian woman.

The Home Office:

- on 25 January 2013, first registered the case on CID;
- on 11 March, recorded that an interview was needed;
- on 16 April, invited the couple for an interview (on 23 May) because of concerns about the photographs which they had submitted and the fact that the wedding had taken place at a location which the Home Office considered to be a source of sham marriages;
- following their non-attendance, on 28 May wrote that a second interview was not feasible 'due to the case being six months old';
- on 1 August, wrote 'due to time constraints unable to verify the relationship. On evidence submitted there are no grounds for refusal';
- Issued a residence card on 16 September.

Chief Inspector's comments:

- Following a series of significant delays before and during case consideration, there was no time to schedule a further interview slot within the six months. No pastoral visit was requested as an alternative. So, an applicant about whose marriage doubts had been raised was issued a residence card (and the decision was still issued after six months had passed).

5.43 Senior managers assured us that such problems would be resolved by April 2014 and that they expected caseworkers to start considering cases earlier in future. Nonetheless, we consider that there should be some form of prioritisation of cases from the outset, to identify those that are potentially more complex and will therefore need more in-depth scrutiny. This would ensure that where, for example, an interview is deemed necessary to investigate suspicions of sham, there is time to carry this out before a decision is made, even in the event of an initial cancellation.

There should be some form of prioritisation of cases from the outset, to identify those that are potentially more complex and will therefore need more in-depth scrutiny

We therefore recommend that the Home Office:

Ensures that residence card applications that require additional scrutiny are identified upon receipt and decided on the basis of all relevant evidence.

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

Resource issues

- 5.44 In 2010 the European Commission raised concerns with the Home Office about the time taken to decide EEA2 applications. The Home Office provided assurances that matters would improve, and for a brief period they did. However, from 2011 staff numbers within European Casework declined dramatically. A major cause was the departure of many staff under a Home Office-wide voluntary exit scheme and, at one point in 2012, the area had only 37% of its required caseworker resources. This caused a dramatic increase in the number of cases awaiting decision.⁵⁰ In September 2012 10,472 applications (of all European case types) were received, but only 4,372 cases decided. This meant that the Home Office was failing to fulfil its legal obligation to decide residence card applications within six months. In addition, it meant that the Department was not meeting the undertaking it had given to the Commission.
- 5.45 In the period after 2010, the Home Office failed to resource European Casework consistently to meet the legal requirement to decide all residence card applications within six months. This risked infraction proceedings from the European Commission, with consequent reputational damage to the UK, and also meant that applicants were provided with an unacceptably poor level of service.
- 5.46 The Home Office must also consider the well-being of its own staff. A manager described those who were left to carry the burden, until reinforcements were fully trained, as ‘frazzled’.
- 5.47 A new management team was in place in European Casework from the autumn of 2012. They addressed the situation they had inherited very effectively. From late 2012, efforts were made to increase staff numbers and, between January and March 2013, over 150 caseworking staff were brought in from a recruitment agency and fully trained. The experience of most staff interviewed was that the agency staff had been effectively integrated with their permanent counterparts. One said that the new staff were very able and brought a refreshing, outside perspective. Supervisory roles were also filled.
- 5.48 These new resources helped to reduce the number of outstanding cases. We were pleased to see that, in all but two of the months between February 2013 and March 2014, the number of decisions made exceeded the number of applications received. Between mid-November 2013 and mid-February 2014, the number of EEA2 cases which had been outstanding for over six months fell by 63%.
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- The Home Office must ensure that it maintains an effective resource level in order to meet legal timescales and to provide a consistent level of service to applicants*
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- 5.49 The Home Office must ensure that it maintains an effective resource level in order to meet legal timescales and to provide a consistent level of service to applicants. Having so many agency staff, who could leave at one week’s notice and whose successors would require extended training, is an acknowledged risk. We welcome the management decision to sustain stability by extending agency contracts until December 2014 and the plans to run recruitment for fixed-term appointments⁵¹ this year.
- 5.50 We were pleased to see that European Casework was effectively monitoring its resource situation and likely future needs. This included:
- detailed monitoring tools to forecast future needs;
 - monitoring recruitment by other government departments, which could cause agency staff to leave; and

⁵⁰ Other causes of the backlog included cases placed on hold while particular policy issues were resolved.

⁵¹ Current applications projections do not justify recruiting staff on permanent contracts, so fixed-term appointments will be offered. Such contracts are often for 18 months or two years, with options for extension or being made permanent if a business need for extra permanent staff is identified.

- tracking the general job market in Liverpool.

- 5.51 One unknown was the effect on application numbers of the removal of transitional controls on Bulgarian and Romanian migrants in January 2014. When we were on-site in late January, there had been no ‘spike’ in applications.⁵² We were encouraged to find that contingency plans were in place should the number of applications rise, including the ability to bring across other Liverpool-based caseworking staff.
- 5.52 It is important not only to have sufficient staff, but also to use them effectively. In November 2013, there were 118.6 full-time equivalent (FTE)⁵³ caseworkers at the first-level management grade of Executive Officer (EO) grade and 8.9 (FTE) at the more junior Administrative Officer (AO) grade. EOs decide all EEA2 cases and EEA1 refusal cases. AOs decide EEA1 issue cases.
- 5.53 We found it surprising that different grades considered EEA1 issues and refusals. An AO considering that a case should be refused refers it to an EO. An AO must therefore be able to identify refusals, so could also complete them, and AOs told us that they wished to do so. We heard that EOs usually agree with AOs’ judgements so two staff conduct a similar consideration process for the same decision – an inefficient use of resources. We consider that AOs should make all EEA1 decisions and were pleased to hear that managers would be piloting this.
- 5.54 European Casework has productivity targets to ensure that staff use their time effectively. Across all case types, it seeks to make, on average, 4.1 decisions per person per day, which it has mostly been exceeding. These sit alongside targets for measuring decision quality – new staff have all their decisions assessed and move to the standard for other staff (2%) only when judged ready. Performance is monitored regularly and in detail, for example in weekly managers’ meetings. However, the productivity targets allow for the different amounts of time that individual cases, and case types, take, so staff are not penalised for taking longer over complex decisions. Although some staff considered their work ‘stats-driven’, they did not feel that the targets led to cases being rushed.
- 5.55 Targets can lead to perverse outcomes, as we noted in a previous report on asylum,⁵⁴ so we find it encouraging that European Casework combines rigorous assessment of productivity with allowances for complicating factors.

Conclusion

- 5.56 Despite the variations in resource levels dedicated to this area of work, at the time of the inspection we were encouraged by local management’s focus on dealing with outstanding cases and its plans for moving forward.

⁵² Figures for January to March indicate that that situation has not altered.

⁵³ For example: a member of staff who worked Monday to Friday would be 1.0 FTE; one who worked Monday to Wednesday would be 0.6 FTE.

⁵⁴ http://icinspector.independent.gov.uk/wp-content/uploads/2010/03/Asylum_Getting-the-Balance-Right_A-Thematic-Inspection.pdf.

CHAPTER 6: INSPECTION FINDINGS – IMMIGRATION OFFENCES AND USE OF ENFORCEMENT POWERS

Customs and immigration offences should be prevented, detected, investigated and, where appropriate, prosecuted.

Introduction

- 6.1 European law has primacy over the UK's domestic immigration legislation. In our EEA2 sample, for example, an Ecuadorian national was arrested for theft, cautioned and found to have no permission to be in the UK. Papers were then served on him as an illegal entrant but, within one month, his naturalised Spanish wife had proved that she was exercising Treaty rights and obtained a residence card for him. He could use that to demonstrate that he was in the UK on the basis of exercising Treaty rights.
- 6.2 Although this particular case did not involve any obvious deception, others are making fraudulent applications for residence cards with a view to circumventing the Immigration Rules. The Home Office considers that this is a significant issue. This chapter examines abuses of such rights, with a particular focus on sham marriage.

Prevention and deterrence

- 6.3 Prevention of sham marriage has two aspects: intelligence-led activity and deterrence activity. In January 2014 we described intelligence-led Home Office enforcement activity at register offices to stop sham weddings before they take place.⁵⁵
- 6.4 Deterrent activity is undertaken, in part, by Criminal and Financial Investigation (CFI) teams which focus on organised crime groups (so-called Level 2 crimes). Less action is taken against sham marriages which do not have links to organised crime (so-called Level 1 crime).

- 6.5 As in our recent short-notice inspection, a register office representative we consulted during this inspection confirmed that there were blatantly sham couples attending for their weddings even after being warned that suspicions about their genuineness had been reported to the Home Office. The representative described them attending their weddings in 'anoraks and beanie hats', with little interaction (as they lacked a common language) and even using their mobile phones to send texts throughout the ceremony.

There were blatantly sham couples attending for their weddings even after being warned that suspicions about their genuineness had been reported to the Home Office

- 6.6 However, we were also told of a case where disruption of a wedding apparently deterred two other couples, who had planned to marry in the same week but then cancelled. This suggested some link (potentially a facilitator involved in all three, which could indicate a level of organised crime), but there was no prosecution capacity to follow this up. The enforcement team for that register office area

⁵⁵ See footnote 4.

had no Level 1 prosecution capacity of its own. In our previous report, we discussed ‘displacement’ of sham marriages around register offices. There is therefore a risk that the two couples simply went to another register office where the local ICE team was not so active in tackling sham marriage.

- 6.7 The Home Office is expecting the new Regulations 19 and 21B of 1 January 2014,⁵⁶ which enable removal of the EEA national involved in any abuse of Treaty rights, to act as a stronger deterrent. However, the new power will still need to be supported by robust enforcement action in order to be effective.

Detection of suspected fraud and deception by EEA national applicants and sponsors.

- 6.8 Our file sample identified fraudulent evidence of Treaty rights as a reason for refusal in 13% of the 30 EEA1 refusals. It was also recorded as a reason in 18% of the 60 EEA2 refusals that we examined.

- 6.9 Staff must be vigilant to detect forged or counterfeit national identity documents in such a high-volume application environment. Fraud expertise is consolidated in an off-site Document Centre. However, all staff do an e-learning forgery awareness course and have access to written guides provided by National Document Fraud Unit (NDFU) staff. NDFU staff based in Liverpool have also provided forgery training for a number of casework staff. They offer an identity document checking service and can sit with caseworkers if a pattern of forgery is detected. On-site, we observed an efficient system of caseworkers interacting with NDFU, which did not add to consideration times.

On-site, we observed an efficient system of caseworkers interacting with NDFU

- 6.10 During the same period as our file sample, 85 forged or counterfeit identity documents were identified (plus four forgeries as photocopies). Figure 15 below shows a consistent level of referrals per month during that period.

Figure 15: Referrals of suspected forged or counterfeit national identity documents by caseworkers – 1 April to 30 September 2013

Month	Number of referrals
April	94
May	87
June	97
July	64
August	62
September	71
Total referrals	475

- 6.11 The total included 277 alerts on the Interpol database of more than 40 million travel documents reported by 167 countries as lost or stolen.⁵⁷ While on-site, we learned that one EU member state does not contribute information on its national ID cards to the database and this explained why, in our sample, we noted caution in three cases where claimed nationals of that member state submitted only ID cards. In our EEA1 file sample we also found an Indian purporting to be Dutch: the Home

⁵⁶ See Appendix 1 or <http://www.legislation.gov.uk/ukxi/2013/3032/made>.

⁵⁷ <http://www.interpol.int/INTERPOL-expertise/Databases>.

Office confirmed this form of deception as more rare.

- 6.12 We concluded that widespread awareness, training and monthly reports on forgery trends had helped staff to become more vigilant as, for the whole of the period April 2012–March 2013, 526 referrals had been made (including 437 Interpol alerts). 84 forged and counterfeit documents (and one photocopy) were identified during that period. On-site, forgery staff told us they had perceived more appetite for training on fraud and tackling it in the previous four to five months. We welcome this proactive approach to forgery.
- 6.13 Supporting documents in EEA1 cases routinely included pay slips, bank statements and letters from employers, and we saw vigilance here as well. Figure 16 sets out a case where counterfeit documents were identified.

