



# An inspection of Administrative Reviews

(May – December 2019)

**David Bolt**

Independent Chief Inspector of  
Borders and Immigration



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# Foreword

I first examined the Home Office's processes for handling Administrative Reviews (ARs) in 2015 in response to a request from the Home Secretary, who was bound by Section 16 of the Immigration Act 2014 to commission a report within 12 months of the introduction of new Administrative Review (AR) provisions in lieu of appeal rights. Section 16 concerned the effectiveness of ARs in identifying and correcting case working errors and the independence of AR reviewers in terms of their separation from the original decision maker. My report, which was sent to the Home Secretary on 4 April 2016, covered these specific points and looked additionally at service standards in dealing with AR applications, consistency across different areas of the Home Office, organisational learning and cost savings.

The inspection found significant room for improvement, and I made 14 recommendations, grouped under four headings: Administrative Review applications; consideration of reviews; quality assurance; and learning. The Home Office accepted 13 of the 14 recommendations in full and the fourteenth in part.

In early 2017, I conducted a re-inspection and found that the handling of in-country ARs had improved considerably, but progress in relation to overseas and at the border ARs had been slower. I concluded that six of the original 14 recommendations could be considered completely 'closed'. However, the Home Office was not yet able to demonstrate that it had delivered an efficient, effective and cost-saving replacement for the previous appeals mechanisms. This was made more difficult because ARs were split across three business areas, and I suggested that the Home Office should consider appointing a senior responsible owner for the overall system of ARs to ensure consistency and benefits realisation.

This latest inspection looked again at the Section 16 'tests'.

At the border ARs are dealt with by Border Force. The numbers are small. However, examination of the case files and interviews with frontline officers raised some concerns, and the process needs to be better managed and have greater oversight.

All other ARs are now considered by the one dedicated unit within UK Visas and Immigration (UKVI). Since November 2018, this has included ARs submitted by applicants to the EU Settlement Scheme (EUSS), essentially those granted pre-settled status who believe they should have been granted settled status. Any internal Home Office review process will struggle to prove it is truly "independent", but the current arrangements for in-country, overseas and EUSS ARs create as much separation from the original decision maker as is possible while the decision-making and review functions remain under one Director General.

In terms of identifying and correcting case working errors, the inspection found a distinct difference between "objective" factual or process errors, where the ARs were generally effective, albeit too slow to remedy the error in some cases (Biometric Residence Permit replacements, for example), and instances where the AR applicant was challenging the decision maker's interpretation of the evidence they had provided, specifically where the case worker had refused the original application on credibility grounds. Since the AR reviewer is constrained to consider only the same evidence that the original decision maker had in front of them, the process is geared towards demonstrating that the



Home Office has not made an error rather than to providing the applicant with the best outcome. This undermines UKVI's claim to excellent customer service, but it is of particular concern with potentially vulnerable applicants.

I have commented elsewhere about how the EUSS stands out from other borders and immigration processes, including in the lengths the Home Office is prepared to go to in order to ensure that applicants get the best outcome. The same is true for EUSS ARs, highlighting the dichotomy in approach towards other types of applicant.

This report makes five recommendations, aimed for the most part at improving current AR processes and oversight, including urgently improving AR reporting and data so that the true picture can be seen. However, after almost five years, the Home Office should be thinking beyond merely tweaking its processes and should be asking whether the AR "system" has delivered the benefits, including for applicants, that it claimed it would during the passage of the Immigration Act 2014. If the answer is "no", or "not yet", it needs to take a more fundamental look at the scope of ARs and at what it is seeking to achieve through them.

This report was sent to the Home Secretary on 24 January 2020.

**David Bolt**  
**Independent Chief Inspector of Borders and Immigration**

# 1. Purpose and Scope

- 1.1** Building on previous inspections,<sup>1</sup> this inspection again examined the efficiency and effectiveness of Administrative Reviews (ARs), specifically:
- the effectiveness of ARs in identifying case working errors
  - the effectiveness of ARs in correcting case working errors
  - the independence of persons conducting ARs (in terms of their separation from the original decision maker)
- 1.2** The inspection focused on in-country, overseas and at the border ARs.

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<sup>1</sup> The first ICIBI inspection of Administrative Reviews was published in May 2016. This report was commissioned by the Home Secretary in accordance with Section 16 of the Immigration Act 2014. <https://www.gov.uk/government/publications/inspection-report-on-administrative-review-processes-may-2016>

A re-inspection report, examining what progress the Home Office had made in implementing the 2016 recommendations, was published in July 2017. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/674307/113\\_A\\_re-inspection\\_of\\_the\\_Administrative\\_Review\\_process.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/674307/113_A_re-inspection_of_the_Administrative_Review_process.pdf)

## 2. Methodology

### 2.1 For this inspection, inspectors:

- in June 2019, made familiarisation visits to Appeals, Litigation and Administrative Review (ALAR) and policy teams in Manchester and London; Sheffield Decision Making Centre (DMC); Premium Account Management team and Heathrow Airport, in order to inform the scope of the inspection
- reviewed Open Source material, including:
  - published Home Office and ministerial statements about the Immigration Bill 2014 and the intent and impact of the proposed AR system
  - relevant legislation, policies and guidance
  - previous ICIBI inspection reports and the Home Office's responses
  - documentary evidence and data provided by the Home Office
  - academic research, journals and articles about AR
- wrote to key stakeholders to seek their views on the AR process and to signpost them to the 'Call for evidence', published on the ICIBI website on 3 June 2019, inviting written submissions (evidence and case studies) from non-governmental organisations (NGOs), academic institutions, think tanks, faith groups and representative bodies with knowledge and expertise of the AR process, and from individuals with first-hand experience of AR
- met UK Council for International Student Affairs (UKCISA), INTO University Partnerships, Glasgow Caledonian University and University of Oxford
- analysed the written submissions received from stakeholders
- conducted 51 interviews and/or focus groups with Home Office managers and staff in: the ARU in Manchester; Appeals, ALAR; Sheffield Decision Making Centre (DMC); Indefinite Leave to Remain (ILR) team; EU Settlement Scheme (EUSS) team; Central Operations and Assurance Team; the Chief Casework Unit; Birmingham, Gatwick and Heathrow Airports; Border Force Operational Assurance Directorate; and AR policy officials
- examined 152 case records for ARs concluded between 1 March and 31 May 2019, comprising:
  - 21 AR applications rejected as "invalid"
  - 37 in-country ARs (19 Tier 4 and 18 Indefinite Leave to Remain applications)
  - 69 overseas ARs (all Tier 4)
  - 24 at the border ARs
- on 24 September, delivered their emerging findings to Home Office senior managers, and followed up with a number of questions on points of detail

## 3. Summary of conclusions

- 3.1** In 2013, in making the case for the replacement of various appeal rights with the right to apply for an Administrative Review (AR), the Immigration Minister explained that the government did not believe that “a costly, complex and lengthy appeal process [was] the most appropriate way to resolve factual errors”.
- 3.2** The new AR provisions, which were set out in the Immigration Act 2014, and covered in-country, overseas and at the border “eligible decisions”, took full effect from the beginning of the 2015-16 business year.
- 3.3** ICIBI published its first AR inspection report in 2016. It found significant room for improvement in the Home Office’s identification and correction of case working errors through Administrative Reviews (ARs) and in the communication of AR decisions to applicants. The report made 14 recommendations,<sup>2</sup> addressing the application processes, the reviews, quality assurance and organisational learning.
- 3.4** A re-inspection in 2017 noted that the Home Office had yet to demonstrate it had delivered an efficient, effective and cost-saving replacement for appeals, a task that was made harder because responsibility for ARs was split across UK Visas and Immigration (UKVI) and Border Force, and in UKVI was further split across two directorates. ICIBI therefore suggested that the Home Office should consider appointing a Senior Responsible Owner (SRO) for the overall system of ARs to ensure consistency and benefits realisation.
- 3.5** In response, the Home Office argued that Border Force needed to retain responsibility for at the border ARs, which were “reactively considered” as part of Border Force’s measures to secure the border. A subsequent review by the Administrative Review Unit (ARU) agreed, concluding that the “casework routes were sufficiently different [from ARU’s other work], as were the arguments used by Border Force in responding to at the border ARs”.
- 3.6** However, UKVI did rationalise its own AR functions and, since February 2019, ARU has been responsible for all UKVI ARs. The phased transfer of overseas ARs to ARU began with Tier 4<sup>3</sup> in September 2018 and was completed on 4 February 2019. From 1 November 2018, ARU also took on EU Settlement Scheme (EUSS) ARs. Since ARs were introduced, ARU has also been responsible for checking that applications for at the border ARs are valid, rejecting any that are not and passing the valid applications on to Border Force to complete the review and respond to the applicant.
- 3.7** The ARU was created in Manchester in 2014 as “a separate, dedicated team” for in-country ARs. This was done in order to satisfy the requirement of the Immigration Act 2014 (the 2014 Act) that the AR reviewer must be independent “in terms of their separation from the original decision maker”. At this time, the ARU was part of UKVI’s Complex Casework Directorate,

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<sup>2</sup> The Home Office accepted 13 and partially accepted one recommendation. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/526205/Home\\_Office\\_Response\\_to\\_ICI\\_Report\\_on\\_Administrative\\_Review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/526205/Home_Office_Response_to_ICI_Report_on_Administrative_Review.pdf)

<sup>3</sup> Student visa. <https://www.gov.uk/tier-4-general-visa>

reporting to the Chief Operating Officer, while the original decisions were taken by case working teams in Temporary Migration and Permanent Migration, based in Sheffield and Liverpool respectively, and reporting to the Director In-Country Migration.

- 3.8** In June 2018, the ARU became part of Appeals, Litigation and Subject Access Request (ALS) (since renamed Appeals, Litigation and Administrative Review (ALAR), an SCS-level command within UKVI's Immigration & Protection (I&P) Directorate). The original decision-making teams for all in-country and overseas eligible decisions, including EUSS decisions, are in the Visas & Citizenship Directorate, and located around the UK and overseas.
- 3.9** Insofar as it is possible within UKVI, the AR reviewers are therefore separate. However, the separation point becomes blurred for in-country and overseas ARs where the reviewer returns the decision to the original decision-making business area for reconsideration.
- 3.10** The Home Office regards the AR process as completed when the decision by the ARU (or Border Force) is dispatched to the applicant. Reconsideration falls outside the process. The inspection found that consequently no-one has oversight of post-AR reconsiderations. Different business areas have adopted different ways of handling them. One reported that a reconsideration would be completed by the same decision maker who had made the original decision as it was a learning opportunity for them. In smaller decision-making teams the person reconsidering an application may be sitting alongside the original decision maker. In other business areas, reconsiderations are directed to a separate post-decision team to ensure objectivity.
- 3.11** And, there is no single Customer Service Standard (CSS) for a reconsideration following an AR, so while an AR applicant might receive notification that the original decision had been withdrawn within the AR 28-day CSS, based on the file sample, some will then wait months more for a new decision. This effectively frustrates the purpose of AR, which is not just to identify case working errors but also to correct them. While the Home Office's reasons for restricting the role of the AR reviewer may be sound, the applicant should not suffer further delays in receiving the correct "original" decision.
- 3.12** Border Force has never had a separate, dedicated AR team. Each of its five operational commands (Heathrow, Central, North, South, South East and Europe) has its own arrangements for dealing with ARs. At Heathrow, Gatwick and Manchester Airports, the Border Force Higher Officer (BFHO) AR reviewers sit in casework units.<sup>4</sup> Elsewhere, ARs are given to a BFHO who has not been involved with the original decision to refuse entry, who may be at the same or a different port.
- 3.13** In the file sample none of the Border Force AR reviewers was involved in the original decision. However, in line management terms and physically, the independence of Border Force AR reviewers was less clear-cut than it would be if there were a single, dedicated team. This would also help with consistency and oversight.
- 3.14** Guidance for Home Office caseworkers, which is published on GOV.UK, is lengthy (74 pages) and technical. One paragraph is redacted because it is "official-sensitive". However, there is a simple guide for anyone considering applying for an AR, also on GOV.UK. Meanwhile, Border Force officers have their own guidance, last updated in January 2018. This carries the warning "All the content of this guidance is classified as official-sensitive and must not be disclosed

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<sup>4</sup> Casework teams are responsible for all cases where there is a legal barrier to removal and complex cases where protracted further enquiries are required, including conducting further immigration interviews and asylum screening interviews, recommending detention or Immigration Bail, responding to PAP letters and JRs, and completing ARs.

outside the Home Office.” This is odd on two counts: firstly, most of the 39 pages simply describe the AR process; secondly, it hardly helps the argument that ARs are an appropriate replacement for the right of appeal to a tribunal if the “rules of engagement” for one part of BICS are apparently “secret”.

- 3.15** The 2015 inspection report concluded that: “Overall, there was a clear and pressing requirement for accurate data covering all aspects of the AR processes for in-country, overseas and at the border ARs. Internally, the Home Office needed this to inform its policy and practice, and to support learning. Externally, it was a prerequisite for reassuring Parliament and the public about the Home Office’s handling of challenges to immigration decisions where the right of appeal has been removed.”
- 3.16** However, this inspection found that AR data, which was a mixture of centrally collated statistics and local spreadsheets, was neither reliable nor comprehensive, nor was it sufficiently granular to show the statistics for certain routes or types of applicant. This made meaningful analysis difficult and any conclusions necessarily tentative. For example, the inspection found that four nationalities (India, Pakistan, Nigeria and China) had featured in the top five for in-country, overseas and at the border AR applications each year since 2015-16. However, the Home Office had not completed an Equality Impact Assessment<sup>5</sup> in respect of the AR process, either before its introduction or since, and there was no monitoring of equality data related to AR applications or outcomes.
- 3.17** The Home Office indicated that the data it collated was sufficient for ARU’s purposes, which were essentially limited to managing the workflow. However, the requirement for accurate data and detailed analysis goes beyond this, if only to understand the true reasons for fluctuations in application numbers and outcomes, over time and by route, nationality etc. and to identify lessons for reviewers and for original decision makers in line with the Immigration Minister’s statement to Parliament that: “Administrative review will be a central part of improving decision quality, dealing with case working errors and feeding back review outcomes much better to decision makers.”<sup>6</sup>
- 3.18** According to the Home Office data, the numbers of AR applications have fallen considerably since 2015-16, which the department regards as an indication that the quality of original decisions has improved. This may be the case, but other factors may also have affected application numbers, for example: a perception that the AR process is too slow (making reapplication a better option); is constrained in what it can consider and therefore lacks true independence; and is not value for money.
- 3.19** There are similar problems in relying on AR overturn rates as an indicator of the quality of original decisions. Nonetheless, in 2013 the Home Office said that it would “monitor the overturn rate” and compare it with the “60% figure currently down to casework error” that were overturned at appeal and “where there is a discrepancy we will investigate this”.<sup>7</sup> Inspectors found no evidence that AR overturn rates had been monitored to this end since the 2014 Act came into force.<sup>8</sup>

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5 An Equality Impact Assessment (EIA) is an analysis of a proposed organisational policy, or a change to an existing one, which assesses whether the policy has a disparate impact on persons with protected characteristics. They are carried out primarily by public authorities to assist compliance with equality duties, however the Equality Act 2010 does not require public authorities to carry out EIAs.

6 <https://publications.parliament.uk/pa/cm201314/cmpublic/immigration/131105/pm/131105s01.htm>

7 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/254851/Sol\\_Administrative\\_review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/254851/Sol_Administrative_review.pdf)

8 In December 2019, ARU informed ICIBI that “Policy is currently working with Home Office Science and Insight and the Ministry of Justice to scope an evaluation to gauge the effectiveness of the implementation of administrative review policy. The intention is to have this concluded by the Spring of 2020.”

- 3.20** This is not to underestimate the challenges. At the time of this inspection, the recording and consideration of ARs, plus any fresh decisions following a successful AR, was spread across four different Home Office case working systems. The evidence submitted and relied upon to make the original decisions was found on Home Office case working systems, physical files, and on third party IT systems. The different systems in use affected data quality, as did the way that data was captured and reported.
- 3.21** In this and in other recent inspections, the Home Office has made much of the new case working system, ATLAS, and how it will transform casework. While this may be true in terms of the retrieval of case records, it will also require a significant push on the quality of record keeping. Meanwhile, the inspection was told that ATLAS had actually created new problems with some original decisions as it “isn’t very good at calculating leave” and, as a result, ARU was “correcting an awful lot of errors” with Tier 4 applications.
- 3.22** Inspectors examined 152 Home Office case files (electronic records and paper files) for ARs decided by ARU and by Border Force between 1 March and 30 May 2019, plus ARs that had been rejected as invalid. All 24 recorded at the border ARs were examined. For in-country and overseas ARs inspectors examined a sample which, while not statistically significant, served to illustrate some of the strengths and failings of the AR system. For example, almost half (34 out of 69) of the overseas Tier 4 ARs examined by inspectors had taken longer than the 28-day service standard to provide a response.
- 3.23** In particular, the file sample showed that ARU reviewers were generally effective at identifying and correcting “objective” errors, such as the misapplication of the Immigration Rules, the overlooking of relevant evidence or the granting of the wrong length or conditions of leave, particularly when issuing Biometric Residence Permits (BRP) to Tier 4 applicants (albeit the Home Office was often slow in providing applicants with a replacement, suggesting that the end-to-end process of correcting BRP errors via ARs was neither efficient nor customer-focused). But, the file sample also clearly showed that the AR process was of little or no value where original decisions to refuse were based on the decision maker’s assessment of the applicant’s credibility.
- 3.24** The fact that the AR reviewer was constrained to consider only the same evidence that the original decision maker had had in front of them meant that the process was geared more towards demonstrating that the Home Office had not made an error rather than in reaching the most appropriate outcome for the applicant, which was of particular concern with potentially vulnerable applicants, such as those seeking Indefinite Leave to Remain (ILR) as a victim of Domestic Violence (DV). However, this would be best addressed by ensuring that original decisions are all quality assured. The inspection established that original decisions for DV ILR were subject to a 2% random quality assurance check (for decision makers assessed as fully competent). Given the risks if the credibility assessment is wrong, a mandatory “second pair of eyes” check would seem more appropriate.
- 3.25** Even allowing for the reviewers’ limited remit in credibility cases, some examples showed a readiness to side with the original decision-maker’s opinions about the weight of the evidence provided that raised questions about institutional thinking. This was particularly evident in the application of the Genuine Student Rule (GSR).
- 3.26** Here, the inspection concluded that it was contrary to the letter and spirit of GSR guidance for decision makers to be making decisions based on the interview of the applicant when they attended their Visa Application Centre (VAC) appointment, as these were not tailored



to any specific concerns the decision maker had about their genuineness and did not provide applicants with “a chance to expand on answers and clarify themselves”. As such, ARU should not be upholding such decisions.

- 3.27** To be effective, first line assurance needs to be both rigorous and consistent. According to its own risk assessment, all GSR refusals by the Sheffield Decision Making Centre (DMC) were supposed to be approved by an Entry Clearance Manager (ECM). This was to ensure that the credibility of the applicant had been tested and that the interview and refusal notice reflected this. However, for most of 2018, because of a shortage of ECMs in the Sheffield DMC, SCS approval had been given for only “light touch reviews” of these decisions, which meant only a quick review of the decision based on the refusal notice. The overseas AR file sample between 1 March and 31 May 2019 indicated that ECM reviews had been resumed, but there was little evidence that ECMs were challenging original decision makers’ judgements.
- 3.28** In December 2018, responding to a Parliamentary Question about changes introduced “to minimise the chance of errors occurring in relation to a person’s immigration status”, the Immigration Minister said: “We have created a Chief Caseworker Unit (CCU) within UKVI ... to bolster case working expertise and ensure that caseworkers have a clear escalation route where they have a concern or require specialist guidance.” CCU reported that, as well as ensuring that discretion was being properly exercised and exploring systemic issues across UKVI, it was advising on particularly complex cases and trying to build a bridge between policy and operations so that operational areas played a greater role in the design and development of policy. CCU was keen to get more UKVI referrals. It saw customer insight data for UKVI but found it “very numerically focused”, making it difficult to “get under the skin of what the issues are”.
- 3.29** Within Border Force, responsibility for quality assuring immigration casework is devolved to individual ports or business areas. Border Force Operational Assurance Directorate (OAD) relies on operational managers to assure and assess activity and record any issues identified, sharing this with OAD. Because of the small numbers and the distributed way in which they were handled, there was little if any SCS-level oversight of at the border ARs within Border Force. No-one had asked, for example, why the numbers of at the border ARs were so low, or why in 2018-19 there were roughly half the number there had been in 2015-16. ARU, who received and validated at the border ARs, did not have any dealings of substance with Border Force beyond occasional case-specific clarifications.
- 3.30** However, from the at the border case files and from interviews of Border Force frontline officers, the inspection identified questionable practice regarding the use of AR waivers, amounting in some cases to an abuse of process. Border Force was also failing to apply the correct rules to AR refunds. Only one of nine ARs examined by inspectors had received the refund to which they were entitled. In this, Border Force reviewers were not helped by the fact that their own guidance included an ‘Example of a completed ex-gratia payment approval form...’ which referred to retention of £25 per applicant for “the rejection administration fee”. This was not in accordance with AR policy or guidance, which specified the refunding of the whole fee (£80).
- 3.31** In arguing for the replacement of appeals with ARs, the Home Office had stated that it and HM Courts and Tribunal Service would make substantial financial savings (£261 million PV combined over ten years) due to a decrease in the volume of appeals. The 2016 inspection found that: “no analysis of actual cost savings had been done, and the Home Office did not have any reliable data in relation to the costs associated with Pre-Action Protocols and Judicial



Reviews, which the Impact Assessment had acknowledged were likely to increase as a result of the removal of appeal rights.”

