



UK Border Agency's operations in the North West of England

An Inspection of the Civil Penalties Compliance Team – Illegal Working

March – April 2010



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Independent Chief Inspector of the UK Border Agency



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Foreword from John Vine CBE QPM



I am pleased to present the report of my recent inspection of the UK Border Agency's Civil Penalties Compliance Team – Illegal Working (CPCT) which is based in Manchester.

The Civil Penalty scheme was designed to create a hostile environment for those who seek to benefit from the abuse of immigration control and employ illegal migrant workers. Parliament specifically granted powers for this purpose so it was disappointing to find that the UK Border Agency had a largely passive approach towards the Civil Penalties scheme and was too accommodating towards attempts by employers to reduce penalties. Performance indicators were 'soft' and as a result, ineffective in driving better performance or creating a real deterrent to others.

I would particularly highlight the disparity between the publicised amount of penalties issued and the payments actually collected. Continually using figures of fines issued as a measure of effectiveness is misleading when a much smaller percentage of the total is actually recouped.

This is not the first time I have reported on the shortfall between civil penalties issued and payments collected. My findings from a pilot report "*Inspection of Freight Searching Operations at Juxtaposed Controls in Calais and Coquelles*" published in my 2008-2009 annual report¹ highlighted similar weaknesses.

I have set out my findings together with seven recommendations which I believe would strengthen the operation of the CPCT.



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1. The Independent Chief Inspector of the UK Border Agency Annual Report 2008-2009 can be found at:
<http://icinspector.independent.gov.uk/inspections/inspection-reports/>

1. Executive Summary

1. The Immigration, Asylum and Nationality Act 2006 introduced a new system of civil penalties for employers who employ illegal migrant workers. The aim of the legislation was to provide the UK Border Agency with a swift and effective means of tackling employers who fail to meet their obligations in their employment practices, without criminalising those who slip up in operating their recruitment and employment practices. This inspection focused on the effectiveness and efficiency of this national operation and the extent to which the Civil Penalties Compliance Team – Illegal Working (CPCT) complied with relevant guidance and legislation.
2. The CPCT exceeded its targets during the last financial year. However, we believe that further development of these targets, together with associated Key Performance Indicators (KPIs) is required. We do not believe that they were ambitious enough to promote business improvement. There is also a need to develop the analysis of management information as a tool to identify good practice or performance shortcomings.
3. Reporting of financial information was misleading and lacking in transparency. There are two ways to describe the level of debt owed to the CPCT as a result of penalties being issued. The ‘gross potential value’ is the total of penalties when they are first imposed. The ‘net recoverable debt’ takes account of any reductions in the penalty following an objection and/or appeal. Approximately 23% of penalties were reduced or cancelled as a result of objections and/or appeals. Therefore there is a significant difference between the two values. The CPCT do not include ‘net recoverable debt’ in management information reports, nor is it published in the public domain. At the time of the inspection, the gross potential value of penalties was £39,997,500 and £5,598,992 had been recovered. We were unable to determine what proportion of the net recoverable debt this represented.
4. We also found that there were significant risks with the current CPCT Information Technology (IT) system in terms of support, resilience security and audit. The system provides the CPCT with the tools to administer the Civil Penalty scheme; a new system had been commissioned but will not be ready until the first quarter of 2011. There is an immediate need for a review of the current system to ensure adequate controls are in place.
5. We found evidence that management had used the knowledge and experience of staff in order to improve business processes within the CPCT. This resulted changing the format of letters to employers, to ensure more detail was provided about a case, thus reducing the number of objections being received into the unit.
6. There was also positive feedback regarding the relationship between the CPCT and external stakeholders for example Treasury Solicitors. This ensured that appeals were being dealt with more efficiently. The relationship with Treasury Solicitors had also improved, ensuring that appeals were dealt more efficiently.
7. The findings of this report were consistent with our findings regarding the administration of the Civil Penalty Scheme in our scrutiny of Juxtaposed Controls at Calais and Coquelles which was carried out in 2009. In that scheme we also found that the level of penalties collected was only a fraction of the amount imposed and the UK Border Agency should review the efficiency and effectiveness of both these schemes.

2. Summary of Recommendations

We recommend that the UK Border Agency:

1. Reviews the CPCT's current suite of KPI's to ensure they support government objectives for the Civil Penalty scheme and introduces internal performance indicators to drive continuous improvement in the process.
2. Improves the accuracy and clarity of financial reporting of penalties by ensuring net recoverable debt is highlighted as well as monitoring total numbers of cases received for each month.
3. Ensures that Enforcement Teams understand fully the lessons learned from the appeals process.
4. Accurately measures performance by region, including the provision of feedback to Enforcement Teams, so processes can be improved.
5. In advance of a new computer system, urgently reviews the current system's security and audit arrangements to ensure they are compliant with government policy and relevant legislation, e.g. the Data Protection Act 1988.
6. Improves the current quality assurance process and training of staff so that consistent, evidence-based decisions are made.
7. Reviews whether it is efficient and effective to have two separate civil penalty schemes administered separately within one organisation.

3. The Inspection

- 3.1 The role of the Independent Chief Inspector of the UK Border Agency was established by the UK Borders Act 2007 to examine the efficiency and effectiveness of the UK Border Agency. In 2009, the Independent Chief Inspector's remit was extended to include customs functions and contractors.²
- 3.2 The Chief Inspector is independent of the UK Border Agency and reports directly to the Home Secretary.

Purpose and Aim

- 3.3 This inspection of the Civil Penalties Compliance Team – Illegal Working (CPCT) formed part of a wider inspection covering some of the UK Border Agency's operations in the North West of England. The terms of reference for this specific inspection were:
- to undertake a discrete inspection of the Illegal Working Team within the CPCT, collecting evidence to assess the efficiency and effectiveness of this national operation, and the extent to which the team complied with relevant guidance and legislation.

Scope

- 3.4 The scope of the inspection was to assess:
- How successful the CPCT - Illegal Working Team had been in meeting targets specified within the North West Enforcement and Compliance Business Plan 2009-2010;
 - The effectiveness of its casework function; and
 - Variations in the process between the six UK Border Agency regions.

Inspection Criteria

- 3.5 The inspection was carried out against a selection of the Independent Chief Inspector's Core Criteria³ covering the following four themes:
- High level outcomes of the business;
 - Processes and procedures including quality of decision-making and consistency of approach;
 - Impact on people subject to UK Border Agency services;
 - Management and leadership.
- 3.6 The specific criteria used for this inspection can be found at Appendix 1.

Methodology

- 3.7 The initial on-site phase of the inspection, involving file sampling, was carried out on 25 and 26 March 2010. The second phase took place between 14 and 16 April 2010.

2. http://www.legislation.gov.uk/ukpga/2009/11/pdfs/ukpga_20090011_en.pdf

3. Core Criteria of the Independent Chief Inspector of the UK Border Agency can be found at: http://icinspector.independent.gov.uk/wp-content/uploads/2010/03/Criteria_for_core_programme.pdf

3.8 A range of methods were used during the inspection, including:

- analysis of documentary evidence and management information;
- file sampling of 74 completed cases (including cases that had raised objections and had appeals concluded);
- interviewing 13 members of Agency staff and managers across all levels;
- conducting two focus groups with a total of ten staff – seven carrying out case work and three working exclusively on appeals;
- analysis of policy guidance; and
- meetings and phone conversations with five stakeholders (Appendix 3).

3.9 On the final day of the on-site phase of the inspection, high level emerging findings were provided to senior managers responsible for the CPCT.

3.10 The inspection identified seven recommendations for improvement to operational service delivery in the CPCT and these are set out on Page 6 of this report.

4. Background

- 4.1 At the time of the inspection, the UK Border Agency was structured into five primary segments. The four operational areas of Border Force, Immigration Group, International Group and Criminality and Detention Group. The fifth is the Corporate Services segment which includes the centralised management of the UK Border Agency relating to Financial Management, Human Resources, Policy and Management Information. The majority of UK based staff work within either Immigration Group or Border Force.
- 4.2 The UK Border Agency presence in the North West of England is made up of a part of Border Force North⁴ and Immigration Group North West, which contains a number of national functions that support operations across the UK Border Agency.

Civil Penalties Compliance Team – Illegal Working (CPCT)

- 4.3 The CPCT is part of the Immigration Group North West⁵ and sits within Enforcement and Compliance. It was established to undertake the administrative support for the Civil Penalty scheme. The CPCT's primary responsibilities are:
- to make initial penalty decisions;
 - to serve the penalty notices on employers; and
 - to deal with any subsequent objections, appeals and payments from employers.
- 4.4 The Civil Penalty Scheme was introduced to support the Government's commitment to tackle illegal working through the following three high level objectives:
- creating a hostile environment for those who seek to benefit from abuse of immigration control;
 - reducing harm resulting from abuse of immigration control;
 - combating illegal migrant working and those who benefit from it.⁶

Section 15 of Immigration, Asylum and Nationality Act 2006

- 4.5 The CPCT derives its authority from Section 15 of the Immigration, Asylum and Nationality Act 2006. Civil Penalties for employers came into effect on 29 February 2008. The Act imposed a duty on employers to establish whether their employees were permitted to work in the UK before employment commences. Employers found to be employing workers illegally were liable to be fined under civil law up to a maximum of £10,000 per worker. A criminal offence of knowingly employing illegal workers also exists which carries a maximum sentence of up to two years in prison with an unlimited fine. The scope of this inspection was civil penalties whilst criminal offences were not considered. Under Section 19 of the 2006 Act, a Code of Practice entitled 'Prevention of Illegal Working' was published. This set out the factors that may be considered when determining the level of penalty to be imposed in each case.

4. Three regions – North, Central and South

5. Six regions – London and South East, East and West Midlands, North West, Wales and South West, Scotland and Northern Ireland

6. UK Border Agency Intranet – An Overview of Civil Penalties

4.6 These powers replaced the previous arrangements under section 8 of the Asylum and Immigration Act 1996 which made it an offence to employ a person subject to immigration control who either did not have valid leave in the UK, or was not permitted under the terms of their leave to work in the UK. The liability for the employer was employment of such a person and the fine was £5,000.

The Process

4.7 A detailed schematic of the Civil Penalty process from initial decision, through to potential objection, appeal and third party debt collection can be found at Appendix 2.

4.8 In summary, officers within Enforcement Teams, across the UK undertake intelligence-led visits to premises of businesses thought to be employing illegal migrant workers. If an employer is found to be employing such a worker, the officer will serve a Notice of Potential Liability (NOPL) on them. The NOPL and information gathered from the visit is then compiled into a referral pack and sent to the CPCT.