Figure 16: Case study of an EEA sponsor involved in a fraudulent application.

The Applicant (a Ukrainian national):

- applied for a residence card, submitting documents to demonstrate that his Lithuanian wife was exercising Treaty rights.

The Home Office:

- noted that the wife had previously sponsored a Pakistani partner and that her new husband was 18 years younger than her;
- identified that the supporting documents submitted were counterfeit, including some Barclays bank statements which were poorly printed;
- did not accept that she was exercising her Treaty rights and further found that the employment documents were ‘unprofessionally produced’, the company was ‘non-trading’ and the husband appeared on the papers as a previous director;
- did not refuse immediately on the deception grounds, but sought an interview because of indicators of sham marriage: the couple failed to attend and there was no further time to reschedule;
- refused the application on the basis of not having proved exercise of Treaty rights because the documents were fraudulent and that it was a marriage of convenience.

Chief Inspector’s comments:

- This was a blatant submission of multiple counterfeit documents. Under subsequent (1 January 2014) changes to the Regulations, the Home Office would now be able to remove the EEA partner from the UK and potentially preclude her return for 12 months.⁵⁸ We were surprised that, at the time, no attempt was made to prosecute the applicant and sponsor for fraud.

- 6.14 Nearly all the applicants were in lower paid jobs, often with small firms which outsourced payroll functions (leading to computer-generated generic payslips). We found that caseworkers were alert to fraudulent evidence of both employment and self-employment. Figure 17 below is an example of the latter and also a case where incomplete records mean that we are unable to establish whether checks were made to verify the applicant’s entitlement to draw on public funds.

We found that caseworkers were alert to fraudulent evidence of both employment and self-employment

⁵⁸ See Appendix 1 Regulation 21B(b) or <http://www.legislation.gov.uk/ukxi/2013/3032/made>.

Figure 17: Case study of a fraudulent EEA1 application on self-employment grounds

The Applicant (a naturalised⁵⁹ Italian citizen, living in the UK with his wife and five children):

- claimed to be exercising his Treaty rights as a self-employed street trader but was found not to have a street trader's licence;
- submitted incomplete accounts from a claimed accountant whom the Home Office noted was not registered with any recognised body.

The Home Office:

- refused his application on the basis that he was not exercising Treaty rights (noting that 97% of his income came from public funds);
- did not record on CID whether a Department for Work and Pensions (DWP) referral was made (or was not required because of other known circumstances).

Chief Inspector's comments:

- The Home Office identified that the individual's application was not supported by evidence and the decision to refuse a registration certificate was reasonable. However, the applicant had been found not to be exercising Treaty rights and was in receipt of substantial benefit payments. Despite this, there should have been a specific record of a referral to DWP being considered or made. This would allow for statistical analysis of DWP referrals.

6.15 Two other EEA1 refusal cases fell into this category. Another naturalised Italian national sponsoring his non-EEA wife and their Italian children had received substantial benefit payments between October and mid-November 2012. A Slovak woman with a child, sponsoring her new Pakistani husband for a residence card, had been receiving significant payments from HM Revenue and Customs (HMRC) and the Department for Work and Pensions (DWP). The number of cases in our sample was small but we were concerned that we were unable to confirm from CID records if a referral had been made to DWP in each case, or if the caseworker had already confirmed entitlement to payments. Home Office figures suggest that this issue can sometimes arise in EEA2 cases too. Across all European Casework refusals during our scrutiny period of 1 April to 30 September 2013, 0.9% of EEA2 cases cited being a burden on public funds as a basis for refusal.

6.16 We therefore asked about checks when on-site. Caseworkers told us that they do undertake checks and referrals. While entitlement is a matter for DWP, the Home Office must ensure that CID records show that it has alerted DWP when people are no longer exercising their Treaty rights. It must ensure that caseworkers note all such actions on CID, both from the audit perspective and to allow the Government to identify any abuse by EEA nationals and their family members.

The Home Office must ensure that CID records show that it has alerted DWP when people are no longer exercising their Treaty rights

6.17 In the six-month period of our file sample, 160 HMRC checks were done. The Home Office broke these down for us as 12 for sponsor verification, 6 for sham marriage and 95 for EEA cases (but were unable to break down the last category further). We had been alerted to the fact that a 'quota' limited the number of checks the Home Office could request. However, when we pursued this on-site, we were told that the loan of three Home Office staff to HMRC had improved the capacity.

⁵⁹ A naturalised person is one who, having lived in a country without being of that country's nationality, acquires that nationality.

Deception in EEA2 cases: marriages of convenience

- 6.18 EEA2 residence card applications must include proof of a relationship with an EEA national exercising Treaty rights and the immigration status of the non-EEA spouse or civil partner is not a relevant factor.⁶⁰ However, member states may refuse to issue residence cards where the relationship is one of convenience (sham). Figure 18 below shows the refusal and issue patterns relating to the immigration status of applicants in our sample. Having entered illegally, or having overstayed any permission to remain, may arouse the Home Office's suspicion that a recent marriage might be one of convenience, entered into purely for staying in the UK. Forgery specialists at Liverpool told us that they particularly saw many Nigerian and Ghanaian passports newly issued in London and showing no immigration history.

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Figure 18: Immigration status of EEA2 applicants in our sample, broken down by outcome

Status	Number within the refusals sample	Number within the issues sample
Overstayed period of permission to remain	22 (37%)	6 (10%) ⁶¹
Illegal entrant	4 (7%)	2 (3%)
Extant permission to be in the UK	17 (28%)	18 (30%)
Failed Asylum Seeker	0 (0%)	1 (2%)
Possessed existing EEA documentation	2 (3%)	5 (8%)
Immigration status unclear	15 (25%)	28 (47%)
Total	60 (100%)	60 (100%)

- 6.19 Home Office caseworking, enforcement and other intelligence clearly indicates that some non-EEA nationals are entering into marriages of convenience in order to remain in the UK. This issue features in the Home Office's National Threat Assessment. Where the Home Office had refused to issue residence cards to EEA2 applicants in our sample on the basis of marriages of convenience, and where we were in a position to come to a view, we agreed with the assessment they had reached in eight cases out of nine (89%).

Some non-EEA nationals are entering into marriages of convenience in order to remain in the UK

- 6.20 Caseworkers explained that photographs submitted in support of applications could add to any concerns about sham marriages when they appeared to be artificially staged or digitally manipulated. We saw some photographs of this type when we sat with caseworkers to observe real-time consideration of eight EEA2 applications.

⁶⁰ Following the case of Metock (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62008J0127:EN:HTML>).

⁶¹ Some of the six apparent overstayers who were issued with residence cards may have been exercising Treaty rights from before their previous leave to enter or remain expired.

6.21 A couple may be interviewed because there appears to be a significant cultural difference between them. Home Office intelligence and enforcement staff to whom we spoke for our previous linked report⁶² told us that, in known sham cases, there was a pattern of East European brides matched with men from very different cultures, particularly Pakistani nationals. One of the register office enforcement actions we observed for that report was of just such a couple. In our sample, we saw three refusals of this pairing for sham marriage. Intelligence analysis had identified nationals of India, Pakistan, Bangladesh and Nigeria as most commonly found to be involved in suspected sham marriages.

In known sham cases, there was a pattern of East European brides matched with men from very different cultures, particularly Pakistani nationals

6.22 The 44 East European sponsors were 37% of our sample (55% issues and 45% refusals). They were overwhelmingly female (36, one of whom was in a civil partnership) with eight male. We looked at the range of their partners and Figure 19 shows that the majority of partner nationalities had, on the face of it, cultural differences from their EEA sponsor.

Figure 19: Nationalities of partners of the East European EEA nationals in our sample

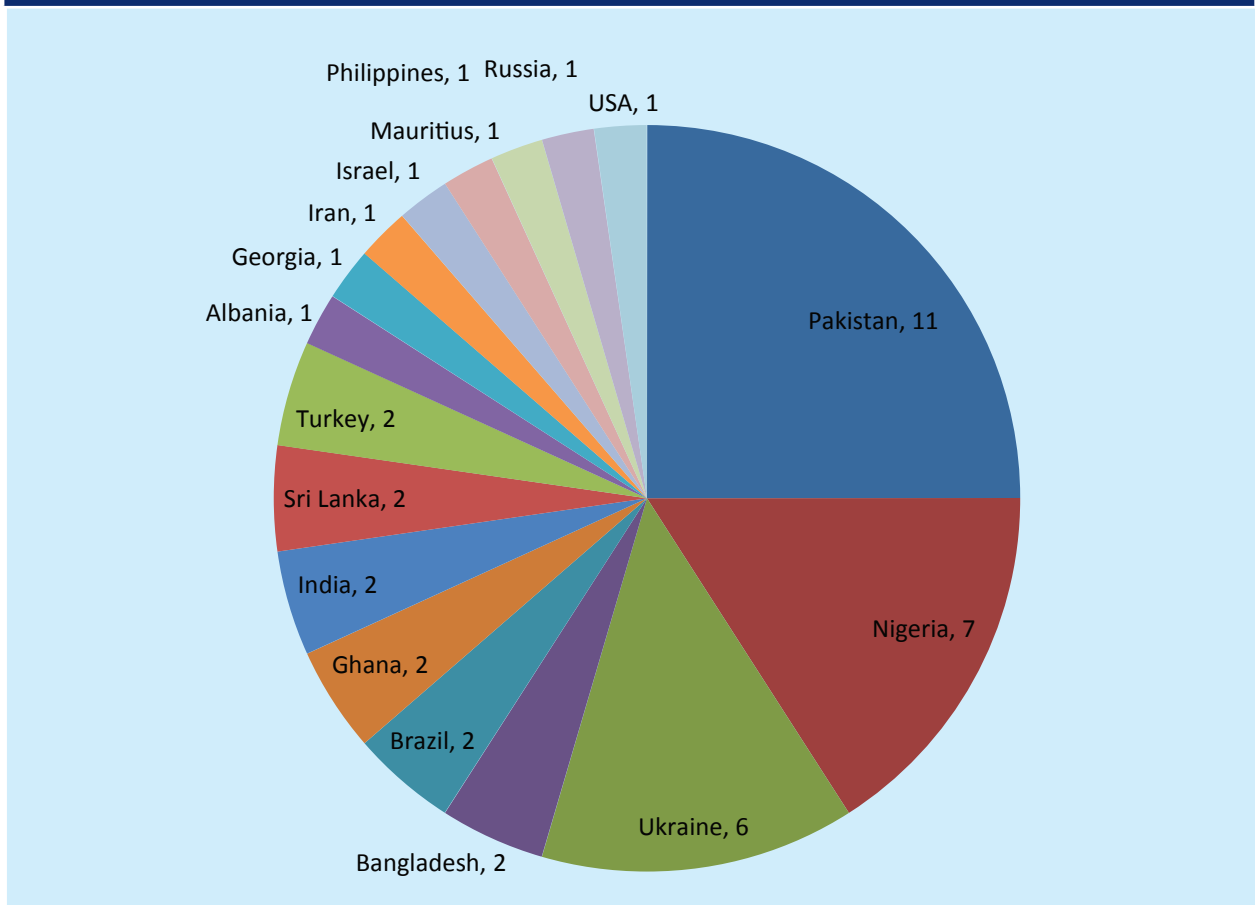
EEA nationalities	Nationalities of partners
Lithuania	Bangladesh, Georgia, Nigeria, Pakistan (4), Sri Lanka (2), Ukraine (3), USA
Poland	Brazil, Ghana, India, Iran, Mauritius, Pakistan, Philippines, Russia, Turkey (2)
Hungary	Brazil, India, Nigeria (2), Pakistan (2)
Slovakia	Nigeria (3), Pakistan (3)
Latvia	Albania, Ghana, Ukraine (2)
Czech Republic	Nigeria, Pakistan
Estonia	Bangladesh, Ukraine
Romania ⁶³	Israel

6.23 Figure 21 shows the distribution of the partner nationalities in Figure 20 for all the EEA nationalities as a group.