- 3.32** In response to the 2017 re-inspection, the Home Office stated: “We can confirm to the ICI that we are undertaking analysis of the changes made to appeals and Administrative Review and we expect to publish the findings in due course.” This inspection asked about the analysis, as none had been published. In June 2019, the Home Office reported that work on a cost-saving analysis had been “tasked out”. There was no more information about what it would include or when it would be completed.
- 3.33** ARs were introduced for EUSS applicants with effect from 1 November 2018. For an EUSS AR, the ARU caseworker is not limited to identifying and correcting case working errors but can consider and, where appropriate, request new evidence, while EUSS applicants are permitted to make an AR application and a fresh EUSS application in parallel. The number of AR applications had been low compared to the number of eligible decisions while the overturn rate was significantly higher than for other types of AR, again explicable because of the ability of the reviewer to accept new evidence and by the determination of the Home Office to provide every assistance to EUSS applicants.
- 3.34** The inspection found evidence of good collaboration between ARU and the original decision-making unit and EUSS policy staff, and also found that the feedback loops for EUSS ARs were more effective than for other ARs. Inevitably, EUSS ARs took reviewers longer on average than other ARs. However, forecasts had overestimated the numbers of EUSS AR applications and ARU staffing levels were sufficient, although this could change if it received larger numbers or more difficult cases.
- 3.35** The inspection found that there was interest within the Home Office and amongst stakeholders in extending the greater flexibility built into the EUSS AR process to other ARs. However, to do this across the board would be beyond ARU’s capacity as currently resourced, and the Home Office saw certain practical difficulties with, for example, permitting a parallel AR application and fresh visa application, which could lead to a grant of different periods of leave and complications over any refunds.
- 3.36** Nonetheless, it was clear from this inspection that in looking to improve ARs the Home Office needs to think beyond merely ‘tweaking’ its processes and ask whether the AR “system”, after almost five years of operation, has delivered the benefits it claimed it would during the passage of the 2014 Act. If it has not, the Home Office needs to take a more fundamental look at the scope of ARs and what it is seeking to achieve through them. Either way, it needs as a matter of some urgency to improve its data and information about ARs and to ensure that there is sufficient visibility and ownership of this at Board level within BICS.

## 4. Recommendations

### The Home Office should:

- 4.1** Ensure that all data and information relevant to demonstrating how the Administrative Review (AR) system is working, including related Pre-Action Protocol (PAPs) or Judicial Review (JR) data, is routinely captured and analysed, and used to effect the continuous improvement of both ARs and original immigration decisions.<sup>9</sup> Linked to this:
- a. ensure that guidance and instructions to caseworkers (including Border Force officers) responsible for making eligible decisions mandate the minimum recording standards/data requirements in respect of their decisions, actions and reasons/justifications;
  - b. publish quarterly performance data for Administrative Reviews (ARs), covering as a minimum: the numbers of in-country, overseas, at the border and EU Settlement Scheme ARs received; the outcomes (including numbers of ARs declared invalid, with a breakdown of the main reasons); and processing times (having first published the Customer Service Standard (CSS));
  - c. publish (periodically) the details of improvements made to policies, guidance and original decision-making practice as a result of the lessons learned from ARs, first ensuring that feedback mechanisms are effective (timely, specific, and auditable);
  - d. review the quality assurance regimes for all types of eligible decision, ensuring that where dip sampling is used the sample size is sufficient to provide a high ( $\geq 95\%$ ) level of confidence, and that where decisions rely on a credibility assessment 100% are quality assured by a manager before the decision is dispatched.
- 4.2** Review Administrative Review (AR) guidance (and training), and guidance relating to eligible decisions, and ensure that the directions given to reviewers and to original decision makers (including Border Force officers in both cases) are clear and consistent, paying particular attention to:
- a. deadlines for valid AR applications, including the limits of any reviewer discretion;
  - b. the use, recording and management oversight of AR waivers;
  - c. the completeness of AR and original decision letters, which should contain the details of all of the evidence relied upon to reach the decision, including the verbatim transcript of interviews, where relevant;
  - d. the timescale(s) for reconsiderations following an AR, which should recognise the applicant's reasonable expectation of a correct "original" decision within the shortest possible time, rather than having to restart the process as if they were a new applicant;
  - e. refunds, both the amount and the timeliness of reimbursement;
  - f. identification and signposting of formal complaints.

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<sup>9</sup> This effectively repeats Recommendation 14 from 'An inspection of the Administrative Review processes introduced following the 2014 Immigration Act' (September – December 2015).

- 4.3** Create a single, dedicated unit within Border Force to deal with all at the border Administrative Reviews (ARs), responsible to a nominated Border Force Senior Civil Servant (SCS) and with formal reporting lines to the Appeals, Litigation and Administrative Review (ALAR) SCS regarding at the border AR performance.
- 4.4** Conduct and publish a full evaluation of the Administrative Review (AR) system, baselined against the “Objectives” and “Appraisal (Cost and Benefits)” set out in the 2013 ‘Impact Assessment of Reforming Immigration Appeal Rights’ and other official statements made during the passage of the Immigration Bill 2014, and including:
- a. a list of actions (with owners and timescales) required to deliver what was originally intended;
  - b. consideration of potential changes to AR policy and practice, whether overall or specific to certain routes, that would improve the customer experience, including (but not limited to) empowering the AR reviewer to consider fresh evidence, particularly where the eligible decision involved an assessment of the applicant’s credibility.
- 4.5** Present to the BICS Board a detailed (not simply statistical) quarterly report on the Administrative Review (AR) system, covering how in-country, overseas, at the border and EU Settlement Scheme (EUSS) ARs are working, the issues raised and lessons learned, risks and proposed actions (including by areas responsible for making eligible decisions).

# 5. Background

## Immigration Act 2014

- 5.1** The Immigration Act 2014 (the 2014 Act) removed the right of appeal to the Immigration and Asylum Chamber of the First Tier Tribunal for various types of immigration decisions and replaced it with an administrative review (AR)<sup>10</sup> process, internal to the Home Office, to provide “a proportionate and less costly mechanism for resolving case working errors”.<sup>11</sup>
- 5.2** In 2013, in arguing for the need for reform, the Immigration Minister wrote:
- “Currently an individual’s remedy against an application refused in error is to appeal against that refusal. We do not believe that a costly, complex and lengthy appeal process is the most appropriate way to resolve factual errors. Appeal rights are appropriate for legally and factually complex issues that engage fundamental rights, namely EU free movement rights, human rights, asylum and humanitarian protection. We need to reform the appeals framework to reflect these priorities.”<sup>12</sup>
- 5.3** The 2014 Act reduced the types of immigration decision that enjoyed a right of appeal, unless an application is certified as “clearly unfounded”,<sup>13</sup> from 17 to four:
- international protection claims (asylum or humanitarian protection applications)
  - decisions to revoke refugee status or humanitarian protection
  - claims for the right to remain in the UK under European law
  - human rights claims
- 5.4** Prior to the 2014 Act, Administrative Reviews (ARs) already existed for refusals of entry clearance applications made overseas under the points-based system (PBS). The 2014 Act widened the scope of ARs to include immigration decisions made in-country and at the border. Later, the scope was further widened to include applications under the EU Settlement Scheme (EUSS) made on or after 1 November 2018.
- 5.5** The removal of appeal rights under the 2014 Act was phased. In October 2014, in-country PBS applications from Tier 4 students and their dependants and non-European Foreign National Offenders had their appeal rights removed, followed in March 2015 by the remaining in-country points-based decisions, and in April 2015 by the rest of the decisions covered by the 2014 Act.<sup>14</sup>

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10 Administrative review allows an individual to challenge a decision about them made by a public body. It is carried out by the public body, at their discretion.

11 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/262789/Factsheet\\_05\\_-\\_Appeals.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/262789/Factsheet_05_-_Appeals.pdf)

12 ‘Impact Assessment of Reforming Immigration Appeal Rights’, dated 15 July 2013. <https://www.parliament.uk/documents/impact-assessments/IA13-24A.pdf>

13 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/778221/certification-s94-guidance-0219.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/778221/certification-s94-guidance-0219.pdf)

14 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/434176/tribunal-gender-statistics-jan-mar-2015.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/434176/tribunal-gender-statistics-jan-mar-2015.pdf)

# The Administrative Review process

## “Eligible decisions”

5.6 The decisions for which a person may seek an AR, known as “eligible decisions”, are defined in Appendix AR of the Immigration Rules – see Figure 1.

<b>Figure 1: Eligible decisions as defined at Appendix AR of the Immigration Rules</b>	
<b>In-country</b>	
Decisions to grant or refuse Leave to Remain (LTR):	In respect of applications made on or after
As a Tier 4 migrant (or as the partner of a Tier 4 migrant)	20 October 2014
As a Tier 1, 2 or 5 migrant (or as the partner or child of a Tier 1, 2 or 5 migrant)	2 March 2015
Under the Immigration Rules unless it is one of the following types of application: <ul style="list-style-type: none"> <li>• visitor;</li> <li>• long residence;</li> <li>• partner or child of a member of HM Forces;</li> <li>• under Part 8 (family members);</li> <li>• under Part 11 (asylum); or</li> <li>• Appendix FM (family members – except bereavement and domestic violence applications).</li> </ul>	6 April 2015
Pursuant to the UK’s obligations under Article 41 of the Additional Protocol to the European Community Association Agreement (ECAA) with Turkey	6 April 2015
<b>At the border</b>	
Decisions to cancel leave to enter or LTE where:	In respect of applications made on or after
There has been such a change in circumstances in the applicant’s case since that leave was given that it should be cancelled	6 April 2015
The leave was obtained as a result of false information given by the applicant or the applicant’s failure to disclose material facts	6 April 2015

<b>Overseas</b>	
Refusal of an application for entry clearance:	In respect of applications made on or after
Under the Immigration Rules unless the application was under one of the following categories: <ul style="list-style-type: none"> <li>• visitor;</li> <li>• short-term student;</li> <li>• partner or child of HM Forces;</li> <li>• Part 8 (family members); or</li> <li>• Appendix FM (family members).</li> </ul>	6 April 2015
Pursuant to the UK's obligations under Article 41 of the Additional Protocol to the ECAA with Turkey	6 April 2015
<b>Eligible decisions as defined at Appendix AR (EU) of the Immigration Rules</b>	
Refusal of an application for entry clearance:	In respect of applications made on or after
EU Settled Status	1 November 2018

## Scope and purpose

- 5.7** AR is the review, “by a different person on an independent team”<sup>15</sup> from the original decision-maker, of an eligible decision to determine whether the decision was incorrect due to a case working error as defined in Appendix AR and Appendix AR (EU) of the Immigration Rules.<sup>16</sup>
- 5.8** The process is designed primarily to provide redress for individuals whose applications for leave have been refused or cancelled. However, individuals who have been granted leave in-country may also apply for AR if they consider that the period of their leave or the conditions attached to it have been calculated incorrectly.<sup>17</sup>

## Applying for an AR

- 5.9** Individuals seeking an AR must apply to the Home Office within the prescribed deadline, which varies: in-country and at the border, within 14 days or within seven days if detained; overseas and EUSS, within 28 days.
- 5.10** In-country and at the border applications may be made online or, in “exceptional circumstances”, by using “the specified paper application form”, available on the GOV.UK website, but not by letter or email without using the form. From 1 October 2019, it became mandatory that overseas applications were made online. Prior to that, they had to be made on the specified application form, and “delivered to the overseas post named on the decision notice”.

<sup>15</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/806921/Admin-review-guidance-v10.0-ext.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/806921/Admin-review-guidance-v10.0-ext.pdf)

<sup>16</sup> <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-ar-administrative-review> and <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-ar-eu>

<sup>17</sup> Applicants may submit an AR if they believe the conditions or length of leave is incorrect, or for EUSS applicants who receive EU Pre-Settled status instead of Settled Status.

- 5.11** Overseas ARs are free of charge. Unless the original application was free, in which case so is an AR application, all other ARs attract a fee of £80, payable with the application, which is refunded where the application is rejected as invalid, or the AR decision is to grant leave, or that the period or conditions of the leave originally granted were incorrect. All Border Force ARs attract a fee of £80 and for EUSS ARs, a fee of £80 is applicable unless the applicant is in local authority care. In all chargeable AR cases, an applicant can apply for a fee waiver if they are unable to pay the fee.

## Customer Service Standard

- 5.12** Where the application is accepted as valid, the Home Office works to a Customer Service Standard of 28 days to respond with an outcome to the review. Any refunds of the fee should be made “normally ... within 3 weeks of the date of the decision”.

## Possible outcomes

- 5.13** An AR has one of four outcomes:
- it succeeds, and the eligible decision is withdrawn
  - it does not succeed, and the eligible decision remains in force and all of the reasons given for the decision are maintained
  - it does not succeed, and the eligible decision remains in force but one or more of the reasons given for the decision is withdrawn
  - it does not succeed, and the eligible decision remains in force but with different or additional reasons to those specified in the decision under review

## Caseworker guidance

- 5.14** Guidance for caseworkers carrying out an AR was first published in October 2014. Version 10 of this guidance, which runs to 74 pages, was published on 5 June 2019.
- 5.15** The AR guidance “tells caseworkers how to validate, consider and decide” UK and overseas AR applications, and “covers validation of administrative review applications relating to border decisions”.
- 5.16** For non-EUSS ARs, the reviewer may not consider any additional evidence that was not before the original decision maker, unless its purpose is to prove that deception has not taken place, that a document is genuine, or that an application is not invalid by providing proof of postage for when a decision was received.

## Border Force ARs

- 5.17** The AR guidance covers the validation of at the border AR applications, and provides examples of reviewable at the border case working errors that might occur, and whether the reviewer can request relevant new evidence to be considered.
- 5.18** The description of who may conduct an at the border AR makes no reference to the person having to be “on an independent team” from the original decision maker. Meanwhile, under ‘How to consider an administrative review application’ the AR guidance states: “Border Force officers must follow the guidance on administrative review contained in the Border Force guidance when they consider requests.” While under ‘Administrative review decisions’ it states:

“Border Force officers must follow the guidance on administrative review contained in the Border Force operations manual when deciding requests.” Guidance for Border Force officers, ‘Administrative review: dealing with applications (Version 3.0)’, dated 15 January 2018, carries the warning “All the content of this guidance is classified as official-sensitive and must not be disclosed outside the Home Office”.

## EU Settlement Scheme

- 5.19** In January 2019, the Home Office published separate guidance for EU Settlement Scheme ARs. Version 5 of this guidance (20 pages) was published on 10 October 2019.<sup>18</sup>
- 5.20** ARs for the EUSS have a wider remit and caseworkers can apply greater flexibility regarding new and supporting evidence. EUSS AR applicants are able to submit fresh evidence with their AR application. They are also able to deal directly with the AR caseworker who can request specific information that, if provided, would result in a positive outcome for their case. However, if new evidence provided results in a decision being overturned, the £80 fee will not be refunded because the original decision maker is not deemed to have made a case working error.

## Previous inspections of the AR system

### 2016 Inspection

- 5.21** During the passage of the 2014 Immigration Bill, some MPs and peers argued that an internal Home Office AR system would not be an effective replacement for an appeal to an Immigration and Asylum Tribunal judge, who was independent of the Home Office. An amendment was made to the Bill during its passage through the Lords, resulting in section 16 of the 2014 Act, which states:
- “Before the end of the period of 12 months beginning on the day on which section 15 comes into force, the Secretary of State must commission from the Chief Inspector [of Borders and Immigration] a report that addresses the following matters –
- the effectiveness of administrative review in identifying case working errors;
  - the effectiveness of administrative review in correcting case working errors;
  - the independence of persons conducting administrative review (in terms of their separation from the original decision-maker).”
- 5.22** The Home Secretary commissioned a report addressing the three matters identified in section 16 in June 2015. The inspection ran from September to December 2015 and the report<sup>19</sup> was sent to the Home Secretary on 4 April 2016. It was published on 26 May 2016.
- 5.23** In addition to the matters prescribed in the 2014 Act, the inspection examined customer service standards for ARs, consistency across different areas of the Home Office, organisational learning and cost savings.
- 5.24** The inspection found that, while levels of accuracy and consistency varied between in-country, overseas and at the border reviews, overall there was significant room for improvement in

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<sup>18</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/838972/admin-review-euss-v5.0-ext.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/838972/admin-review-euss-v5.0-ext.pdf)

<sup>19</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/549244/ICIBI\\_report\\_on\\_admin\\_reviews\\_May\\_2016.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/549244/ICIBI_report_on_admin_reviews_May_2016.pdf)



respect of the effectiveness of AR in identifying and correcting case working errors, and in communicating decisions to applicants. With regard to the independence of the reviewer, the Home Office had created a separate, dedicated team to handle in-country reviews, but most overseas and at the border reviews were carried out locally, and while the inspection found no indications of bias, it was harder to evidence that overseas and at the border reviewers were truly separate and independent.

- 5.25** In terms of service standards, the Home Office was comfortably meeting the 28 days for responses to AR applications, except in a proportion of overseas applications. Meanwhile, there was no systematic feedback to reviewers (or to original decision makers) regarding decisions that had been subject to a successful legal challenge, so organisational learning was at best patchy. Finally, despite arguing that the introduction of administrative reviews would save £261m over ten years, the Home Office had yet to do any analysis of the cost savings.
- 5.26** The report made 14 recommendations, grouped under four headings: administrative review applications; consideration of reviews; quality assurance; and learning. The Home Office “fully” accepted 13 of the recommendations and “partially” accepted one.<sup>20</sup>

## 2017 Re-inspection

- 5.27** Between January and March 2017, ICIBI carried out a re-inspection of the AR process. The re-inspection report<sup>21</sup> was sent to the Home Secretary on 23 May 2017 and published on 13 July 2017.
- 5.28** This re-inspection examined the Home Office’s progress in implementing the original recommendations. It found that the handling of in-country ARs had improved considerably, but progress with overseas and at the border ARs had been slower.
- 5.29** It concluded that six recommendations could be considered completely “closed”. However, the Home Office was not yet able to demonstrate that it had delivered an efficient, effective and cost-saving replacement for the previous appeals mechanisms. This was made more difficult because ARs were split across three business areas and, while the re-inspection did not make any new recommendations, it suggested that the Home Office should consider appointing a senior responsible owner for the overall system of ARs to ensure consistency and benefits realisation.
- 5.30** In its formal response,<sup>22</sup> the Home Office noted:

“The current position in UKVI [UK Visas and Immigration] is that a request for a review of a decision made in-country under the Points Based System is undertaken within Immigration and Protection Directorate and a request for a review of an overseas entry clearance decision is dealt with by Visas and Citizenship Directorate. The Administrative Review decision-making that was previously done overseas has recently been repatriated to the UK. Now that repatriation is complete, UKVI will consider whether all Administrative Review decisions can be made in a single unit. In the meantime, UKVI will appoint a single SRO [Senior Responsible Owner] with responsibility for holding both sides (in-country and overseas) to account and ensuring coordination and consistency of process.”

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<sup>20</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/526205/Home\\_Office\\_Response\\_to\\_ICI\\_Report\\_on\\_Administrative\\_Review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/526205/Home_Office_Response_to_ICI_Report_on_Administrative_Review.pdf)

<sup>21</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/674307/113\\_A\\_re-inspection\\_of\\_the\\_Administrative\\_Review\\_process.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/674307/113_A_re-inspection_of_the_Administrative_Review_process.pdf)

<sup>22</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/628107/HO\\_Response\\_-\\_ICI\\_Re-inspection\\_Administrative\\_Reviews\\_-\\_July\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/628107/HO_Response_-_ICI_Re-inspection_Administrative_Reviews_-_July_2017.pdf)

**5.31** However, regarding a single Senior Responsible Owner (SRO) for the whole of BICS, it stated:

“It is important to recognise that whilst there is some congruence with the two UKVI areas, Border Force reactively consider these decisions at port as part of their function in securing the UK borders. On that basis, it would make sense to allow Border Force operations to continue to manage the process as they do currently ...”

## Potential changes to the AR process

**5.32** In August 2019, inspectors were informed by Home Office managers that two major reviews that were underway would encompass ARs:

- The Law Commission’s ‘Simplifying of the Immigration Rules’<sup>23</sup>
- ‘Future Border and Immigration System (FBIS)’<sup>24</sup>

**5.33** Inspectors were told that simplification of the Immigration Rules would be an opportunity to assess AR policy. Policy staff had already identified that applicants who did not have legal representation may not be able to identify case working errors, as required by the AR process. Regarding the consideration of new evidence, they felt it would be fairer if this was allowed “across the board” and were looking at how it could be “simplified and made more consistent across the different schemes”.

**5.34** At the time of the inspection, however, there were no firm plans or timescales regarding any changes to the AR system.

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<sup>23</sup> The Law Commission’s, ‘Simplification of the Immigration Rules’ was published in January 2020. <https://www.lawcom.gov.uk/project/simplifying-the-immigration-rules/>

<sup>24</sup> <https://www.gov.uk/government/speeches/home-secretary-future-border-and-immigration-system>

## 6. Inspection findings: Resources and volumes

### Staffing the Administrative Review “system”

#### Administrative Review Unit (ARU) responsibilities

- 6.1 UK Visas and Immigration’s (UKVI) Administrative Review Unit (ARU), based in Manchester, was created in October 2014. Initially, it was responsible only for in-country Administrative Reviews (ARs). At the time of this inspection, ARU formed a relatively small part of Appeals, Litigation and Administrative Review (ALAR), a Senior Civil Servant (SCS) led command of almost 800 staff spread across the UK, responsible for preparing and presenting appeals at tribunals and managing judicial reviews, as well as Administrative Reviews (ARs).
- 6.2 In September 2018, the ARU began to take on overseas ARs, starting with Tier 4.<sup>25</sup> The transfer of overseas ARs was phased, with the last tranche moving over to ARU on 4 February 2019. The phased transfer of overseas ARs to the ARU began in late September 2018. Other routes were transferred at intervals up to February 2019.
- 6.3 To mitigate any risks to ARU performance during this handover, additional resources were made available by recruiting new staff for the ARU and existing staff received training on each of the routes being transferred.<sup>26</sup> Nonetheless, ARU found it a “challenging transition” and sought additional support from staff who had previously completed overseas AR work in ICQAT.<sup>27</sup>
- 6.4 From November 2018, it also took on EU Settlement Scheme (EUSS) ARs. ARU also validates applications for an at the border Administrative Review (AR) before they are passed on to Border Force to complete the review.