4.9 The CPCT then consider the information in the referral pack and decide whether or not a civil penalty should be issued. If a civil penalty is to be issued, CPCT will serve a Notice of Liability (NOL) on the employer. However, if it is deemed that no offence has been committed, a Notice of No Liability (NONL) is served on the employer and no further action is taken.

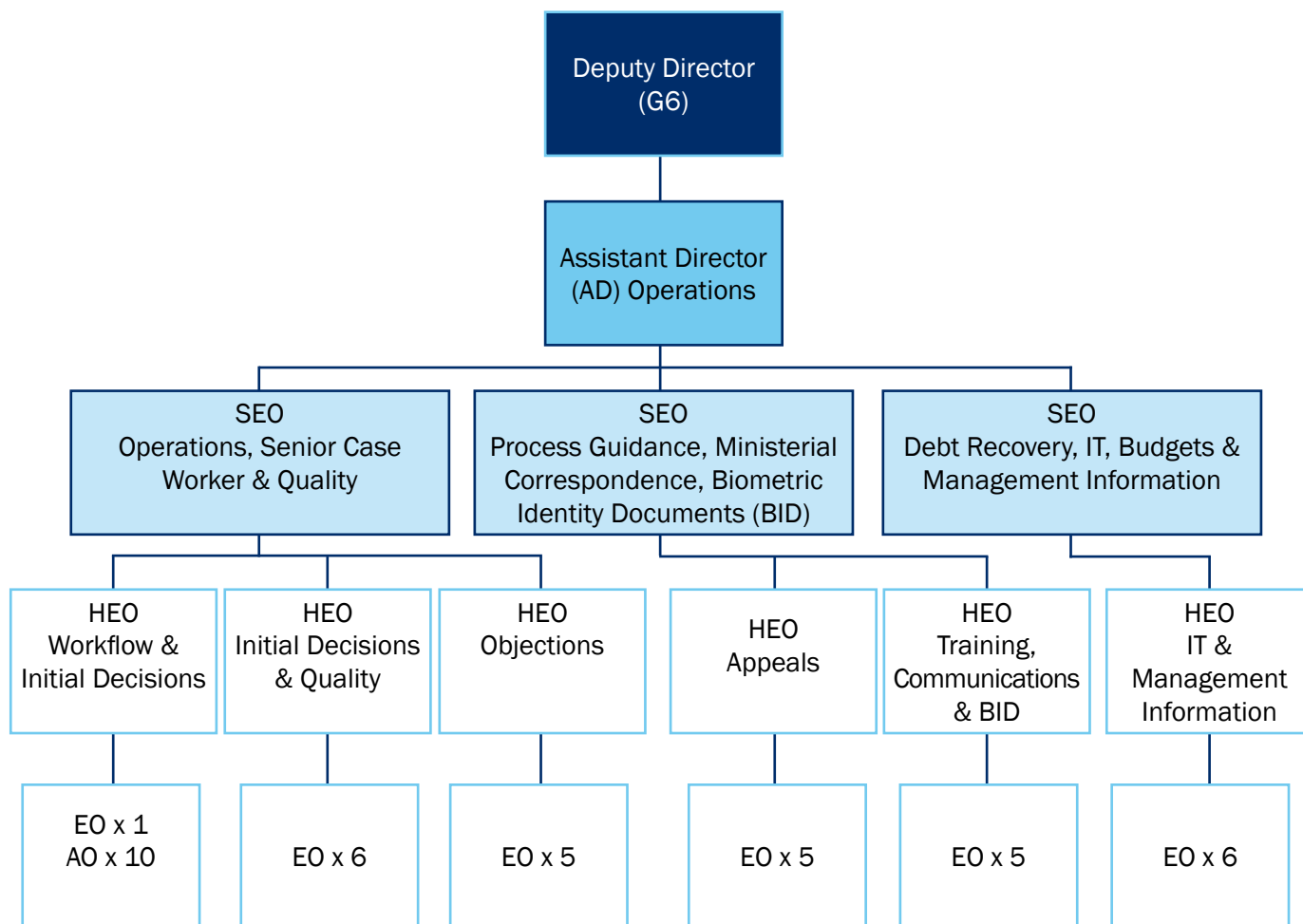
4.10 The Code of Practice sets out that an employer has the right to object and/or appeal against the penalty and has 28 calendar days to do this from receipt of the NOL. The CPCT would then consider the grounds of the appeal and/or objection, taking into account any further evidence.

4.11 If the objection and/or appeal is dismissed, the employer would then be required to pay the outstanding civil penalty. A civil penalty may be paid outright, or with the agreement of a CPCT caseworker, over a period of up to two years. If a payment is missed, then the outstanding balance would automatically become payable. The payment is monitored by the Home Office Shared Service Centre in Newport which provides a finance, procurement and human resource service to the Home Office and the UK Border Agency.

4.12 If an employer fails to pay the outstanding penalty following objection and/or appeal, the Home Office Shared Service Centre pursues the payment of the penalty. If the Shared Service Centre has been unable to collect the payment after 90 days of the penalty being issued, the debt is transferred to a third party debt recovery agency. At the time of the inspection, processes relating to the use of a third party debt recovery agent were still being established since the introduction of the system in February 2008. In order to manage the implementation of the new processes, the Shared Service Centre were sending cases to the debt recovery agent in batches of 200. The third batch of 200 had recently been sent when we arrived on site in mid April 2010.

Structure

Figure 1 : Organisational Structure of CPCT



SEO - Senior Executive Officer
HEO - Higher Executive Officer
EO - Executive Officer
AO - Administration Officer

5. Inspection findings – High level outcomes of the business; and Management and leadership

Specific criteria:

There are clear and realistic performance targets to drive improvement.

Key performance measurement and monitoring is focused on the priorities set out in the business plan.

- 5.1 The Civil Penalty Compliance Team – Illegal Working (CPCT) largely exceeded their Key Performance Indicators (KPIs) however, we found no clear rationale for any of the KPIs, nor that they drove improvement. We did not find any evidence to justify the levels that the KPIs had been set at. We found clear evidence that management information was being produced on a monthly basis. This was used by senior managers within the CPCT, with an executive summary going to the UK Border Agency Board. However, some major pieces of information were not contained in the monthly management information packs such as the amount of net recoverable debt, information on individual cases and the age of debts.
- 5.2 Overall, we found that the system did not create the hostile environment for those who benefit from illegal working that the Government had intended. Nor did we consider the operation of the Civil Penalty scheme swift or effective.

KPIs and Targets

- 5.3 The CPCT had targets which were set out within the North West Enforcement & Compliance 2009-2010 Business Plan⁷. Those targets were then translated into KPIs - see Figure 2 below. Performance against these KPIs was monitored on a regular basis through the production of monthly management information reports.

7. Immigration Group North West Enforcement and Compliance Business Plan 2009-10

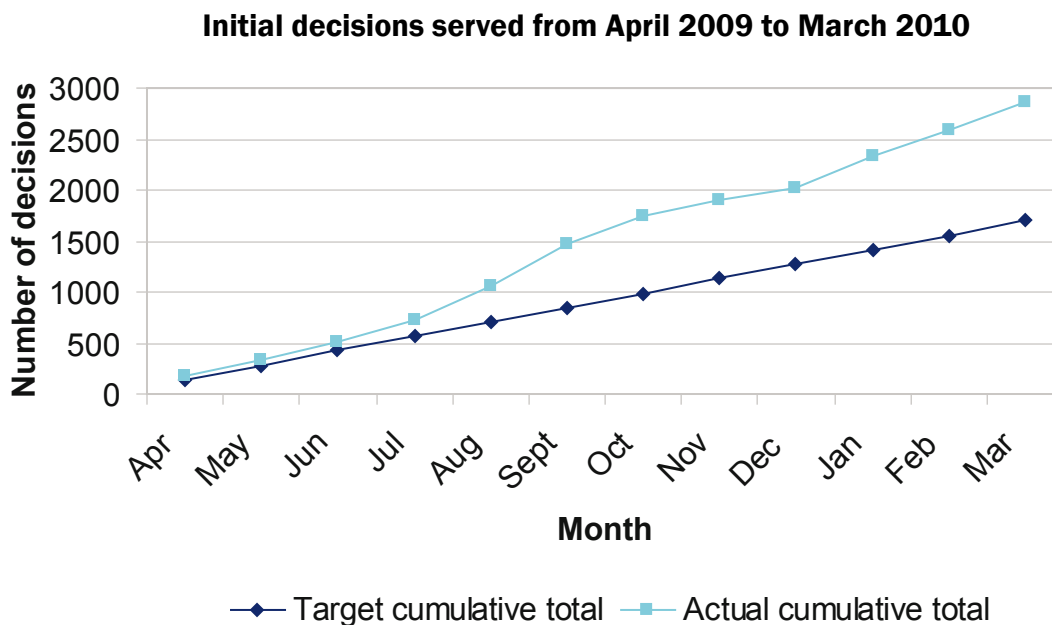
Figure 2: Targets and KPIs for 2009-10

Targets from 2009-2010 Business Plan	Key Performance Indicators (KPIs)
To serve 1700 initial decisions	To serve 1700 initial decisions
To undertake 1275 objection decisions	Issue 1275 objection decisions
To ensure that 65% of appeal cases are upheld	65% of all appeals upheld in favour of the CPCT
To recover £1m in penalty payments	Generate £2.5m in payments
	Reduce the objection rate to 75% (from a starting point of 80%)
	Ensure that backlogs at each stage of the process do not exceed 2009 levels

Initial decisions

- 5.4 Figure 3 shows that the KPI for initial decisions was regularly exceeded for the financial year 2009 – 10. The target to serve 1700 initial decisions within the reporting year had been broken down to approximately 141 decisions per month, with the target having increased cumulatively by this amount each month as the year progressed. We found that in every month of the reporting period, the number of decisions served exceeded the cumulative target that had been set.
- 5.5 By March 2010, 1,700 decisions should have been served, however this was exceeded by 1,167. Performance had exceeded the target by 69%, and the overall number of decisions being 2,867.

Figure 3: Initial decisions served from April 2009 to March 2010



Appeals

- 5.6 The KPI for 65% of appeals to be upheld, although met, seemed low because by the time a decision reached the appeal hearing, it would have been reviewed up to three times by case workers within the CPCT; firstly at the initial decision stage, then at the objection stage and finally upon receipt of the appeal if the decision was taken to contest the appeal. Therefore we would expect the target to be significantly higher than 65%.
- 5.7 During the period between 1 April 2009 and 31 March 2010, 249 appeals were concluded. Of these, 166⁸ (66%) were concluded in favour of the CPCT. This included those appeals that were conceded by employers and those which were dismissed by the judge.

