



Home Office

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

An inspection of the Administrative Review processes introduced following the 2014 Immigration Act

September – December 2015

The Home Office thanks the Independent Chief Inspector (ICI) for the recommendations in his report on Administrative Review. Our responses are below.

The Home Office is grateful to the ICI for identifying a number of issues, particularly around quality standards within the report. We were concerned by the findings, it shows quality has not consistently been of the standard to which we aspire and we have wasted no time in making a series of far reaching changes to the way we operate this activity.

From a sample of 140 in-country Administrative Review decisions, the ICI found that in 11 cases the Home Office had incorrectly maintained a previous refusal decision that should have been withdrawn – an error rate of 8%. Additionally, there were 10 cases, representing a further 6% of the sample, where the ICI agreed that the Home Office had correctly maintained the previous refusal decision but found that the Administrative Review decision letter contained incorrect reasoning.

From a sample of 65 overseas visa decisions, the ICI found that in 6 cases the Home Office had incorrectly maintained a previous refusal decision that should have been withdrawn and in a further 2 cases a refusal decision was withdrawn when it should have been maintained – an error rate of 12%. Additionally, there were 4 cases, representing a further 6% of the sample, where the ICI agreed that the Home Office had correctly maintained the previous refusal decision but found that the Administrative Review decision letter contained incorrect reasoning.

In considering the error rate that the ICI sample identified in relation to Administrative Reviews of overseas visa decisions, the ICI's findings should be considered within the wider context that only a relatively small proportion of negative Entry Clearance decisions result in an application for Administrative Review. The ICI report quotes from Home Office management information that showed that between 6 April 2015 and 30 September 2015, of 16,060 Entry Clearance refusal decisions that were eligible for Administrative Review, the Home Office received 568 applications, representing 3.5% of the eligible decisions. It is important to make clear then that, whilst the ICI sample, of 65 overseas Administrative Review decisions, identified 6 cases (9% of the sample) where the Home Office maintained an Entry Clearance refusal decision that should have been withdrawn, there is a wider context in which figures show that only a relatively small percentage of eligible Entry Clearance decisions actually result in an application for Administrative Review.

The Home Office's response to the ICI's recommendations sets out, in detail, the actions being taken to ensure that Administrative Review functions effectively in identifying and correcting case working errors. Additionally, with specific regard to in-country cases, UK Visas and Immigration has identified the principal generic categories which the ICI sample found to have been incorrectly reviewed and is recalling and re-reviewing all cases of these types received since the advent of in-country Administrative Review. By 13 May, 273 previously decided cases had been re-reviewed, with UK Visas and Immigration identifying an additional 87 cases where the original decision should have been overturned, but was not, and in each case is contacting, or attempting to contact, the customer to correct the decision and provide an apology and refund of their Administrative Review fee. The exercise to re-review cases will be completed in June 2016.

The Home Office fully accepts thirteen of the fourteen recommendations that the ICI has made and is working swiftly to act upon them. The Home Office partially accepts one of the recommendations.

As well as enhanced internal assurance of case review quality and the introduction of a second tier quality review from colleagues independent of the in-country and overseas Administrative Review teams, the ICI will review progress in 2016/17 against the recommendations they have made.

The Home Office will also give consideration to establishing an external quality assurance panel, which would consist of professional persons who are completely independent from the Home Office, and be given a remit to review a random, anonymised sample of Administrative Review decisions on a regular basis and feed back to UK Visas and Immigration and Border Force on the quality of the decisions made.

1. Recommendation 1: The Home Office should make it clear to applicants in published guidance and on the online application form that the deadline for applying for an AR is calculated from the deemed date of receipt of the eligible immigration decision unless the applicant can demonstrate they received this on a later date.