#### Staffing levels

- 6.5 Since 2015-16, ARU staffing levels have increased and the balance of Administrative Officers (AOs) to Executive Officers (EOs) and Senior Executive Officers (SEOs) has changed towards a greater proportion of more senior staff.
- 6.6 The 2016 inspection found that when the ARU was being planned the Home Office’s initial thinking had been to use Executive Officer (EO) caseworkers to review in-country ARs.<sup>28</sup> However, “for resource reasons” the plan was revisited and the ARU was established with Administrative Officer (AO) caseworkers, which it was argued was appropriate because inter alia the original decisions were mostly made by AOs, and because EO (or higher) grade senior caseworkers would provide robust quality assurance and would deal with more complex cases.

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25 Student visa. <https://www.gov.uk/tier-4-general-visa>

26 The training was delivered by Business Embedded Trainers within ARU.

27 The International Casework & Quality Assurance Team (ICQAT)

28 At this time, overseas and at the border ARs were being reviewed by Higher Executive Officer (HEO) equivalents, respectively Entry Clearance Managers (ECMs) and Border Force Higher Officers (BFHOs).

**6.7** In reality, the bulk of the AOs redeployed into the new ARU were inexperienced in immigration casework, with permanent staff in the minority; quality assurance was ineffective; and inspectors found no evidence of cases being identified as “complex” and passed to EO caseworkers to review. Consequently, the report recommended:

“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.”

**6.8** Responding in May 2016, the Home Office accepted the recommendation and noted that UKVI:

“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.

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.”

**6.9** From the staffing figures provided for 2015-16 to 2018-19, plus the position at 1 May 2019 (see Figure 2), UKVI appears to have made the changes to which it referred, albeit these took until 2017-18 to effect.

**Figure 2: Administrative Review Unit staffing levels  
(2015-16 to 2018-19, plus the position at 1 May 2019)<sup>29</sup>**

Grade	2015-16	2016-17	2017-18	2018-19	1 May 2019
Grade 6 <sup>30</sup>	–	1	–	–	–
Grade 7	1	–	1	1	1
Senior Executive Officer Senior Caseworker		1	1	1	1
Senior Executive Officer Team Leader	1	1	1	1	1
Higher Executive Officer Senior Caseworker	1	1	4	4	6
Higher Executive Officer Team Leader	1	1	2	3	4
Executive Officer Senior Caseworker	5	4	5	–	–
Executive Officer Caseworker	–	–	8	19	34
Executive Officer Team Leader	3	4	4	2	2
Administrative Officer Caseworker	12	14	13	–	
Administrative Officer Admin Support	4	8	13	16	11
<b>Full-time equivalents</b>	<b>28</b>	<b>35</b>	<b>52</b>	<b>47</b>	<b>60</b>

**6.10** In terms of staff numbers, the original sizing of the ARU was based on planning assumptions about the likely number of in-country ARs. After the first six months of the post-2014 Act system, these assumptions appeared to have over-estimated the take-up and despite the ARU not being fully staffed and caseworker productivity being lower than expected, the ARU was managing “comfortably” within the 28-day service standard for responses.

## Border Force – at the border ARs

**6.11** At the border ARs are dealt with by Border Force. Border Force did not have a separate, dedicated AR team, but dealt with ARs through its five operational commands: Heathrow, Central, North, South, South East and Europe. Each command had its own arrangements for dealing with ARs. At Heathrow, Gatwick and Manchester Airports the Border Force Higher Officers (BFHOs) who carried out ARs sat in a casework unit.<sup>31</sup> separate from the port functions. Elsewhere, ARs were distributed to a Border Force Higher Officer (BFHO) who had not been involved with the original decision to refuse entry, who may be at the same or a different port.

29 The 2017 re-inspection report contained the following breakdown for the ARU: 1xGrade 5 (SCS); 1xGrade 6; 2xGrade 7; 2xSEO; 4xHEO; 21xEO; 16xAO; Total 47.

30 ARU was overseen by a Grade 6 manager, not located in Manchester, who also had other responsibilities within UKVI’s Appeals, Litigation and Administrative Reviews (ALAR) command.

31 These casework teams were responsible for all cases where there is a legal barrier to removal and complex cases where protracted further enquiries are required, including conducting further immigration interviews and asylum screening interviews, recommending detention or Immigration Bail, responding to PAP letters and JRs, and completing ARs.

**6.12** Inspectors requested details for the numbers and grades of staff in each command available to complete ARs if required to do so – see Figure 3.

Figure 3: Numbers and grades of Border Force staff available to complete ARs in each command (2015-16 to 2018-19)								
	2015-16		2016-17		2017-18		2018-19	
	BFSO	BFHO	BFSO	BFHO	BFSO	BFHO	BFSO	BFHO
<b>Heathrow</b>		All		All		4.5	1	3
<b>Central</b>		18		6		5		4
<b>North</b>	1	24	1	28	2	24	1	23
<b>South</b>		8		8		8		8
<b>South East &amp; Europe</b>		9		9		9		9
	3	+1 BFO	3	+1 BFO	3	+1 BFO	3	+1 BFO

#### Key

BFSO = Border Force Senior Officer, equivalent to SEO

BFHO = Border Force Higher Officer, equivalent to HEO

BFO = Border Force Officer, equivalent to EO

## Administrative Review data

### Systems used in the AR process

**6.13** At the time of this inspection, the recording and consideration of ARs, plus any fresh decisions following a successful AR, was spread across four different Home Office case working systems. The evidence submitted and relied upon to make the original decisions was found on Home Office case working systems, physical files and on third party IT systems<sup>32</sup> – see Figure 4.

<sup>32</sup> Lidpro and Docushare are IT systems owned by the Home Office's commercial partners who manage the Visa Application Centres (VACs). Applicants' supporting documents are scanned and stored on the partners' servers at the application stage. When a decision maker requires sight of the scanned documents they have to access a restricted area on the relevant server.

Figure 4: Systems used in the AR process				
	In-country	Overseas	At the border	EUSS
<b>Evidence available to the original decision maker</b>	<ul style="list-style-type: none"> <li>• CID</li> <li>• CRS<sup>33</sup></li> <li>• HOPS<sup>34</sup></li> <li>• ATLAS</li> <li>• Physical Home Office file</li> </ul>	<ul style="list-style-type: none"> <li>• CID</li> <li>• CRS</li> <li>• 3rd Party IT systems</li> <li>• Local shared drives</li> <li>• Proviso</li> </ul>	<ul style="list-style-type: none"> <li>• CID</li> <li>• CRS</li> <li>• Physical port file</li> </ul>	<ul style="list-style-type: none"> <li>• CID</li> <li>• CRS</li> <li>• PEGA<sup>35</sup></li> <li>• Residence Proving Service<sup>36</sup></li> </ul>
<b>AR validation</b>	<ul style="list-style-type: none"> <li>• CID</li> </ul>	<ul style="list-style-type: none"> <li>• CRS</li> </ul>	<ul style="list-style-type: none"> <li>• CID</li> </ul>	<ul style="list-style-type: none"> <li>• CID</li> </ul>
<b>AR consideration</b>	<ul style="list-style-type: none"> <li>• CID</li> </ul>	<ul style="list-style-type: none"> <li>• CRS</li> </ul>	<ul style="list-style-type: none"> <li>• CID</li> <li>• Physical port file</li> </ul>	<ul style="list-style-type: none"> <li>• CID</li> </ul>
<b>Record of AR outcome</b>	<ul style="list-style-type: none"> <li>• CID</li> </ul>	<ul style="list-style-type: none"> <li>• Proviso</li> </ul>	<ul style="list-style-type: none"> <li>• CID</li> </ul>	<ul style="list-style-type: none"> <li>• CID</li> </ul>
<b>Fresh decision</b>	<ul style="list-style-type: none"> <li>• CID</li> </ul>	<ul style="list-style-type: none"> <li>• Proviso</li> </ul>	<ul style="list-style-type: none"> <li>• CID</li> </ul>	<ul style="list-style-type: none"> <li>• PEGA</li> </ul>

## Data quality

**6.14** At the beginning of this inspection, inspectors requested a range of data from the Home Office in relation to all types of AR. The different systems in use affected data quality, as did the way that data was captured and reported. It was therefore difficult to have confidence in much of what was provided and to produce any meaningful analyses from it.

## In-country AR data

**6.15** Data on in-country AR applications and outcomes was grouped and recorded under labels that did not distinguish the immigration route, and inspectors were unable to establish the “upheld” (where the AR was unsuccessful) and “overturn” (where the AR succeeded) rates for different routes. For example, Tiers 2 and 5 were grouped together, while applications for Indefinite Leave to Remain (ILR) citing Domestic Violence were grouped with several other types of in-country eligible decisions.

**6.16** In July 2019, the Home Office’s Performance Reporting and Analysis Unit (PRAU)<sup>37</sup> told inspectors that the way data in relation to ARs was broken down met the requirements of ARU. ALAR senior management confirmed that the data met their needs and said that decision-making units relied on data held on local spreadsheets to produce their own management information (MI) and statistics on specific immigration routes.

33 CRS is a primarily a ‘read-only’ database, which replicates information placed on Proviso. Information added to CRS cannot be viewed on Proviso and is not reportable.

34 HOPS is the Home Office Platform Storage system which allows documents to be uploaded by the Home Office. This allows documents to be viewed and stored digitally without the need for paper files.

35 The EU Settlement Scheme casework system.

36 A standalone system that conducts an automated check against specified DWP and HMRC systems for evidence of UK residence.

37 The PRAU produces analysis of how the Home Office’s Borders, Immigration & Citizenship System is performing, including reporting on performance to the Department’s Executive Committee. The Unit is also responsible for the Home Office’s published ‘transparency data’ on borders and immigration performance as well as acting as the guardian for the public release of management information more widely.

## Overseas AR data

**6.17** ARU senior management told inspectors that data for overseas ARs could not be relied upon as visa Decision Making Centres (DMCs) had not been regularly updating Proviso with the outcome of overseas ARs. The Home Office explained:

“When ARs were introduced, caseworkers were sent instructions via OPIs<sup>38</sup> 96,<sup>39</sup> 264<sup>40</sup> and in Proviso user guidance on how to deal with these cases and use relevant Proviso events.

Following the centralisation of AR consideration, Proviso ceased to be the caseworking database for consideration: caseworkers in International Casework & Quality Assurance Team (ICQAT) and latterly Administrative Review Unit (ARU) use CRS when considering and processing updates on ARs. The originating DMC will not necessarily know an AR has been submitted until the AR has been decided (unless asked to forward documents in between) when the DMC is informed of the decision (upheld/dismissed), and will issue the decision letter to the customer, taking any subsequent action required to resolve the application.

OPI 768, issued in June 2018, set out the role of ICQAT in the AR process and advised DMCs to record the outcome of the AR. As Proviso is not used for live caseworking in this instance, there is not therefore a requirement, or current operating instruction to record each stage of an AR on Proviso. An OPI is however being written now to clarify the use of Proviso events in AR cases.

This use of Proviso events has no impact on the customer. Processes are in place (set out in OPI 768) to ensure that DMCs are notified of AR outcomes and take necessary actions.”

**6.18** Concerning the overall accuracy of data for overseas ARs, the Home Office stated:

“The time/overlap between inspections,<sup>41</sup> combined with moving the AR process from overseas to UK and its associated process changes has led to variances in data outputs from multiple sources. It is regrettable that the incomplete data from the system-derived dataset was not spotted any earlier. Our mitigating actions to issue further guidance will hopefully provide reassurance that we are addressing the issue.”

**6.19** In August 2019, inspectors asked the Home Office when this guidance would be issued to case workers. By the end of December 2019, the Home Office had not provided a response on timescales.

## At the border AR data

**6.20** The PRAU provided inspectors with data for at the border ARs. The numbers were small by comparison, with in-country and overseas ARs reduced from 262 in 2015-16 to just 158 in 2018-19. The PRAU told inspectors that the Home Office did not keep a record of the number of eligible decisions made at the border and therefore it was not possible to calculate ARs as a percentage of eligible decisions.

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38 Operational Policy Instructions.

39 OPI 196 includes information for case workers about how to indicate, using Proviso, that an AR had been received and resolved.

40 OPI 264 provides instructions for DMCs (“posts”) to ensure that Entry Clearance Managers (ECMs) conduct audits of the ‘Post Dashboard’ on Proviso, to ensure that the majority of ARs were on target to meet their 28-day service standard and to identify cases at risk of exceeding the service standard.

41 ICIBI was conducting an inspection of network consolidation (“onshoring”) in parallel with the AR inspection.



**6.21** Most at the border ARs are lodged and reviewed at Heathrow, where Border Force senior management acknowledged that the local AR data “could be better”.

## Administrative Review Policy

**6.22** ARU managers told inspectors they maintained close links with the SEOs responsible for AR policy. This had been necessary before EUSS ARs were introduced and had continued. There had been discussions about how the EUSS AR process was progressing and also about changes required to AR decision templates. Senior management referred to three types of discussion:

- whether ‘minor’ tweaks to AR policy were possible, for example, more flexibility about the timescales for raising Biometric Residence Permit (BRP) errors
- bigger policy questions, such as whether applicants should be permitted to submit new evidence
- whether there was consistency regarding the different routes available to challenge a decision and how they worked

**6.23** Inspectors spoke to policy staff. Senior staff were aware of the interest in more flexible application timescales and the ability to submit fresh evidence. Greater flexibility had been built into the EUSS AR process, and it was recognised that this would be “fairer across the board”. However, inspectors found that there was little awareness of how ARs were working in practice, in particular at the border ARs. For example, policy staff were not sighted on Border Force’s use of AR waiver forms.

**6.24** Border Force managers told inspectors they had no relationship with AR policy staff. Officers were expected to rely on existing guidance. Inspectors reviewed the Border Force AR guidance, ‘Administrative review: dealing with applications ‘Administrative review: dealing with applications – Version 3.0, Jan 2018’. The guidance pre-dated ARU’s move to ALAR in June 2018 and referred it as part of the ‘Complex Casework Directorate’.

**6.25** They instructed Border Force officers: “If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then [email Border Force national immigration and customs enquiries \(NICE\)](#).” However, the NICE inbox and telephone enquiry line were closed in February 2019.<sup>42</sup>

**6.26** Border Force officers and Higher Officers told inspectors they thought they “no longer had a policy team” and Border Force confirmed that policy queries had a “clear escalation route; Line managers/ Regional Command & Control Units/ National Command Centre. If the query has still not been satisfactorily resolved, then the NCC will approach Operational Policy. This is a new process and Operational Policy recognises that the change will not be the type of support that staff have been accustomed to in the past. However, it does mean that ports are being encouraged to look up the relevant guidance and seek advice locally rather than approaching Policy colleagues as the first option which allows for speedier resolution of queries.”

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<sup>42</sup> At the factual accuracy stage, the Home Office explained that: A number of factors were considered when deciding to close the BF NICE inbox. It was providing a service valued by officers but, in fact, nearly two thirds of enquiries could have been resolved by reference to local managers or by viewing published guidance. Furthermore, the resource required to service the inbox impacted on the Team’s ability to deliver strategically aligned projects to benefit Border Force at a national level. The service also pre-dated the National Command Centre which led to confusion about the respective role of each. The ICI notes that the guidance reviewed still directs officers to the NICE inbox although the service closed in February 2019. This is correct. However, the BF A-Z contains c.500 pieces of guidance and a decision was taken not to update this reference in every chapter of guidance. Staff receive an auto-response confirming the service has ended and setting out how to find support. The guidance will be updated as and when it comes up for review.”

6.27 Inspectors also noted that the Home Office intranet, Horizon, contained inaccurate information about how to refund an applicant where an at the border AR was successful. The guidance used by ARU, 'Administrative review' (version 10.0), stated:

"The application fee must be refunded to the applicant if the:

- application is invalid and is rejected
- eligible decision is withdrawn and leave granted to correct an error identified by the administrative review, in accordance with paragraph AR2.2(a) of Appendix AR – this includes both cases where the review is about:
  - a refusal
  - the type or period of leave granted
- eligible decision is withdrawn and the case sent back to the original decision-making team to re-decide
- eligible decision is withdrawn and an application which was granted is now refused"

6.28 However, the 'Example of a completed ex-gratia payment approval form...' referred to retention of £25 per applicant for "the rejection administration fee". This was not in accordance with policy or guidance, which specified the refunding of the whole fee (£80). Moreover, in the file sample examined by inspectors, there were instances of partial refunds which suggested that in referring to the example, officers confused the amount to be retained with the amount to be refunded.

**Figure 5: Example of a completed ex-gratia payment approval form**

Amount to be refunded: Please specify amount to be refunded £ <u>80</u>	
The Rejection Administration Fee applies to all applications submitted after 17/03/2016. £25 per applicant should be retained.	
<u>Failure to indicate the amount to be refunded will result in this form being returned to the requestor</u>	
Caseworker requesting refund: <i>put caseworker's name here</i>	
Telephone:	Tel No.                      Team Name:                      Team
HEO recommending refund: <i>put officer's name here</i>	
Signature of HEO authorising refund	Date:    19/07/16

## Cost savings from the AR system

### Projected savings

- 6.29** The Home Office's 2013 'Impact Assessment of Reforming Immigration Appeal Rights'<sup>43</sup> included an estimate of the savings that would be realised by the Home Office and by HM Courts and Tribunals Service (HMCTS)<sup>44</sup> as a result of the proposed changes to appeal rights and increased scope of ARs:
- “The key monetised benefits are savings in appeals costs for the Home Office (£73m PV over ten years) and HMCTS (£187m PV over ten years) due to a decrease in the volume of appeals. (£261m PV over ten years).”
- 6.30** The 2015-16 inspection found that: “no analysis of actual cost savings had been done, and the Home Office did not have any reliable data in relation to the costs associated with Pre-Action Protocols (PAPs) and Judicial Reviews (JRs), which the Impact Assessment had acknowledged were likely to increase as a result of the removal of appeal rights.”<sup>45</sup>
- 6.31** The 2017 re-inspection found that the Home Office was “not yet able to demonstrate that it had delivered an efficient, effective and cost-saving replacement for the previous appeals mechanisms”. In response, the Home Office stated: “We can confirm to the ICI that we are undertaking analysis of the changes made to appeals and Administrative Review and we expect to publish the findings in due course.”<sup>46</sup>
- 6.32** For this inspection, inspectors asked about the analysis, as none had been published. Inspectors were told in June 2019 that work on a cost-saving analysis had been tasked out. There was no more information about what it would include or when it would be completed, but it was recognised that it would require the Home Office to work with the Ministry of Justice (MoJ) and HMCTS. Meanwhile, there had been no conversations with MoJ or HMCTS specifically about the benefits of ARs in lieu of appeals.
- 6.33** The Impact Assessment recognised that there would be a cost to the Home Office from processing ARs, but the intention was that this would be covered by “a cost recovery fee to migration applicants. Processing Administrative Reviews is therefore expected to be cost-neutral. It will involve Home Office staff reviewing cases therefore there is an opportunity cost of their time although the scale of this is not yet known.”

### Recorded expenditure and fee income

- 6.34** The Home Office provided inspectors with details of ARU expenditure, as recorded on the Home Office accounting system, together with its fee income since it was established – see Figure 6. ARU senior management understood that the fee income was retained by ALAR. They explained that ARU was not set an annual budget as budgets were set at SCS level. ARU came under ALAR's budget.

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43 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/249120/appeals\\_impact\\_assessment.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/249120/appeals_impact_assessment.pdf)

44 Responsible for the administration of criminal, civil and family courts and tribunals in England and Wales, including the First-Tier Tribunal (Immigration and Asylum).

45 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/549244/ICIBI\\_report\\_on\\_admin\\_reviews\\_May\\_2016.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/549244/ICIBI_report_on_admin_reviews_May_2016.pdf)

46 <https://www.gov.uk/government/publications/home-office-response-to-the-report-a-re-inspection-of-the-administrative-review-process>

Figure 6: ARU expenditure and fee income (2014-15 to 2018-19)			
Financial Year	Expenditure (£)	Income (£)	Difference (£)
2014-15	146,410	–	146,410
2015-16	348,060	261,380	86,670
2016-17	1,004,760	215,610	789,150
2017-18	1,357,030	239,420	1,117,610
2018-19	1,527,680	164,490	1,363,190

6.35 As Figure 6 shows, ARU’s recorded expenditure had risen year-on-year. Staff costs made up the largest element each year and some part of the annual increase was explained by the change in staff numbers and the grade mix. Pay costs rose each year, as did the costs of travel and subsistence.

6.36 Inspectors asked the Home Office about the jump in expenditure in 2016-17, when the accounts showed that Pay Costs rose from £374,695 to £975,183, and were told:

“There are several factors behind this increase. There was a move in 2016 within the ARU from agency staff to permanent staff. More pertinently Finance colleagues have confirmed that costs for the financial years 2014 to 2015 and 2015 to 2016 are during the inception of Manchester ARU and costs were attributed fully to ARU from 2016 to 2017 onwards. Prior to 2016 to 2017, when ARU was very much in its inception, costs were not easily attributable to ARU specifically. The increases in 2016 to 2017 reflect that dedicated staff had been recruited within ARU and costs were much more readily identifiable as being ARU specific.”

6.37 Allowing for some similar effect on the fee income totals for 2015-16 and 2016-17, inspectors nonetheless had difficulty understanding the reported income figures.

6.38 PRAU data showed in-country AR numbers declining year-on-year since 2015-16. Figure 7 shows the numbers of in-country eligible decisions and the numbers of ARs received and completed (reviewed and the original decision either “upheld” or “overturned”).

Figure 7: In-country eligible decisions and AR’s received and completed (2015-16 to 2018-19)		
Year	Eligible decisions	ARs
2015-16	199,315	7,054
2016-17	238,032	6,017
2017-18	227,669	5,714
2018-19	263,837	4,822

6.39 The Home Office suggested that the reduction in the number of ARs and the higher ratio of eligible decisions to ARs could be because the quality of original decisions was improving, with changes to the Immigration Rules permitting a more generous approach to evidential flexibility.<sup>47</sup> While plausible, the Home Office offered no evidence for this possible explanation, nor any indication that it had explored other possibilities, for example, an increasing lack of satisfaction with ARs as a remedy.