Recovery of penalty payments

- 5.8 Figure 4 below shows that the KPI for generating income through payment of penalties was exceeded, although the target (to recover £1m in penalty payments) differed from the KPI to (generate £2.5m in payments). The reason for this difference is that the target was achieved by August 2009, so the KPI was re-profiled to make the target more challenging for the CPCT. Simply stating an overall amount of money to be recovered, without putting that in the context of a percentage of the total debt did not appear to drive the process. Nor did the fact that the total outstanding debt was not recorded.

Figure 4: Income Generated 2009-10

2009-10 target	KPI	Amount received 2009-10
Recover £1m	Generate £2.5m	£4,408,067.89*

*The amount received included some penalties which had been paid in full, some payments received as part of instalment plans, some payments received as part payments towards a total penalty and some where the penalty was issued before April 2009

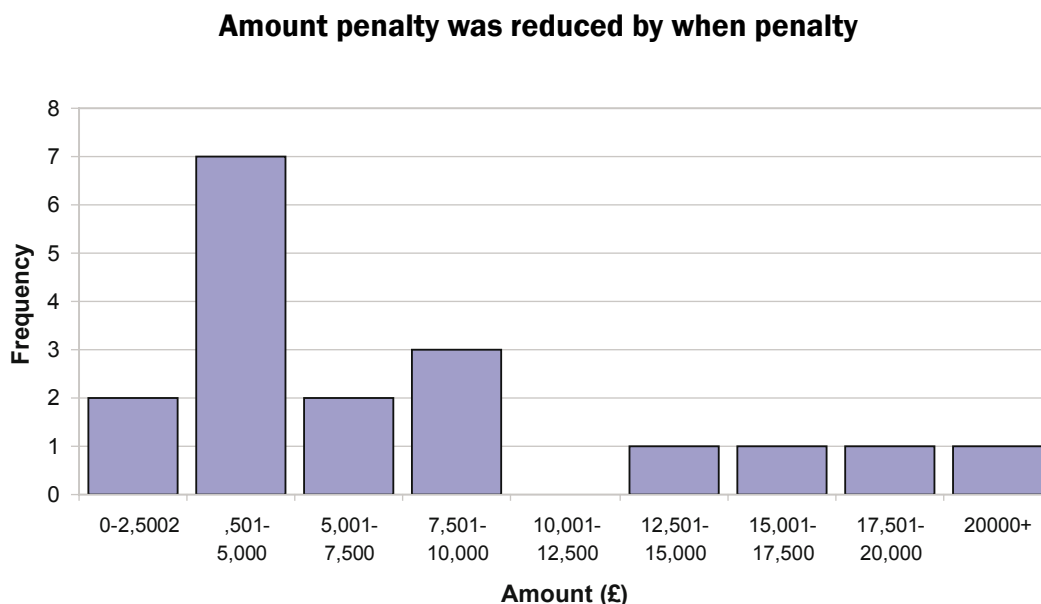
- 5.9 At the time of the inspection monthly management information reported on the gross potential value of penalties. A simplified explanation of the process is below:
- when a NOL was served the financial penalty was recorded as the gross potential value;
 - approximately 70% of NOLs attracted an objection;
 - approximately 23% of those objections resulted in the penalty being reduced or cancelled; and
 - the gross potential value was immediately reduced and was known as net recoverable debt.
- 5.10 This was consistent with the findings from our file sample. This is illustrated below.

Figure 5: Penalties reduced or cancelled after objection, review or appeal for those files sampled

Number of files sampled	No of files where the penalty was reduced or cancelled	Gross potential value of penalties	Net recoverable debt after objection, review or appeal
74	18	£647,500	£471,500

- 5.11 We found that 18 of the 74 cases (24% of files sampled) had the penalty reduced or cancelled at objection, review or appeal.
- 5.12 Figure 6 below shows the reduction from the initial penalty for those cases where the penalty was reduced or cancelled from the file sample.

Figure 6: Penalty reductions



- 5.13 From this analysis we saw that four of the 18 cases, (where the penalty was reduced/cancelled), had the initial penalty reduced by more than £12,500. Of the £176,000 reduction in the value of the penalties, £95,500 came from these four cases.
- 5.14 At the time of the inspection, the gross potential value of penalties imposed since February 2008 was £39,997,500; we were unable to determine the net recoverable debt because the information had not been reported. Publicising only the gross potential value of some penalties⁹ gave a distorted picture of the UK Border Agency's Civil Penalty Scheme. Gross and net figures should be available in order to show an accurate reflection of the penalties imposed and to avoid misleading parliament and the public.
- 5.15 We believe that collecting and including the net recoverable debt as part of Management Information reports would encourage the CPCT to focus on where improvements could be made to the overall process.
- 5.16 No information was provided to managers of the CPCT on the payment of penalties in respect of individual cases, nor were managers able to tell us the age of debts. The CPCT had recognised the need for improvement themselves and proposed the implementation of monitoring the total number of cases received for each month. This process would monitor the penalty and subsequent payments of penalties issued in specific reporting periods, e.g. per calendar month. We believed that this was a positive step by the CPCT.
- 5.17 We noted that in June 2009, some 16 months after the CPCT was formed, the UK Border Agency commissioned an internal review of the CPCT¹⁰ to assess the processes in place and to examine whether any efficiency savings could be made. The findings of the review were published in July 2009 and included 50 recommendations for improvement, which the UK Border Agency accepted.

9. <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/listemployerspenalties/publicationassessment/publicationpolicy.pdf?view=Binary>

10. Civil Penalty Compliance Team Review, 16 July 2009

5.18 One recommendation that we were particularly interested in dealt with the area of debt recovery.

“Debt recovery – focus is needed on driving through the process to its conclusion if the civil penalty regime is to be seen as an effective deterrent”

5.19 Between February 2008 (when the legislation was changed) and 31 March 2010, £5,598,992.38 had been collected by the CPCT. It was worth noting that from Management Information reports produced by the CPCT, £4,408,067.89 (or 79%) had been collected during the financial year April 2009-March 2010. However, because the CPCT did not record the level of ‘net recoverable debt’ we were unable to determine how the above translated into the proportion of payments that should have been collected.

Ownership of KPI to generate income

5.20 We have an additional specific concern about the KPI for the generation of payments. It appeared odd for the CPCT to own this KPI when they did not have the necessary leverage to make it effective. The CPCT had no direct control over the whole process for collecting payments.

5.21 Once a NOL was served, or an employer had exhausted their ‘appeal rights’ where no further objection or appeal could be made, the responsibility for collecting the payment was transferred to the Home Office Shared Service Centre. If, following a 90 day period, the payment had still not been made, the collection of payment was then transferred to a third party debt recovery agent.

5.22 While senior managers in the Agency assigned the KPI for the generation of payments to the CPCT, the CPCT had no involvement in the collection or chasing of payments. UK Border Agency management should therefore consider what they wish to achieve from this KPI, how best it can be achieved and whether the current split between administering the process and collecting the debt meets these needs.

Specific criteria:

Staff understand the CPCT – Illegal working key objectives

5.23 Even though CPCT’s aims and objectives are published on the UK Border Agency’s intranet and accessible to all staff, we found there were differing levels of knowledge and understanding about the role of the CPCT. We believe that management within the CPCT needed to explicitly define the CPCT’s role to their staff.

5.24 Through interviews and focus groups with staff and managers we found that some staff thought that the main aim of CPCT was to educate employers and encourage compliance with the law, whilst others thought their role was to impose penalties and ensure that all penalties were recovered.

One member of staff commented that *“...we seem to have adopted the customer is always right approach when dealing with objections and appeals because we accept everything at face value”*.

5.25 This member of staff was referring to situations when employers appeal and they submit additional evidence. There was no evaluation of how credible the additional evidence was. For example, if a photocopy of a passport was subsequently provided, it was accepted as justification for reducing the penalty. There was no further investigative process to determine whether the passport existed at the time of the enforcement operation.

Another member of staff commented that *“...employers who pay up early are at a disadvantage because people who appeal or object can often enter negotiation and have their penalty reduced”*.

- 5.26 This referred to the number of employers who claimed to be unable to pay the penalty due to financial reasons. When an objection or appeal was raised on financial grounds, any bank statement provided appeared to be accepted as justification. The CPCT or the debt recovery agent would engage with the employer with a view to determining a change in the penalty to ensure it could be paid.
- 5.27 This approach appeared contrary to the CPCT guidance and could be seen to punish those who pay the appropriate penalty on time, with the whole process in favour of those who object or appeal and claim financial hardship. The knowledge of this amongst staff clouded their views further as to the exact remit of the CPCT because this approach appeared to neither encourage compliance nor recover relevant penalties.
- 5.28 We are of the opinion that it was extremely difficult for anyone to measure the Civil Penalty system's efficiency or effectiveness because the KPIs did not specify how long a case should take to complete and, in some cases, the penalties were paid over a two year period.
- 5.29 The North West Enforcement and Compliance business plan for 2009- 2010 stated that the *"Immigration, Asylum and Nationality Act 2006 introduced a new system of civil penalties for employers who employ illegal migrant workers. This enables the UK Border Agency to provide a swift and effective means of tackling employers who are less than diligent in their employment practices."*
- 5.30 There was evidence to suggest that in some cases it was the opposite - slow, passive and cumbersome. If it is important to be swift and effective, and to create a 'hostile environment' for those who employ illegal workers, then the UK Border Agency urgently needs to consider better ways to measure success and performance against the Government's high level objectives.
- 5.31 At the time of the inspection, the UK Border Agency suggested to Parliament and the public, through high profile press releases and media activity, that it regularly fined employers who flouted the regulations 'up to £10,000'. In practice, we found that the actual amount imposed or collected was far less than this. Employers had only a small chance of paying the maximum fine per illegal worker and staff stated that this had not gone unnoticed by either employers or their legal representatives. Rather than being a deterrent to employing illegal workers, we believe that this leniency and perceived passivity may actually have had the opposite effect. It most certainly did not constitute a 'hostile environment' for employers of illegal workers, and until the CPCT has a way of measuring efficiency and effectiveness, the true level of performance of the team will remain an unknown quantity.

We recommend that the UK Border Agency:

- reviews CPCT's current suite of KPIs to ensure they support government objectives for the Civil Penalty scheme and introduces internal performance indicators to drive continuous improvement in the process
- improves the accuracy and clarity of financial reporting of penalties by ensuring net recoverable debt is highlighted alongside monitoring total number of cases received for each month.