⁶² See footnote 4.

⁶³ It is not clear why a Romanian national was a sponsor during this time period.

Figure 20: Nationalities of partners of the East European EEA nationals in our sample



6.24 76 West European sponsors formed the other 63% of our sample (they divided by 53% refusals to 47% issues). In contrast, we found that they were more likely to act as sponsors where they had the same, or similar, cultural heritage as the EEA2 applicant (seen in both genuine relationships and marriages of convenience). Unlike Eastern Europe, Western Europe has experienced significant migration from other parts of the world in recent decades. When looking at the 27 out of 76 (36%) who had been born outside Europe, we found that 18 (24%) had actually been born in the same non-EEA country as their partner and would be likely to share a cultural heritage despite having a European nationality. Figure 21 sets out our analysis.

When looking at the 27 out of 76 (36%) who had been born outside Europe, we found that 18 (24%) had actually been born in the same non-EEA country as their partner

Figure 21: EEA nationals in our sample who were born in the same country as their partners

Nationality of EEA sponsors	Nationality of partners
German (4)	Afghan Nigerian Sri Lankan Venezuelan
Italian (3)	Argentinian Bangladeshi South African
Belgian (2)	Ghanaian Pakistani
Netherlands (2)	Ghanaian Somali
Spanish (2)	Ecuadorian Pakistani
Swedish (2)	Gambian
Austrian (1)	Nigerian
French (1)	Algerian
Portuguese (1)	Brazilian
Total 18	

6.25 It is relevant that nationality requirements are not standardised across the EEA. For example, a spouse can apply for Italian citizenship after being married to an Italian national and resident for a year, if there is a child. A partner can be naturalised as German after three years of residency there, but the marriage need only have lasted for two years. For partners of British citizens applying after 9 July 2012 for a UK settlement visa (and later citizenship) on the basis of that relationship, the probationary period has extended from the previous three years to five. The couple must also intend to continue their relationship.⁶⁴

6.26 The remaining nine EEA sponsors who were born outside Europe (12% of the 76) had been born in the same region of the world as their partners.

6.27 Of those 27 where the EEA partner had been born outside Europe, sixteen (59%) were refused. This was higher than the refusal rate for cases sponsored by East Europeans (45%) and the overall refusal rate of 53% for all cases with West European sponsors. Six (22%) were refused for more than one reason. Reasons included eight proxy marriages considered to be invalid; four sham marriages; four cases of providing insufficient proof of exercising Treaty rights; and one each of deception over the Treaty rights; failing to provide evidence of the sponsor's identity; and submitting an EEA passport which had previously been reported lost or stolen.

Of those 27 where the EEA partner had been born outside Europe, sixteen (59%) were refused

6.28 Breaking down the sixteen refusals, these were seven of those born in the same country as their partner (39% of that group of 18) and all of the nine born in the same region (100%). This finding is further discussed in Chapter 8.

⁶⁴ <https://www.gov.uk/settle-in-the-uk/y/you-re-the-family-member-of-a-british-citizen>

- 6.29 Finally, we also considered possible cultural matches by looking at family names. For example, an Italian national who had been born in Colombia was paired with a Canadian national also with a Hispanic name. We noted 11 cases (14%) where the EEA nationals had been born in Europe but their family names had potential cultural links to the countries of their partners. That left 38 West European sponsors (50% of the total) with no obvious connection to the country of the partner.
- 6.30 On-site in Liverpool, we were told about a large sham marriage prosecution case in the North West area where there was no obvious cultural connection. A Dutch woman was extradited and jailed for four years in 2012⁶⁵ for arranging bogus marriages between Nigerian men and women from the Caribbean parts of the Netherlands⁶⁶ who flew into Manchester Airport for the weddings. This prosecution was under the auspices of ‘Operation Fry’, a joint investigation agreement between the UK and the Netherlands. The agreement was signed in August 2010 after 500 suspected sham marriages were identified between Dutch nationals from the Netherlands Antilles and Nigerian nationals who were unlawfully in the UK.

Marriages of convenience involving proxy

- 6.31 Marriage ceremonies in the UK have been controlled incrementally over a long period⁶⁷ and registration officials are required to report suspicions of sham marriage to the Home Office.⁶⁸ Figure 9 in Chapter 5 set out our statistical finding that EEA2 applicants were more likely to be issued with residence cards where they had married in the UK and much more likely to be refused where the marriage was overseas – 26 of the 29 overseas proxy marriage cases (90%) were refused.⁶⁹
- 6.32 Identifying when a proxy is involved in marriages of convenience presents a particular challenge. From our file sample we noted that investigation of proxy marriages relied on the Home Office’s Country of Origin Information (COI), case law and bespoke instructions produced for caseworkers. In assessing documents submitted by applicants, caseworkers would first check whether proxy marriages were valid at all in that country and, if so, whether the submitted documents corresponded to any requirements for conducting and registering such a marriage.

Identifying when a proxy is involved in marriages of convenience presents a particular challenge

Detecting suspected marriages of convenience: interviews

Marriage Interview Pilot

- 6.33 In June 2012, in response to ministerial interest in the scale of sham marriages, European Casework began a pilot of additional investigative interviews for some EEA2 applications. This has been fully adopted and is being expanded.
- 6.34 Certain indicators for suspected sham marriage were developed to identify whether an interview should be required.
- 6.35 One problem for the interview pilot was 60% non-attendance. Where time allowed for rescheduling, but couples again failed to attend, this could not be factored into a decision. The Home Office changed the EEA regulations from 1 January 2014 to allow it to draw negative inferences from twice failing to attend an interview.⁷⁰ The implications of this are discussed later in this chapter. While on-site, we were told that attendance appeared to be increasing as a result of the new Regulations. Data later provided by the Home Office showed a 53% attendance rate in March 2014.

65 http://www.cps.gov.uk/northwest/cps_northwest_news/dutch_woman_jailed_for_organising_sham_marriages_in_the_uk/.

66 This refers to a group of islands in the Caribbean – some are a formal part of the Netherlands and others are special municipalities of the Netherlands.

67 The Marriage Act 1753 was for England and Wales and did not apply to Scotland.

68 See paragraph 3.21. The process was fully explained in the report referenced at footnote 4.

69 24 of those 26 cases were refused because the marriage was considered invalid. The other two were refused for different reasons.

70 See Appendix 1 (Regulation 20B new section 4) or <http://www.legislation.gov.uk/uksi/2013/3032/made>.

Marriage interviews: file sampling results

- 6.36 In our file sample, we found non-attendance at 27% for those people to whom residence cards were then issued and at 50% for those to whom they were refused. The pattern was not particularly surprising, as those in a genuine relationship have an incentive to attend an interview to prove this to the Home Office, while a couple who married only to assist the EEA2 applicant to obtain a residence card would have an incentive to avoid the in-depth scrutiny of the interview stage.
-
- We found non-attendance at 27% for those people to whom residence cards were then issued and at 50% for those to whom they were refused*
-
- 6.37 The local CFI team told us that some non-attendance arose from paid sham spouses having returned to their home countries straight after the wedding. CFI staff can monitor flight information to detect spouses returning just for the interview and can also use information from Facebook and Twitter⁷¹ evidentially. We strongly suggest early provision of stand-alone access for caseworkers to access Facebook and similar sites to ensure that the investigative power of these sources is fully utilised in preparation for interviews.
- 6.38 We were not able to find a record of the specific reasons for scheduling each interview in 48% of our sample. In many of these cases, we were, nonetheless, able to establish from the paper file and/or electronic records why interviews had been requested.
- 6.39 In the 31 cases where CID did record reasons for inviting couples to interview, 16 had more than one reason identified. The highest occurring were general plausibility at 19%, proxy marriages at 17%, concerns about submission of an EEA national identity card at 12% and section 24 reports (suspected shams referred by registrars) at 10%.
- 6.40 While on-site, we were assured by both staff and managers that decisions to request marriage interviews were taken after consultation with senior caseworkers, but the lack of comprehensive CID records remains a concern.
- 6.41 The Home Office must ensure that clear audit trails are kept to show why interviews have been requested. This will allow it, not only to conduct more effective evaluations of the marriage interview process, but also to establish whether its interview referral mechanism needs to be adjusted to better target suspected marriages of convenience. We therefore make the following recommendation.
-
- The Home Office must ensure that clear audit trails are kept to show why interviews have been requested*
-

We recommend that the Home Office:

Retains a record of the reasons for requesting marriage interviews and uses this information to ensure that appropriate cases are selected for interview.

Marriage interviews: process

- 6.42 At interview, the couples are seen separately. Home Office staff referred to the format as ‘Mr and Mrs’, after the television programme that tests married couples’ knowledge of each other and their domestic arrangements. In both our sample and observations, we found questioning across reasonable areas, such as how the couple met and married, leisure time, work and accommodation. We highlighted in our previous report⁷² that sham couples may be ‘well-rehearsed’ for questions in this format so interviewers need to probe responses. It is the nature of discrepancies, rather than the

⁷¹ These types of internet-based social networking sites enable those with personal accounts to upload comments, details of events/diaries and photographs.

⁷² See footnote 4.

number, which is key – the interviewer should be looking for evidence of rehearsed responses and deception rather than run-of-the-mill memory lapses.

Marriage interviews: on-site observation

- 6.43 While examining Home Office files allowed us to reach judgements on whether interviews were being used effectively to detect marriages of convenience, we also observed eight pairs of marriage interviews while on-site (16 interviews). This enabled us to assess aspects such as body language and tone of voice that are not captured in paper and electronic records.
- 6.44 During the period of our inspection, the interviewer typing responses to prepared questions was being replaced by audio-recording interviews and testing credibility. We noted that existing interview facilities (table and bolted-down upright chairs) formed a barrier to observation. We strongly suggest that the barrier of the full-sized table is removed.
- 6.45 In addition, in the observed interviews, we noted that interviewers did not always use plain English and some had a tendency to speak quickly. This caused difficulties for the interviewees who spoke English as an additional language and meant that questions had to be rephrased or repeated. As we commented in our earlier short notice report, this issue should be addressed through more effective interview training.⁷³
- 6.46 Our observed live interviews included two overseas proxy cases where the previous marriage of the EEA woman was not shown on the certificate as dissolved. The first woman had previously sponsored both a husband and a long-term partner for UK residence cards. Figure 22 below sets out the other case.

⁷³ See footnote 4 for link, Recommendation 4.

Figure 22: Case study of an observed live interview relating to proxy marriage

The Interviewees (Hungarian EEA sponsor and Nigerian husband):

- had applied for a residence card.

The Home Office:

- noted that the husband was making a second residence card request, with a second wife and second Nigerian customary marriage certificate (proxy) within a year and a half, so invited them to interview;
- at interview – noted that, although he claimed to have e-mailed his new wife’s divorce certificate to Nigeria, it was not shown on the marriage certificate which specified that the new wife was a ‘spinster’; there was a manuscript addition saying a ‘bride price’ had been paid; the Home Office could not be satisfied that the marriage was valid;
- noted that the wife required an interpreter for her interview and had taken only two English lessons; the couple claimed to have begun their relationship using sign language and electronic translators on mobile phones;
- also noted a number of discrepancies and gaps in knowledge (including his divorce, his studies and their general domestic life): it was not clear if he had properly divorced his previous EEA wife as the Nigerian divorce document declared him to be in Nigeria when he was actually in the UK;
- refused the application as a marriage of convenience.

Chief Inspector’s comments:

- This situation was complex with the non-EEA national having made the two applications with different wives and proxy marriage certificates. The interviewer identified that the key to ensuring that any new marriage was valid was proof that a previous marriage had been declared and dissolved. He also wrote a very clear explanatory note on CID about the glaring discrepancies between their interviews, with a recommendation to refuse.