<sup>47</sup> <https://www.gov.uk/government/publications/points-based-system-evidential-flexibility#history>

- 6.40** A fee is charged for in-country, at the border and EUSS AR applications. Overseas applications are free. The fee has remained at £80 since it was introduced in 2015. The Home Office told inspectors that: “The Administrative Review process was intended to be a proportionate and less costly mechanism for resolving case working errors” and “the fee was set at £80 so it was the same fee as lodging an appeal for a decision on paper with the immigration tribunal”.
- 6.41** The PRAU provided a breakdown of in-country AR outcomes. While the totals did not reconcile with those for AR applications received and completed (Figure 6), the breakdown showed that a significant majority of ARs were not successful, with the reviewer upholding the original decision. However, the proportion of ARs that overturned the original decision had increased – see Figure 8.

**Figure 8: In-country AR outcomes (2015-16 to 2018-19)**

Year	Upheld	Overtured	Total	Other <sup>48</sup>
<b>2015-16</b>	5,289 (84%)	1,024 (16%)	<b>6,313</b>	<b>741</b>
<b>2016-17</b>	4,737 (85%)	842 (15%)	<b>5,579</b>	<b>438</b>
<b>2017-18</b>	4,295 (80%)	1,055 (20%)	<b>5,350</b>	<b>364</b>
<b>2018-19</b>	3,154 (69%)	1,390 (31%)	<b>4,544</b>	<b>278</b>

- 6.42** Referring to the fee income figures in Figure 6, the Home Office commented:

“The numbers in the spreadsheet above represent monies earned after decisions are completed at which point they are accounted for as income. There will not be a direct correlation between number of applications submitted and monies earned as, fees will be refunded when applications are successful and also there are exemptions and fee waivers from paying the AR fee.”

- 6.43** However, looking at the “upheld” totals in Figure 8, this does not satisfactorily explain the size of the income “shortfall”, unless roughly one in three unsuccessful in-country ARs qualifies for a fee waiver.
- 6.44** Unravelling ARU’s expenditure versus income picture becomes more complicated from September 2018, when ARU began to take on overseas ARs. In June 2019, the Home Office told inspectors it recognised that the policy on charging for ARs was “not currently consistent” and that it “reflects historical considerations and processes”. The 2016 inspection report had noted that: “This anomaly appeared to be due to the difficulty of collecting the fee if it was not paid electronically, rather than because of any differences in the costs of processing applications.” In 2015, senior managers had told inspectors that: “Consideration was being given to finding a technical fix that would enable charging to be introduced.”
- 6.45** However, the evidence provided for this latest inspection appeared to suggest that the Home Office had decided against introducing a separate fee for overseas ARs and was recovering the costs through the fees it charged for visa applications:

“The cost of the administrative reviews are included within the Entry Clearance fees for eligible decisions. The unit cost for individual entry clearance fees is the calculated estimate of the full financial cost for providing the service, including direct costs and relevant local and central overheads (e.g. accommodation, HR, Finance and IT), plus depreciation, cost

48 Includes applications that were rejected as invalid and those that were withdrawn.

of capital employed, and other wider system costs that are incurred in connection with immigration and nationality activity.”

- 6.46** It was unclear how the costs of overseas ARs had been apportioned to visa application fees. According to the PRAU, the numbers of eligible decisions (those where the entry clearance visa had been refused) hovered around 20,000 a year (2015-16: 20,031; 2016-17: 28,196; 2017-18: 20,695; 2018-19: 17,400).
- 6.47** However, as payment for a visa application was required when the application was submitted, it would appear that all applicants whose application could possibly result in an eligible decision must be charged a proportion of the overall estimated annual costs of overseas ARs. Given that only a minority (possibly between a third and a quarter – see below) of those refused a visa actually applied for an AR, this approach was questionable in terms of customer service.
- 6.48** In reality, the data the Home Office provided for overseas ARs was plagued by gaps and inconsistencies. In response to ICIBI’s initial evidence request, the PRAU produced the data in Figure 9.

**Figure 9: PRAU data for completed overseas ARs (2015-16 to 2018-19)**

Year	Total ARs received	Upheld	Upheld but amended	Dismissed	Resolved	Blank (no outcome recorded)
2015-16	4,620	2,799	142	834	62	783
2016-17	4,117	2,343	162	1,084	0	528
2017-18	3,526	2,596	38	358	0	534
2018-19	1,391	987	14	56	0	334

- 6.49** Inspectors drew the Home Office’s attention to the fact that the data was not consistent with that provided to the concurrent inspection of the Network Consolidation (“Onshoring”) of visa decision making, and were told to use the latter, which was derived from data gathered locally at UKVI’s visa Decision Making Centres – see Figure 10.

**Figure 10: DMC data for completed overseas ARs (2015-16 to 2018-19)<sup>49</sup>**

Year	Upheld	Overtuned	Total
2015-16	1,365 (85%)	143 (9%)	1,614
2016-17	1,503 (65%)	618 (26%)	2,303
2017-18	4,100 (63%)	1,787 (28%)	6,470
2018-19	3,835 (74%)	1,093 (21%)	5,201

- 6.50** A simple ‘sense check’ of both datasets raises numerous questions, rendering neither susceptible to meaningful analysis. But, if the latter set of “upheld” figures for overseas ARs were even broadly correct, it would suggest that ARU’s “notional” fee income from 2019-20 should roughly double. This is “notional” because, if it is the case that the costs of overseas ARs have been factored in to visa application fees, the fee income will not accrue to ALAR. However, even if it did, ARU’s expenditure would far exceed overall AR fee income, with the funding gap having grown to c.£1m a year using the 2018-19 expenditure figures.

<sup>49</sup> Total does not equate to upheld and overturned ARs as the total also includes ARs that were invalid, withdrawn or upheld in part.



- 6.51** Meanwhile, inspectors saw no evidence of any cashable offsetting savings made elsewhere in UKVI from the transfer of overseas ARs to ARU.
- 6.52** From November 2018, ARU also took on responsibility for EUSS ARs, for which it recruited additional resources. Between November 2018 and March 2019, the Home Office recorded 138 EUSS ARs,<sup>50</sup> not enough to make a material difference in terms of ARU fee income against expenditure. Inspectors were told that reviewers were taking significantly longer to deal with EUSS ARs, mainly because applicants were permitted to provide further evidence.

## Management oversight

### The case for a Senior Responsible Owner (SRO) for ARs

- 6.53** Inspectors found that, with the exception of the AR validation process, which was conducted by UKVI on behalf of Border Force, AR processes in UKVI and Border Force remained essentially separate.
- 6.54** The 2017 re-inspection had pointed out that having ARs split across three business areas made it more difficult for the Home Office to demonstrate that it had delivered an efficient, effective and cost-saving replacement for the previous appeals mechanisms. It also noted that progress against the 2015-16 recommendations had been uneven across the three areas.
- 6.55** However, it stopped short of recommending that all ARs should be considered by a single unit. Instead, ICIBI proposed that the Home Office should consider appointing a Senior Responsible Owner (SRO) for the overall system to ensure consistency and realisation of the benefits on which the changes in the 2014 Act were predicated.
- 6.56** In its response, the Home Office stated:
- “It is important to recognise that whilst there is some congruence with the two UKVI areas, Border Force reactively consider these decisions at port as part of their function in securing the UK borders. On that basis, it would make sense to allow Border Force operations to continue to manage the process as they do currently...”<sup>51</sup>
- 6.57** However, UKVI would “appoint a single SRO with responsibility for holding both sides (in-country and overseas) to account and ensuring coordination and consistency of process” and would consider whether all UKVI ARs could be decided in a single unit now that it had repatriated the decision-making that was previously done overseas.<sup>52</sup>
- 6.58** The Home Office told inspectors that in early 2018 a review had been conducted by the head of the ARU to assess whether there were “sufficient commonalities in the three existing AR areas in casework routes, staffing/grading and processes and procedures that would lead to the formation of a single dedicated team of reviewers capable of delivering high quality decisions.”
- 6.59** The review concluded that the casework routes were sufficiently different, as were the arguments used by Border Force in responding to at the border ARs. It also concluded that

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50 Of the 138 EUSS AR applications received, 19 were rejected and one was withdrawn, 15 upheld the original decision and 103 overturned the original decision.

51 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/628107/HO\\_Response\\_-\\_ICI\\_Re-inspection\\_Administrative\\_Reviews\\_-\\_July\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/628107/HO_Response_-_ICI_Re-inspection_Administrative_Reviews_-_July_2017.pdf)

52 At the time, the work was split across two UKVI directorates, Immigration and Protection (I&P), which managed the ASU, and Visas and Citizenship (V&C), which managed the International Casework and Quality Assurance Team (ICQAT) to which overseas ARs had been transferred from Entry Clearance Managers at overseas DMCs.

consideration of UKVI and Border Force ARs in one location “would be at odds with the 2013 Statement of Intent<sup>53</sup> that ARs would be considered by “...a separate dedicated team of reviewers in each specialist area”. This appeared to ignore the fact that Border Force did not have a “separate dedicated team” but a series of port-specific arrangements.

## UKVI oversight of the AR process

- 6.60** In June 2018, the ARU became part of Appeals, Litigation and Subject Access Request (ALS) (since renamed Appeals, Litigation and Administrative Review (ALAR), an SCS-level command within UKVI’s Immigration & Protection (I&P) Directorate).
- 6.61** Inspectors were told that the I&P Board met monthly and that “Admin Review performance is reviewed as part of overall discussion [which] includes output measures and results from 1st line assurance”.
- 6.62** The I&P Board reports into the UKVI/HMPO<sup>54</sup> Joint Executive Board, which also meets monthly. Inspectors were told that “Admin Review features on the main performance dashboards and will be covered to some degree, on any trend/emerging issue”. Inspectors saw evidence of AR performance on the dashboard, but none to show that any trends or emerging issues had been identified and discussed. In the year to May 2019, discussion of ARs appeared to have focused on the transfer of overseas ARs to ARU.
- 6.63** The ALAR SCS told inspectors that they received weekly and monthly management information (MI) on ARU performance. Inspectors were shown performance data for 2018-19, produced by the PRAU, which included month and year-to-date numbers of ARs received and completed, outcomes, turnaround times, income received and refunded, and heatmaps. The data was broken down by in-country, EUSS and at the border ARs. The PRAU was unable to produce the same MI for overseas ARs. Where this was captured it was on local spreadsheets and was limited, typically, to monthly intake, output, work in progress (WIP) queue, and percentage of ARs completed within the SLA.
- 6.64** The ALAR SCS had monthly calls with the Grade 7 head of ARU and the latter’s Grade 6 manager, who spoke to the head of ARU at least weekly. The calls would cover ARU performance, plus the feedback generated by ARU senior caseworkers (SCWs) and sent to decision-making units. How ARU was using its findings to drive organisational improvement was also included in periodic reports from UKVI’s Central Operations Assurance Team (COAT).<sup>55</sup> However, the SCS was clear that responsibility for seeing that any feedback from ARU was implemented rested with the decision-making units.
- 6.65** Outside these regular calls, the Grade 6 might contact the head of ARU if, for example, the data showed that the WIP had grown significantly or if the SLA was being missed, and the head of ARU might make contact to discuss a high profile or complex case. But, overall, the SCS and Grade 6 regarded ARU as “a relatively small unit” that did not need a lot of senior management attention as they had confidence in ARU management. However, they had asked COAT to review more cases and carry out some robust second line assurance to confirm that ARU was getting it right.

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53 Immigration Bill Statement of Intent – Administrative review in lieu of appeals (Clause 11), published October 2013. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/254851/Sol\\_Administrative\\_review.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/254851/Sol_Administrative_review.pdf)

54 UKVI and Her Majesty’s Passport Office are under the same Director General.

55 COAT provides “second line assurance” of UKVI decision-making, monitoring and measuring this against “the standards set out in guidance, legislation and judicial judgements”. Inspectors were told that COAT was expected to report on ARU twice a year and would conduct a “deep-dive” in particular areas when required.



- 6.66** Inspectors asked about quality indicators for ARU. ARU managers, all of whom had received training in line management, management fundamentals, leading with confidence, and ‘leading from the middle’, told inspectors that they regarded decision quality as more important than meeting the 28-day SLA. They would rather ARU went out of service standard than “rush in staff who are not properly trained”. They monitored overturn rates insofar as these were relevant to current performance, but they were not aware that anyone was monitoring overturn rates over the longer-term.
- 6.67** In fact, the Grade 6 used the numbers of “upheld” ARs subsequently overturned by PAPs and JRs as a quality indicator, while recognising that not everyone whose AR was unsuccessful would resort to a Pre-Action Protocol (PAP) or a Judicial Review (JR).

## Border Force oversight of at the border ARs

- 6.68** From the evidence provided to inspectors, it appeared that oversight of the at the border AR process rested with individual ports of entry. There was no evidence that SCS managers in each of the regional commands had routine oversight of ARs and none to show that ARs had been discussed at any Border Force board-level meetings. Inspectors were told that the low numbers meant that ARs were not generally discussed in management or assurance meetings, as issues are not identified with any frequency.
- 6.69** In September 2019, inspectors delivered their emerging findings from this inspection to senior managers from UKVI and Border Force, including in relation to the latter’s oversight of the AR process. Following this meeting, Border Force wrote to inspectors:

‘The Border Force Oversight Unit considers that they may have a role in analysing casework to look for trends etc. However, a Casework Review is being done at present which may change how casework is managed in the future. This would influence where such activity would sit. OAD’s (Border Force’s Operational Assurance Directorate) Lessons Learned Team activity also feeds into this wider piece’.

## Risk management

- 6.70** The Home Office provided inspectors with the Risk Register for the ARU. This identified three risks, the first two of which concerned the potential mismatch of resources to intake, because of seasonal surges and uncertain forecasts, and the third concerning the consequences of ARU being an early adopter of the new case working IT system, ATLAS. For all three the impact was assessed as “Major” and the likelihood as “Likely 50-80%”.
- 6.71** ARU’s plans to manage and mitigate these risks included monitoring AR intake and completing a “trend analysis against forecast”. It also looked to train AR staff to work across different AR types and to “build a pool of flexible staff in Appeal Ops” to call on if needed. Should ATLAS result in fewer ARU staff being needed for data input the staff could be redeployed to support other ALAR functions. Meanwhile, ARU had negotiated an arrangement with ICQAT that the latter would assist ARU with overseas Tier 4 ARs in August/September 2019, if needed.
- 6.72** ARU managers told inspectors that going out of service standard was another option available to them when the intake was high, and they had resorted to this in the past. However, this was not referenced in the Risk Register.

- 6.73** The Risk Register made no mention of AR decision quality and the impact of poor decisions, nor of the risk of breaching GDPR<sup>56</sup> if AR decision letters were sent to the wrong email addresses, including to legal representatives who were no longer representing the applicant. Inspectors saw evidence that ARU senior management was concerned about wrongly addressed decision letters and, generally, about relying on DMCs to serve overseas AR decisions. ARU had identified instances where AR decisions had not been served at all, or “only the revised refusal is being served without the AR letter which sometimes invites a further ineligible AR application from applicants who are confused by their incomplete decision.
- 6.74** In May 2019, inspectors were told there were no documented risks relating specifically to ARs in any Border Force Risk Register. Border Force informed inspectors:
- “Assurance expectations set out the minimum standards that Border Force should be achieving, or working to achieve, at every port /business unit. One such expectation is that clear risk management and escalation processes are in place, risk registers are up-to-date, and any mitigating actions are owned and progressed. First line assurance identifies areas where there are issues and where these are continual, they will be recorded on local risk registers and escalated where appropriate. Business risks are expressed on local, regional and strategic risk registers. The way in which risks are expressed on these documents does not always lend itself to like for like comparisons. This is because issues may be considered at a more specific and detailed level in local risk registers or on a wider level in strategic risk registers. In this instance general case working and officer capability are expressed as risks on local risk registers which demonstrates how risk in this area is managed rather than referencing the handling of administrative reviews specifically as a risk.”<sup>57</sup>
- 6.75** In October 2019, in response to questions raised by inspectors about the sample of at the border ARs they had examined, Border Force reported that “a high level strategic risk is presently being drafted for addition to the BF Chief Operating Officer’s Risk Register which looks at operational decision-making across BF activity. As this risk covers all caseworking decisions it includes Admin Review caseworking”.
- 6.76** Following the emerging findings meeting for this inspection, Border Force wrote to confirm that this risk had been defined – see Figure 11. Inspectors were not told about any planned actions or mitigations.

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<sup>56</sup> <https://www.gov.uk/government/publications/guide-to-the-general-data-protection-regulation>

<sup>57</sup> BF OAD – response to case sampling, additional information.

**Figure 11: Border Force Risk Register**

**Risk: Frontline Decision Making**

**Cause**

Poorly made, poorly recorded or poorly evidenced decisions (both single and multiple) made by frontline staff and managers.

**Effect**

Immigration decisions that are not legal and defensible leading to potentially high financial penalty. Customs work that is illegal, indefensible or cannot be handed to partner organisations for investigation.

**Impact**

Legal challenges that BF are not in a position to defend leading to potentially high financial penalty. Precedents set by legal challenges that encroach on BF's operational policies and practices. Loss of confidence from the public and partner agencies.

## Transformation

### A new online application form

- 6.77** From April 2019, the Home Office required all AR applications to be made online via Access UK, an online application portal, unless the original application was made on paper. Inspectors were told that the introduction of ARs for EUSS applications in November 2018 had created an opportunity to sort out “critical issues” in other areas, for example, an error in the guidance suggesting that overseas decisions to grant a visa application were eligible for an AR.
- 6.78** The new online form had also corrected some formatting issues, making it clearer for ARU staff, however some staff told inspectors that further improvements to the form were needed, for example, the facility to attach documents. Currently, applicants had to send any additional information to a separate email inbox.

### ATLAS

- 6.79** The immigration case working system, CID, was being replaced with a new system, ATLAS. In October 2019, inspectors were told that ATLAS would be rolled out to the ARU by 5 November 2019.<sup>58</sup>
- 6.80** According to the Home Office, ATLAS would:
- hold reliable data that was easier to access
  - streamline case working
  - support a paperless process
  - improve the applicant experience
- 6.81** ARU told inspectors that ATLAS would enable them to “digitally transmit decisions”. At the time of the inspection, in-country ARs decisions were sent to the applicant by post. EUSS AR decisions were recorded on PEGA, the EUSS case working system, and the AR decision letter was sent to the applicant by email. For overseas ARs, ARU emailed the AR outcome to the

<sup>58</sup> In December 2019, inspectors were informed that the roll out had been postponed until mid-January 2020.

relevant DMC to email the decision letter to the applicant. ARU recorded the AR as concluded once it had sent the outcome to the DMC, rather than when it was dispatched to the applicant. ARU management commented that: "Obviously it is not an ideal process to return AR decisions to DMCs to be served and finalised; but it is the only process that can work around the system and technology constraints across the business, and this shouldn't be a reason why applicants are not receiving decisions."

**6.82** ARU managers felt that ATLAS would improve the handling of overseas ARs, but some ARU staff told inspectors that where ATLAS was already being used by decision-making units it was creating problems, as the system "isn't very good at calculating leave" and they "were correcting an awful lot of errors" with Tier 4 applications.

**6.83** Inspectors asked Border Force Higher Officers at Heathrow dealing with ARs what impact ATLAS would have on their work. They understood they would be getting ATLAS in 2019 but had yet to see any training material. However, one commented:

"Any system has to be better than CID, quite frankly. One would hope it has the functionality of CID that we can build on, but we have launched a system like this with every intention of functionality and then we either lose the will or the money, or both ... it's been flagged that there may be issues with the notes section."

**6.84** Inspectors asked the Home Office about how ATLAS would benefit the at the border AR process and were told:

"Following deployment of Atlas, Border Force will be using the Challenge service, which has been developed by UK Visas and Immigration, to record details of requests for Admin Review. It is currently planned that this will be deployed from 22 January [2020], along with the first drop of Atlas functionality to Border Force although this is still subject to final confirmation.

The training materials are still being developed but the intention is to draw on materials provided within UKVI. The deployment of Atlas will not in itself materially change how AR cases are handled at ports."

# 7. Inspection findings: Effectiveness and Independence

## Section 16 “tests”

- 7.1** Section 16 of the Immigration Act 2014 (the 2014 Act) required the Home Secretary, within 12 months of the changes to appeal rights contained within the 2014 Act, to commission a report from the ICIBI that addressed:
- the effectiveness of Administrative Review (AR) in identifying case working errors
  - the effectiveness of AR in correcting case working errors
  - the independence of persons conducting AR (in terms of their separation from the original decision maker).
- 7.2** These particular ‘tests’ reflected the concerns expressed by MPs and peers during the passage of the 2014 Immigration Bill. The 2016 inspection covered these points, but in order to satisfy the ICIBI’s statutory remit to monitor and report on the efficiency and effectiveness of immigration functions it also examined service standards in dealing with ARs, consistency across different areas of the Home Office, organisational learning and cost savings. This inspection took the same approach.

## This inspection

- 7.3** In this inspection, inspectors looked to apply the same tests by examining the processes for applying for an AR, validation of AR applications by the Home Office and how the AR process worked in practice.

## File samples

- 7.4** As well as reviewing policies and guidance, inspectors interviewed Home Office staff and examined Home Office case files (electronic records and paper files) for ARs decided by UK Visas and Immigration (UKVI) and Border Force between 1 March and 30 May 2019, plus ARs that had been rejected as invalid. The period chosen took account of the transfer of overseas AR applications from the International Casework Quality Assurance Team (ICQAT) to the Administrative Review Unit (ARU) in Manchester in February 2019.
- 7.5** The process of generating the sample sets of case files illustrated some of the difficulties in reaching an informed understanding of how the AR system was working overall. Inspectors asked the Home Office to provide:
- Home Office file reference numbers for all individuals who submitted an AR that was rejected as invalid
  - CID/ATLAS and Home Office file reference numbers for all individuals who had submitted an in-country AR for Tier 4 Leave to Remain (LTR) or Indefinite Leave to Remain (ILR) in the UK

- Visa Application Form (VAF) reference numbers for all individuals who had submitted an (overseas) AR for Tier 4 Entry Clearance
- port reference and Home Office file reference numbers for all individuals who submitted an (at the border) AR as a visitor or returning UK resident

**7.6** Based on the references and data provided, inspectors selected at random, but stratified according to outcomes (upheld or overturned):

- 20% (a total of 21) of ARs rejected as invalid
- 20% (18) of in-country Indefinite Leave to Remain (ILR) ARs
- 20% (19) of in-country Tier 4 ARs
- 20% (70) of overseas Tier 4 ARs
- 100% (24) of at the border ARs (as the total was small) – see Figure 12.