1.1 Accepted.

- 1.2 Applicants who receive an eligible immigration decision are informed that they have 14 days to apply for an Administrative Review from the date that they receive their decision letter. This recommendation refers to the need to ensure it is clear to applicants that the deadline for applying for an Administrative Review is calculated from the *deemed* date of receipt of the eligible immigration decision, unless they can demonstrate the decision was received on a later date. The deemed date of receipt is two working days after the decision was despatched.
- 1.3 The on-line application form asks applicants whether they are submitting their application for Administrative Review within the deadline for applying or not – if the application is being submitted after the deadline applicants are given the opportunity to explain why.
- 1.4 The published guidance that caseworkers work to was updated on 7 April to make clear that, in the eventuality an apparently late application for Administrative Review is received, caseworkers must check on the Royal Mail's *Track and Trace* system when the original decision was delivered. Where the *Track and Trace* service is unavailable the guidance notes that caseworkers must request evidence from the applicant about when they received the original decision.

2. Recommendation 2: Ensure caseworkers take all reasonable steps to check the actual date of receipt of the eligible decision before rejecting applications on the basis that they are out of time.

2.1 Accepted.

- 2.2 This recommendation links to Recommendation 1. In-country Administrative Review caseworkers were previously, and in good faith, applying the guidance which stated, '*If the eligible decision is sent by post to an address in the UK, it is regarded as having been received on the second working day after the day on which it was posted, unless there is evidence to prove it was received on a different date.*' The guidance did not direct caseworkers to check the actual date on which the notice was received.
- 2.3 Following a review of the procedures for validating Administrative Review applications, amended processes and guidance have been introduced which instruct caseworkers to carry out appropriate checks before any application is rejected. These checks include monitoring the Royal Mail *Track and Trace* system where appropriate to determine the actual date of receipt of the eligible decision. Where the *Track and Trace* service is unavailable, guidance further notes that caseworkers must request evidence from the applicant about when they received the original decision.

3. Recommendation 3: Ensure that CID notes and AR invalidity notices state clearly why an AR application was determined to be invalid.

3.1 Accepted.

3.2 This recommendation refers to the need to ensure that in-country Administrative Review caseworkers provide clear reasoning, in both internal notes on the CID database and in decision notices served to applicants, when a case is rejected as invalid. Amended processes were introduced into the operation in November 2015 to make these requirements clear to caseworkers. Compliance with the requirements is assessed through quality assurance checks.

4. Recommendation 4: Where the applicant failed to qualify for a fee waiver, ensure the invalidity notice informs them they may reapply with the fee within seven days.

4.1 Accepted.

4.2 In circumstances where applicants did not qualify for a fee waiver, the in-country Administrative Review team had previously rejected their application and e-mailed them to explain the reasons for this and to invite the submission of a fresh application along with the correct fee. This practice occurred because the online application process does not currently have the facility for an applicant who does not qualify for a fee waiver to make a separate, standalone payment to the Home Office. A workaround was therefore put in place under which the outstanding application was rejected and applicants were invited to resubmit their application along with the correct fee.

4.3 With effect from December 2015, amended processes have been implemented under which applicants who do not qualify for the fee waiver do not receive a rejection decision from the Home Office but instead are sent a letter which informs them that their current application remains outstanding but they must, within 7 days, submit a further application accompanied by the appropriate fee.

5. Recommendation 5: Provide training for AR reviewers that is consistent with the training provided to original decision-makers.

5.1 Accepted.

5.2 In April and May 2016, all current in-country Administrative Review caseworkers received additional training on Tiers 2, 4 and 5 of Points Based System casework. The training was delivered by UKVI Business Experts who work on these Tiers and was consistent with the training that UKVI initial decision makers receive. The additional training included modules on assessing credibility, exercising judgment based on balance of probabilities and consideration of the general vacancy rule.

6. Recommendation 6: In light of its performance to date, revisit the structure, grading and staffing (in terms of knowledge and experience) of the AR Team in Manchester to ensure its effectiveness in identifying and correcting case working errors.