6.47 Figure 23 sets out that we agreed with the outcome in seven (88%) of the eight interviews that we observed.

Figure 23: Outcomes from the observed live interviews

Cases		Outcome	Inspector’s position
1	Polish EEA sponsor and Pakistani husband	Refused as sham marriage	Agreed
2	Spanish EEA sponsor and Dominican Republic wife	Refused as sham marriage	Agreed
3	French EEA sponsor and Ivory Coast husband	Refused as sham marriage	Agreed
4	Portuguese EEA sponsor and Brazilian husband	Refused as sham marriage	Agreed
5	Hungarian EEA sponsor and Nigerian husband	Refused as sham marriage	Agreed

6	Lithuanian EEA sponsor and Moroccan husband	Issued	Disagreed
7	Lithuanian EEA sponsor and Bangladeshi husband	Issued	Agreed
8	Lithuanian EEA sponsor and Egyptian husband	Issued	Agreed

6.48 We were satisfied that the interviews we observed were conducted fairly. Caseworkers, interviewers and managers told us that they supported the interview stage and considered that it helped to make decisions more robust. We agree that the targeted use of interviews is beneficial, as it gives the Home Office an additional source of evidence on which to base its decisions on residence card applications.

The targeted use of interviews is beneficial, as it gives the Home Office an additional source of evidence on which to base its decisions on residence card applications

6.49 Some staff emphasised that interviews did not automatically lead to refusal and described cases where submitted evidence might have led to refusal but the interview enabled couples to demonstrate a genuine marriage. This underlines the difficulty of judging whether a relationship is one of convenience solely on the basis of submitted paperwork. The last couple in Figure 23 above was one of those where there were multiple indicators of potential sham yet the interview established that it was a genuine relationship.

Marriage interviews: areas for improvement

6.50 We found that the process did not provide for a couple's interaction to be formally evaluated. We were concerned by this, as poor or no interaction is one of the key indicators of suspected sham marriage that register offices report to the Home Office.⁷⁴ Home Office staff told us that it was quite common in European Casework to encounter couples who had trouble communicating in a common language, whereas this was rare in wider society. A short 'language test' may be carried out with them together in this situation to see if they can communicate on a day-to-day level but without a focus on quality of interaction.

Home Office staff told us that it was quite common in European Casework to encounter couples who had trouble communicating in a common language, whereas this was rare in wider society

6.51 We do realise that interviewers have a short opportunity to observe the pair together in the waiting area. But we consider that, in some cases, there could be extra evidence or intelligence gained if the interviewer were to speak to the couple together. We are not advocating revisiting the interviews and any discrepancies, but something more along the lines of explaining the next steps and asking if they each have any questions about the process.

In some cases, there could be extra evidence or intelligence gained if the interviewer were to speak to the couple together

6.52 The case study at Figure 24 below sets out a situation where observing the couple together and formally gauging their ability to interact might have led to a different decision. This might also counter any possibility that couples in sham relationships could 'pass' a marriage interview through careful preparation of potential questions and responses.

⁷⁴ One of the tick boxes on the section 24 report form (section 24 process explained at paragraph 3.21).

Figure 24: Case study relating to a couple's interaction

The Applicant (a Pakistani national):

- applied for a residence card on the basis of his Lithuanian wife exercising Treaty rights.

The Home Office:

- interviewed them and wrote that they were satisfied that their relationship was genuine;
- detained him at an airport some months later as he was returning from travel abroad because intelligence identified him as a suspected facilitator of sham marriage; interviewed them both and found significant differences in accounts of their relationship, plus she spoke almost no English (and he did not speak her language or any other common language);
- investigated her as a potential victim of trafficking for the purpose of sham marriage and found that she lived with a Lithuanian man (by whom she was pregnant), whereas her husband lived in a different part of the UK; she complained that her husband was abusive and violent and had taken her passport;
- removed the husband from the UK.

Chief Inspector's comments:

- This is a case where the separate interviews did not sufficiently probe the relationship. The wife's need to be interviewed in her own language, which her husband could not speak, should have led to more investigation. Seeing them together for a short while could have identified both communication and interaction difficulties and could have led to the refusal of the husband's residence card rather than its issue. The Home Office is, however, to be commended for the action it later took to detain and remove the husband from the UK.

- 6.53 Recommendations by interviewers to Home Office decision-makers focused strongly on the amount and significance of discrepancies across the separate interviews. We conclude that, for some cases, discrepancies alone (or lack of them) may not deliver the whole picture. Observing interaction would add to decision quality and, potentially, to both the safeguarding of vulnerable people and the obtaining of wider intelligence.

We recommend that the Home Office:

Ensures that couples are spoken to and observed together where the relationship is suspected to be one of convenience.

Detecting fraud: use of intelligence

- 6.54 In our recent inspection of a sham marriage operation in West London,⁷⁵ we highlighted that while registrars, together with Home Office staff and managers, considered that marriages of convenience were a growing problem, there were significant gaps in intelligence about this abuse. Background information provided for the introduction of the Immigration Bill to Parliament in the autumn of 2013⁷⁶ could not be more specific than to state that sham marriages were estimated to run at somewhere between 4,000 and 10,000 of applications to European Casework per year.
- 6.55 It is the intelligence function which informs the Home Office's National Threat Assessment, and sham marriage is included. For this inspection we spoke to intelligence/analysis staff both on the ground and at the strategic level. We were pleased to hear that 'Operation Mellor' was still driving interest and activity to tackle sham marriages and that staff were being recruited into a new

⁷⁵ See footnote 4.

⁷⁶ <http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0110/14110.pdf>.

intelligence hub in Liverpool (to be the central point for intelligence on sham marriage). It will replicate the intelligence hub for temporary migration at Sheffield, which a strategic intelligence manager told us had 'proved its worth'. The aspiration is that the three hubs in Croydon, Sheffield and Liverpool will provide more intelligence support than has previously been available.

- 6.56 The strategic intelligence view was that the intelligence potential from European Casework was not yet being realised and that use of internal databases stopped staff contributing to the 'bigger picture' in intelligence gathering and use. We were told that work had begun to roll out a new intelligence management system – a single system with all-staff access to replace the previous restricted-access approach. We hope that this supports wider collection of intelligence that will establish the actual extent of marriage abuse in the UK and the most effective ways to tackle it.

The intelligence potential from European Casework was not yet being realised

Criminal investigation and prosecution

- 6.57 In our file sample, we did not find criminal investigations and prosecutions where EEA nationals had sponsored what were judged to be marriages of convenience or had engaged in other forms of deception. This was the case even where the EEA national was clearly seen to have sponsored previous applications. We were surprised that no investigations or prosecutions had taken place with a view to deterring such activity.

We did not find criminal investigations and prosecutions where EEA nationals had sponsored what were judged to be marriages of convenience or had engaged in other forms of deception

- 6.58 We explored this on-site. CFI teams are remitted to disrupt 'organised crime' and are accredited at Level 2 of the Professionalising Investigation Programme (PIP).⁷⁷ CFI staff with experience of high-profile criminal prosecutions told us that the majority of sham marriage cases do not reach that higher threshold of organised crime. Both caseworkers and enforcement staff raised concerns with us about the historical lack of prosecutions at the lower level (Level 1) of criminal activity and, particularly, the lack of sanction on EEA nationals involved.

- 6.59 In January 2014, new Regulations 19 and 21B came into force to enable removal of EEA nationals involved in such abuse. 21B also prevents return for 12 months after removal unless the person complies with Treaty rights requirements in certain circumstances.⁷⁸ When on-site, we were told by an enforcement manager that being able to act against EEA nationals involved in sham marriage deceptions had 'really, really boosted morale' in the team.

- 6.60 More effort needs to be made to identify and prosecute those cases if this issue is to be tackled. Changing the law will not, of itself, have the desired effect.

More effort needs to be made to identify and prosecute those cases if this issue is to be tackled

⁷⁷ PIP is jointly sponsored by the Association of Chief Police Officers and the College of Policing. It aims to develop professional investigators who can conduct investigations to a national standard based on recognised good practice. <http://www.college.police.uk/en/10093.htm>. CFI staff must accredit at PIP Level 1, do the immigration enforcement investigators' exam (IEIE) and then accredit at PIP Level 2.

⁷⁸ See Appendix 1 or <http://www.legislation.gov.uk/ukxi/2013/3032/made>.

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

Detecting marriages of convenience: pastoral visits

- 6.61 The Home Office has 19 Immigration, Compliance and Enforcement (ICE) teams which contribute to the UK's efforts to tackle sham marriages, but these teams are focused on meeting a target for arrests. There is a national target on tackling sham marriage, but no local ones. For our earlier linked report into sham marriage enforcement, we visited the West London ICE team and observed the investigation and prevention of two weddings. Adding to our understanding for this further inspection, we spoke to staff at the ICE based in Liverpool and the one based at Bedford, plus another representative of a register office.
- 6.62 Our key finding came from the crucial difference in enforcement powers between preventative activity at register offices and pastoral visits. In the former, officers attend where there is a known immigration offender, so arrests frequently result, but a pastoral visit to a home address is an investigative undertaking without a power of entry.
- 6.63 We noted that pastoral visits were not consistently resourced across the country. We contrasted West London's resourcing (enabling regular register office enforcement and 15 pastoral visits each week) with the Bedford team, which had been running so significantly understaffed for so long that its arrest target had been formally reduced. Bedford was also experiencing increased 'lorry drops' (where clandestine entrants to the UK exit the vehicles in which they have been concealed) at its three motorway service stations. ICE teams must attend these immediately, and particularly where under-18s are involved, to fulfil the Home Office's safeguarding responsibilities.⁷⁹ Unexpected priorities like this were always likely to cancel scheduled pastoral visits.
- 6.64 We found this situation to be exacerbated by European Casework guidance making home visits a last resort, with some requests made close to the six-month limit for making decisions on residence card applications. Enforcement teams told us that they often needed to 'stack up' the visits to be able to resource a dedicated period of home visits, so, if caseworkers did not emphasise the time limit, the visit would not be done in time. Staff told us of two recent occasions when they had carried out the visit and then found that the decision had already been made.
- 6.65 There is clearly a need for the Home Office to consider how much it values what these visits can bring to the robustness of decision-making and to deciding how to ensure consistency. The current lack of consistent capacity and use of expensive arrest-trained enforcement staff to visit addresses where they have no power of entry, even if they do find someone at home, appears to be poor use of expensive resources and enforcement powers. Managers were keen to support European Casework, but had to keep to their priorities.
- 6.66 We also explored, with both caseworkers and enforcement staff, whether, in some situations, a visit might be a more appropriate first step than an interview. They agreed, with an obvious situation being suspicion that the EEA spouse had left the country. In this scenario, even if entry were not obtained, talking to neighbours might still provide substantiation, which could then inform an

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⁷⁹ <http://icinspector.independent.gov.uk/wp-content/uploads/2013/10/An-Inspection-into-the-Handling-of-Asylum-Applications-Made-by-Unaccompanied-Children-FINAL.pdf>.

interview request. Another scenario is friends entering into a sham marriage, where they know each other well and are able to rehearse their interview answers but calling at the address, or enquiring of neighbours, would provide information on claimed co-habitation. We conclude that there should be a more focused and intelligence-led use of such visits rather than a 'last resort' approach.

- 6.67 While we expect fewer 'last resort' requests now that the Regulations allow negative inferences to be drawn from double non-attendance at interview, it remains the case that these visits do not require enforcement powers. Some years ago, the police service began examining roles undertaken by fully-warranted officers but not requiring police powers. One was the taking of witness statements and the Metropolitan Police Service ran a pilot substituting police staff. It was acknowledged that warranted resource was virtually wasted on low-risk situations where police powers did not apply.
- 6.68 We view the police pilot as directly comparable to enforcement staff currently doing pastoral visits where their powers do not apply. Some enforcement staff speculated that they might sometimes be given access simply because two or three fully uniformed enforcement officers appeared on the doorstep and that couples might have concerns that refusing access would lead directly to a refused application. However, this speculation does not offset the amount of warranted resource wasted when no one is at home or no access is given.
- 6.69 As well as resourcing capacity, we considered interviewing capability. In the previous linked inspection,⁸⁰ a senior enforcement manager told us that many newer enforcement staff lacked experience of interviewing, particularly of those speaking English as an additional language. In our research for this report, enforcement managers confirmed this, explaining that their teams now rarely undertook interviewing and that, over time, there had been a reduction in skill.
- 6.70 There is an opportunity here for a small pilot, with some non-warranted staff experienced in interviewing undertaking some pastoral visits in areas where there is known to be less ICE capacity and the required visits cannot be guaranteed to get done in time, or possibly at all. Geographical deployment would need to be carefully considered to gain best value, but the Home Office already has experienced interviewing staff in a number of locations, including London and the South East where most applicants live.
- 6.71 Key advantages could be as follows:
- Expensive enforcement resource released for 'front-line' tasks that actually require enforcement powers;
 - Release of enforcement resource to undertake Level 1 prosecutions, and removals under the new Regulations, contributing to more high profile deterrence; and
 - More key visits actually achieved, adding to overall intelligence.
- 6.72 It could use staff resources across the same directorate (UKVI). We do not consider that this would result in significantly higher personal risk, as other agencies visit homes, such as social workers.