Figure 12: Breakdown of file sample sets						
	Totals			Sample		
	Upheld	O'turned	Total	Upheld	O'turned	Total
<b>Invalid</b>	–	–	<b>104</b>	–	–	<b>21</b>
<b>In-country</b>	116 (60%)	75 (40%)	<b>191</b>	22 (59%)	15 (41%)	<b>37</b>
<b>Overseas</b>	280 (80%)	69 (20%)	<b>349</b>	56 (80%)	14 (20%)	<b>70</b>
<b>At the border</b>	16 (67%)	8 (33%)	<b>24</b>	16 (67%)	8 (33%)	<b>24</b>
<b>Totals</b>	<b>412</b>	<b>152</b>	<b>664</b>	<b>94</b>	<b>37</b>	<b>152</b>

**7.7** Inspectors decided not to look at any applications for dependents, since in most cases these were considered in line with the main applicant, and since there had been no indication from stakeholders or previous reports that assessing evidence of relationships for dependents was a cause for concern within the AR process.

**7.8** Inspectors also decided not to look at a sample of EU Settlement Scheme (EUSS) ARs, since the Scheme had been the subject of two full inspections by ICIBI during 2019, one published in May 2019 and one with the Secretary of State awaiting publication at the time of writing this report.

## Applying for an AR

**7.9** For the AR system to work as an effective means of identifying case working errors, applicants who believe that an error has been made need to understand when they are entitled to apply for an AR and how to do so.

**7.10** Who may apply, time limits and a link to the online application form can be found on GOV.UK under the heading “Ask for a visa administrative review”, which also has hyperlinks to “Appeal against a visa or immigration decision” and “Visa and Immigration reconsideration requests”.

**7.11** The landing page content is simple and clear, but available only in English. Clicking “online form” opens a page with further details, including the fee amount and when ARs are free of charge. There is no link to caseworker guidance ‘Administrative Review (version 10.0)’.

**7.12** In April 2019, the previous application forms for in-country and at the border ARs, were replaced with a web-based form. When completed, this is emailed to an ARU inbox where it

will be retrieved by a member of the workflow team who will decide whether it is valid and, if so, allocate it to a reviewer. It is not possible to attach documents to the web-based form, so any supporting evidence must be emailed separately “within 10 days of submitting” the online application. A ‘paper-based’ application can be requested (via email) for posting to ARU.<sup>59</sup>

**7.13** From 1 October 2019, overseas ARs also had to be lodged online. Up to that point, anyone applying for an overseas AR could download an electronic form from a link provided in the refusal notice. From the file sample, inspectors found that most Tier 4 applicants had printed the form, written out their application by hand and sent a scanned copy to the AR email address. As there is no cost for an overseas AR, there is no reference to fees on the form.

## Validating AR applications

### ARU workflow teams

**7.14** On receipt, ARU validates AR applications to ensure that they are in line with paragraphs 34M-34Y in Part 1 of the Immigration Rules. The key requirements are that the AR application must be made:

- in respect of an eligible decision
- within the specified timescale
- in accordance with the relevant application process and, unless exempt, with payment of the specified fee
- in cases where an AR waiver form has not already been signed
- in cases where an applicant has not already made a new application for entry clearance, Leave to Enter (LTE), or Leave to Remain (LTR), after being notified of an eligible decision

**7.15** Applicants are permitted only one AR application per eligible decision, unless the outcome of a first AR has altered or added to the reasons for an eligible decision, when a second AR is permitted.

**7.16** The 74-page caseworker guidance, last updated on 5 June 2019, provides details of the validation requirements set out in the relevant paragraphs of the Immigration Rules, making it clear to AR caseworkers where they “must reject” an AR application as invalid. Though written for caseworkers, it is questionable how easy most applicants would find this section of the guidance to understand.

**7.17** Fee and payment exemptions are covered in some detail and in more straightforward language. The guidance also covers “Fee waiver due to exceptional circumstances” and “Refunds”. AR caseworkers told inspectors that they rarely received requests to waive the fee due to exceptional circumstances, but refunds were made where an AR application was rejected as invalid or where the AR was successful.

**7.18** The guidance refers to “the process for in-country caseworkers and Border Force officers to follow when they reject an invalid request for administrative review” and states that: “Entry clearance managers processing overseas administrative review requests must follow local processes when they reject invalid requests in line with the Immigration Rules.” This is misleading as Border Force Officers and Entry Clearance Officers are not involved in the process

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<sup>59</sup> At the factual accuracy stage, the Home Office commented: “ARU routinely write out for any further evidence at the validation stage, if the applicant or their representatives indicate that intended additional evidence had not yet been submitted.”



of validating AR applications. These are done by a workflow team in ARU in Manchester, with a small workflow team in Sheffield dealing with overseas AR applications.

**7.19** The Sheffield team was created in 2017 when overseas ARs were handled by the International Casework and Quality Assurance Team (ICQAT). It was absorbed into Appeals, Litigation and Administrative Review (ALAR) when overseas ARs transferred to ARU in February 2019. ARU managers explained that the rationale for retaining the Sheffield team was that Sheffield and Manchester used different shared drives on the Home Office IT system, with access restricted by location. Consequently, AR caseworkers in Manchester did not have direct access to documentary evidence on which the original decision to refuse was based. The Sheffield team was able to access the shared drive and email the documentation to staff in Manchester for consideration.

**7.20** The Home Office provided figures for in-country and at the border AR applications rejected as invalid – see Figure 13. It was unable to provide the figures for overseas ARs.

<b>Figure 13: Numbers of in-country and at the border AR applications rejected as invalid (2015-16 to 2018-19)</b>		
<b>Year</b>	<b>In-country</b>	<b>At the border</b>
<b>2015-16</b>	741	46
<b>2016-17</b>	438	42
<b>2017-18</b>	364	33
<b>2018-19</b>	278	47

**7.21** Inspectors asked for a breakdown of the reasons why ARs had been rejected as invalid but were told that this could not be provided because “the reason for rejection is only recorded in CID notes or the decision letter [and] there are no reportable fields to retrieve the reasons for invalid applications”. However, staff on the workflow team in Manchester told inspectors that the most common reasons they invalidated an application was because it was out of time or because the required fee had not been paid.

**7.22** Staff on the Manchester workflow team said that they were able to be flexible. For example, if an applicant had applied in time but had not paid the fee, they could email them to request they made the payment, or they could validate an out of time application if an applicant claimed that their representative had not passed on the original decision letter in a timely manner.

**7.23** In Sheffield, Administrative Officers (AO) recorded each case on CID, noting whether the application has been submitted in time, and whether the correct fee had been paid. The Sheffield workflow team told inspectors that they did not invalidate many applications. This was partly due to them taking a more flexible approach to the time limit for applications. It was recognised that there could be delays in overseas applicants receiving their original decisions, and therefore it was sometimes difficult to determine whether an AR application was ‘in time’. Consequently, overseas applicants were usually allowed a seven-day ‘grace period’ beyond the 28-day limit for applying for an AR.



- 7.24** AR guidance does permit some flexibility, although it is phrased in a way to suggest that this should be applied on a case by case basis and with a clear justification rather than in the more routine way described by Sheffield:

“Applications submitted after the deadline has expired must normally be rejected. The only exception to this is where the Secretary of State is satisfied that it would be unjust not to waive the time limit and the application was made as soon as reasonably practicable.

The migrant may need to provide evidence to demonstrate why the Secretary of State should decide that it would be unjust not to accept the out of time administrative review application.”

## At the border ARs – AR waiver forms

- 7.25** ARU in Manchester was responsible for validating at the border AR applications. Both ARU and Border Force staff told inspectors that there was very little communication between ARU and Border Force regarding AR applications. ARU workflow staff said that they generally just referred to CID notes to check that an application made at the border was valid. Occasionally, they would email a Border Force colleague to confirm that they would accept a “borderline case as to whether it’s in time”.
- 7.26** Border Force’s Operational Assurance Directorate (OAD) confirmed that the only communication between ARU and Border Force concerned the validation process. Border Force then “took ownership” of all at the border ARs. But, in light of the concerns raised by inspectors about the lack of communication, OAD said that it now asked ARU pass on details of the number of invalidated applications so that Border Force could amend its records.
- 7.27** Home Office guidance refers to the waiving of the right to an AR as a reason for invalidating an AR application:

“Paragraph 34N(3): waiver form previously signed

You must reject an administrative review application in respect of an eligible decision if the applicant has previously signed an ‘administrative review waiver form’ relating to that decision.

An applicant may complete and sign an administrative review waiver form in line with paragraph AR2.10(a) of appendix AR. This is a form which a person may use to declare that although they may make an administrative review application of a decision, they will not do so. By completing and signing the waiver form, they are confirming that they will not apply for an administrative review of the decision.

You must check CID case notes and, if applicable, the case file to make sure that no signed waiver form has been received by the Home Office.”

- 7.28** The AR waiver form could be used with any eligible decision. However, inspectors found that only Border Force made use of it. If a person received an eligible decision at the border and signed a waiver form, any AR application would be declared invalid. No exceptions were made.

## Invalidation: File sample evidence

- 7.29** From a total of 104 AR applications identified as invalidated between 1 March and 30 May 2019 inspectors examined 21 (14 in-country ARs, three overseas, and four at the border). Of these, 17 had received an original refusal decision, three had been granted a visa but there was an alleged error with the length or conditions of leave, and in one case the outcome of the original decision was reconsidered and granted outside of the AR process. In eight of the 21 cases, the AR applicant had a legal representative, but it was not possible to say to what extent they had helped with the application.
- 7.30** Initially, the Home Office was unable to provide any case reference numbers for invalidated overseas ARs as this was recorded as a note on CRS not in a reportable data field. The PRAU was therefore unable to retrieve the data. UKVI later provided case numbers for invalidated overseas ARs from local records kept by DMCs and ARU. These were not quality assured and many of the cases listed as invalid were found to be valid. However, inspectors were able to retrieve and examine three invalid overseas ARs from the local data.
- 7.31** Inspectors found that all of the AR applications in the file sample had been correctly invalidated, according to the Immigration Rules and Home Office guidance. CID and notes correctly recorded the reason(s) for invalidation in all 21 cases, and the notice of invalidity sent to the applicant was clear and provided an adequate explanation.
- 7.32** The reason(s) for invalidation differed: eight were not in respect of an eligible decisions; six were not within the specified timeframe; in four cases, the applicant was not in the UK, as required; one was because the DMC reversed the decision before the AR was processed, and another referred to an incorrect refusal that had since been rectified; and, one had used the wrong application form.
- 7.33** The six applications that were out of time raised questions about consistency, as inspectors found seven ARs amongst the other sample sets that were also out of time but had been validated. In four of the seven, the CID notes did not adequately explain why the application had been validated. All four were in-country ARs submitted more than 14 days after the decision should have been received by the applicant. In the other three, the workflow team had taken a pragmatic and customer-focused approach:
- one was one day out of time, but the applicant had emailed ARU explaining that they had experienced difficulties submitting the AR application form
  - one overseas application arrived by post beyond the time limit, however ARU tracked the letter and accepted it had been posted in good time and delayed in transit
  - one was validated as the original decision notice had not included an email address to which the applicant could send an AR application
- 7.34** Three of the four of invalidated at the border ARs examined by inspectors had been invalidated because the applicant had signed a waiver form.
- 7.35** Of the 21 invalidated ARs inspector examined, 13 had been quality assured prior to the notification being dispatched to the applicant. Staff in Sheffield expressed some concerns about the high level of quality assurance of invalidations. They argued that this slowed the process down and that they should be able to send DMCs straightforward invalidations immediately, for example, where the application was clearly out of time. Inspectors did not identify any

significant delays in the validation process in the file samples. Almost all had been validated within one or two working days of receipt.

## In-country ARs

### Eligible decisions and AR applications

**7.36** According to the data provided by the PRAU, the number of in-country ARs received expressed as a percentage of eligible decisions almost halved between 2015-16 and 2018-19 – see Figure 14.

Figure 14: Annual in-country AR totals as a percentage of eligible decisions		
Year	Eligible decisions	ARs (percentage)
2015-16	19,9315	6,313 (3.2%)
2016-17	23,8032	5,579 (2.3%)
2017-18	22,7669	5,350 (2.3%)
2018-19	26,3837	4,544 (1.7%)

### Outcomes by nationality

**7.37** The Home Office informed inspectors that no Equality Impact Assessment had been completed in respect of the AR process and there was no monitoring of equality data related to AR applications or outcomes. However, the data provided by the PRAU identified the five nationalities that most commonly applied for an in-country AR with the upheld/overturned rates for 2015-16 to 2018-19 – see Figure 15.

Figure 15: In-country AR applications and outcomes by Nationality (2015-16 to 2018-19)										
Year	India		Pakistan		Nigeria		China		Bangladesh	
	Upheld	O'turn	Upheld	O'turn	Upheld	O'turn	Upheld	O'turn	Upheld	O'turn
2015-16	886 (89%)	114 (11%)	621 (94%)	43 (6%)	399 (89%)	47 (11%)	156 (48%)	171 (52%)	439 (89%)	55 (11%)
2016-17	1,161 (86%)	182 (14%)	957 (93%)	70 (7%)	646 (91%)	62 (9%)	255 (59%)	176 (41%)	368 (93%)	29 (7%)
2017-18	1,109 (86%)	176 (14%)	753 (86%)	119 (14%)	454 (84%)	84 (16%)	198 (44%)	253 (56%)	278 (86%)	47 (14%)
2018-19	919 (79%)	247 (21%)	697 (85%)	120 (15%)	367 (78%)	102 (22%)	172 (37%)	290 (63%)	158 (77%)	46 (23%)
	<b>4,075</b> <b>(85%)</b>	<b>719</b> <b>(15%)</b>	<b>3,028</b> <b>(90%)</b>	<b>352</b> <b>(10%)</b>	<b>1,866</b> <b>(86%)</b>	<b>295</b> <b>(14%)</b>	<b>781</b> <b>(47%)</b>	<b>890</b> <b>(53%)</b>	<b>1,243</b> <b>(88%)</b>	<b>177</b> <b>(12%)</b>
<b>Total</b>	<b>4,794</b>		<b>3,380</b>		<b>2,161</b>		<b>1,671</b>		<b>1,420</b>	

**7.38** While the numbers of AR applications have fluctuated annually by nationality, there has been more consistency year-to-year in the upheld and overturned rates for each nationality, which have averaged between 85% and 90% upheld for India, Pakistan, Nigeria and Bangladesh. China stands apart, with more ARs resulting in the original decision being overturned than upheld since 2015-16 and with the ratio increasing to almost 2:1 in 2018-19.

## Outcomes by route

**7.39** A breakdown of in-country AR outcomes by immigration route shows significant variations in the upheld and overturned rates for the different routes – see Figure 16.<sup>60</sup>

**Figure 16: Breakdown of in-country AR outcomes by immigration route (2015-16 to 2018-19)**

Year	Tier 1		Tiers 2 & 5 <sup>61</sup>		Tier 4		Permanent residence <sup>62</sup>		Other		Total
	Uph'd	O'turn	Uph'd	O'turn	Uph'd	O'turn	Uph'd	O'turn	Uph'd	O'turn	
<b>2015-16</b>	1,018 (95%)	58 (5%)	1,576 (84%)	307 (16%)	1,329 (69%)	609 (31%)	1,103 (97%)	38 (3%)	263 (96%)	12 (4%)	<b>6,313</b>
<b>2016-17</b>	1,302 (91%)	122 (9%)	1,142 (80%)	277 (20%)	446 (58%)	325 (42%)	1,355 (94%)	85 (6%)	492 (94%)	33 (6%)	<b>5,579</b>
<b>2017-18</b>	1,226 (88%)	170 (12%)	809 (77%)	244 (23%)	293 (40%)	448 (60%)	1,207 (92%)	102 (8%)	760 (89%)	91 (11%)	<b>5,350</b>
<b>2018-19</b>	1,045 (81%)	247 (19%)	577 (67%)	289 (33%)	164 (24%)	524 (76%)	726 (89%)	93 (11%)	642 (73%)	237 (27%)	<b>4,544</b>
<b>Total</b>	<b>4,591</b>	<b>597</b>	<b>4,104</b>	<b>1,117</b>	<b>2,232</b>	<b>1,906</b>	<b>4,391</b>	<b>318</b>	<b>2,157</b>	<b>373</b>	<b>21,786</b>

**7.40** As with the outcomes by nationality, the reasons for the year-to-year variations in the upheld/overturn rates for each route are complex. External factors play a part. For example, in May 2018, as a result of growing Parliamentary concern that “[Tier 1] applicants were being wrongly refused when their only failing was that they had made minor tax errors”,<sup>63</sup> the Immigration Minister committed to carrying out a review of all Tier 1 (General) cases. The review, published in November 2018, identified a number of areas for improvement, including ensuring a consistent approach and better preparation for defending legal challenges.<sup>64</sup>

**7.41** From the data provided, the trend is towards an increased percentage of overturned original decisions for all routes. External factors aside, this could indicate that applicants are making better-judged AR applications, that reviewers are more confident in challenging original decisions, that the quality of decisions has deteriorated, or some combination of all three.

**7.42** However, inspectors found no evidence of any monitoring or analysis of overturn rates by the Home Office, either in 2015, in 2017 or in 2019, despite it setting out in the 2013 Statement of Intent that it would do this:

“Sampling suggests we currently lose approximately 60% of Points Based System appeals due to case working error. We will monitor the overturn rate on administrative review and compare it with the 60% figure currently down to casework error. Where there is a discrepancy we will investigate this.”<sup>65</sup>

<sup>60</sup> The percentages in Figure 16 are the relative percentages of upheld to overturned ARs by route by year. The totals do not include invalid ARs or those that were withdrawn.

<sup>61</sup> Home Office data combines Tiers 2 and 5.

<sup>62</sup> Permanent residence includes ‘Non-PBS ILR’ (applications for Indefinite Leave to Remain outside of the Points-Based System), for example, applications citing Domestic Violence, Ancestry or Statelessness.

<sup>63</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/758375/2018-11-22\\_Tier\\_1\\_General\\_paragraph\\_322\\_5\\_report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/758375/2018-11-22_Tier_1_General_paragraph_322_5_report.pdf)

<sup>64</sup> AR applications for Tier 1 ILR were put on hold in May 2018 to await the review. After a brief resumption, Tier 1 cases were again placed on hold in May 2019 to await further review following a High Court judgement. The Home Office told inspectors that “The Admin Review Unit in Manchester had 56 main applicants with 30 dependants (86 in total) held as of 30 June 2019.”

<sup>65</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/254851/Sol\\_Administrative\\_review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/254851/Sol_Administrative_review.pdf)

## Pre-Action Protocols and Judicial Reviews

**7.43** Inspectors asked the Home Office for data for ARs where the original decision was upheld that were escalated by dissatisfied applicants to Pre-Action Protocol (PAP) letters<sup>66</sup> and Judicial Reviews (JRs).<sup>67</sup> The Home Office provided data for in-country and at the border ARs but did not have the data for overseas ARs – see Figures 17 and 18.

Figure 17: Number of Pre-Action Protocol letters following an upheld in-country AR (2015-16 to 2018-19), shown as a percentage of upheld ARs	
Year	In-country
2015-16	1,413 (28%)
2016-17	1,287 (27%)
2017-18	1,121 (26%)
2018-19	1,039 (33%)
<b>Total</b>	<b>4,860</b>

**7.44** Refused Tier 1 and 2 and ILR applications as a victim of Domestic Violence produced the largest numbers of PAP letters.

**7.45** Home Office data for PAP outcomes where there had been an AR were not broken down by in-country, overseas and at the border ARs. The percentages for the three combined between 2015-16 and 2018-19 were: 60.3% refused or partially refused; 7.2% accepted. In 0.5% of cases the PAP letter led to a reconsideration of the original decision. The remainder had not received a response at the time the data was provided (June 2019).

**7.46** Figure 18 shows the number of post-AR JRs lodged over the same period.

Figure 18: Number of Judicial Reviews following an upheld AR (2015-16 to 2018-19), shown as a percentage of all upheld ARs	
Year	In-country
2015-16	899 (17%)
2016-17	740 (16%)
2017-18	592 (14%)
2018-19	382 (12%)
<b>Total</b>	<b>2,613</b>

**7.47** As with PAPs, refused Tier 1 and 2 applications produced the largest numbers of JRs following an upheld in-country AR.

**7.48** Between 2015-16 and 2018-19, 59.3% of post-AR JRs (in-country, overseas and at the border) were rejected, refused permission to proceed, or dismissed;<sup>68</sup> 17.8% were conceded by the Home Office or granted permission to proceed. As at June 2019, 22.9% were outstanding.

**7.49** Stakeholders told inspectors that they regarded the “high” numbers of PAPs and JRs as a reflection of the narrow scope of ARs. It was also claimed that ARs were seen as a “stepping

66 A Pre-Action Protocol letter notifies a public body of an individual’s intention to bring litigation and sets out the basis of their claim. It is an opportunity for the Home Office to seek a resolution that avoids litigation.

67 A Judicial Review is a type of legal hearing where a judge assesses the lawfulness of a decision or action taken by a public body.

68 “Rejected” means a judge has determined that the claim is without legal merit. “Refused permission to proceed” means a judge has determined that the claim is not arguable. “Dismissed” means a judge has upheld the Home Office’s decision.

stone” to get to litigation. Meanwhile, the Home Office said it saw the year-on-year fall in PAPs and JRs related to in-country ARs as a sign that the ARU’s decision-making had been improving.