Specific criteria:

There is effective joint working with delivery partners and stakeholders.

- 5.33 We found that there was a good working relationship between the CPCT and their external and internal stakeholders and that the CPCT worked hard to maintain constructive relationships.

5.34 The CPCT worked with a number of external and internal stakeholders in the delivery of their objectives. External stakeholders included a firm of solicitors (who provided legal representation under contract from Treasury Solicitors where the value of the penalty was less than £30,000 unless it was a particularly complex case), and a different firm of solicitors who operated as a third party debt collection agency. Internally there were Enforcement Teams who were part of Local Immigration Teams (LIT's) across the UK, the Shared Service Centre, and Treasury Solicitors for legal representation on appeals. As part of the inspection process, we interviewed stakeholders and staff and managers at all levels within the CPCT.

External stakeholders

5.35 We found that the CPCT held regular meetings with those involved in debt recovery, the Shared Service Centre, and those who provided legal representation including Treasury Solicitors. There were monthly, minuted meetings of the Illegal Working Civil Penalty Finance Meeting which provided the CPCT with an update on how the collection of penalties was progressing. Feedback from external stakeholders showed that there was a positive relationship with the CPCT with a combined objective to increase the level of penalties being collected. In the minutes of the 14 October 2009 meeting, the purpose of the group was "to tackle issues and remove barriers by discussing proposals for the way forward" after the Senior Director of the Immigration Group had requested that recovery rates for Illegal Working Civil Penalties be quadrupled.

5.36 We were informed by external stakeholders that there was a positive relationship between them and the CPCT and Treasury solicitors. Treasury Solicitors particularly noted the improvement that had been made in the quality of information that was provided to them from the CPCT for appeals. It was the aim of the CPCT that in order to operate more efficiently, they would defend appeals without having to appear in person and give evidence; therefore it was important that the quality of the decision and supporting evidence was robust. The CPCT also provided a written witness statement to support the decision.

5.37 For example, if Treasury Solicitors felt that a case might be lost, they would discuss with the CPCT with a view to conceding the case and avoiding the costly appeals process. This was an example of constructive dialogue, positive stakeholder engagement and implementation of appropriate action.

Internal stakeholders

5.38 We found that the CPCT provided regular feedback, via email, to Enforcement Teams; they also developed a training package to advise Enforcement Teams of key CPCT issues.

5.39 Enforcement Teams were responsible for sending the referral packs to the CPCT when an enforcement operation had been conducted and a NOPL had been served on an employer. The quality of the evidence and information from the enforcement operation were key to the CPCT being able to make well evidenced decisions. Feedback was given by CPCT if the referral packs contained insufficient information for the caseworker to make a decision. Caseworkers also informed the Enforcement Teams of the outcomes of individual cases. If a case was subject to an objection or appeal which was upheld, an e-mail was also sent to the Enforcement Team outlining the reasons why this occurred. The CPCT were clear that they wanted to pass on lessons learned to Enforcement Teams to ensure that the issues identified were taken into account in future operations.

5.40 In response to information regularly being omitted from referral packs and the issues surrounding the number of objections and appeals upheld, CPCT developed a training package and it was delivered by volunteer staff. Through discussions with Enforcement Teams, we found that the training package had been well received and anecdotal evidence provided during interviews and focus groups suggested that improvements in process and quality of referral packs had been made.

Specific criteria:

The UK Border Agency evaluates the impact of its services and processes and seeks ways to improve them continuously.

- 5.41 We found evidence of some positive activity by the CPCT in evaluating its services and processes and also some areas for improvement. We also found one area, Information Technology, which gave rise to significant concern.

Lessons Learned

- 5.42 We found that the CPCT were proactive in evaluating some of their processes by producing lessons learned, both for external stakeholders and internally for staff involved in case work.
- 5.43 We found that when objections against a penalty were raised and concluded, resulting in a decrease or cancellation of a penalty, written feedback was provided to the Enforcement Team responsible for referring the case to the CPCT. The feedback was provided by the caseworker on a case by case basis, but was also supported by a quarterly bulletin and which was sent to all Single Points of Contact (SPOC's) within the Enforcement Teams. The SPOC's acted as the liaison point between the CPCT and Enforcement Teams nationwide so that any communication could be channelled directly to appropriate staff, for subsequent dissemination.
- 5.44 However, three SPOC's raised concerns that lessons learned seemed to simply consist of copying and pasting judicial comments, which were not always easy to understand. A request was made for the CPCT to redraft these in plain English, a suggestion which we would endorse having seen a selection of these bulletins.

We recommend that the UK Border Agency:

- ensures that Enforcement Teams fully understand the lessons learned from the appeals process.

- 5.45 In addition to this feedback, we found that lessons learned were also produced by the appeals team. If a judge allowed an appeal, or a case was conceded before the case went to court, the key elements of the case and the reasons for the loss were recorded and distributed internally to management and staff involved in case work.
- 5.46 In both cases, the lessons learned were designed to improve processes and reduce the number of successful objections and appeals in the future.

Analysis of data

- 5.47 We believe that more analysis and better consideration of data could have been given to specific aspects of the civil penalty process.

Reporting formats at the time of inspection showed statistics for:

- the number of NOLs served;
- the gross potential value of penalties;
- the number of objections;
- the number of appeals; and
- the value of penalty collected.

- 5.48 This data was provided for each month, the financial year and as a cumulative total from February 2008. Using data provided by the CPCT, we were able to ascertain that there were differences in regional performance in terms of objections and Figure 7 below illustrates the point.
- 5.49 The indicative data in Figure 7 shows that objections were more likely to be received from employers in London and the South East region than any other region, with approximately 81% of notices served on employers in that region resulting in an objection being raised.

Figure 7: Objection Rates by Region, April 2009 – March 2010

Region	Penalty notices served on employers	Objections received by CPCT from employers	Objections as a percentage of notices served
London and South East	921	749	81%
Midlands and East of England	454	302	67%
North East, Yorkshire and Humberside	388	276	71%
North West	264	170	64%
Scotland and Northern Ireland	195	99	51%
Wales and South West	353	215	61%
Total	2575	1811	70%

- 5.50 Figure 7 gives an indication of the level of objections received by the CPCT from employers in each region as a proportion of the NOLs. It should be noted that a proportion of the objections received would have related to notices served in the previous financial year. In this case the column 'Objections as a percentage of notices served' should be taken as indicative rather than the 'true' proportion.
- 5.51 Regional differences were also evident in the results of objections raised. Analysis of data provided by the CPCT in Figure 8 below shows that 28% of objections which originated from London and the South East, and Midlands and the East of England resulted in the penalty being decreased or cancelled. This compared with 14% of objections in Wales and the South West and 11% in Scotland and Northern Ireland.
- 5.52 Caution should be used in interpreting these figures as the numbers were very small. It was also not possible to say whether the difference between regions was due to inherent differences in the types of cases dealt with, rather than UK Border Agency operating processes.

Figure 8: Objection Conclusions by Region, April 2009 – March 2010

Region	Objection Decision Letters Sent by CPCT	Objections Concluded - Decision Upheld		Objections Concluded - Penalty Increased		Objections Concluded - Penalty Decreased or Cancelled		Objections Concluded - Other Result ¹¹	
		Number	% of decision letters ¹²	Number	% of decision letters	Number	% of decision letters	Number	% of decision letters
London and South East	814	428	53%	1	*	224	28%	161	20%
Midlands and East of England	297	149	50%	1	*	83	28%	64	22%
North East, Yorkshire and Humberside	272	158	58%	2	*	55	20%	57	21%
North West	193	105	54%	0	*	37	19%	51	26%
Scotland and Northern Ireland	101	59	58%	1	*	11	11%	30	30%
Wales and South West	206	122	59%	0	*	29	14%	55	27%
Total	1883	1021	54%	5	*	439	23%	418	22%

5.53 Finally, we also noted differences between regions in the results of the 249 appeal cases which were concluded¹³. This shows that 38% of appeals which originated from London and the South East were conceded, compared to 16% of appeals from the North East, Yorkshire and Humber.

11. This includes: case referred to CIT, rejected as out of time, a change of the liable party, means reduction, liable party did not object or accept liability, and warning letter issued

12. Percentages may not add to 100% due to rounding

13. CPCT defines a concluded appeal case as one where an appeal was withdrawn by an employer, conceded by CPCT, dismissed or allowed by a judge

Figure 9: Appeal Rates by Region, April 2009 – March 2010

Region	Appeals Concluded	Appeals conceded by UKBA		Appeals withdrawn by employer		Appeals going before a judge - dismissed/ allowed ¹⁴	
		Number	% of those concluded ¹⁵	Number	% of those concluded	Number	% of those concluded
London and South East	100	38	38%	37	37%	25	25%
Midlands and East of England	46	10	22%	20	43%	16	35%
North East, Yorkshire and Humberside	37	6	16%	11	30%	20	54%
North West	17	5	29%	9	53%	3	18%
Scotland and Northern Ireland	23	7	30%	7	30%	9	39%
Wales and South West	26	7	27%	10	38%	9	35%
Total	249	73	29%	94	38%	82	33%

5.54 Of these 249 cases, 73 were conceded by the CPCT before the case went to court.

5.55 We believe there were opportunities for improvement that could be exploited by examining the reasons why cases from some regions had their appeals dismissed when cases from other regions were not dismissed. There were numerous factors that could contribute to whether a case was upheld or dismissed e.g. the quality of referral packs, inclusion of evidence from enforcement teams, and the level of awareness of employers of the system. Further analysis could help the CPCT identify improvements to the process to ensure increased numbers of successful penalties being imposed.

5.56 This finding in relation to appeals and objection is similar to the findings we made in our report *“Asylum: Getting the Balance Right?”*¹⁶ Paragraph 2.30 of that reports states that:

“Despite the number of allowed appeals, we did not find any systematic analysis of the reasons for allowed appeals. This would have allowed the UKBA to identify national or local trends that could have led to an improvement in the quality of decisions.”

14. This includes appeals allowed and dismissed by a judge

15. Percentages may not add to 100% due to rounding

16. Paragraphs 2.29-2.32 of *“Asylum: Getting the Balance Right?”* – published February 2010

<http://icinspector.independent.gov.uk/inspections/inspection-reports/>

5.57 We were therefore of the opinion that in line with these findings, there would be benefits to the CPCT in further analysing the number of allowed appeals including any regional variations to improve the overall success rate of appeal cases.