6.1 Accepted.

6.2 UK Visas and Immigration is restructuring the grade and expertise balance of the caseworkers working on in-country Administrative Review. Where previously all Administrative Review work was undertaken by Administrative Officer caseworkers, we are recruiting Executive Officer caseworkers who will be responsible for decision making on

more complex cases. We are issuing guidance to caseworkers on the particular types of cases that are likely to fall into the 'complex' category.

- 6.3** As a result of this change, just under half of the case working resource for in-country reviews will be Executive Officers. The in-country management structure has also been strengthened to include a Chief Caseworker to oversee all quality assurance and we are doubling the number of senior caseworkers, who will also lead on assurance processes. Further information in relation to the enhanced assurance processes being put in place is detailed under Recommendation 11.

7. Recommendation 7: Produce a revised statement about the processes for overseas and at the border ARs explaining clarifying how independence and separation from the original decision-maker are ensured where there is no '*separate, dedicated team of reviewers*'.

- 7.1** Accepted.
- 7.2** As the report notes, a proportion of Administrative Reviews of Entry Clearance decisions are already considered by reviewers that are not connected to the original decision making area.
- 7.3** The Entry Clearance operation is establishing a centralised team, ICQAT, the International Casework and Quality Assurance Team, which is independent of the original decision making process. From September 2016 all Administrative Reviews of Entry Clearance decisions are scheduled to be undertaken by ICQAT. Full implementation of the transition of overseas Administrative Review work to ICQAT will fulfil the commitment to establishing a '*separate, dedicated team of reviewers*' for reviews of Entry Clearance decisions.
- 7.4** The Home Office is pleased that the ICI found the Administrative Review process was working well at the border. Border Force aims to effect an open and transparent process for Administrative Review that is fair and quick for the applicant and at the same time ensures the most effective and efficient use of resources. Guidance to staff is clear that the Higher Officer undertaking the review must not have authorised the original decision or be the line manager of the officer who made the decision.
- 7.5** The report acknowledges that the separation of the original decision maker from the reviewer was clear at smaller ports. At Heathrow Terminal 4, which handles the largest number of Administrative Reviews within Border Force, there is a dedicated team of Higher Officers who conduct Administrative Reviews in addition to other caseworking duties.
- 7.6** As Administrative Review has now been in place for over 12 months, Border Force will review processes to ensure they are as robust, open and independent as possible.

8. Recommendation 8: Ensure that all AR reviewers address all substantive issues raised by the applicant and that CID (or CRS) notes and decision notices accurately reflect this.

- 8.1** Accepted.
- 8.2** All in-country Administrative Review caseworkers have received additional training to ensure that all issues raised by applicants within their Administrative Review application

are fully addressed in decision notices and that relevant information is also captured on CID database. To ensure compliance with this, decision quality assessment forms for the in-country operation have been amended to include assessment of caseworkers' entries on CID notes and assessment of whether the Decision Notice has covered all points raised by an applicant.

- 8.3** For Administrative Reviews of Entry Clearance decisions, the operating procedures for the new centralised team of reviewers will include the requirement to consider all substantive issues raised by the applicant and to record the outcome of that consideration in caseworking notes on the CRS system and in Decision Notices.

9. Recommendation 9: Clarify guidance regarding the requirement for reviewers to correct all errors contained in the original decision (not just those identified by the applicant in their AR application), including carrying out further checks where they identify these were not done correctly by the caseworker who made the original decision.

- 9.1** Partially accepted.

- 9.2** Administrative Reviews undertaken overseas and at the border encompass a full reconsideration of the refusal decision, whereas in-country reviews are essentially limited to specific points raised by the applicant in their application except where in the course of that review the caseworker identifies another error.

- 9.3** The ICI has recommended that the in-country review should also involve a full reconsideration of the original refusal decision and should not be limited to a focus on the specific points raised in the application for Administrative Review.