## File sample evidence

- 7.50** For file sampling purposes, inspectors requested case reference numbers for in-country Indefinite Leave to Remain (ILR) and Tier 4 ARs that had received an outcome between 1 March and 30 May 2019. According to the Home Office, there were 191 in total.<sup>69</sup> Inspectors examined 37 of the 191 ARs. This involved looking at paper files and CID records.
- 7.51** Of the 37 ARs, 19 related to in-country Tier 4 applications, and 18 to applications for ILR in the UK. The latter comprised:
- four Tier 1 applications
  - seven Tier 2 applications
  - six victim of Domestic Violence applications
  - one UK ancestry application
- 7.52** Five of the 37 applications had been validated by ARU despite being received after the 14-day time limit.
- 7.53** Thirty one of the 37 ARs were resolved by ARU within the 28-day service standard.
- 7.54** Of the 37 ARs:
- 22 were “upheld”, of which
    - 20 upheld all the reasons cited in the original decision
    - 2 added new or changed reasons but upheld the original decision
  - 15 were “overturned”, of which
    - 11 were given a new decision by ARU
    - 4 were returned to the original decision-making unit to reconsider

## File sample: Identification and correction of case working errors

- 7.55** Inspectors agreed with the outcome in 35 of the 37 cases. Based on this sample of ARs, ARU appeared to be effective at identifying and correcting objective case working errors, such as misapplication of the Immigration Rules, the overlooking of relevant evidence or the granting of the wrong length or conditions of leave, particularly when issuing Biometric Residence Permits (BRP) to Tier 4 applicants – see Case Studies 1 and 2.

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<sup>69</sup> This was not the peak period for Tier 4 visa applications.

### Case Study 1: Identification and correction of misapplied Immigration Rules

#### **The error**

The applicant, who had been in the UK for several years on a Tier 2 visa, applied for Tier 2 ILR. The application was refused on the grounds that they fell short of the minimum salary requirement (£40,100) by a few hundred pounds.

#### **The AR**

The applicant submitted an AR stating that when they submitted their ILR application the minimum salary requirement was £38,000. Changes to the Immigration Rules had occurred while the application was being considered.

#### **ARU**

The ARU caseworker identified this as a case working error and, after consulting a senior caseworker, overturned the original decision and granted ILR.

### Case Study 2: Biometric Residence Permit error corrected

#### **The error**

The sponsor of a student who was in the UK on a Tier 4 visa and had submitted an application for Tier 4 Leave to Remain noted that the Biometric Residence Permit (BRP) issued to the student contained an error granting them the right to work in the UK.

#### **The AR**

The sponsor, a higher education institution, submitted an AR on the student's behalf, explaining the BRP error.

#### **ARU**

The AR was considered by ARU who wrote to the student shortly before the 28-day service standard date requesting them to return the incorrect BRP. A new BRP was issued within two days of the Home Office receiving the old one.

## File sample: Domestic Violence applications for Indefinite Leave to Remain

- 7.56** In the case of two of the 37 sample ARs inspectors were not convinced that the outcome was correct. Both ARs concerned refusals of ILR as a victim of Domestic Violence (DV). In both, the AR caseworker upheld the original decision maker's assessment of credibility, which included subjective judgements that were open to challenge as "unreasonable" given the "balance of probabilities" threshold for ILR applications and the seriousness of getting these particular decisions wrong – see Case Study 3.



## Case Study 3: Domestic Violence case

### **The original ILR application**

The applicant applied for ILR on Domestic Violence (DV) grounds, attaching as supporting evidence non-molestation orders against their partner and his family members.

### **Original consideration**

The Home Office corresponded with the applicant's representative and obtained letters from the applicant's local authority and her GP reflecting her claim that she was a victim of DV. The Home Office also obtained a police report of a domestic dispute, where the applicant's partner claimed that the applicant was the aggressor.

Four and a half months after the application was made, ILR was refused because the applicant's documentary evidence "came from her own personal, verbal testimony, and is not considered to be an independent or impartial source".

### **The AR**

The applicant indicated in her AR that further evidence was available from the NHS should it be required. She also questioned the source of the decision maker's assertion in the refusal letter that her partner wished them to continue to live together.

The AR caseworker upheld the original decision.

### **Home Office comment**

When this case was raised by inspectors, the Home Office commented:

"ARU would not contact Social Services as this would constitute obtaining fresh evidence which wasn't in front of the original decision maker.

[Name] Social Services made no assessment by a trained DV professional that the applicant was a victim of domestic violence in their letter. Furthermore, it is clear from the phrasing of the social services letter that the letter was based on the applicant's own personal verbal testimony.

As the social services letter contradicted the findings of the email from the police whereby the applicant was considered to be the suspect rather than the victim, considering the evidence as a whole it was not considered that the applicant was a victim of Domestic Violence.

The DV policy guidance states 'letters from domestic violence support agencies, including refuges, may require you to follow up to confirm that the organisation has made a professional assessment, and is not merely relaying the applicant's account'. However, in this instance as this was based on the applicant's own personal testimony as highlighted by the phrasing in the Social Services letter, then this would not have been referred to the original decision-making team for further information from Social Services.



The DV policy guidance states that ‘Non-molestation orders are designed to prevent an abuser from committing any further abuse, for example by prohibiting contact with the applicant. They can be made where the court considers that it would benefit the applicant or any relevant child, taking account of all the circumstances, including the need to secure the health, safety and wellbeing of the applicant or child.

If there is no finding of fact recorded on the final order, a non-molestation or occupation order should not be classed as conclusive proof has taken place. You must assess the order in conjunction with other evidence that has been submitted.’

Assessing the evidence, the email from the police contradicted the applicant’s version of events and Social Services had made no professional assessment on the applicant being a victim of Domestic Violence. The non-molestation order was therefore considered in conjunction with the other evidence and in light of the evidence as a whole the decision of the original caseworker not to attach much weight to the non-molestation order was correct.

ARU do not therefore accept it would have been appropriate for the case to have been referred for reconsideration.”

- 7.57** Case Study 3 illustrates the difficulty of assessing credibility, especially where it relates to a domestic violence claim. The reviewer followed AR guidance in terms of “the correct test”, which is “whether it is more likely than not, based on the evidence and facts available, that the original decision maker made the right decision that the applicant is not credible”. But, in doing so, demonstrated that AR is ineffective in such cases and the onus needed to be on ‘right first time’ decisions.
- 7.58** While the decision maker was correct to question the weight that could be placed on the non-molestation order, and the local authority and the GP’s reports, since these were based on the applicant’s own accounts, they failed to take reasonable steps to ensure they had sufficient evidence and facts to reach the correct credibility assessment. Moreover, they took the police report as evidence that the applicant was not the victim of domestic violence when it neither proved nor disproved this. Overall, the approach taken to assessing the applicant’s credibility was simplistic and showed little awareness of the gravity of the decision.
- 7.59** In 2015, ICIBI had recommended that the Home Office should remind caseworkers not to give disproportionate weight to uncorroborated evidence from agencies that support victims, but should verify it where possible, and that “performance measures [for DV settlement cases] take full account of the risk of fraudulent claims, the complexity of such cases, and the need to protect vulnerable individuals”, and that:
- “Provided it can be managed effectively and without delaying decisions, [it should] encourage caseworkers to interview Domestic Violence applicants in cases where the supporting evidence does not allow the caseworker confidently to assess the applicant’s credibility.”<sup>70</sup>
- 7.60** The Home Office accepted all of these recommendations. In its response it said it was reviewing guidance to distinguish more clearly between an assessment by a domestic violence professional and a letter of support that repeats the applicant’s version of events; it would

<sup>70</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/477547/Home\\_Office\\_Formal\\_Response\\_to\\_ICI\\_Inspection\\_of\\_Settlement\\_Casework\\_-\\_2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/477547/Home_Office_Formal_Response_to_ICI_Inspection_of_Settlement_Casework_-_2.pdf)

“give further consideration to the possible resource implications and the optimal arrangements for interviewing, including what specialist training might be required in view of the possible vulnerability of the applicants”; and, that:

“UKVI regularly reviews its levels of performance which includes quality, timeliness and percentage of refusal decisions. We are especially vigilant in highly sensitive applications, such as Domestic Violence, where vulnerability and timeliness are major considerations. Senior managers review performance measures on a weekly basis.”

**7.61** Neither of the original decisions in the two domestic violence cases that resulted in upheld ARs had been quality assured by the original casework team. Inspectors asked about this and about whether DV ILR decisions were subject to a ‘second pair of eyes’ check.<sup>71</sup> The Home Office replied:

“Liverpool Settlement casework has advised that there is no mandatory second pair of eyes check for a domestic violence refusal. All DV decisions are subject to a 2% random quality assurance check. Liverpool Settlement has also advised that it has always been the case that they routinely random sample 2% of decisions per caseworker, with the caveat that caseworkers on training/mentoring receive 100% checking until they are signed off then they are subject to the usual 2%.”

## **File sample: Reconsiderations of in-country eligible decisions**

**7.62** AR guidance instructs ARU caseworkers:

“If you withdraw an incorrect decision, you should normally correct the error and issue a new decision. However, the role of the administrative review team is to identify and correct casework errors, not to act as the original decision maker. In some cases you must refer the application back to the original decision-making team to casework after you have withdrawn the incorrect decision. These are cases where:

- the case was considered under the ‘single fatal flaw’ process and you have withdrawn the single refusal reason – the rest of the case must now be considered by the original decision maker
- there has been a change of circumstances such that the whole case needs reconsidering when the decision is remade
- the applicant may need to be interviewed before remaking the decision, for example to assess their credibility or the genuineness of a vacancy – it is not possible to interview applicants as part of the administrative review process as this is an original decision making function
- the original decision maker’s failure to obtain further evidence amounted to a casework error and the administrative review team cannot obtain the evidence because it requires liaison with other agencies, which is outside the team’s remit.”

**7.63** In the sample of 37 in-country ARs, 15 were overturned. Of these, 11 were issued a new decision by ARU, all of which were refused PBS (Tier 2 and 4) applications. Four decisions were referred back to the original decision-making team for reconsideration, of which three were Tier 4 applications and one was an application for Tier 2 ILR. Inspectors agreed with ARU’s actions in all 15 cases.

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<sup>71</sup> The term ‘second pair of eyes’ is used by the Home Office to describe an assurance process whereby an immigration decision is reviewed by a Higher Executive Officer or a Senior Executive Officer prior to being dispatched to the applicant.

- 7.64** However, inspectors found inconsistencies in how reconsiderations were handled once they had left ARU. ARU did not track the case to ensure that the reconsideration had been completed. ALAR senior management told inspectors it was “not desperately comfortable with that” but the mechanisms for tracking cases were not good enough.
- 7.65** Any attempt to track reconsiderations would be further complicated by the fact that there was no timescale within which they had to be completed. The policy team confirmed “there is no policy on this [reconsiderations]. Possibly three months, similar to appeals. They are trying to get the case working teams to prioritise cases coming back as opposed to new cases.” Meanwhile, a manager in a case working unit dealing with post-AR reconsiderations acknowledged “there needs to be more work on establishing reasonable turnaround times”.
- 7.66** Different business areas had adopted different working practices for handling reconsiderations, including having the same decision maker who had made the original decision complete the reconsideration. While this might provide a learning opportunity, it raised a question about whether the AR process was ultimately independent. In other business areas, reconsiderations were directed to a separate Post-decision team in order to ensure objectivity, which went some way to answering the widespread concerns that no internal process could be truly independent.
- 7.67** During the inspection, Tier 4 managers in the Sheffield DMC told inspectors that there would soon be a separate dedicated casework team that would process Tier 4 reconsiderations. However, elsewhere in UKVI managers did not feel this was an issue as the independent AR had already taken place and they were just implementing its recommendations. Inspectors were told that ILR reconsiderations were reviewed by a senior caseworker (SCW), adding another layer of assurance. Meanwhile, policy staff stated that the purpose of the AR was to decide if the original decision was sustainable, so sending it back to the original decision maker assisted with feedback loops.
- 7.68** One of the 37 cases examined by inspectors involved a reconsideration by the original decision-making team without a formal application for an AR. In this instance, a representative for the applicant contacted a senior member of staff in Sheffield and requested that the Home Office reconsider the decision. This was contrary to the AR guidance that all eligible decisions made in-country should be referred to AR should the applicant wish to challenge the outcome.
- 7.69** The case, which managers saw as evidence of the Home Office’s “human face”, highlighted the limitations of the AR process, which would have upheld the original decision as there was no error, while the original decision-making unit accepted new evidence which allowed it to change its decision.

### **File sample: Consideration of human rights grounds**

- 7.70** A human rights claim is not an eligible decision. Consequently, AR guidance instructs AR case workers not to engage with any human rights claims found in an AR application:
- “A human rights or protection claim made in an administrative review application will not be considered. If the administrative review maintains the decision the applicant will be served with a notice under section 120 of the 2002 Act which will provide an opportunity to make any human rights or protection claim.”
- 7.71** In the sample of 37 in-country ARs, there was one Tier 4 AR where the applicant had raised human rights concerns about returning with their family to their home country. In the AR

decision letter, which upheld the original refusal, the caseworker not only engaged with the human rights claims, but offered detailed and unsupported assessments of the applicant's home country and family situation. This was clearly contrary to the guidance.

**7.72** Inspectors asked the Home Office for an explanation. The Home Office responded:

"The AR caseworker has engaged with Human Rights grounds as part of their Section 55 consideration and was incorrect to do so. ...

However, the caseworker did highlight in their decision letter 'You applied for a Tier 4 Student Visa which is purely a Points Based Application and no discretion can be exercised. Furthermore, you have raised Human Rights Article 8 in your administrative review, however Article 8 claims are not eligible decisions for administrative review as defined in Appendix AR of the Immigration Rules – specifically AR2.6.'

Potentially the decision letter could have advised that it was open for the applicant to submit an appropriate HR application, however we would not specify the grounds for making an application as we would be wary of being seen as offering immigration advice and/or creating a legitimate expectation for a grant of leave."

**7.73** ARU explained what it was able to do if it had concerns that an applicant had received poor advice from their legal representative, which raised a question about the consistency of such referrals:

"Representatives often highlight how the negative decision will impact the family unit as a whole and it is open to representatives to raise any HR / exceptional factors which they feel would impact any negative decision. Nevertheless, ARU would refer representatives where there are any indications of malpractice to OISC/Intel. This has been done previously with representatives on stateless cases."

## **Independence of the reviewer and the end-to-end AR process**

**7.74** Section 16 of the Immigration Act 2014 refers to "the independence of persons conducting administrative review (in terms of their separation from the original decision maker)".

**7.75** Although part of UKVI, ARU was physically and, at Director level, organisationally separated from original decision makers. From interviews and focus groups, inspectors were satisfied that ARU managers and staff recognised the importance of thinking and acting independently and were comfortable in doing so, as was evidenced in the sample of in-country ARs examined by inspectors. However, AR policy limits the reviewer's remit, for example in respect of credibility assessments and reconsiderations, and while the Home Office may regard these as falling outside the AR process, others are likely to see this as a false distinction and question whether the end-to-end AR process (from application to remedy) is truly independent.

## Overseas ARs

### Data quality

- 7.76** The Home Office was unable to produce robust data for overseas ARs. Therefore, some of the findings and conclusions in relation to the overall effectiveness of the AR process for overseas applicants are necessarily tentative.

### Eligible decisions

- 7.77** According to the PRAU, the number of eligible decisions (those where the entry clearance visa had been refused in defined immigration routes) hovered around 20,000 a year, but with significant year-to-year fluctuations – see Figure 19.

Figure 19: Overseas eligible decisions (2015-16 to 2018-19)	
Year	Eligible decisions
2015-16	20,031
2016-17	28,196
2017-18	20,695
2018-19	17,400

- 7.78** The data provided by the PRAU for overseas ARs, received and completed each year since 2015-16, and that provided by Decision Making Centres (DMCs) differed wildly. The PRAU indicated that inspectors should use the DMC data, but this would appear to be incomplete at least for 2015-16 and 2016-17 – see Figures 20 and 21.

Figure 20: PRAU data for completed overseas ARs (2015-16 to 2018-19)						
Year	Total ARs received	Upheld	Upheld but amended	Dismissed	Resolved	Blank (no outcome recorded)
2015-16	4,620	2,799	142	834	62	783
2016-17	4,117	2,343	162	1,084	0	528
2017-18	3,526	2,596	38	358	0	534
2018-19	1,391	987	14	56	0	334

Figure 21: DMC data for completed overseas ARs (2015-16 to 2018-19) <sup>72</sup>			
Year	Upheld	Overtaken	Total
2015-16	1,365 (85%)	143 (9%)	1,614
2016-17	1,503 (65%)	618 (26%)	2,303
2017-18	4,100 (63%)	1,787 (28%)	6,470
2018-19	3,835 (74%)	1,093 (21%)	5,201

- 7.79** As a working assumption, inspectors took the annual total for applications each year to be around 5,000. This would suggest that roughly one in four eligible decisions results in an AR which, if true, no doubt in part reflects the fact that applications for overseas ARs are free. Based on what stakeholders told inspectors, the numbers would be higher but many

<sup>72</sup> Total does not equate to upheld and overturned ARs as the total also includes ARs that were invalid, withdrawn or upheld in part.

individuals, especially Tier 4 visa applicants, preferred to reapply for a visa rather than apply for an AR. This was because they believed reapplying would be quicker and they did not want to miss their planned travel date or the start date of their chosen course.

**7.80** If the 5,000 figure is correct, from February 2019 when the last of the overseas AR streams transferred to the ARU the latter’s intake will be roughly double what it was prior to September 2018 when the phased transfer began.

## Overseas AR outcomes

**7.81** Based on the DMC data, and excluding 2015-16, the overturn rate for overseas ARs appears to be somewhere between one in three and, more recently, one in four.

**7.82** In light of stakeholders’ comments about reapplications, inspectors asked the Home Office for data for refused applicants who had reapplied for the same immigration route within 28 days of their refusal. In 2018-19, according to the data provided, 2,050 Tier 4 overseas applications were refused (excluding Tier 4 Child and Dependant applicants). From these there were 695 (34%) fresh applications, 575 of which were issued, 85 were refused and 35 had no outcome.

**7.83** While a successful reapplication does not mean that there was a case working error and that an AR would have succeeded, since the applicant may have provided additional evidence, it is reasonable to assume that there would have been some increase in the AR overturn figures had applicants applied for an AR rather than reapplying for a visa.

## Outcomes by nationality

**7.84** Inspectors asked for a breakdown of the outcomes of the 2018-19 Tier 4 AR applicants by nationality – see Figure 22.

**Figure 22: Overseas Tier 4 AR applications and outcomes by nationality (2018-19)**

Year	Pakistan		India		Nigeria		Iran		China	
	Upheld	O’turn	Upheld	O’turn	Upheld	O’turn	Upheld	O’turn	Upheld	O’turn
2018-19	723 (78%)	203 (22%)	523 (79%)	136 (21%)	395 (80%)	98 (20%)	158 (83%)	33 (17%)	130 (68%)	60 (32%)
<b>Total</b>	<b>926</b>		<b>659</b>		<b>493</b>		<b>191</b>		<b>190</b>	

**7.85** Although the order was different, four of the top five nationalities were the same as the top five nationalities applying for an in-country AR, with Iran replacing Bangladesh for Tier 4 ARs.

**7.86** If the 2018-19 upheld/overturned totals reported by the DMCs (Figure 21) are correct, it would appear that over half (2,753 out of 5,201 is 53%) of all overseas ARs were in respect of Tier 4 refusals, and of these the top five nationalities accounted for 2,459 (89%). It also appeared that it was less likely that a Tier 4 AR applicant from Pakistan, India, Nigeria or Iran would have the original decision overturned than other overseas AR applicants. Again, China stood apart, and while the outcomes for Chinese Tier 4 AR applicants were still c. 2:1 in favour of the original decision being upheld, this ratio was significantly better than the ratio for other top five Tier 4 nationalities (c. 4:1) and also better than overseas AR applicants as a whole.

**7.87** As with the in-country ARs, there was no Equality Impact Assessment for overseas ARs.

## Pre-Action Protocols and Judicial Reviews

**7.88** The Home Office was unable to provide data for Pre-Action Protocol (PAP) letters and Judicial Reviews (JRs) following on from overseas AR applications. However, a senior caseworker (SCW) in Litigation Operations told inspectors they believed the quality of overseas decisions had improved since the AR function had transferred to ARU as fewer decisions were resulting in litigation.

## File sample evidence

- 7.89** Inspectors examined 69 Tier 4 AR applications considered by the ARU between 1 March and 31 May 2019, all of which followed a visa refusal.
- 7.90** Within the sample, the most common nationalities were: Pakistan (17), India (14), Nigeria (7), Bangladesh (4) and Iran (4). Most (57) of the original decisions were made at the Sheffield DMC. The remainder were made at overseas DMCs (Pretoria and New Delhi).
- 7.91** Of the 69 ARs:
- 58 were upheld, of which
    - six had reasons removed
    - two had new reasons added
  - 11 were overturned and sent back to the DMC for reconsideration

## File sample: Identification and correction of case working errors

**7.92** As with in-country ARs, inspectors found that ARU reviewers were effective at identifying and correcting objective errors made by DMC caseworkers. For example, six ARs were overturned because the DMC had miscalculated the funds available to the applicant for their maintenance and had therefore not awarded the correct points.<sup>73</sup> One was due to the DMC failing to exercise evidential flexibility regarding the non-submission of a document.<sup>74</sup> However, contrary to guidance, ARU's outcome letters did not include the reasons for overturning the original decisions.

## File sample: Reconsiderations of Tier 4 visa eligible decisions

- 7.93** As with in-country ARs, where ARU sends an eligible decision back to a DMC for reconsideration, there is no specified time by which the DMC must deliver a new decision. In many cases, the start date of the study course will have passed by the time a new Tier 4 decision has been delivered. In some cases, it has already passed when the AR arrives at the ARU.
- 7.94** Figure 23 shows the time taken to deliver a new decision in each of the 11 overturned ARs sent back to a DMC for reconsideration.

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<sup>73</sup> Under the Points Based System, ten points are awarded for maintenance if a Tier 4 applicant can prove they have adequate funds for their proposed study course.