We recommend that the UK Border Agency:

- accurately measures the performance by region, including the provision of feedback to Enforcement Teams, so processes can be improved.

Information Technology

- 5.58 We found that there was a lack of resilience in the current information management system which could pose risks should the system suffer from any kind of failure. We were concerned that there was inadequate access controls to protect the data from unauthorised access or amendment and this was exacerbated by the absence of an audit trail on the system which should be in place to identify and record all activity by specific users.
- 5.59 At the time of inspection the CPCT was using an in-house developed IT database which stored and recorded the different case working stages of the civil penalty process. It was also used to produce management information which informed future planning and decisions by senior managers. The database was stored on a shared network drive and could be accessed by all members of the team in the CPCT. The database was also accessed by a number of staff in the Home Office Shared Service Centre. It was regarded by all staff and managers as a critical business system.
- 5.60 The system was developed by a member of staff experienced in using Microsoft Access. We acknowledged the ingenuity shown by this individual, but noted that the system was struggling to cope with the additional demands placed upon it. There were risks to the process with specific regard to support, security and audit. We raised our concerns with senior managers during our emerging findings presentation at the close of the on-site phase of our inspection. In addition, we continued dialogue to ensure that our concerns were being addressed. Since the on-site phase of our inspection, senior managers at the CPCT have:
- finalised a specification for an upgrade to the database, including security and access arrangements. The specification included migration of the database to an existing database structure within the UK Border Agency which should provide the necessary controls in respect of access, security and audit. The minimum time before the new system would be implemented was February 2011; and
 - reviewed the process for how access to the system was granted, with all authorisations needing the approval of a senior manager. They had also reiterated the need to follow Home Office rules for managing personal data, including mandatory e-learning on information assurance.
- 5.61 We were pleased that progress towards a solution had commenced, however, due to the time scale between the inspection and the potential delivery date of a new system we believe that the CPCT should ensure that data integrity would be monitored and reviewed during the interim period.
- 5.62 The CPCT relied on Sirius, the Home Office IT contractor (now Fujitsu), to conduct a back up of the network drive, thus ensuring that any data over 24 hours old could be recovered. However, the Home Office contractor was not responsible for the integrity of the database in terms of its construction and there was insufficient support should the system crash. There was also a lack of resilience as only one member of staff had responsibility and knowledge of the system in detail, with two more staff having limited knowledge available in their absence. In our opinion, none of this constituted sufficient support for a business critical system.

- 5.63 The lack of corporate ownership of the system meant that there was no formal process for future development of the system or dealing with change requests for the system. Changes were requested on an ad hoc basis by staff and the complexity of the change, plus the business benefits, were considered by the member of staff who developed the system in conjunction with the assistant director.
- 5.64 In addition to support issues, we also found significant risks regarding security and support. The nature of the system, using Microsoft Access, coupled with the current size of the database meant that in order for staff to continue using the database, there was no access control on the system. Users had to log on to POISE, the Home Office network, which already had significant security controls applied and restricted access to data on the corporate network drive where the database was stored. However, once a user had logged on to POISE and the network drive, they obtained open access to the part of the network relevant to their unit.
- 5.65 This meant that any member of staff could access the database without any additional login. There were no records of who had been on the system and what records they had viewed or updated. Nor was there any distinction between 'read-only' or 'update' access.
- 5.66 Individual users had no separate log on process therefore there was no separate access control for different roles. Nor was there scope to restrict access to parts of the system or data, relevant to an individual's role and no audit trail on the system. A user could read, amend, print or export data without leaving a footprint. This risk was amplified for the staff in the Shared Service Centre because staff in the CPCT had no direct means of overseeing their activity. It would have been possible for a member of staff to copy or amend data and provide it to a third party organisation, without fear of being identified. Although there was no evidence that this had happened, we were concerned that the data stored could be compromised without anyone being aware. These concerns should be addressed by the new system.

We recommend that the UK Border Agency:

- in advance of a new computer system, urgently reviews the current system's security and audit arrangements to ensure they are compliant with government policy and relevant legislation, e.g. the Data Protection Act 1988.

6. Inspection Findings – Processes and procedures including quality of decision making and consistency of approach

General criterion:

UK Border Agency staff make lawful and reasonable decisions and these are fair and consistent.

Casework processes

- 6.1 In terms of timescales set for resolving a case, one section of the Civil Penalty process had an internal target and one had a statutory limit. Overall though, we were concerned that there was no official overall timescale set for how long it should take to resolve a case. Consequently, there was no consistency in the time taken to create files and provide employers with an initial decision. We were concerned at the number of cases that fell outside of the 28 day statutory period for dealing with objections and the loss of potential revenue.

Time taken to reach initial decision

- 6.2 We found that there were inconsistencies and variations in the process even to get to the stage of creating a file on which to start consideration of the case. The time taken from when the Enforcement Team issued a NOPL to a file being created at CPCT ranged from the same day to 43 days, the average being 11 days.
- 6.3 In addition our file sampling showed variations in time taken between the date a file was created at CPCT and the date CPCT reached an initial decision.

Time taken to reach an initial consideration on a notice of potential liability (NOPL)

- 6.4 Of the 74 cases we sampled, 72 had the file creation date recorded. Figure 10 shows the average minimum and maximum time taken from the time a file was created at the CPCT to the time the CPCT reached a consideration on the penalty to be issued to the employer.

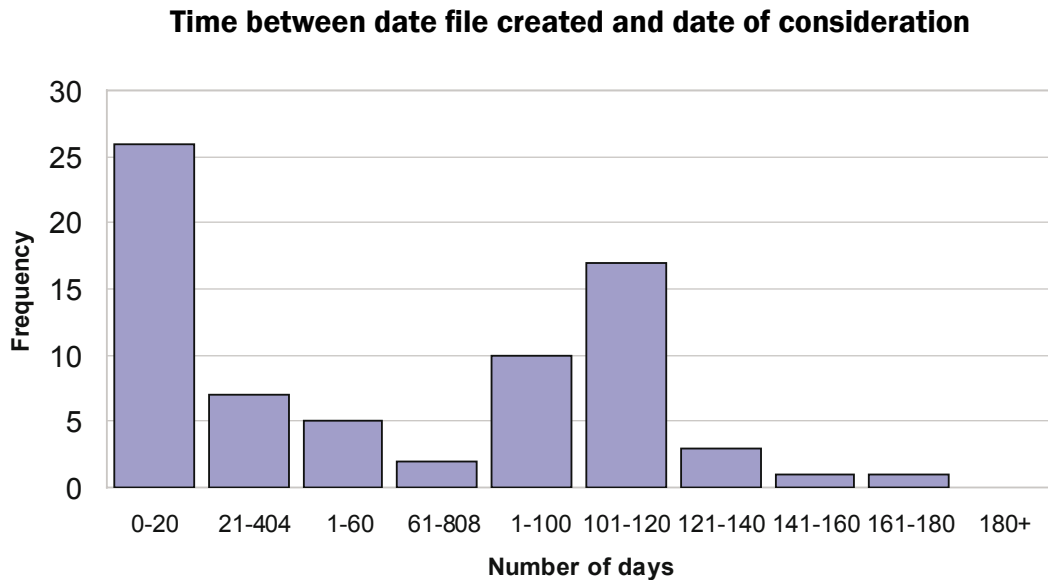
Figure 10 – Time between the date a file is created at CPCT and the date CPCT reaches a consideration

Average (days)	Minimum (days)	Maximum (days)
61	0 ¹⁷	171

17. Zero here means the same day,

6.5 Figure 11 below shows the distribution of the time taken between the date a file was created at the CPCT and the date the CPCT reached a consideration.

Figure 11: Time taken between date file created and date of consideration



6.6 Around a third of cases take between 0-20 days, a similar amount was taking between 81-120 days.

Time taken to reach a consideration on a penalty after objection

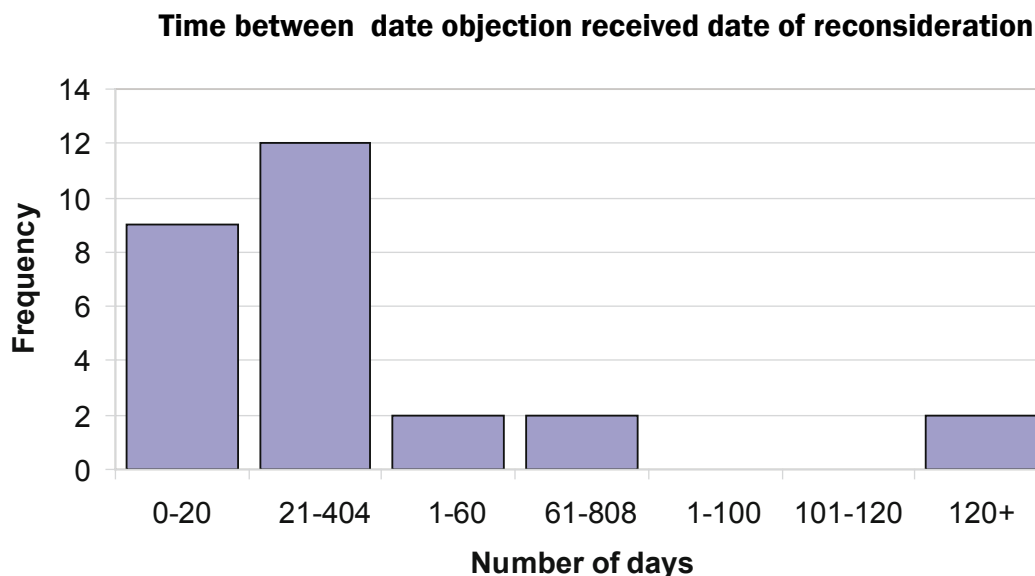
6.7 Section 16(5) (b) of the Immigration, Asylum and Nationality Act 2006 stated that “Where the Secretary of State considers a notice of objection, he shall inform the objector of his decision before the end of the prescribed period or such longer period as he may agree with the employer” – the prescribed period being 28 calendar days from the objection being received from an employer or their legal representative.

6.8 From our file sampling we noted that this target was not always adhered to. Of the 74 cases, 27 cases received an objection that was considered by the CPCT. Figure 12 shows the average, minimum and maximum time taken for the CPCT to reconsider the penalty after receiving an objection from the employer.

Figure 12: Time between receipt of objection at CPCT and the date of letter notifying decision		
Average (days)	Minimum (days)	Maximum (days)
35	4	216

6.9 Figure 13 below shows the distribution of the time taken between the date an objection was received at the CPCT and the date the CPCT notified the employer or their representative of the result of the re-consideration.