- 9.4** Immigration and Border Policy Directorate have amended guidance and training for in-country caseworkers to make clearer that where they identify an error in the course of their review they should correct it even if the applicant has not raised that point. However there are important differences between the circumstances of those using the Administrative Review process in-country compared to those using it overseas or at the border. The difference in approach is consistent with policy intent and there are sound reasons for maintaining it. A policy that required a full reconsideration in-country would place the onus on the Home Office to review the case in full as a matter of routine and there would be no incentive for the applicant to identify claimed errors.

- 9.5** It is in the interests of overseas applicants to specify their reasons for review and for this to be conducted as quickly as possible. However, this is not necessarily always the case with in-country applicants. If in-country applicants were not required to specify reasons for the review it could lead to abuse of the system as general requests for reconsideration without any specific reasons could be submitted in an attempt to delay departure from the UK. On account of this we consider it appropriate that reviews should focus on specific points that applicants have raised rather than extend to a full reconsideration of the previous refusal decision.

10. Recommendation 10: Consider the scope to prioritise the processing of ARs to meet the needs of the applicant in terms of timeliness (as in the case of some Tier 4 ARs).

- 10.1** Accepted.

10.2 This recommendation relates to Administrative Reviews of Entry Clearance decisions. Consideration will be given to the possibility of processing Administrative Reviews more quickly for certain cohorts of applicants. The ICI will be updated in the autumn with the outcome of this consideration.

11. Recommendation 11: Put in place formal, robust QA procedures for all ARs (including decisions regarding the validity of applications) that takes account of the grade and experience of the reviewer and the complexity of the original decision.

11.1 Accepted.

11.2 As part of the restructuring of the in-country Administrative Review operation referred to in the response to Recommendation 11, the in-country quality assurance regime has also been reviewed. With effect from January 2016, a more formalised assurance process of assessing, against set criteria, a proportion of randomly selected decisions was introduced. With effect from April 2016, the results of decision quality assessments are being recorded on the electronic tool - QATRO – that is used as part of UK Visas and Immigration's general decision quality framework. The results of this 'first tier' layer of internal assurance will be captured, and reviewed, as part of the general quality assurance framework within UKVI's Complex Casework Directorate and the Directorate's Chief Caseworker will have regular oversight of decision quality.

11.3 For Administrative Reviews of Entry Clearance decisions, ICQAT, the International Casework and Quality Assurance Team, will also establish formal quality assurance processes. ICQAT is being staffed by experienced Entry Clearance staff who will also receive appropriate training for their roles.

11.4 A second tier of quality assurance of in-country and overseas Administrative Review decisions will be undertaken by UKVI's Quality Audit Team. The Audit Team, which is independent from the in-country and overseas operations, will assess a number of randomly selected review decisions.

11.5 As well as enhanced internal assurance of case review quality and the introduction of a second tier quality review from colleagues independent of the in-country and overseas Administrative Review teams, the ICI will conduct a further inspection to be scheduled for 2016/17 to offer assurance that the necessary improvements have taken place.

11.6 The Home Office will also give consideration to establishing an external quality assurance panel, which would consist of professional persons who are completely independent from the Home Office, and be given a remit to review a random, anonymised sample of Administrative Review decisions on a regular basis and feed back to UK Visas and Immigration and Border Force on the quality of the decisions made.

11.7 The Border Force assurance process for Administrative Reviews undertaken at the border was introduced on 1 October 2015. Senior officers are required to check a random sample of 10% of cases (or 10 if there are fewer than 100 cases or all if there are fewer than 10) for evidence that the review has been conducted by an independent Higher Officer, that the application has been decided in line with policy and guidance and that a decision has been made within the 28 days service target.

12. Recommendation 12: Record and use the results of QA to improve the quality and consistency of AR outcomes by feeding back to reviewers and their managers.