<sup>74</sup> Under 245AA of the Immigration Rules, the Home Office may write to an applicant to request a document to support their application if specified evidence is missing, a document is in the wrong format or if a document does not contain all of the information needed. This is explained in 'Evidential Flexibility: points-based system' (Version 9.0) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/761154/Points-based\\_system\\_-\\_evidential\\_flexibility.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/761154/Points-based_system_-_evidential_flexibility.pdf)



Figure 23: Time taken for DMC reconsiderations following a Tier 4 AR overturn	
Days	Reconsideration outcome
136	Issued (rescheduled start date)
113	Withdrawn (missed start date)
97	Refused
78	Issued
64	Withdrawn (missed start date)
58	Withdrawn (missed start date)
49	Issued
42	Withdrawn (missed start date)
39	Withdrawn (missed start date)
34	Issued
28	Issued

**7.95** Normally, when reconsidering an application, the DMC will contact the applicant or, more likely, their sponsor to learn whether they can be accepted on the course at a later date. If the sponsor says this is not possible, the DMC will write to the applicant using the following template:

“We have contacted your sponsor regarding the latest course acceptance date however they have confirmed that they can offer you a place for the [date] intake.

We cannot issue a visa more than 3 months in advance and we cannot keep the application pending. We therefore require you to withdraw your application.

Please confirm that you would like us to withdraw your application by emailing [\[email\]](#)

We sincerely apologise for any inconvenience caused.”

**7.96** Though not stated in the DMC notification, the advantage in withdrawing the application is that the visa refusal will not show on an individual’s immigration record.

### File sample: Upheld original Tier 4 decisions

**7.97** In 49 of the 69 Tier 4 AR cases examined by inspectors the ARU caseworker decided that the original decision was correct and should be upheld. Inspectors found the ARU letters informing applicants that their AR had not succeeded were well written, factually accurate and engaged all the points raised by applicants in their application.

**7.98** Of the 49 original decisions that were upheld, there were three where the visa application had been refused for a clear, objective reason, but it was evident from the AR application that the applicant had not fully understood the explanation in the refusal letter and had assumed there had been a case working error. The ARU letters, written in plain English, cited the relevant Immigration Rules and responded to each of the points made in the AR application, looking to help the applicants to understand the original decision.



## File sample: Upheld original Tier 4 refusals under the Genuine Student Rule

- 7.99** Of the 49 upheld Tier 4 ARs, 35 related to refusals under the Genuine Student Rule (GSR). Paragraph 245ZV(k) of the Immigration Rules requires that “the Entry Clearance Officer must be satisfied that the applicant is a genuine student.”<sup>75</sup>
- 7.100** Overseas visa applications are streamed Red, Amber or Green by a Streaming Tool used by UKVI as an indicator of the risk of non-compliance should a visa be issued. The RAG rating is intended to enable DMCs to manage their workloads more efficiently and to assist decision makers. Red-streamed applicants are considered ‘high risk’ and subjected to additional checks, of supporting documents for example, and in the case of Tier 4 applicants to genuineness assessments, which means “you may be asked to undertake an interview, either in person, or on the telephone to check that you are a genuine student”.<sup>76</sup>
- 7.101** Applicants refused under GSR were rated Red by the Streaming Tool. The RAG rating is visible to the ARU. However, ARU told inspectors that the RAG rating did not influence their consideration of an AR.
- 7.102** Home Office guidance<sup>77</sup> explains how decision makers “must take into account all the information provided in the application and, if applicable, in the credibility interview” when making an assessment of whether an applicant is a genuine student.
- 7.103** The guidance instructs decision makers that they must not refuse an applicant on genuineness grounds without interviewing them, unless: “the application has been refused previously on genuine student grounds and there have been no changes to the material circumstances and no new evidence” or “there have been a significant number of very similar or identical applications and you have satisfied yourself by interviewing a sample of these applicants that they are not genuine”.
- 7.104** It then lists factors, with examples, to be considered “when assessing whether you are satisfied that an applicant is a genuine student”, indicating that it is not a checklist and is not exhaustive. The factors include an applicant’s immigration history, education history and post-study plans, personal and financial circumstances, the course, course provider and qualification, accompanying dependents, and the ‘pull factors’ influencing the applicant’s choice of the UK as their destination.
- 7.105** Inspectors understood from stakeholders that, in practice, refusals under GSR often cite the same reasons: the applicant has large gaps between periods of study and is unable to explain why; the applicant has provided “generic” responses about the course or university they have chosen and not explained why the latter is more suitable than others offering the same course or how the chosen course will benefit their intended career.
- 7.106** The 2013 Statement of Intent (‘Administrative Review in lieu of appeals’) was clear that ARs would not make a fresh assessment of an applicant’s credibility. Where this had been a reason for refusal “the test on review would be only whether the original decision was unreasonable/perverse not a new credibility decision”. Inspectors therefore focused on whether and how this test had been applied in the nine GSR cases in the file sample.

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<sup>75</sup> <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-6a-the-points-based-system#pt6astudent>

<sup>76</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/843003/T4\\_Migrant\\_Guidance\\_October\\_2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/843003/T4_Migrant_Guidance_October_2019.pdf)

<sup>77</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/836519/tier-4-guidance-v48.0-ext.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/836519/tier-4-guidance-v48.0-ext.pdf)

**7.107** To judge whether an original decision was “unreasonable/perverse” ARU reviewers needed to understand the process decision makers were required to follow. While this is set out in guidance, inspectors asked what training reviewers had received. ARU provided a copy of a UKVI PowerPoint presentation entitled ‘Genuine Student Rule: A common approach’. Although undated, ARU also provided evidence that it was first delivered to ARU staff who would be reviewing overseas ARs in September 2018 by ICQAT and had since been deployed by ARU trainers.

**7.108** The final slide stated:

“GSR Conclusions

- Interviews are necessary
- Interview sponsors of concern
- Make sure to probe inconsistencies
- Be logical, concise and consistent
- Do not be subjective
- Allow clarifications
- Record verbatim
- Always attach interview records and retain anything relevant”

**7.109** Elsewhere, the PowerPoint presentation noted:

“You must not refuse an applicant under GSR without an interview – even when an applicant has a recent GSR refusal we should interview and give the applicant a chance to address our concerns”

and

“Give applicants a chance to expand on answers and clarify themselves – ask supplementary and probing questions if vague responses given. It is not enough to rely solely on vague answers as a reason for refusal under genuineness.”

**7.110** In addition to the PowerPoint presentation, inspectors were provided with a one-page Tier 4 “crib sheet”, intended for use by decision makers in DMCs and by ARU reviewers. This included a box on GSR which stated: “Can only refuse on GSR where an interview has been conducted – do NOT refuse on Sheffield short interview only.”

**7.111** In the file sample, inspectors identified three GSR refusal cases where the only interview had been done by video link with Sheffield when the applicant had attended the Visa Application Centre (VAC) to submit their biometrics. ARU told inspectors that this was sufficient because:

“In all three applications referred to, these applicants have had an interview of 18+ questions and, whilst these interviews are based on a template and contain an element of standard questions they are not classed as ‘Sheffield short VAC interviews’. [Sheffield DMC] have changed their approach to interviewing following feedback from ARU and Litigation and have improved on the interview template.”

**7.112** Inspectors were told that the “Sheffield short interview” had comprised four questions, so the 18+ question template was clearly more extensive. However, inspectors concluded that it was

contrary to the letter and spirit of GSR guidance for decision makers to be making decisions based on a VAC interview, as these were not tailored to any specific concerns the decision maker had about their genuineness and did not provide applicants with “a chance to expand on answers and clarify themselves”. As such, ARU should not be upholding such decisions.

**7.113** Inspectors found one example egregious – see Case Study 4.

#### **Case Study 4: Refusal on Genuine Student Rule (GSR) grounds without a GSR interview**

##### **The application**

The applicant applied for a Tier 4 visa to study for a degree at a UK university.

At their VAC interview, the applicant was asked the standard questions about their future plans, how the study course would help them achieve those plans, and their expected salary on return to their home country. The applicant’s answers were brief and there were some errors in the English, but they were cogent. No follow-up questions were asked and no further details sought.

##### **The refusal**

In refusing the application “on the balance of probabilities that you are not a genuine student”, the decision maker referred “in particular” to the applicant’s answers stating that it did “not seem plausible” that the applicant intended to apply for voluntary work and not look to “recoup” the costs of attending a university course in the UK.

##### **The AR application**

In their AR application, the applicant explained that their family circumstances meant they did not have to depend on paid employment and they saw voluntary work was a step towards running an NGO in their home country in the future. They claimed that the decision to refuse them a visa was based on a personal perception and was not in line with the Rules.

##### **Original decision upheld**

The AR caseworker “acknowledged” that there was no “legal requirement” to take up paid employment after completion of a study course, but questioned the “benefit of obtaining a degree in the UK” and “we are in agreement with the ECO and do not find it credible that you do not intend to take up paid employment in view of the significant financial implications of studying and living in the UK”.

##### **Inspectors’ comment**

Refusal on credibility grounds without an extended GSR interview was unreasonable as the applicant’s plans and family circumstances were not properly explored. The decision maker’s balance of probabilities judgement was based on their opinion rather than any evidence or the lack of it.

ARU should have overturned the decision and sent it back for reconsideration. Instead, by reiterating the judgement made by the original decision maker, the ARU caseworker was effectively adding their own credibility assessment.

### **Home Office comment**

When this case was put to the Home Office, it responded:

“The decision directly references the ECO assessment of credibility and states, “Furthermore, we are in agreement with the ECO and do not find it credible that you do not intend to take up paid employment in view of the significant financial implications of studying and living in the UK.”, so it is not accepted that the AR caseworker conducted a new credibility assessment of the application. ...

Whilst it is accepted the rules do not specify a student must take up paid employment after graduation, the credibility assessment is a balancing exercise that weighs up the student’s intentions based on their answers at interview.

The guidance does not specify what is considered to be genuine as the decision maker needs to weigh up several factors against each other.

The refusal explains that taking into account the extensive costs of studying in the UK it does not appear credible that a student would have no financial aspirations. It is also noted that during the interview the applicant indicated [their] family members would be funding [their] study but did not appear to know anything about their respective incomes which the ECO did not note in their refusal. On review of the AR decision it could have been considered to add this point as a new refusal reason within the existing credibility assessment attracting a fresh right of AR as per page 45 of the AR guidance.”

### **Independent Chief Inspector’s comment**

The Home Office response ignores the fact that there was no extended GSR interview in this case. Despite the reference to the need to weigh up several factors none was considered in this case except for the costs of study and the applicant’s VAC interview responses. Balance of probabilities is a low threshold but still relies on the evidence rather than the decision maker’s (and reviewer’s) uninformed and set opinions.

**7.114** Where a decision maker decides on the basis of the information in front of them, including the VAC interview, that a GSR interview is necessary, this is normally done by telephone by a dedicated interviewing team in the Sheffield DMC. The decision maker is responsible for providing the interviewer with the specific questions to put to the applicant. The interview then provides a verbatim transcript of the interview, which may go back to the same decision maker or to another decision maker to assess and issue the decision.

**7.115** Referring to these extended GSR interviews, ARU caseworkers told inspectors:

“When we first took over, the quality of the interviews, and therefore the refusals, wasn’t very good. We overturned a lot and sent them back for further interviews. We said they wouldn’t stand up at JR [Judicial Review] and since then, they seem to have got better.”

and

“We have a monthly feedback call with [the Sheffield DMC] and they have come over here to discuss our findings. We said we’d send something back if a point wasn’t clear as we can’t uphold it. They’ve got a lot better since then. They realised they’d had to do it again and it made sense for them to do it right the first time.”

**7.116** Inspectors referred 13 GSR cases to the Home Office and asked for its comment on the quality of the interviews. The Home Office responded:

“It is considered following feedback from ARU and litigation, that the quality of interviews has improved over the past 6 months with more probing questions tailored to each applicant. With regards to the interviews of [Case reference number] and [Case reference number] especially, a number of relevant and probing questions were asked at interview. It is acknowledged the other [four] cases are not as comprehensive. With the knowledge we have now, some of these may have been referred to the original casework teams.”

**7.117** In addition to Case Study 4, inspectors raised other examples from the file sample where the ARU caseworker appeared to have made their own credibility assessment rather than testing whether the original decision was “unreasonable/perverse”. For example:

“Upon review of your [extended GSR] interview transcript I am also not satisfied with your arguments as these could be applied to any other institution.”

“There is no compelling evidence that you need to have an MBA qualification in order to open your own business as you state that you plan on having work experience in management anyway.”

“You state you did research other universities but only applied to the ones stated during interview. Whilst it is acknowledged that cost is an important factor for many international students, I would expect a genuine student research and considerations to go beyond the cost of the individual universities and in to what the universities offer and how this would meet their individual needs.”

**7.118** The Home Office disagreed with inspectors’ view that these were new credibility assessments. It wrote:

“It is not accepted that all cases raised here have defended decisions by making new/fresh credibility assessments – comments such as ‘leads me to agree with the ECO that your plans for the future are not clear and doubts are therefore raised as to the credibility of your application’ point to a review of the ECO’s original credibility assessment rather than making a new credibility decision. A credibility assessment has already been completed by the original casework team and when responding to the issues raised in the AR application, the AR caseworker has explained why they agree with the initial credibility assessment.

It is acknowledged this is a subjective area for the AR remit, and it is a timely reminder to be aware of the remit of AR. On 26/09/19, caseworkers were given GSR refresher training with extra material specific to the AR role for reviewing credibility decisions. Going forward this should help AR reviewers to be mindful of the delicate balance between addressing AR grounds and making a new credibility assessment.”

## Performance and Quality Assurance

**7.119** Almost half (34 out of 69) of the overseas Tier 4 ARs examined by inspectors had taken longer than the 28-day service standard to provide a response. The longest had taken 85 days and the

shortest five days. Of the 34 delayed cases, 29 applicants received correspondence from the ARU informing them of the delay. The template email read:

“We are currently making further enquiries regarding your application and although we strive to assess all administrative reviews within 28 days of the application being submitted, there can sometimes be delays. We are currently awaiting the outcome of those enquiries and apologise for the delay in completing your review. We aim to review your application by [Date]. If we are unable to assess your application by [Date] we will contact you further. Thank you for patience in this matter.”<sup>78</sup>

**7.120** In all but three cases, it was not clear from the notes on the case working system what further enquiries were being made, raising suspicions that the real reason for the delay was AR volumes and/or processing times. The Home Office told inspectors:

“Delay emails are sent to applicants to provide a level of customer service when an applicant’s case is going beyond SLA date. Making further enquiries is used in the template as it is a common and genuine reason for delay – examples would be awaiting policy advice, making referrals, and seeking SCW [senior caseworker] guidance on specific complex issues.”

**7.121** Inspectors saw evidence of caseworkers having to wait for a SCW to answer a question and of the quality assurance (QA) process delaying responses being dispatched to the applicant. Inspectors were told that ARU caseworkers were encouraged to raise simple queries with the ARU SCW team face to face. The caseworkers and SCW were based in the same open plan office. However, if technical advice and/or an in-depth consideration was needed, caseworkers were instructed to use the SCW inbox to ensure that there was an audit trail and that common queries were identified and dealt with consistently.

**7.122** In February 2019, the SCW inbox received 210 emails, mostly caseworker queries. The previous month there had been 165 emails. Inspectors were told that the increase was due to ARU absorbing overseas ARs and having more questions and concerns. The Home Office pointed out that most of the delayed cases identified by inspectors were from “the period immediately following the transition of all International [overseas] AR work to the ARU in Manchester”.

**7.123** Of the 69 ARs, 34 were assured by a SCW prior to dispatch, regardless of whether this breached the service standard. In all 34 cases, the SCW concluded that the caseworker had made the correct decision, although in 18 of these cases the SCW made minor amendments to the wording of the response, most frequently to amend the date on the letter because dispatch had been delayed. In some cases, the QA was completed in a day, while one QA took 18 days and half a dozen others took ten or more days.

**7.124** In June 2019, when inspectors were examining the files, all overseas routes that had transferred to ARU in February 2019 were still subject to 100% QA, and some caseworkers dealing with Tier 4 ARs were on 100% QA as they had not yet reached the performance standard where they could be signed off (and subject to between 10% and 2% dip sampling, dependent on their experience). However, while the focus was on quality, steps had been taken to improve productivity, including by assigning additional resource and support to the ARU SCW and regularly reviewing casework sampling rates to ensure they were appropriate.

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78 Taken from CRS.



**7.125** ARU told inspectors that performance had significantly improved since May 2019. However, the data suggested that the effects on timeliness of any improvement were not evident until July 2019 – see Figure 24.

Figure 24: Percentage of overseas ARs receiving a decision within 28 days	
Month (2019)	Percentage
April	81.9%
May	80.8%
June	80.5%
July	90.4%
August	93.0%

**7.126** ARU senior management told inspectors “[we] can’t slip on service delivery and can’t slip on quality” as “both are equally as important” but they were not going to send out “rubbish” decisions just to stay within the 28-day service standard. ALAR senior management added “While we would love to hit 100% of SLA, we would rather ARU missed it and did the work properly”.

**7.127** Inspectors were told that ARU was aware of the time constraints on Tier 4 applicants. To prevent students from missing out on their course entirely and having to withdraw their application and reapply the following year, ARU would prioritise Tier 4 ARs according to course start dates where the latest start date had not already passed. Inspectors did not find any evidence of this in the file sample and there was nothing in the notes on CRS to indicate that missing the course start date was a consideration. However, the Home Office provided data showing that ARU completed 91.62% of Tier 4 ARs submitted between June and August 2019 before the latest start date “where it was still possible to complete a decision before the latest course date”.

## Independence and feedback between ARU and original decision makers

**7.128** The transfer of overseas ARs to ARU created a more demonstrable separation between the AR reviewer and the original decision maker than when the ARs were reviewed by ICQAT. However, part of ICQAT’s function is to monitor and provide feedback to DMCs on decision quality, and ARU needed to create new feedback loops to continue this for ARs.

**7.129** ARU already held monthly conference calls with in-country decision-making teams. These calls, referred to internally as a ‘telekit’, were used to provide feedback and were extended to DMCs.

**7.130** In February 2019, the telekit between ARU and the Sheffield DMC noted that ARU had completed 78 ARs in the previous month and had identified 34 errors, 20 of which were due to an “incorrect assessment of genuineness”. According to ARU:

“The errors in assessment of genuineness were mainly due to misinterpreting the applicants’ answers at interview. At admin review stage it was thought that some elements of the refusal had been appropriately explained at interview and therefore could not be maintained as a refusal reason. Other common errors included not putting specific points to the applicant or drawing incorrect conclusions based on the applicant’s responses.”

**7.131** The March 2019 telekit noted that in February 2019 ARU had completed 190 ARs, identifying 68 errors, 46 of which were due to an “incorrect assessment of genuineness”.

**7.132** ARU claimed that the May 2019 telekit showed evidence of improvements in probing and the quality of interviews as a result of feedback. This noted that in April 2019, ARU completed 66 ARs, identifying 18 errors, 11 of which related to the assessment of genuineness. While ARU found issues with one applicant’s response not being fully considered and with decision makers making unjustified assumptions, it observed:

“This aside, again there is an improvement from previous months. There appears to be significantly less probing errors recorded, the main issues stem from the interpretation of the applicant’s answers.”

**7.133** For a perspective on whether original decision-making by DMCs had improved since the beginning of 2019, inspectors requested data for overseas Tier 4 ARs resulting in an overturned decision. The data was taken from local spreadsheets and had not been verified. However, it showed the percentage of overturned original decisions decreasing between February and May 2019 before rising again in June and peaking in July – see Figure 25.

<b>Figure 25: Percentage of overseas Tier 4 ARs resulting in the original decisions being overturned (February to August 2019)<sup>79</sup></b>	
<b>Month (2019)</b>	<b>Overtured (minus invalid)</b>
<b>February</b>	30.31%
<b>March</b>	22.09%
<b>April</b>	18.01%
<b>May</b>	14.71%
<b>June</b>	22.92%
<b>July</b>	37.10%
<b>August</b>	24.31%

**7.134** Inspectors looked for other evidence that the Home Office was acting to improve original decision-making and avoid applicants having to resort to an AR. In its July 2017 report ‘An inspection of entry clearance operations in Croydon and Istanbul’, ICIBI recommended and the Home Office accepted that it should:

“Ensure that Decision Making Centres are correctly staffed at the Entry Clearance Manager (ECM) grade, in terms of numbers, experience and skills, to deliver not just the required levels of assurance but to be continuously improving the quality of initial decisions, through regular, constructive feedback to decision makers regarding both their good and poor decisions.”

**7.135** Inspectors were told that any Tier 4 application that an ECO decided should be refused under the Genuine Student Rule (GSR) required ECM approval.<sup>80</sup> This was to ensure that the credibility of the applicant had been tested and that the interview and refusal notice reflected this. However, during this inspection inspectors were told that, because of a shortage of ECMs in the Sheffield DMC, SCS approval had been given for only “light touch reviews” of these decisions, which meant only a quick review of the decision based on the refusal notice. This regime was in force between 15 February and 31 December 2018. In the overseas Tier 4 file sample, which

<sup>79</sup> The Home Office caveated this data: “This table contains internal management information provided by the Home Office. It has not been quality assured to the level of published National Statistics so should be treated as provisional and therefore subject to change.” Provided as part of a late evidence request so no additional explanation for high overturn rates held.

<sup>80</sup> Sheffield DMC: ECM ‘Review to Risk’ document.



comprised ARs considered by the ARU between 1 March and 31 May 2019, inspectors found evidence that ECM reviews had been resumed.

## At the border ARs

### Eligible decisions

- 7.136** The Home Office told inspectors that the Home Office did not keep a record of the number of eligible decisions made at the border and therefore it was not possible to calculate ARs as a percentage of eligible decisions.
- 7.137** Inspectors requested data about individuals who were removed from the UK within 24 hours of an eligible decision at the border, as this would indicate they did not wish to pursue an AR. However, the Home Office was only able to provide the total number of removals from the UK.

### At the border AR applications

- 7.138** The Home Office did provide data for at the border ARs received and completed between 2015-16 and 2018-19 – see Figure 26. The numbers are low and have reduced year-on-year, so that in 2018-19 they were roughly half the number in 2015-16. Inspectors found no evidence that the Home Office had questioned why the numbers had reduced.