Figure 13: Time between receipt of objection at CPCT and the date of letter notifying decision



- 6.10 Most cases took between 0-40 days. The graph shows two cases that took longer than 120 days, and one of these took 217 days for reconsideration after objection.
- 6.11 When a case fell outside the 28 day target and no agreement had been made with the employer, it had to be considered for 'write-off' as it was outside the prescribed period. The decision to write off the cases rested with the Chief Executive of the UK Border Agency; the Treasury was also informed if the amount was more than £50,000.
- 6.12 At the time of the inspection, we asked for information about the number of cases which had not met this deadline. Data current up to 31 March 2010 showed that since the new processes were introduced into the CPCT in February 2008, 137 cases were being considered for write-off because they fell outside of the 28 day prescribed period.
- 6.13 This represented 3.2% of all NOL's served. The total amount of the penalties for these cases was £1,702,500 which represented 4.3% of gross potential value; we do not know what percentage this represents for the net recoverable debt but it would be higher than 4.3%. In addition a further 239 cases were being considered for write off due to employers declaring themselves insolvent or bankrupt. The value of these cases was **£1,067,951.60**. Revenue in the form of penalty payments was lost and this did not support the UK Border Agency's objective of "creating a hostile environment for those who seek to benefit from abuse of immigration control".

Specific criteria:

Decisions are made clearly based on all of the evidence and in accordance with current statutory requirements, published policy, guidance and procedures.

Training and written guidance enables staff to make the right decisions.

- 6.14 We found evidence that case working staff were provided with sufficient guidance and procedures to efficiently carry out their role. However, while guidance was available for all staff, we found some inconsistencies in its use.
- 6.15 Guidance was published on the UK Border Agency's intranet. Documents were also subject to version controls, to ensure that staff could access the most up-to-date version. All staff we spoke to were aware of the guidance and knew where to access it.
- 6.16 One of the main reference documents used by staff was the Civil Penalties for Employers Code of Practice. A copy of the framework used by the CPCT is shown below in Figure 14.
- 6.17 This reference document was used to determine the level of penalty to be imposed on an employer who was deemed to have been employing illegal workers. The Code included a framework with distinct factors that could have contributed to a reduction in a penalty. For example, the maximum penalty per worker was £10,000, but this could be reduced by £2,500 if this was the first penalty to have been served on the particular employer. The penalty could be reduced by a further £2,500 if the employer had not obstructed the operation of the Enforcement Teams.

Figure 14: Framework for assessing the level of a civil penalty¹⁸

		Nature of checks completed					
		Full	Partial		No		
OCCASION ON WHICH WARNING/PENALTY ISSUED	3RD+	No penalty	Maximum penalty of £10,000 per worker		Maximum penalty of £10,000 per worker		
			Reduced by up to £1,250 per worker reported	Reduced by up to £1,250 per worker, with co-operation			
			Minimum penalty of £7,500 per worker				
	2ND	No penalty	Maximum penalty of £7,500 per worker		Maximum penalty of £10,000 per worker		
			Reduced by up to £1,250 per worker reported	Reduced by up to £1,250 per worker, with co-operation		Reduced by up to £1,250 per worker reported	Reduced by up to £1,250 per worker, with co-operation
			Minimum penalty of £5,000 per worker			Minimum penalty of £7,500 per worker	
	1ST	No penalty	Maximum penalty of £5,000 per worker		Maximum penalty of £7,500 per worker		
			Reduced by up to £2,500 per worker reported	Reduced by up to £2,500 per worker, with co-operation		Reduced by up to £2,500 per worker reported	Reduced by up to £2,500 per worker, with co-operation
			No penalty Warning letter issued			Minimum penalty of £2,500 per worker	

Consideration of all evidence on file

- 6.18 It is our view that the case working process would be more efficient if all information was investigated and submitted at the initial stage.
- 6.19 A penalty could be further reduced if an employer had made partial checks of documents to check a prospective employee’s eligibility to work. This could have included asking for passports, keeping copies of documentation and receiving evidence of their immigration status. During our file sampling exercise, we found that 5 out of 74 files contained copies of passports within the referral pack, potentially indicating that an employer had made full or partial checks of an employee. However, because there was no explicit reference to these checks in the witness statements, written by the officer who was part of the Enforcement Team, the documents had not been taken into consideration and no reduction was applied to the penalty. If the employer raised an objection highlighting the existence of photocopied documents, they were considered and the penalty was then reduced.

18. Prevention of Illegal Working – Immigration, Asylum and Nationality Act 2006 – Civil Penalties for Employers Code of Practice February 2008

- 6.20 The CPCT must ensure that processes and guidance are up to date and clear unambiguous instructions accompany them so that every case can be dealt with on a consistent basis according to the Code of Practice. In the cases highlighted above, if the initial decision had taken account of the photocopied documents, the correct penalty or Notice of No Liability (NONL) could have been served and saved the CPCT the administrative burden of dealing with the objection. In our view, failure to do so was not a good use of the CPCT's resources and indeed could have impacted negatively on the employer's business.
- 6.21 With a large number of penalties being reduced or cancelled at the objection or appeal stages, we believe that improving the initial decision would bring efficiency benefits to the CPCT. This could be achieved by improving the quality of intelligence and referral packs which would aid the quality of the initial decision. During our file sample and through discussions with staff, we found that when an objection was raised, further evidence became available to support the objection.

Quality assurance of decisions

- 6.22 While the use of quality assurance seemed a positive action, there were areas for improvement. We were told by staff that checks were made on decisions of individual caseworkers however we were unable to confirm this as no records were kept of the outcome of the checks. There was a lack of checks against the database to assess if the correct penalty was recorded.
- 6.23 Staff at Higher Executive Officer (HEO) grade were responsible for conducting quality assurance of decisions made by case workers. We were informed that the quality control was concentrated on the evidence in the referral pack and the decision based upon that evidence. The quality control also included a check of the Adelphi system¹⁹ to ensure the penalty had been recorded correctly. However, we were informed that the CPCT database was not checked to ensure that details of any amendments to penalties following objections and/or appeals were recorded accurately. This was a concern because the system was used to produce management information.
- 6.24 New staff were subject to 100% checks against their decisions. This level of quality assurance fell to a dip sample of 10% for experienced staff and occurred approximately two or three months after recruitment, once the HEO was satisfied with the quality of the work and this decision was recorded on the individual's Personal Development Review (PDR). Individual HEO's made an informal note of the feedback they provided to staff, but there were no adequate records to determine or compare performance across the case working teams. The level of information recorded differed amongst the various staff at HEO level.

Training

- 6.25 We found positive evidence in relation to the commitment of managers to the development of staff, but found areas for improvements where training was related specifically to the CPCT work. We were disappointed to learn that there was no structured training for new staff.
- 6.26 When the CPCT commenced operations in February 2008, all case working staff were provided with a two week training course specific to their role. That training had not been formalised or integrated into the induction process. Training for staff who had been in place since February 2008 had little structure. It was based upon them sitting with experienced or senior staff and receiving one to one training. We acknowledged that ad hoc shadowing took place within the CPCT. We were concerned, however, that the haphazard approach and the lack of standardised training for trainers could mean a lack of consistency in how staff carried out their roles, the decisions they made or how they interpreted guidance. This had been reflected in the findings of our file sampling and interviews with staff.

19. Adelphi is a Home Office and UK Border Agency administrative tool that provides amongst other things, an online finance service. All financial transactions are recorded on this system including the financial information related to civil penalties.

6.27 We found this lack of structure and consistency for both new staff and experienced staff who changed roles within the unit. For example, only experienced appeals team staff had been trained in writing statements to support the defence of an appeal.

We recommend that the UK Border Agency:

- improves the current quality assurance process and training of staff so that consistent, evidence based decisions are made.

7. Inspection Findings – Impact on people subject to UK Border Agency services

Specific criteria:

Responses to customers will be in plain language, within the published timescales, accurate and give a full answer to their query.

- 7.1 We found evidence that letters to employers or their representatives who raised objections and/or were making an appeal varied in their quality.
- 7.2 When a decision was made on a case, the caseworker wrote to the employer advising them of the outcome. These letters should have included the evidence that had been considered to ensure the employer was fully aware of why the penalty had been imposed and which part(s) of the Immigration, Asylum and Nationality Act 2006 had been contravened.
- 7.3 During interviews and focus groups, staff informed us that when sufficient detail about the evidence had been included within the letter, the opportunities for objection and appeal were reduced, impacting on the number of objections and appeals being raised. However, when the detail was limited, employers were not aware of exactly what evidence had been considered and subsequently objected, meaning further administration and cost for the CPCT.
- 7.4 We were encouraged to learn that management had initiated meetings with staff to give them opportunities to make suggestions to the process to improve the efficiency and effectiveness of the CPCT. The issue of the quality of the information in the letters was raised in these meetings and consideration was being given to changing this aspect of the process. We considered this to be good practice, utilising the knowledge and experience of staff at all levels to deliver business change. We did find that there were a number of standard letters which were used, for example, to inform customers that their case was being considered. We found that these letters provided an efficient format for the unit to deliver a consistent message to all recipients.

8. Inspection Findings – Comparison with Civil Penalty scheme at Juxtaposed controls

Comparison with Civil Penalty scheme to prevent hauliers and drivers vehicles being used for the purpose of clandestine entry.

- 8.1 It was disappointing to note that some of the issues that came to light in this inspection mirror issues reported a year ago at the Juxtaposed Controls in Calais and Coquelles, most importantly that the deterrent effect was not apparent in either scheme.
- 8.2 The Independent Chief Inspector in his pilot inspection of Juxtaposed Controls examined whether the deterrents provided for under the Civil Penalty legislation, which allowed the UK Border Agency to issue fines against hauliers and drivers to prevent their vehicles being used for the purpose of clandestine entry, were being applied efficiently and effectively.
- 8.3 Among the findings published in the Independent Chief Inspector's first annual report²⁰ were:
- Insufficient performance targets to drive civil penalty activity resulted in the deterrent effect of civil penalty legislation being severely curtailed;
 - No effective debt recovery strategy in place to chase unpaid debts;
 - The power to impound freight vehicles owned by freight companies that failed to pay fine was severely underused;
 - The UK Border Agency delivered a large increase in the number and value of penalties issued in 2008/09. However the expected increase in income that should have followed this trend was not realised; and
 - The UK Border Agency had not undertaken any assessment of the effectiveness of the Civil Penalty Scheme.
- 8.4 Although the two Civil Penalty Schemes operated under different legislation, and were administered by different teams within the UK Border Agency, essentially they were dealing with similar issues where people were seeking to enter and/or work in the UK illegally and businesses were not doing all they could to help prevent it.
- 8.5 In addition to the recommendations in this report specifically aimed at the CPCT, it would be beneficial for the UK Border Agency to review whether it is efficient and effective to have two different teams, one from Border Force and one from Immigration Group, administering similar systems and to assess whether lessons are learned and shared between each team.