We recommend that the Home Office:

Pilots pastoral/home visits being undertaken by non-enforcement staff who are experienced in interviewing.

⁸⁰ See footnote 4.

Removal

EEA Nationals

- 6.73 During our file sample period, EEA nationals and sponsors found to have abused the Regulations were generally not prosecuted and/or referred for removal from the UK unless a CFI team had taken forward a Level Two criminal prosecution.
- 6.74 The Home Office amended the EEA regulations in January 2014 to facilitate the removal of all EEA nationals found to have abused the Regulations (not just sham marriage). This change was well-received by both caseworking and enforcement staff. While on-site we heard that some ICE teams, including one we visited, had already made a removal under the new Regulations.
- 6.75 We were satisfied that the enforcement guidance was updated to provide staff with appropriate guidance on how to carry out the newly-enabled removals.

Non-EEA nationals and barriers to removal

- 6.76 Non-EEA nationals refused residence cards can be removed from the UK if they are not benefiting from a sponsor's Treaty rights. We looked at whether any removal action had been taken on our sampled cases by the end of the inspection period. An outstanding repeat application or appeal is a barrier to removal. Figure 25 below shows that in 23 cases out of 60 (38%) where we saw no evidence of a referral for consideration of removal, this was because a fresh application or appeal had been made. Of the 33 cases where a referral was actually made to Capita Business Services (55% of the sample),⁸¹ it turned out that there was a barrier to removal in 20 of them (61% of those 33). Overall, in 72% of the 60 refusals, there was a barrier to removal action.

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Figure 25: Referrals of non-EEA nationals for possible removal

Whether a referral was made	Number
No evidence of a referral, but there was a known barrier to removal	23 (38%)
Evidence of a referral	33 ⁸² (55%)
Situation not clear	4 (7%)
Total	60 (100%)

- 6.77 In order to remove an individual, a passport or other valid identity document is required. Enforcement staff told us that, in the past, passports had come through in only small numbers to the ICE teams for removal action. An enforcement manager said that they had only been 'dribbling out' from the Migration Refusal Pool (MRP)⁸³ and that it now felt like a 'trickle'. The European Casework Risk Register records concerns that few failed applicants are removed from the UK and that there is a reputational risk from a perceived lack of enforcement. We share this concern, as fraudulent applications are likely to be deterred only if there is a meaningful sanction when they are identified.

Fraudulent applications are likely to be deterred only if there is a meaningful sanction when they are identified

⁸¹ In October 2012 the Home Office awarded a contract to Capita Business Services (CBS) for contact management of cases where leave to remain in the UK has been refused, identifying those who have already left, and encouraging those who have not yet left to depart. This contract has since been extended to include elements of casework.

⁸² Includes five cases where a referral was made only 4/5/6/6/9 months after it would have been first possible to do so.

⁸³ The MRP is 'a report run from the Home Office immigration database which details all individuals who have received a negative temporary or permanent migration decision since December 2008'. <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/1165/116504.htm>.

- 6.78 However, there is a tension between the need to remove those who have used deception to make fraudulent claims and to process repeat applications from those who initially failed to submit sufficient evidence, but do so at their second attempt. In addition, the Regulations, unlike the Immigration Rules, do not allow repeat applications to be dismissed without substantive consideration if they raise no new issues, nor do they limit the number of times an individual can re-apply for a residence card. This makes the task of removal more difficult in such cases than in those that fall under domestic, rather than European, law. The following case study reflects the impact of repeat applications.

Figure 26: Case study- barriers to removal

The Applicant (a Nigerian national):

- made six applications for a residence card between May 2010 and September 2013; a card was never issued;
- applied in February 2012 with a customary marriage certificate (proxy) on the basis of marriage to a naturalised German citizen exercising Treaty rights;
- applied in December 2012 on the basis of marriage to a French national exercising Treaty rights (providing a Nigerian divorce certificate for the marriage to the German wife and a Republic of Guinea proxy marriage certificate for the French wife);
- applied in September 2013, again on the basis of marriage to the same French sponsor.

The Home Office:

- refused the February 2012 application on the basis that the sponsor's German ID was invalid (previously reported lost/stolen), an invalid proxy marriage had been submitted and the sponsor failed to show she was exercising Treaty rights;
- refused the December 2012 application for deception in relation to the French wife's employment, failure to attend two marriage interviews and an invalid proxy marriage;
- had records of the applicant as an overstayer in July 2011, when he was arrested and served with papers relating to his immigration status; his original Nigerian wife and children pursued separate claims to remain in the UK (there were doubts as to whether they had formally divorced);
- further investigated the French wife, finding she had left the UK to work in Spain and was possibly still married to another Nigerian national;
- noted that this applicant had never used his appeal rights and appeared to be making fresh applications each time to prevent removal;
- refused his latest application for a residence card in March 2014.

Chief Inspector's comments

- Despite having been identified as an overstayer in 2011 and engaged in deception on numerous occasions, this individual could not be removed as an immigration offender while he had an outstanding residence card application. This is the type of case where the new powers in the Regulations to remove the sponsors who enter into sham marriages should be invoked.

- 6.79 Tackling sham marriage is a Home Office priority, in line with the National Threat Assessment, but removal has been lagging behind. Those apprehended at register offices and those refused documents by European Casework have valid passports, a great advantage in arranging a speedy removal. The Regulations have now been altered to enable removal of EEA nationals in cases of abuse. Where an application by a non-EEA national is dependent upon the exercise of a Treaty right by the EEA

sponsor, the Home Office should look at the speedy removal of both parties in such cases. A repeat application or appeal would be unlikely to be successful where there is previous evidence of abuse. Removing both partners as soon as possible, and publicising removals arising from the changes to the Regulations, would also act as a deterrent to those considering entering into sham marriages with a view to prolonging their stay in the UK.

Removing both partners as soon as possible, and publicising removals would also act as a deterrent to those considering entering into sham marriages

We recommend that the Home Office:

Speedily removes those who sponsor, or seek to benefit from, marriages of convenience.

CHAPTER 7: INSPECTION FINDINGS – SAFEGUARDING INDIVIDUALS

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

- 7.1 A satisfactory standard of service includes open access and an easy to use application process, fair treatment for all and decisions that are both high-quality and timely. People wanting residence documents should know their rights and responsibilities and be given the information they need to access the services they require.

The Home Office began charging for residence documents in July 2013.⁸⁴ This brought European Casework into line with areas of immigration casework where charging has become the norm.⁸⁵ So applicants now enter into a transaction with the Home Office and this quite reasonably raises expectations of customer service.

The application process: information and guidance provided to applicants

- 7.2 The Home Office uses a centralised postal system with web-based information. The web page on Gov.uk encourages use of the application form,⁸⁶ which have to be printed and completed in black ink. The online application forms are effectively booklets (28 pages) with separate guidance notes and a checklist repeating some information.⁸⁷ Many applicants use English as an additional language and the information provided appeared potentially overwhelming.
- 7.3 With this in mind, we considered access for those with disabilities.⁸⁸ The guidance pages had large clear dark print on a light background and there were interactive links to the application form and guidance/checklist. There was also an interactive button for those using assistive technology who wanted to request an alternate format, but this only opened a very basic email message box with tiny print and provided no guidance on what could be made available or the timescale.
- 7.4 This provision should be urgently reviewed, as it is an obvious customer service gap and the Home Office must ensure that it is compliant with providing full access under the Equality Act 2010. With so many applicants coping with forms and guidance in English as an additional language, someone needing an alternative format even to start their application may be further disadvantaged.
- 7.5 There was applicant information dated 1 October 2013 and 1 January 2014, and a warning to use the most up-to-date application forms, so we were satisfied that steps were being taken to update the

The Home Office must ensure that it is compliant with providing full access under the Equality Act 2010

84 The Directive, as transposed by the Regulations, allows member states to exercise discretion in charging people who choose to apply for residence documents. Setting a fee of £55 per person received Parliamentary approval and was implemented in July 2013.

85 The Home Office charges higher fees for foreign nationals wanting to come to the UK, or to extend their stay here.

86 It does make clear that both documents and application form are not mandatory.

87 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/261505/eea-checklist.pdf

88 Examples – visual impairments, and physical impairments affecting use of a keyboard/mouse.

web pages. We saw that most documents were now badged with ‘UK Visas and Immigration’ (UKVI) but one checklist puzzlingly still had the UK Border Agency logo.

- 7.6 What we did find confusing was that the UKVI general web page set out its visas, asylum, settlement, and nationality work with no mention of European Casework, but then, after scrolling well down the web page, we found a telephone enquiry number for European citizens.⁸⁹ We consider that many EEA1 and EEA2 category applicants would be unlikely to find this number when nothing above suggested that UKVI even dealt with them.
- 7.7 On 13 January 2014, the Home Office published new service standards for UKVI staff under ‘Customer Excellence’.⁹⁰ This gave those applying under areas of the Immigration Rules an idea of how long their applications would normally take, but EEA nationals were included in a group with settlement and nationality casework and the statement that they ‘will be decided as soon as possible and within 6 months under the Freedom of Movement Directive’. This should be clarified, as this statement does not reflect the ‘immediately’ timescale for registration certificates set out in European law.
- 7.8 We found appropriate information on applicants’ responsibilities. We do, however, question why applicants were forewarned that the Home Office might conduct an ‘unannounced home visit’, when the more numerous interviews were not mentioned and applicants were not warned that, under Regulations changes on 1 January 2014, failure to attend an interview twice could be taken into account in a decision.⁹¹
- 7.9 We benchmarked with Her Majesty’s Passport Office (HMPO),⁹² which is known for the quality of its customer service. We saw on their website’s front page that first-time adult applicants were provided with information about identity interviews.⁹³ We found easy to access basic information about their purpose, potential location, length of time and what happens next. The Home Office plans to increase the number of marriage interviews significantly, to get up to 600 per month. With more interviewees and the new responsibility placed on them to attend, the Home Office should use the HMPO example as a useful benchmark for providing basic information about this significant event.

The Home Office should use the HMPO example as a useful benchmark for providing basic information

Contact with applicants throughout their applications

- 7.10 In our sample, we looked at how effectively the Home Office responded to letters or emails from applicants.⁹⁴ There were 14 queries, but satisfactory replies were sent to only three (21%). We were concerned that eight of the 14 (57%) concerned applications which had passed the six-month deadline. We could not find a record of replies to five of the eight (63%) and two of those three replies were delayed. We considered that there was room for significant performance improvement in this area.
- 7.11 In our sample period, there was no proactive contact with applicants about delays. Staff confirmed this, with one manager indicating that to do so would risk diverting resources from making decisions. However, the new Customer Service Standards for how UKVI staff should deal with ‘fee-paying in-country’ applications say: ‘Staff receiving complex applications which can’t be decided within the

Satisfactory replies were sent to only three (21%). We were concerned that eight of the 14 (57%) concerned applications which had passed the six-month deadline

89 <https://www.gov.uk/government/organisations/uk-visas-and-immigration#topics>.