12.1 Accepted.

- 12.2** For Administrative Reviews of in-country decisions, the QATRO tool, which was trialled in January 2016 and then rolled out from April 2016, will be used to more easily capture feedback for individual caseworkers from Senior Caseworkers and to identify trends and common error themes to inform continuous improvement across the operation.
- 12.3** The structure of the in-country operation is being revised, with the Senior Caseworkers reporting directly to the Complex Casework Directorate Chief Caseworker who will provide governance over decision quality and help ensure that the results from quality assurance assessments are fed back to caseworkers.
- 12.4** For Administrative Reviews of Entry Clearance decisions, the International Casework and Quality Assurance Team is introducing formal quality assurance processes. These processes will include feedback mechanisms to both the staff who made the Administrative Review decision and also to the initial decision makers and their management teams. This will be done using a formal digital process and will allow management teams to interrogate databases for information based on themes, posts and individuals.
- 12.5** The report found that in all Border Force cases sampled the original decision to cancel leave was correctly maintained. The ICI also found that Border Force decision notices were generally of a good quality and correctly addressed the issues raised by the applicant.

13. Recommendation 13: Capture and feedback in a structured form to original decision-makers the learning from ARs where the reviewer has withdrawn the original decisions and/or amended the reasons.

- 13.1** Accepted.
- 13.2** With regard to the in-country Administrative Review operation there is already a structured feedback process in place. As the ICI report notes, a monthly teleconference, chaired by the head of the Administrative Review team, takes place with senior representatives from UKVI business areas responsible for decisions subject to Administrative Review. The purpose of the meeting is to feedback on errors in initial decision making that have been identified through the Administrative Review process and to ensure that appropriate actions are taken to improve the quality of initial decision making. The ICI report also notes feedback from managers in Temporary Migration that they believed that feedback from Administrative Review outcomes had improved quality.
- 13.3** For Administrative Reviews of Entry Clearance decisions, as noted in the response to Recommendation 12, the International Casework and Quality Assurance Team is introducing formal quality assurance processes. These processes will include feedback mechanisms to the initial decision makers, and to their management teams, which will include where the Administrative Review has identified errors in the original decision.
- 13.4** With regard to Administrative Reviews undertaken at the border, each Border Force region will submit a quarterly return to the Operational Assurance Directorate which will highlight remedial action taken where issues have been identified through the Administrative Review process.

14. Recommendation 14: Ensure that all data relevant to demonstrating how the AR system is functioning is captured and used to effect the continuous improvement of both ARs and original immigration decisions, including where Pre-Action Protocols (PAPs) or Judicial Reviews (JR) cases are conceded and why.

14.1 Accepted.

- 14.2** With regard to the in-country Administrative Review operation, improved processes have been put in place to ensure that the results of litigation challenges to Administrative Review decisions are fed back to the in-country team. This includes highlighting cases where the Administrative Review decision is withdrawn as a result of a challenge raised in a Judicial Review or Pre-Action Protocol letter, identifying the reasons why the legal challenge was conceded and ensuring that any lessons to be learnt are acted upon. Similar to the monthly teleconference referred to in the response to Recommendation 13, which focus on feeding back on any lessons learned from errors in initial decisions, there is a fortnightly teleconference with UKVI colleagues in litigation operations that focuses on any cases where a legal challenge against the Administrative Review decision is conceded and provides a forum to discuss any trends and inform continuous improvement.
- 14.3** For Administrative Reviews of Entry Clearance decisions, the International Casework and Quality Assurance Team will collate data from a variety of sources to provide assurance to senior managers within UKVI that the Administrative Review mechanism is functioning correctly. This will include data from cases where a Pre-Action Protocol letter or a Judicial Review challenge has been received. Part of the remit of the ICQAT team will be to provide feedback to decision makers and to regional and headquarters management on individual case outcomes where appropriate and on any trends identified.
- 14.4** Border Force is looking to develop monthly data on the percentage of Administrative Review decisions which are upheld. Border Force intend to report this information in the monthly strategic performance report on Border Force operations.