We recommend that the UK Border Agency:

- reviews whether it is efficient and effective to have two separate civil penalty schemes administered separately within one organisation.

20. <http://icinspector.independent.gov.uk/wp-content/uploads/2010/03/ici-ukba-report-july08-sept09.pdf>

Appendix 1

Inspection Framework and Core Criteria

The criteria used in this inspection were taken from the Independent Chief Inspector’s Core Inspection Criteria. They are shown below.

The criteria used in this inspection were taken from the Independent Chief Inspector’s Core Inspection Criteria. They are shown below.

Section 1 – High level outcomes of the business

- 1.1 General Criterion: The borders are secured and immigration is controlled for the benefit of the country. The specific criteria are shown in Figure 1.

Figure 1 – Specific criteria:

1.1(a)	There are clear and realistic performance targets to drive improvement.
1.1(c)	There is effective joint working with delivery partners and stakeholders including enforcement and security agencies; carriers; local authorities; employers and educational establishments.

- 1.3 General Criterion: Reviewing and evaluating information so that improvement can be made. The specific criteria are shown in Figure 2.

Figure 2 – Specific criteria:

1.3(c)	The UK Border Agency evaluates the impact of its services and processes and seeks ways to improve them continuously.
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Section 2 – Processes and procedures including quality of decision making and consistency of approach

- 2.2 General Criterion: The UK Border Agency staff make lawful and reasonable decisions. The specific criteria are shown in Figure 3.

Figure 3 – Specific criteria:

2.2(d)	Decisions are made clearly based on all of the evidence and in accordance with current statutory requirements, published policy, guidance and procedures.
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- 2.4 General Criterion: Decisions made are fair and consistent. The specific criteria are shown in Figure 4.

Figure 4 – Specific criteria:

2.4(a)	Training and written guidance enables staff to make the right decisions.
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Section 3 – Impact on people subject to UK Border Agency services

- 3.4 General Criterion: UK Border agency staff ensure customers are clear about progress and outcomes of any application. The specific criteria are shown in Figure 5.

Figure 5 – Specific criteria:

- 3.4(b) Responses to customers will be in plain language, within the published timescales, accurate and give a full answer to their query.

Section 4 – Management and Leadership

- 4.2 General Criterion: The UK Border Agency has a robust and comprehensive internal performance management framework which leads to improvements. The specific criteria are shown in Figure 6.

Figure 6 – Specific criteria:

- 4.2(a) Decisions are made clearly based on all of the evidence and in accordance with current statutory requirements, published policy, guidance and procedures.

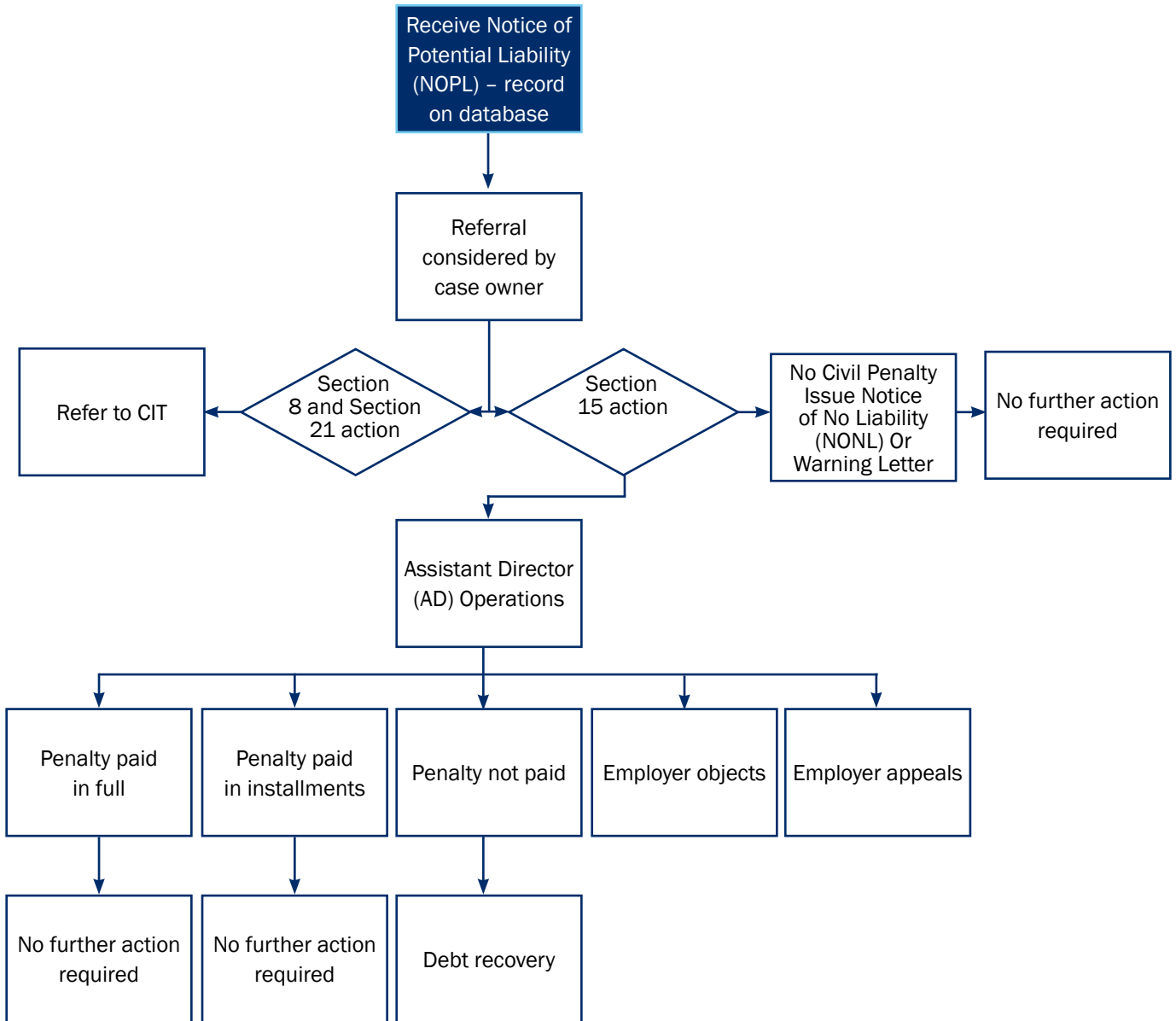
- 4.7 General Criterion: Communication. The specific criteria are shown in Figure 7.

Figure 7 – Specific criteria:

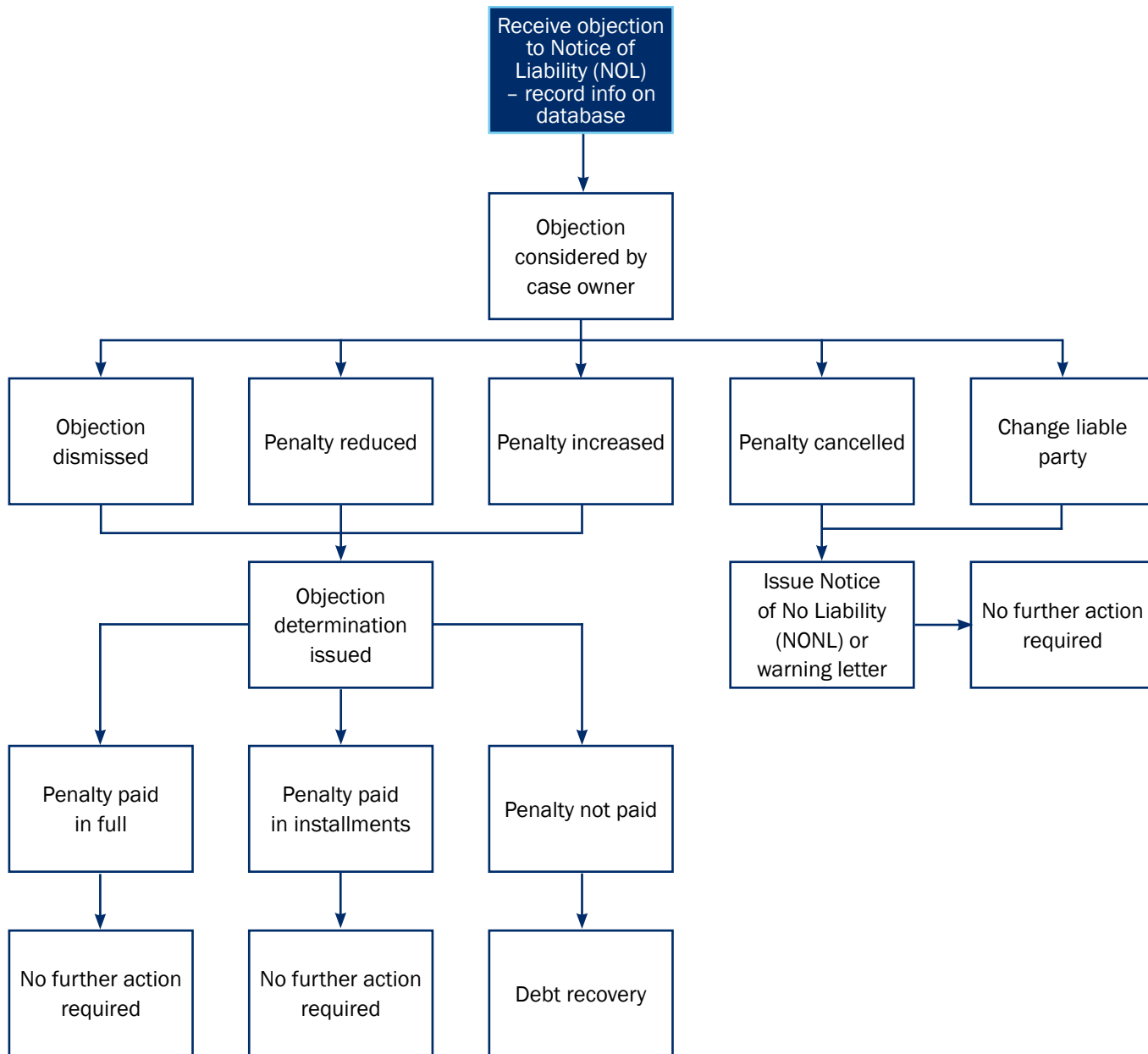
- 4.7(c) Staff understand key objectives and values of the UK Border Agency.