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

91 See Appendix 1 or <http://www.legislation.gov.uk/uk/si/2013/3032/made>.

92 HMPO is an Executive Agency of the Home Office.

93 <https://www.gov.uk/apply-first-adult-passport>.

94 This does not include requests for urgent return of a travel document.

service standards, must write to the applicant – within the timescales of the standards – informing them of what will happen next.⁹⁵ We welcome the ‘must’, which will provide consistency.

- 7.12 Information about how to request return of travel documents is easy to find, with clear standards – up to 10 working days for EEA1s (and up to 20 for EEA2s who have no entitlement to free movement under the Directive). Sixteen returns were requested in our sample (9% of 180) but there was a CID record of the despatch date for only 11 (69%). Of those 11, 9 (81%) were returned within the target and one shortly after. This was a reasonable performance, although any delay can impact on an EEA applicant’s right to travel freely. While the casework backlog was being cleared, the ‘up to 10’ days seemed reasonable, but the Home Office should look at shortening this once it has cleared its oldest cases. We were told on-site that they now have an efficient return process which met a large number of requests for return of travel documents for the Christmas break.

Insufficiency of information

- 7.13 Chapter 5 showed that, in our sample, 58% of the reasons for EEA1 refusals and 20% of the reasons for EEA2 refusals were insufficient evidence of Treaty rights being submitted. As appeals are frequently won with evidence not initially submitted to the Home Office, it is likely that at least some of these insufficiencies were inadvertent. We explored this on-site.
- 7.14 Most caseworkers and managers were of the view that the Directive restricted the Home Office’s ability to prescribe documentation to be submitted. A policy manager explained where the line was drawn between guiding applicants and prescribing what they must submit. The Home Office could suggest additional information, but the European Commission would object if it were to oblige applicants to submit evidence beyond the list of evidence in the Directive. We were told that this situation had led to frustration among staff and managers and, as one manager told us - ‘the application form needs a complete and utter overhaul’. We welcomed this appetite for improving the application process.
- 7.15 To evidence self-employment, applicants were asked to supply ‘at least one’ from a list. Then the form stated that ‘you can also provide...’ from another short list. Our perception was that applicants in our sample understood that the form was instructing them to supply only ‘at least one’ but frequently failed to understand that the form was encouraging them to supply additional information as well.
-
- Applicants frequently failed to understand that the form was encouraging them to supply additional information*
-
- 7.16 Seven cases in our sample (8%) related to insufficient evidence, six for self-employment. Two were refused solely on the ‘insufficiency’ ground. We quote below an example from one of the refusal letters and do not see how the applicant could have thought to supply the sheer range of evidence suggested, in light of the ‘at least one’ instruction. There is no mention of advertising material in the application guidance. The refusal letter is, in effect, providing guidance on how to make a repeat application (which would attract another £55 fee).
- 7.17 ‘This department has concluded that you have provided insufficient evidence that your EEA family member is currently a self employed person. You have failed to submit any evidence of work carried out such as recent invoices and statements, audited accounts, business bank statements clearly showing payments received or any advertisements that your EEA family member may have in order to generate work.’
- 7.18 We considered that any refusal purely on insufficiency grounds could only contribute to extra work in repeat applications and appeals. Staff told us that, in focusing on reducing the older cases, they had stopped contacting applicants for additional information other than in exceptional circumstances.

⁹⁵ <https://www.gov.uk/government/organisations/uk-visas-and-immigration/about/about-our-services>

7.19 Web-based guidance used to inform applicants: ‘If we have refused your application because you have not provided the necessary evidence to support your application, the quickest and easiest solution is to make a new application.’ We welcome the fact that this no longer appears as, in cases where applicants dutifully followed the ‘at least one’ instruction, it could be argued that the Home Office’s decision not to contact them for further evidence was penalising them by an extra £55. One stakeholder told us that many applicants who had been refused on insufficiency grounds lost confidence in their ability to understand the form and paid legal advisors to make their repeat application – adding further costs.

Forms should emphasise the quality and coverage of information needed

7.20 The Home Office should be working to make the application form and process as helpful as it can be within the confines of the Directive, making it clearer to applicants what could be submitted. Forms should emphasise the quality and coverage of information needed to avoid genuine applicants having to pay for repeat applications or go to appeal.

We recommend that the Home Office:

Makes the application process as clear as possible within the constraints of the European Directive.

The impact of interviews

7.21 Investigative interviews were first piloted in June 2012 and were not mandatory. Unusually, no formal evaluation and impact assessment was carried out after the pilot and before roll out.

7.22 We noted that interview slots were allocated by an automated system, with no attention to individual circumstances. The majority in our file sample were from London and the South of England, but their interviews were commonly scheduled for 9am and noon⁹⁶ regardless of address. Driving or taking an overnight coach were the only options to avoid travelling the day before and paying for overnight accommodation.

7.23 We looked in detail at the addresses of the 60 couples invited to interview in our sample. We found that 37 couples (62% of the total) were allocated 9am slots but 73% of them lived a long distance from Liverpool. Of the eight interviews we observed, five couples (62%) had travelled from London and the South of England (including a woman who was in her eighth month of pregnancy and about to start maternity leave)⁹⁷ plus one from Scotland.

7.24 We were concerned that there was no process for intervention to consider individual needs. Figure 27 below sets out a case where the couple did attend at Liverpool but, in our view, it would have been appropriate to ask the local ICE team or a caseworker based in the South East to arrange to interview them at home.

⁹⁶ Only three couples in our sample were scheduled for 1pm.

⁹⁷ Only a medical reason, with certificate, would be accepted as a reason for non-attendance.

Figure 27: Case study of an inappropriate journey to a Liverpool interview

The Applicant (a 51-year old Philippine national):

- applied on 13 March 2013 as the wife of a 72-year old retired Irish national living in the UK; submitted evidence of their identities, previous marriages and current marriage;
- submitted additional information on 8 May about the husband's month in hospital (January to February) and report on continuing care.

The Home Office:

- interviewed them in Liverpool on 5 June, as a Section 24 report existed and the applicant had married a second EEA husband within six months of the death of her first EEA husband;
- following interview, recorded a CID note that the residence card would be issued;
- on receiving the husband's application for a registration certificate on 12 June, linked them and put her document on hold, despite Treaty rights having been proved and the decision in principle to issue her residence card;
- made a decision on 7 August to issue the registration certificate and finally despatched both documents to the couple on 23 August.

Chief Inspector's comments:

- Most applicant couples in our sample were in their twenties and thirties. This husband was 72, and in poor health. The couple had to travel from the South Coast. While we do not disagree with the indicators for requiring an interview, clearly there should have been some alternative to making them travel to Liverpool.

- 7.25 The Home Office does provide a more tailored approach to interviews for people applying for another service. Again benchmarking with HMPO, we found that it has a number of interview offices. In the South-East of England alone, the web site lists interview locations in London, Essex, Kent, Bedfordshire and Surrey. Applicants can also negotiate a suitable time slot.
- 7.26 We were told by managers in Liverpool that European Casework was exploring the possibility of using a number of HMPO interview facilities in future, to bring interviews closer to where people lived. We welcome this proposal and consider that it should be expedited, as it would improve the level of customer service provided to interviewees.

Personal data of individuals should be treated and stored securely in accordance with the relevant legislation and regulations.

- 7.27 The Home Office files relating to EEA applications contain personal data, so storage and use of this data should be in accordance with the law. Home Office guidance to staff mirrors the legislative duties placed upon the Department. We assessed whether files were stored correctly, retrieved easily and contained information relating to the applicant's case only.
- 7.28 We asked the Home Office to provide us with figures on any breaches of data protection within our file sample period. In reply, we were told that a total of 15 minor breaches were identified and rectified quickly.⁹⁸ We were pleased to learn that, following this, regular reviews of storage were

⁹⁸ Matters such as cupboards which failed to lock were immediately reported and mended.

undertaken to ensure compliance with security procedures. Access to the office was pass-controlled. We observed that interviewing officers kept careful control of any individual records which they had to take outside the office down to the interviewing rooms.

The record management system was operating efficiently and effectively

- 7.29 We were also pleased to receive all 90 of the paper files in our sample by our deadline and in good condition. This demonstrated that the record management system was operating efficiently and effectively.
- 7.30 In most of the files we sampled, we saw no evidence that personal data had been incorrectly stored. Only 1 of the 90 paper files we sampled contained information that related to a person entirely unrelated to the applicant, with no explanation as to why the information was on the file. While any third party information stored incorrectly on file is a concern, this was a much better performance than in some previous inspections.⁹⁹

⁹⁹ Example - <http://icinspector.independent.gov.uk/wp-content/uploads/2011/10/Thematic-inspection-report-of-how-the-Agency-manages-Foreign-National-Prisoners1.pdf>.

CHAPTER 8: INSPECTION FINDINGS – CONTINUOUS IMPROVEMENT

Implementation of policies and process should support the efficient and effective delivery of border and immigration functions.

Improving the evidence base on the nature of EEA migration and abuses of free movement

- 8.1 Some non-EEA applicants enter into marriages of convenience because a residence card is a way of remaining in the UK and setting aside any existing immigration offences.¹⁰⁰
- 8.2 Those who obtain EEA residency rights through deception can, if not identified, go on to secure permanent residency in the UK after five years. The policy task for the Home Office is to ensure compliance with European law for the genuine, while still identifying and acting against those seeking to abuse the Regulations.
- 8.3 As opportunities for non-EEA nationals to remain in the UK continue to reduce through the tightened Immigration Rules, the attractiveness of a marriage of convenience with an EEA national is likely to increase further – the phenomenon of ‘displacement’. The basic requirements for a residence card are proof of nationality/identity, a valid marriage/civil partnership and the EEA partner exercising Treaty rights. As the Home Office informed the European Justice and Home Affairs Council in December 2013 – ‘the EU route has become the route of choice for those seeking to frustrate UK immigration control’.¹⁰¹
- 8.4 Policy staff told us that the attitude to sham marriage varied across European countries and the evidence base was poor. The UK was working with a group of like-minded nations seeking to ensure that sham marriage was tackled at European level.¹⁰² We were also told that the European Commission would be issuing a handbook about sham marriage.
- 8.5 In our sample, many of the EEA nationals sponsoring non-EEA partners were originally from outside the EEA. They had obtained citizenship in one of the older EU member states, moved to the UK and then applied for residence cards for their non-EEA spouses and/or registration certificates for themselves. Some may have obtained an EU nationality as a stepping stone to their ultimate goal of UK residency.
- 8.6 We do not know how they obtained their EEA citizenship. Policy and intelligence managers confirmed for us that they were aware of such patterns of changing citizenship, but told us that there was no reliable data on whether citizenship of another EEA country might have been via sham marriage, as marriages of convenience are the responsibility of the country in which they take place.

Many of the EEA nationals sponsoring non-EEA partners were originally from outside the EEA

100 Examples - illegal entry, overstaying or illegal working.

101 See footnote 43.

102 Austria, Belgium, Cyprus, Denmark, Germany and the Netherlands.

We noted that the naturalised Italian national in Figure 17 (who had been born outside Europe) stated on his application form that he had ‘no social or family ties with Italy’.

- 8.7 Additionally, in our sample of EEA1 cases, one individual, originally from Goa (a former Portuguese colony), had been removed from the UK in 2011 having overstayed his permission to remain. At that point he had Indian nationality. He returned less than two years later and was issued with a registration certificate as a Portuguese national.
- 8.8 Better information on this issue would help the Home Office to establish the scale of secondary migration to the UK by those who have relatively recently secured citizenship in other parts of Europe, and the level of abuse in such cases. In that light we make the recommendation below.

We recommend that the Home Office:

Analyses existing records to discover if those naturalised as EEA nationals are disproportionately represented in abuse of free movement rights.

- 8.9 We note that recent changes in policy have been aimed at both parties in a sham marriage – the non-EEA nationals and their EEA sponsors. The marriage interviews pilot had no means of taking its high non-attendance rate (60%) into account in decisions. The change to Regulation 20B¹⁰³ has addressed that and an inference can now be drawn if couples fail to attend two scheduled interviews.

- 8.10 There was previously no effective sanction against an EEA national sponsoring a sham partner, unless Level 2 crime could be shown. That meant there was no deterrent to those EEA sham partners who were not part of a facilitation ring but still practising deception and marrying for payment. Changes to Regulations 19 and 21B enable removal of the EEA national in sham cases and, in such cases, the EEA national will not be able to re-enter the UK for the 12 months following removal if there are reasonable grounds to suspect that admission would lead to an abuse of a right to reside. Staff at Liverpool told us that they had been pleased to be involved in the consideration for these policy changes. Seeking their views was good practice.

Staff at Liverpool told us that they had been pleased to be involved in the consideration for policy changes. Seeking their views was good practice

- 8.11 We conclude that the Home Office has invested deeply in recent strategic policy change designed to plug specific gaps, creating the opportunity for interviews and enforcement to contribute more effectively to delivery. It has tightened the Regulations in a focused way and formally brought abuse to the attention of the EU. The Immigration Bill¹⁰⁴ also contains a number of measures which were drafted with the intention of supporting staff in delivering both prevention and prosecution of sham marriages. The Home Office does, however, still need to do more to understand the drivers of migration to the UK from the European Economic Area so that its future policies are developed with reference to the best possible evidence.

The Home Office does, still need to do more to understand the drivers of migration to the UK from the European Economic Area so that its future policies are developed with reference to the best possible evidence

103 Appendix 1 or <http://www.legislation.gov.uk/ukxi/2013/3032/made>.

104 <http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0110/14110.pdf>.

Relationships between delivery partners

- 8.12 We were concerned about enforcement capacity, as well as implementation of the new Regulations on removing EEA nationals involved in fraudulent applications. In our previous report on sham marriage,¹⁰⁵ we found that Immigration Enforcement was working with the General Register Office (GRO) to encourage more register offices to report suspicions of sham marriage. However, there were numerous register offices which reported a minimal level of suspicions, or none at all. This did not appear to be commensurate with the Home Office's National Threat Assessment and understanding of displacement.
- 8.13 We also found that not all enforcement teams had the capacity or specialist subject knowledge to build effective working relationships with their local register offices to disrupt potential sham marriages before they took place. We recommended that the Home Office 'ensures that local enforcement teams are adequately resourced to act on suspected sham marriage referrals'. The Home Office accepted this 'in part', but stated that action to tackle sham marriages 'must be in the context of the finite resource available and other competing priorities and the need for our resources to be able to flex and adjust as the threat changes and the risk is displaced.'¹⁰⁶
- 8.14 For this inspection we pursued this question of 'competing priorities' in the context of ICE teams' overarching arrest target, unpredictable reactive responsibilities (such as dealing with lorry drops) and resource-intensive pastoral visits that often produced no outcome. We asked policy, intelligence and enforcement staff whether current processes and resources could deliver the intended enforcement and prosecution outcomes of the Regulations changes.
- 8.15 We were concerned to find that there was no clear strategy linking all delivery partners to tackle sham marriage abuse. Immigration Enforcement is still working with the GRO on encouraging all registration officials to report suspicions of sham and yet they are already under a statutory duty to report.
-
- There was no clear strategy linking all delivery partners to tackle sham marriage abuse*
-
- 8.16 The register office representative we spoke to for this inspection had seen no notification from the GRO about the Regulations changes. Registrars warn suspected sham couples that suspicions will be reported to the Home Office and the representative told us that they would add the capacity to prosecute/remove the EEA partner to that warning. The representative voiced an expectation that GRO would be 'a good strong thread running through' the anti-sham activity and we were surprised that the GRO had not issued a formal bulletin to alert registrars to these highly significant changes to the Regulations.
- 8.17 Register offices within local authorities are the only non-Home Office component of the whole process. ICE teams can contribute to building strategic enforcement liaison by developing effective anti-sham partnerships with their local register offices. This was one of the original objectives of 'Operation Mellor' and staff told us that Mellor was still driving interest and had increased activity. However, the register office representative we spoke to said that their local link to the ICE team could be improved, with feedback to explain the reasons when enforcement actions did not follow submission of Section 24 reports. The West London ICE in our original linked inspection¹⁰⁷ had emphasised the need for such feedback to keep relationships with local register offices effective.
- 8.18 But we were most concerned about enforcement capacity to undertake new Level 1 crime prosecutions arising from enforcement in register offices. Capacity is not consistent across teams. CFI staff told us that further Level 1 capacity did exist, because new investigators had first to achieve

¹⁰⁵ See footnote 4.

¹⁰⁶ See footnote 4, Recommendation 2 and Home Office response at <http://icinspector.independent.gov.uk/wp-content/uploads/2014/01/Home-Office-Response-to-Sham-Marriage-Inspection.pdf>.

¹⁰⁷ See footnote 4.

accreditation at that level.¹⁰⁸ We saw opportunities for building capacity – one ICE team had placed two staff with the local CFI team to get them trained for Level 1 prosecutions, but this appeared to be down to local initiative.

- 8.19 We were surprised not to find a strategic approach to ensuring that sufficient capacity existed for Level 1 prosecutions and removals enabled by the new Regulations. It is therefore vital that the Home Office implements the recommendation in our earlier report to resource local enforcement teams adequately, in order to deal with the further sham marriage prosecutions and/or referrals for removal.

It is vital that the Home Office implements the recommendation in our earlier report to resource local enforcement teams adequately

- 8.20 At a strategic level, we were told that a new Level 1 tasking process was being developed for consistency. We welcome this development.
- 8.21 Where those in existing marriages make applications for residence documents, it is for European Casework to identify shams. We were satisfied that this part of the process continued to be developed. The Home Office was aware that the potential for intelligence from European Casework had yet to be exploited and there was hope that the new intelligence management system would achieve its aims.
- 8.22 If caseworkers required a home visit, then activity passed back to Immigration Enforcement. We heard from both caseworkers and enforcement staff that a useful understanding of each other's work and priorities was at a very early stage and that feedback on outcomes from European Casework would be greatly welcomed by ICE teams. Clearly this would support staff across the two directorates to feel part of the one process. We welcome the European Casework initiative to start building closer understanding between caseworking staff and Immigration Enforcement.
- 8.23 If a residence card were refused and enforcement followed under the new Regulations, it would fall to teams within Immigration Enforcement. Potential removal of either party or both is only an apparent end of the process. It is clearly a full cycle, as intelligence about prosecutions and removals must be fed back to the GRO to support its efforts to increase reports from register offices.
- 8.24 During the inspection we were told that the senior manager to lead on sham marriage (including the new provisions to tackle sham marriage in the Immigration Bill) was likely to be from Intelligence. This would be a welcome approach, as it is clear that intelligence is the connecting thread for the anti-sham processes as they move between three different parts of the Home Office and out to the local authorities. This still, of course, leaves the 30% of UK marriages¹⁰⁹ celebrated under religious arrangements and there is some history of sham marriage within the Anglican churches.¹¹⁰ We understand that Immigration Enforcement is working to build closer relationships with the Church of England to tackle sham marriage.¹¹¹

Process improvement

- 8.25 European Casework managers and staff are involved in an ongoing continuous improvement exercise. While on-site in Liverpool, we saw a wide range of relevant metrics displayed on a large stand for all staff to see. Speaking to staff, we heard that they felt motivated and expected to meet the April 2014 target for reducing the backlog of cases. A number of staff emphasised how helpful they found the regular 'Caseworker Corner' meetings, which discuss any policy or process issues that arise with a

¹⁰⁸ Those joining CFI teams must first accredit their investigative skills at PIP Level 1 (see full footnote 78 about PIP).

¹⁰⁹ <http://www.ons.gov.uk/ons/rel/vsob1/marriages-in-england-and-wales-provisional/2011/stb-marriages-in-england-and-wales-provisional--2011.html>.

¹¹⁰ <http://www.independent.co.uk/news/uk/crime/vicar-jailed-over-sham-marriages-2071508.html> and <http://www.bbc.co.uk/news/uk-england-manchester-16165717>.

¹¹¹ The Immigration Bill also contains provisions to bring non-EEA nationals wishing to marry in the Church of England or Church of Wales in line with all others by completing civil preliminaries.

view to aiding consistency. We noted that the meeting is not confined to caseworkers and invites staff from other disciplines, such as NDFU, which is good practice for such groups.

Management information

- 8.26 We have frequently commented on shortcomings in CID records and recommended improvements in record-keeping.¹¹² This inspection found 22% of records to have some information that was incomplete, unclear or difficult to find.
- 8.27 We also requested several items of management information (statistics) on decision-making. The Home Office could provide many, such as decision outcomes, processing times and reasons for refusal but not others, including:
- types of applicant – within the EEA2 ‘umbrella’, there are five statistical categories which should correspond to types of family member but spouses and civil partners are split across two categories;
 - types of Treaty rights claimed by applicants;
 - intervals before issuing certificates of application;
 - numbers of pastoral visits¹¹³ requested; and
 - numbers of prosecutions and removals of EEA2 applicants refused because of sham marriage.
- 8.28 In the marriage interview information, there were also some gaps. We asked the Home Office for data on using interviews and home visits in deciding residence card applications (particularly how many home visits actually took place and how many fed back usable information for decisions). We also asked for data on decisions to issue or refuse cards without using these interventions or where applicants did not attend. The Home Office confirmed that it did not readily record this information, and that obtaining it would require a significant amount of work comparing two sets of records. This does not equip the Home Office to compare decisions made on applications that take different paths and hinders future ability to conduct a full evaluation of this aspect of the application process.
- 8.29 We also noted that the published information about EEA cases is very limited (for example, it does not distinguish between EEA1 and EEA2 cases). Management information is crucial, both to inform the Home Office’s policy and practice as it continues to build its actions against sham marriage and other abuses of free movement and to provide assurance to Parliament and the public that its processes are efficient and effective. We therefore make the following recommendation:

Management information is crucial, both to inform the Home Office’s policy and practice and to provide assurance to Parliament and the public that its processes are efficient and effective

We recommend that the Home Office:

Collects comprehensive and robust management information on all aspects of European casework.

¹¹² <http://icinspector.independent.gov.uk/wp-content/uploads/2012/06/ICIBI-Inspection-of-Hants-IOW-LIT.pdf> Recommendation 5.

¹¹³ Explained at paragraph 3.20.

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

Resourcing and application forecasting

- 8.30 It is clear from European Casework's risk register that managers actively monitor, and seek to mitigate, risks. For example, they are rightly concerned about the risk of infraction by the European Commission should cases not be decided within legal timescales. By increasing staff numbers in the past twelve months and working steadily to eliminate the backlog, managers have acted to mitigate that risk.
-
- Managers actively monitor, and seek to mitigate, risks*
-
- 8.31 Forecasting the need for resources is inherently difficult when EEA nationals and their family members are not obliged to obtain documents from the Home Office in order to exercise free movement rights. Managers had decided to mitigate this risk by combining central Home Office data with local analysis and insights, and had contingency plans for redeploying other staff.
- 8.32 Two risks on the register concern possibilities of significant caseload increases. Increases in Bulgarian and Romanian applicants had not materialised when we were on-site, although the Office for National Statistics (ONS)¹¹⁴ reported a statistically significant increase in Romanian and Bulgarian immigration to 24,000 in the year ending September 2013 (from 9,000 in the previous year). An estimated 70% of them arrived for work. The other risk would arise only should the Government seek to make registration certificates and residence cards mandatory, as in some other countries.
- 8.33 This confirms that the risk register includes some horizon scanning, but it does not include potential increases in the current applicant population. It takes no account, for example, of the potential for increased volumes of applications from southern Europeans and non-EEA nationals sponsored by them, despite the fact that recent statistics indicate that southern European migration to the UK is on a sharply upward trend. Recent ONS figures showed National Insurance number registrations to adult overseas nationals entering the UK to have increased by 19% to 617,000 in the year ending December 2013, with the highest increases for citizens of Poland, Spain, Italy and Portugal.¹¹⁵
- 8.34 European Casework is fully aware that it is vulnerable to sudden and/or significant changes in application numbers, the most likely of all being further displacement to the EEA route as the Immigration Rules are further tightened up. Staff in every relevant role told us that they saw this happening already and expected abuse of the European Regulations to increase.
-
- Staff in every relevant role expected abuse of the European Regulations to increase*
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Improving intelligence

- 8.35 One key risk, not on the register, relates to how limited current information is on the extent of sham marriage. When on-site for this inspection, we were disappointed that the Home Office had not made more progress in building intelligence capability and recruiting to the new Intelligence Hub in Liverpool, initiatives that had been trailed by the Department when we interviewed staff and managers for our short-notice inspection in October 2013.¹¹⁶

114 <http://www.ons.gov.uk/ons/rel/migration1/migration-statistics-quarterly-report/february-2014/msqr-february-2014.html>.