Appendix 2 The Civil Penalty Process

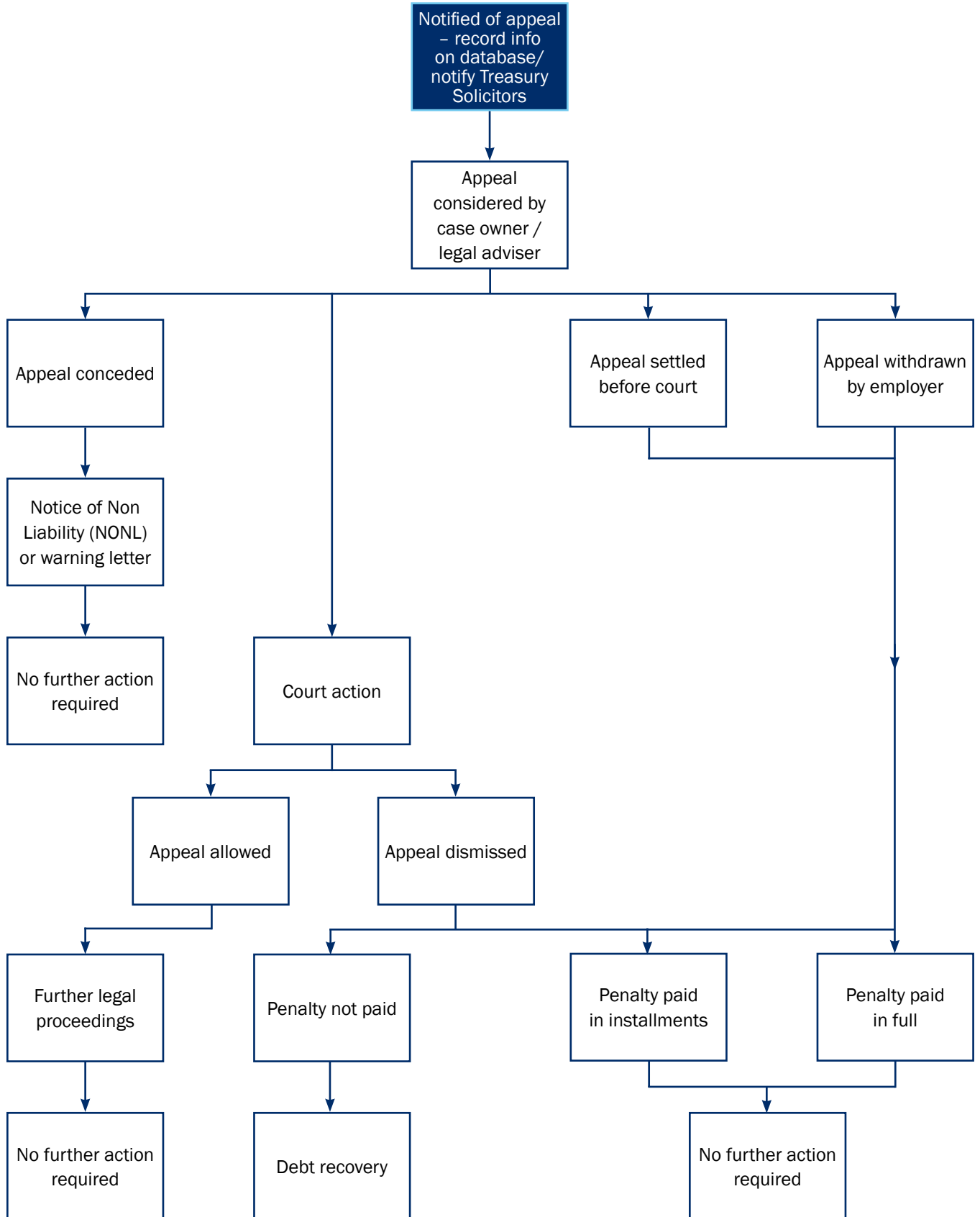
Civil Penalties – Initial Decision



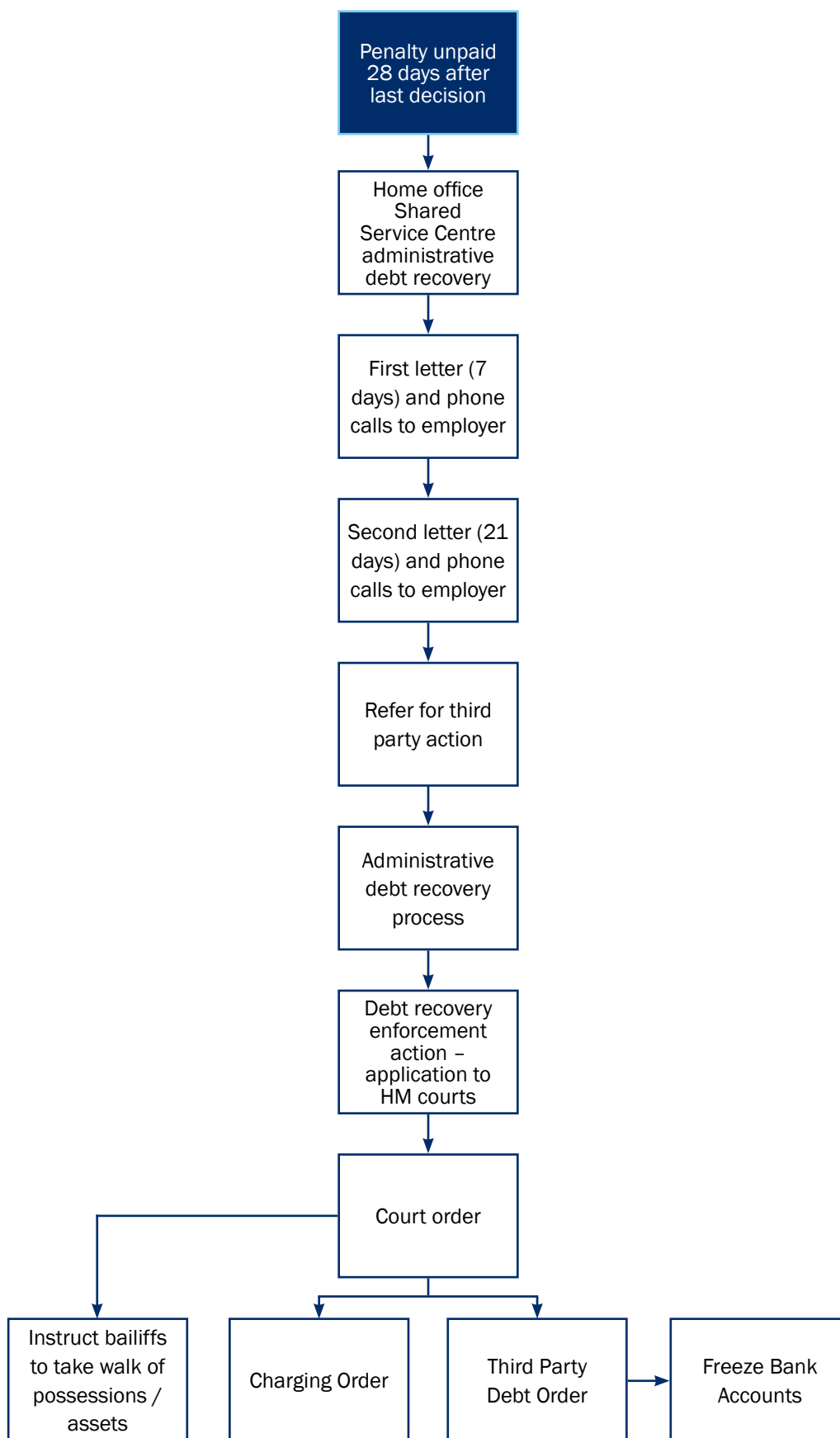
Civil Penalties – Objection



Civil Penalties – Appeal



Civil Penalties – Debt Recovery



Appendix 3

List of stakeholders Interviewed

- Single Point of Contact at Dallas Court (Manchester) Enforcement Team
- Single Point of Contact at Reliance House (Liverpool) Enforcement Team
- Treasury Solicitors
- Fairfax Solicitors (Third Party Debt Recovery Agent)
- UK Border Agency North West Finance Team

Appendix 4

Glossary

Term	Description
Adelphi	A Home Office and UK Border Agency administrative tool that provides amongst other things, an online finance service. All financial transactions are recorded on this system including the financial information related to civil penalties.
Civil Penalties Compliance Team (CPCT)	A specialist UK Border Agency unit that provides administrative support to the Civil Penalty Scheme.
Criminal Investigation Team (CIT)	Enforcement teams should refer all criminal offences to CIT. Occasionally some are sent by mistake to CPCT, hence CPCT will forward them on.
Data Protection Act 1998	The Data Protection Act requires anyone who handles personal information to comply with a number of important principles. It also gives individuals rights over their personal information.
Immigration Group (IG)	The directorate within the UK Border Agency which is responsible for asylum, enforcement and compliance and nationality.
Local Immigration Team (LIT)	A LIT is a local team undertaking as many functions as practicable at a local level in a defined area within a region. LITs will build on the work done by the best local enforcement offices but have a wider remit to encompass community engagement beyond enforcement. They will undertake key enforcement roles in their locality.
Notice of Liability (NOL)	In the event that a civil penalty is to be issued, a Notice of Liability (NOL) will be produced and served on the employer.
Notice of No Liability (NONL)	Following an investigation, if it is deemed that no offence has been committed, a Notice of No Liability (NONL) will be served on the employer and no further action taken.
Notice of Potential Liability (NOPL)	Where UK Border Agency officers are successful in encountering illegal migrant workers, a 'Notice of Potential Liability' (NOPL) must be completed and issued to the employer or representative of the company.
POISE	The IT system/platform used by Immigration Group
(The) Region	The North West of England
Shared Service Centre	A Home Office department which provides finance, procurement and Human Resources Services to the Home Office and the UK Border Agency.
United Kingdom Border Agency (UKBA)	Agency of the Home Office responsible for border control, enforcing immigration and customs regulations. It also considers applications for permission to enter and stay in the UK, including nationality and asylum.
United Kingdom Border Force (UKBF)	The directorate within the UK Border Agency which is responsible for frontline operations.

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