115 'National Insurance number registrations to adult overseas nationals entering the UK increased by 19% to 617,000 in the year ending December 2013. Highest increases were for citizens of Poland, Spain, Italy and Portugal.' <http://www.ons.gov.uk/ons/rel/migration1/migration-statistics-quarterly-report/february-2014/msqr-february-2014.html>.

116 See footnote 4.

8.36 Our interviews with staff indicated that there was a real appetite for better intelligence on those facilitating marriages of convenience and other abuses of free movement rights, as well as for formalising existing processes, which depended to a large extent on personal relationships rather than infrastructure. Improving the quality of intelligence will take time. However, it is vital if the Home Office is going to obtain an informed understanding of the extent and nature of abuses of free movement rights. Only in the light of that understanding will it be able to develop effective strategies to tackle such abuse.

Improving the quality of intelligence is vital if the Home Office is going to obtain an informed understanding of the extent and nature of abuses of free movement rights

APPENDIX 1: NEW POWERS TO ACT AGAINST EEA NATIONALS INVOLVED IN FRAUDULENT APPLICATIONS

Taken directly from <http://www.legislation.gov.uk/uksi/2013/3032/made>.

These powers came into use from 1 January 2014.

Regulation 19 (exclusion and removal from the United Kingdom)

In regulation 19 (exclusion and removal from the United Kingdom)—

(a) after paragraph (1A), insert—

“(1AB) A person is not entitled to be admitted to the United Kingdom by virtue of regulation 11 if the Secretary of State considers there to be reasonable grounds to suspect that his admission would lead to the abuse of a right to reside in accordance with regulation 21B(1).”;

(b) in paragraph (3), for sub-paragraphs (a) and (b) substitute—

“(a) that person does not have or ceases to have a right to reside under these Regulations;

(b) the Secretary of State has decided that the person’s removal is justified on grounds of public policy, public security or public health in accordance with regulation 21; or

(c) the Secretary of State has decided that the person’s removal is justified on grounds of abuse of rights in accordance with regulation 21B(2).”.

New regulation 20B (Verification of right to reside)

“Verification of a right of residence

20B. (1) This regulation applies when the Secretary of State—

(a) has reasonable doubt as to whether a person (“A”) has a right to reside under regulation 14(1) or (2); or

(b) wants to verify the eligibility of a person (“A”) to apply for documentation issued under Part 3.

(2) The Secretary of State may invite A to—

(a) provide evidence to support the existence of a right to reside, or to support an application for documentation under Part 3; or

(b) attend an interview with the Secretary of State.

(3) If A purports to be entitled to a right to reside on the basis of a relationship with another person (“B”), the Secretary of State may invite B to—

- (a) provide information about their relationship with A; or
- (b) attend an interview with the Secretary of State.
- (4) If, without good reason, A or B fail to provide the additional information requested or, on at least two occasions, fail to attend an interview if so invited, the Secretary of State may draw any factual inferences about A's entitlement to a right to reside as appear appropriate in the circumstances.
- (5) The Secretary of State may decide following an inference under paragraph (4) that A does not have or ceases to have a right to reside.
- (6) But the Secretary of State must not decide that A does not have or ceases to have a right to reside on the sole basis that A failed to comply with this regulation.
- (7) This regulation may not be invoked systematically.
- (8) In this regulation, "a right to reside" means a right to reside under these Regulations."

New regulation 21B (abuse of rights or fraud)

"Abuse of rights or fraud

21B. (1) The abuse of a right to reside includes—

- (a) engaging in conduct which appears to be intended to circumvent the requirement to be a qualified person;
 - (b) attempting to enter the United Kingdom within 12 months of being removed pursuant to regulation 19(3)(a), where the person attempting to do so is unable to provide evidence that, upon re-entry to the United Kingdom, the conditions for any right to reside, other than the initial right of residence under regulation 13, will be met;
 - (c) entering, attempting to enter or assisting another person to enter or attempt to enter, a marriage or civil partnership of convenience; or
 - (d) fraudulently obtaining or attempting to obtain, or assisting another to obtain or attempt to obtain, a right to reside.
- (2) The Secretary of State may take an EEA decision on the grounds of abuse of rights where there are reasonable grounds to suspect the abuse of a right to reside and it is proportionate to do so.
 - (3) Where these Regulations provide that an EEA decision taken on the grounds of abuse in the preceding twelve months affects a person's right to reside, the person who is the subject of that decision may apply to the Secretary of State to have the effect of that decision set aside on grounds that there has been a material change in the circumstances which justified that decision.
 - (4) An application under paragraph (3) may only be made whilst the applicant is outside the United Kingdom.
 - (5) This regulation may not be invoked systematically.
 - (6) In this regulation, "a right to reside" means a right to reside under these Regulations."

APPENDIX 2: ROLE & REMIT OF THE INDEPENDENT CHIEF INSPECTOR

The role of the Independent Chief Inspector (‘the Chief Inspector’) of the UK Border Agency (the Agency) was established by the UK Borders Act 2007 to examine and report on the efficiency and effectiveness of the Agency. In 2009, the Independent Chief Inspector’s remit was extended to include customs functions and contractors.

On 26 April 2009, the Independent Chief Inspector was also appointed to the statutory role of independent Monitor for Entry Clearance Refusals without the Right of Appeal as set out in section 23 of the Immigration and Asylum Act 1999, as amended by section 4(2) of the Immigration, Asylum and Nationality Act 2006.

On 22 March 2012, the Chief Inspector of the UK Border Agency’s title changed to the Independent Chief Inspector of Borders and Immigration. This followed a decision by the Home Secretary in February that year to transfer the Border Force functions from UKBA back into the Home Office.

On 26 March 2013, the Home Secretary announced that the UK Border Agency would be abolished and all remaining functions would also transfer back to the Home Office.

The Chief Inspector’s statutory responsibilities remain the same. The Chief Inspector is independent of the Home Office and reports directly to the Home Secretary.

APPENDIX 3: GLOSSARY

Term	Description
C	
Caseworker	An official responsible for processing applications.
Case Information Database (CID)	A database used by the Home Office, designed to record all immigration applications made within the UK and to record what has happened in each case.
Certificate of Application	Document sent to an EEA2 applicant immediately after receipt of their application, usually showing that they are allowed to work.
Court of Justice of the European Union (CJEU)	Originally set up in 1952 as The Court of Justice of the European Communities, it makes sure that EU legislation is interpreted and applied in the same way in all EU countries.
Criminal and Financial Investigation teams (CFI)	Part of the Immigration Enforcement Directorate of the Home Office, responsible for the investigation of suspected immigration offences.
E	
EEA1	Applications by EEA nationals who are exercising Treaty rights, for a document (registration certificate) confirming this.
EEA2	Applications by non-EEA national family members of EEA nationals who are exercising Treaty rights for a document (residence card) confirming this.
European casework	The casework function relating to EEA nationals and their family members.
European Casework	The Home Office unit, based in Liverpool, which carries out the European casework function.
European Economic Area (EEA)	<p>The EEA was established on 1 January 1994. It contains the Member States of the European Union, as well as three members of the European Free Trade Association (EFTA).</p> <p>All EEA nationals enjoy free movement rights within the EEA. Switzerland is not a member of the EEA, but its nationals enjoy similar rights.</p>
European Directive	Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. ‘The Regulations’ transpose the Directive for the UK.

F	
Free movement	Rights enjoyed by EEA nationals. They are not subject to the Immigration Rules and may come to the UK and reside here in accordance with the Regulations. They do not require permission from the Home Office to enter or remain, nor is a document confirming their free movement status mandatory.
G	
General Register Office	The General Register Office is part of Her Majesty's Passport Office and oversees civil registration in England and Wales. It maintains the national archive of births, marriages and deaths dating back to 1837.
H	
Home Office	The lead government department for immigration and passports, drugs policy, crime, counter-terrorism and the police.
I	
Immigration Enforcement	An operational command of the Home Office.
Immigration, Compliance and Enforcement (ICE) Team	Team of Immigration Officers (usually arrest-trained) within Immigration Enforcement, responsible for responding to suspected and known immigration offences in their designated location.
Intelligence	The material that results when information is recorded, assessed and developed.
Issue case	A decision to issue a registration certificate or residence card to an applicant. Roughly analogous to 'grants' in other types of immigration application, but referred to as an 'issue' because the document confirms existing rights.
M	
Marriage/civil partnership interview	Interviews of both parties to a marriage/civil partnership, whose relationship is suspected to be a sham, to test whether the relationship is credible/genuine.
N	
Naturalisation	The legal process by which someone with no automatic claim to citizenship in a country can become a citizen and obtain the same rights and privileges as someone who was born a citizen.
O	
Overstay	One who has been granted time-limited permission to be in the UK and who remains in the UK after that permission has expired.
P	
Pastoral visit	Visit by an enforcement team to the (claimed) home of a couple whose marriage/civil partnership is suspected to be a sham, to test whether their relationship is genuine. Officers may enter only with consent.

Proxy marriage	Marriage in which one or both parties are not present at the ceremony. Someone else acts as a 'proxy' for the person. A legal form of marriage in some countries.
R	
Register office	The office of the Superintendent Registrar who has legal custody of all the birth, marriage and death registers for the local registration district.
Registrar	A generic term in this report for anyone who carries out duties under the Marriage Acts at a register office.
Registration certificate	Document issued to EEA nationals (EEA1s) exercising Treaty rights, as confirmation of their free movement rights.
'The Regulations'	The Immigration (European Economic Area) Regulations 2006 (SI 1003/2006), as subsequently amended. They govern the entry into and stay in the UK of EEA nationals and their non-EEA family members.
Removal	The process by which a person with no permission to be in the UK, through assistance or through enforcement by the Home Office, physically leaves the UK.
Residence card	Document issued to non-EEA national family members (EEA2s) of EEA nationals exercising Treaty rights, as confirmation of their free movement rights.
S	
Senior caseworker	Staff member, at a higher grade than a caseworker, who oversees caseworkers' decision-making and provides guidance.
Sham marriage	Marriage/civil partnership of convenience, contracted for the purpose of avoiding the effect of one or more provisions of United Kingdom immigration law or the Immigration Rules.
Sponsor	The EEA national claiming to be exercising Treaty rights, to whom an application for a residence card relates.
T	
Treaty rights	Purposes for which an EEA national may remain in the UK for longer than three months – employment, self-employment, job seeking, self-sufficiency (includes being retired) and study.
U	
UK Visas and Immigration (UKVI)	An operational command of the Home Office, handling all overseas and UK immigration and visa applications, including requests for EEA documentation.

APPENDIX 4: INSPECTION CRITERIA

Inspection criteria used for this inspection

Operational Delivery

1. Decisions on the entry, stay and removal of people should be taken in accordance with the law and the principles of good administration.
2. Customs and immigration offences should be prevented, detected, investigated and, where appropriate, prosecuted in accordance with the law.
3. Resources should be allocated to support operational delivery and achieve value for money.

Safeguarding Individuals

5. All individuals should be treated with dignity and respect and without discrimination in accordance with the law.
6. Enforcement powers should be carried out in accordance with the law and by members of staff authorised and trained for that purpose.
8. Personal data of individuals should be treated and stored securely in accordance with the relevant legislation and regulations.

Continuous Improvement

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

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