Figure 26: Numbers of at the border ARs received and completed <sup>81</sup> (2015-16 to 2018-19)	
Year	Number of ARs
2015-16	262
2016-17	231
2017-18	155
2018-19	158
<b>Total</b>	<b>816</b>

### At the border AR outcomes

- 7.139** While the number of recorded at the border ARs have reduced each year, the ratio of upheld to overturned original decisions has remained broadly constant at 3:1 – see Figure 27.

Figure 27: At the border AR outcomes (2015-16 to 2018-19)				
Year	Upheld	Overtured	Total	Invalid
2015-16	164 (76%)	52 (24%)	216	46
2016-17	165 (87%)	24 (13%)	189	42
2017-18	96 (79%)	26 (21%)	122	33
2018-19	84 (76%)	27 (24%)	111	47
<b>Total</b>	<b>509</b>	<b>129</b>	<b>638</b>	<b>168</b>

### AR applications and outcomes by nationality

- 7.140** Inspectors asked the Home Office for data for at the border refusals and ARs by nationality. According to this data, four of the five nationalities (Nigeria, India, Pakistan and China) that had

81 Excludes ARs that were withdrawn.

made most at the border AR applications since 2015-16 were also in the top five nationalities for in-country and overseas AR applications – see Figure 28.

Figure 28: At the border refusals and ARs received (2015-16 to 2018-19)							
Year	Nigeria	India	Pakistan	China	Ghana	Total	ARs as %
2015-16	661 (97)	569 (58)	342 (32)	669 (17)	209 (15)	2,450 (219)	8.9%
2016-17	435 (48)	653 (48)	404 (23)	439 (19)	208 (10)	2,139 (148)	6.9%
2017-18	382 (38)	502 (31)	414 (19)	435 (16)	224 (16)	1,957 (120)	6.1%
2018-19	438 (34)	694 (24)	497 (12)	601 (15)	354 (19)	2,584 (104)	4.0%
<b>Totals</b>	<b>1,916 (217)</b>	<b>2,418 (161)</b>	<b>1,657 (86)</b>	<b>2,144 (67)</b>	<b>995 (60)</b>	<b>9,130 (591)</b>	

**7.141** The data was caveated. The totals were for individuals initially refused entry and for non-asylum cases dealt with at ports of entry. Not all of these were eligible decisions and they included cases where the applicant had withdrawn their request to enter the UK. Notwithstanding these caveats, the figures appeared to show an increase in refusals in 2018-19 but a year-on-year reduction in ARs.

**7.142** They also appeared to show that from 2017-18 only a handful of at the border ARs (two in 2017-18 and seven in 2018-19) were received from nationalities other than Nigeria, India, Pakistan, China and Ghana. The “other nationalities” totals for 2015-16 and 2016-17 were 61 and 41 respectively.<sup>82</sup>

**7.143** The Home Office also provided data for upheld and overturned original decisions for the top five nationalities – see Figure 29.

Figure 29: At the border AR applications and outcomes by nationality (2015-16 to 2018-19)											
Year	Nigeria		India		Pakistan		China		Ghana		Total
	Upheld	O'turn	Upheld	O'turn	Upheld	O'turn	Upheld	O'turn	Upheld	O'turn	
2015-16	55	10	30	10	24	5	7	5	5	4	<b>155</b>
2016-17	26	6	31	3	14	2	12	4	7	1	<b>106</b>
2017-18	17	4	16	2	7	4	6	5	8	1	<b>70</b>
2018-19	14	8	13	2	5	4	4	2	9	4	<b>65</b>
	<b>112</b>	<b>28</b>	<b>90</b>	<b>17</b>	<b>50</b>	<b>15</b>	<b>29</b>	<b>16</b>	<b>29</b>	<b>10</b>	
<b>Total</b>	<b>140</b>		<b>107</b>		<b>65</b>		<b>45</b>		<b>39</b>		<b>396</b>

**7.144** The annual totals for at the border AR applications and outcomes by nationality raised further questions about the accuracy and completeness of the Home Office’s data – see Figure 30.

82 Some applications received in one year will not have received a decision until the following year.

Figure 30: At the border ARs				
Year	Total ARs received	Upheld/O'turned (Top 5 only)	Total rejected as invalid	Balance <sup>83</sup>
2015-16	262	155	46	61
2016-17	231	106	42	83
2017-18	155	70	33	52
2018-19	158	65	47	46
<b>Total</b>	<b>816</b>	<b>396</b>	<b>168</b>	<b>242</b>

## Pre-Action Protocols and Judicial Reviews

**7.145** The Home Office provided data for upheld ARs that were escalated by dissatisfied applicants to Pre-Action Protocol (PAP) letters and JRs – see Figures 31 and 32.

Figure 31: Number of Pre-Action Protocol letters following an upheld AR (2015-16 to 2018-19), shown as a percentage of all upheld ARs	
Year	Pre-Action Protocol letters
2015-16	24 (17%)
2016-17	19 (12%)
2017-18	14 (15%)
2018-19	5 (6%)
<b>Total</b>	<b>62</b>

Figure 32: Number of Judicial Reviews following an upheld AR (2015-16 to 2018-19), shown as a percentage of all upheld ARs	
Year	Judicial Reviews
2015-16	55 (34%)
2016-17	35 (21%)
2017-18	19 (20%)
2018-19	11 (13%)
<b>Total</b>	<b>120</b>

**7.146** Only two of the 120 JRs related to an at the border AR had been conceded or granted permission to proceed. The remaining 118 had been dismissed, withdrawn or refused permission to proceed.

## Grounds for refusing entry

**7.147** Appendix V9 of the Immigration Rules covers 'Grounds for cancellation of a visit visa or leave before or on arrival at the UK border and curtailment of leave' – see Figure 33.<sup>84</sup>

<sup>83</sup> This will include ARs that were withdrawn, plus other (non-top five) nationalities.

<sup>84</sup> <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-v-visitor-rules>

**Figure 33: Immigration Rules Appendix V9.2 to V9.4**

**Change of circumstances**

V9.2 Where there has been such a change in the circumstances of the case since the visit visa or leave to enter or remain was granted that the basis of the visitor's claim to admission or stay has been removed and the visa or leave should be cancelled.

**Change of purpose**

V9.3 Where the visitor holds a visit visa and their purpose in arriving in the United Kingdom is different from the purpose specified in the visit visa.

**False information or failure to disclose a material fact**

V9.4 Where:

- a. false representations were made or false documents or information submitted (whether or not material to the application, and whether or not to the applicant's knowledge); or
- b. material facts were not disclosed, in relation to the application for a visit visa or leave to enter or remain as a visitor, or in order to obtain documents from the Secretary of State or a third party provided in support of their application.

**7.148** For the purposes of AR, Appendix V9.2 and V9.4 are eligible decisions; Appendix V9.3 is not. Eligible decisions are those made on or after 6 April 2015. The Home Office was unable to say how many eligible decisions were made at the border.

## Frontline views

**7.149** Inspectors spoke to officers at Heathrow, Gatwick and Birmingham airports. It was suggested that some Border Force Officers (BFOs) and Border Force Higher Officers (BFHOs) tried whenever possible to use 'Change of purpose' as the reason for refusing entry in order to avoid the decision being eligible for an AR. However, it was also pointed out that not all BFOs understood that this was the effect of a 'Change of purpose' refusal.<sup>85</sup> BFOs told inspectors that they had not received formal training about the AR process, and left this to BFHOs.

**7.150** AR training had been provided to BFHOs. One recalled that there had been classroom-based training when ARs were first introduced in 2015, which attendees were expected to cascade to colleagues on return to their port, and a PowerPoint presentation had also been circulated to BFHOs. But, since 2015, there had been no refresher training.

**7.151** The Home Office confirmed that training and awareness sessions had been held for Border Force managers in 2015, and at the same time it had issued an 'Immigration Operational Instruction' (IOI) and guidance on dealing with ARs at the border.

**7.152** More generally, BFOs and BFHOs spoke of the pressures at the PCP to keep the queues moving and how this impacted on decision quality. Shift changes and poor file management were also mentioned as leading to mistakes. Inspectors were told that technical errors, such as "not ticking the right box" or serving decision notices incorrectly, were often picked up and cited by solicitors, but these were less of a concern to Border Force management at the AR stage than if the case went to a PAP or JR, since this could be costly.

<sup>85</sup> At the factual accuracy stage, the Home Office stressed that: "Change of purpose is a lawful decision open to Border Force officers to take if a passenger is seeking entry for a purpose not specified in their entry clearance or visa." It pointed out that this decision "would be subject to PAP and JR proceedings if a passenger felt such a decision was unlawful or unreasonable."

**7.153** Managers also saw experience levels as an issue. One commented that they no longer had enough experienced officers and in a shift of 30 staff there would be “only five that can do cases”.<sup>86</sup>

## File sample

**7.154** For file sampling purposes, inspectors asked for references for all valid at the border ARs decided between March and May 2019. There were 24, carried out at Heathrow, Gatwick and Manchester airports and at the juxtaposed controls in Paris. Inspectors decided to examine all 24.

**7.155** Of the 24:

- all were visa nationals
- 22 were in possession of a visit visa, of which
  - 10 were Nigerian nationals
  - six were Indian nationals
  - six were from six other countries
- two held leave to enter/remain as a returning UK resident, of which
- one was a Pakistani national
- one was a Ghanaian national

**7.156** In every case, the decision to refuse or cancel leave at the border was taken by a Border Force Officer (BFO), with verbal authorisation from a Border Force Higher Officer (BFHO). This is in line with Paragraph 10 of the Immigration Rules, which states that the power to refuse or cancel leave to enter or remain in the UK must not “be exercised by an Immigration Officer acting on his own” but requires “the authority of a Chief Immigration Officer”.<sup>87</sup>

**7.157** In every case, following an initial interview at the Primary Control Point (PCP), the individual should be served with an IS81.<sup>88</sup> Inspectors confirmed that CID recorded that an IS81 had been issued in all 24 cases and also in the four at the border AR applications that were rejected as invalid. Officers are also required to make a formal record where they issue an IS91 (Authority to Detain), and inspectors saw that this had been done in all cases where the individual had been handed to a detaining authority.<sup>89</sup>

**7.158** During the same period, four at the border ARs were rejected by ARU as invalid. Inspectors also examined these files. The four comprised:

- three (a Nigerian national, an Indian national and a Russian national) cancelled visitor visas
- one returning UK resident (an Indian national)

**7.159** Three were rejected because the individual had signed an AR waiver form, although one later complained that they had not understood what they were being asked to sign. The fourth had not signed the waiver form. All four had left the UK.

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<sup>86</sup> At most large ports, the PCPs are staffed by mix of permanent BFOs and Seasonal Workforce (SWF). The latter can issue an IS81 at the PCP but are not trained to conduct further interviews or to progress immigration casework after a person has been detained. Some newer permanent BFOs may not have completed this training or have had much experience beyond PCP work.

<sup>87</sup> <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-1-leave-to-enter-or-stay-in-the-uk#pt1exercise>

<sup>88</sup> Authority to detain for examination/further examination.

<sup>89</sup> Escorting or removal centre contractor, Prison Service, Police

## Notification of the right to apply for an AR

- 7.160** AR guidance sets out the requirement to notify a person of their right to an AR. It is stated in a standard paragraph at the end of the refusal notice – see Figure 34. This paragraph was included in the refusal notification for all 24 at the border ARs that inspectors examined.

**Figure 34: Extract from a refusal notice explaining the right to an Administrative Review**

### **ADMINISTRATIVE REVIEW**

You may seek administrative review of the decision to cancel your continuing leave. You may only seek an administrative review of this decision if you think there has been a case working error.

You may apply for administrative review online. The online application can be accessed at [https://eforms.homeoffice.gov.uk/outreach/UKVI\\_Admin\\_Review\\_Guidance.ofml](https://eforms.homeoffice.gov.uk/outreach/UKVI_Admin_Review_Guidance.ofml)

You have 14 calendar days after the date on which you received this decision to apply for administrative review.

There is a fee for administrative review. The fee will be refunded if the outcome of the administrative review is that the cancellation of leave is withdrawn.

You do not have to leave the United Kingdom while your administrative review is pending.

- 7.161** The AR notification paragraph needs to be tailored to the individual case, as the time limit for submitting an at the border AR differs if the person has been granted Immigration Bail (14 days) or is being held in detention (seven days). The Home Office explained that the latter was to ensure that individuals were detained for the shortest possible time. Inspectors asked whether this gave a detainee sufficient time to access what they needed, for example legal advice, in order to make the best possible AR application. The Home Office said that this had not been raised as an issue.
- 7.162** In one of the 24 at the border ARs, a person who was not detained was incorrectly informed that they had seven days to submit an AR. The Home Office told inspectors: “This was a mistake on the IS82,<sup>90</sup> but the officer did discuss the AR with the Higher Officer and did inform the passenger that [they] had 14 days to submit it.” Inspectors believed that a new refusal letter with the correct AR time limit should have been issued.

## File sample: Identification and correction of case working errors

- 7.163** Based on the file sample, Border Force AR reviewers were not always effective in identifying and correcting all case working errors. The Immigration Rules and AR guidance require AR caseworkers to identify and correct defined case working errors, not just those that affected the original decision or affect the AR outcome. However, AR reviewers at one port told inspectors:

“An admin reviewer would not normally add to a refusal. If they agree with the decision to refuse and believe it to be correct they will maintain the decision as it is. Only if the reviewer believes the refusal to be incorrect to the degree that it undermines the overall decision would they overturn the decision and reconsider the case in order to provide a new/corrected decision.”

<sup>90</sup> Refusal decision notice.

- 7.164** In two of the 24 ARs in the sample an individual had been refused entry on the grounds that they had sought to use deception but the original decision maker had referred to IR V9.2 ‘Change of circumstances’ in the refusal notice. The Home Office agreed with inspectors that the AR caseworker should have identified these errors, commenting in one instance that “the use of counterfeit stamps would be deception, so V9.4 might have been more appropriate” and “should have been used”.
- 7.165** In two other cases inspectors were concerned that the AR reviewer had not addressed all the points raised by the applicant in their AR application. The Home Office argued that in one of these cases all the points were considered but this could have been better reflected in the AR decision letter. In the other case, it said that the BFHO had considered all the points in the AR but had “felt it did not add sufficient weight to the application to overturn the decision”. Inspectors were told that staff had received a reminder to include all the points considered when explaining an AR decision.
- 7.166** Of the 24 at the border ARs, 16 upheld and eight overturned the original decision. Of the upheld ARs, inspectors found that:
- six were wholly in line with AR guidance
  - one should have been rejected as invalid as the wrong reason for refusal had been cited and the correct reason (V9.3 ‘Change of purpose’) was not an eligible decision
  - nine were right to uphold the original decision, but had not followed AR guidance:
    - three did not correct errors in the original refusal notice, relating to the application of the Immigration Rules
    - three did not address all of the points raised in the AR application
    - one included a complaint about the AR waiver process that was not investigated
    - one amended the reasons for refusal but maintained the original date of refusal on the new refusal notice
    - one should have requested a refund of £80 as two valid ARs were submitted in quick succession on the same eligible decision
- 7.167** Case Study 5 is an example of a refusal that inspectors found was correctly upheld at AR.

#### Case Study 5: Refusal decision correctly upheld at AR

##### **The original refusal**

The individual was granted a visa having stated in their application their intention to stay in the UK for 20 days. However, on arrival they told the officer at the PCP that were visiting for a period of six months. They also admitted that they had not disclosed that they had a grown-up child living in the UK with their family because the child did not have valid leave to remain.

The individual’s leave was cancelled because they had failed to disclose material facts in accordance with Appendix V9.4 of the Immigration Rules.



**The AR**

The individual applied for an AR waiver and was granted Immigration Bail as they indicated their intention to apply for an AR. They applied for an AR 14 days after leave was cancelled. In their application the individual attempted to explain why they had not declared their child in their visa application.

The AR decision was delivered the following day. The applicant left the UK seven days later.

**ICIBI comments**

Cancellation of leave was in accordance with the Immigration Rules.

The AR reviewer responded to all of the points raised, concluding that the original decision maker had correctly cancelled the individual's visa and that the decision should be upheld.

**7.168** Case Study 6 illustrates an error by the BFO who made the decision to refuse entry which the AR reviewer failed to identify and correct.

**Case Study 6: Failure to identify and correct a case working error****The decision to refuse entry**

The Border Force Officer (BFO) decided to cancel the person's visit visa at the border because they had failed to disclose their correct occupation. The visa was cancelled on the basis that the person had made false representations on their visa application form. However, they were refused entry "in accordance with paragraph V9.2 of Appendix V: Immigration Rules for Visitors".

On the same day, the BFO set removal directions for two weeks from the date of arrival, despite the person having indicated that they intended to apply for an AR.

**The AR**

The AR was received within seven days. Since an outstanding AR is a barrier to removal Border Force was required to cancel the removal directions.

A week later, the Border Force AR reviewer upheld the original decision in full.

New removal directions were set. The person was removed two and a half weeks after having arrived in the UK.

**ICIBI comments**

In the refusal decision notice, the BFO had written that the person had "used deception in your visa application, in that you did not give a true representation of your current employment". The notice should therefore have cited paragraph V9.4 of the Immigration Rules, not paragraph V9.2. The AR reviewer should have identified this as an error.

More seriously, the person having indicated that they intended to apply for an AR, removal directions should not have been set for a date prior to the latest date for doing so. The AR application was in time.

**Home Office response**

The Home Office agreed that paragraph V9.4 should have been cited and that removal directions should not have been set in this case.



- 7.169** The decision to cancel leave at the border was overturned in eight out of the 24 ARs examined by inspectors. In one there was scope to carry out further verification checks and inspectors believed the refusal should have been reconsidered rather than overturned. In the other seven cases inspectors were satisfied that the AR caseworkers had identified and corrected the case working errors.
- 7.170** In Case Study 7, the AR reviewer also recognised that the decision to detain the individual was incorrect and inappropriate and granted them Immigration Bail.

### Case Study 7: Incorrect cancellation of visa overturned at AR and incorrect detention ceased

#### **The original refusal**

A 60-year old individual had their visit visa cancelled by a Border Force Officer (BFO) on arrival at a UK airport. The BFO noted that, when applying for their visa, the individual had made false claims that they had friends and family in the UK and that their spouse was deceased.

The individual, who had multiple health issues, was detained at an Immigration Removal Centre (IRC).

#### **The AR**

The individual, with help from a legal representative, applied for an AR within two days of entering detention. They were released from detention six days later, prior to the AR having been decided.

A week after their release, the AR reviewer withdrew the refusal, having established that, in fact, the individual had declared on their visa application form that they were coming to visit friends and family in the UK and that the Entry Clearance Officer (ECO) had verified that the individual had sufficient funds before granting the visa.

The AR reviewer also identified that the BFO had cited the wrong paragraph of the Immigration Rules in the refusal notice and that the sponsor interview, which was used to show discrepancies with the individual's statements, had not been recorded correctly. The reviewer decided that if the individual sought a Judicial Review, which they judged was likely, the interview record would "not stand up in court".

#### **Feedback**

The AR reviewer made a record of their discussion with their Border Force Senior Officer (BFSO) about overturning the decision to cancel leave in which they noted that they would provide feedback to the original decision maker.

### ICIBI comment

The decision to detain in this case appeared to ignore the fact that the individual should not have been detained under the Home Office's 'Adults at Risk' policy. Although the individual declared their health issues, the relevant entry on the form seeking approval from the Detention Gatekeeper (DGK)<sup>91</sup> stated: "None known."

Inspectors found another example at the same Terminal of an individual with health issues who was referred to the DGK for detention. The health issues became known to Border Force at the port during the course of a baggage search, but this information was not passed on to the DGK.

- 7.171** Border Force AR reviewers told inspectors that the quality of the interview records made by the original decision maker had an impact on the outcome of any AR. They said that where the interview record was deficient they would simply overturn the decision and grant leave. They described some interview records as "very short and not very legible" with irrelevant questions or inadequate probing. One reviewer commented: "We have had occasions where someone has been refused on X, Y or Z, and then in the interview there is no mention of X, Y or Z."
- 7.172** Inspectors also found that some interview records were difficult to read. In two of the 24 ARs examined by inspectors, the individual's solicitor had asked for interview transcripts, prompting the AR reviewer to ask the caseworker to type the transcript before it could be sent. In its response to one of these, the Home Office stated: "Interview transcripts do not have to be typed. This one was as the officer in question has handwriting that can be hard to read."
- 7.173** Border Force Operational Assurance Directorate (OAD) accepted that the general standard of record keeping could always be improved and told inspectors that this was something that managers recognised and did flag. However, there were no plans to move away from handwritten interview records.

### File sample: Notification of AR decision to overturn the original decision

- 7.174** In none of the eight cases where the AR reviewer overturned the original decision did the reviewer provide a full explanation of the reasons for their decision in the letter notifying the applicant of the outcome of their AR. However, one letter did contain an apology for "the previous error made in the consideration of the cancellation of your leave".

### File sample: AR waivers

- 7.175** AR 2.8 of the Immigration Rules states: "Where administrative review is pending the Home Office will not seek to remove the applicant from the United Kingdom".<sup>92</sup> This is qualified by AR 2.10, which explains:

"Administrative review is not pending when: 1(a) an administrative review waiver form has been signed by an individual in respect of whom an eligible decision has been made. An administrative review waiver form is a form where the person can declare that although they can make an application in accordance with paragraphs 34M to 34Y of these Rules, they will not do so."

<sup>91</sup> The Detention Gatekeeper assesses referrals for detention to ensure that detention is proportionate; whether there is a realistic prospect of removal within a reasonable timescale; and whether individuals may be at risk of harm in detention due to any vulnerabilities.

<sup>92</sup> <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-ar-administrative-review>

**7.176** Of the BICS directorates, only Border Force used AR waivers. AR guidance instructs Border Force officers:

“You should ensure that the AR waiver form has been issued to the individual and correctly completed and signed. Copy served to the port file. The individual is removable.”

**7.177** In the file sample, inspectors found a case where a returning UK resident had their leave cancelled at the border and was removed before the time they had to apply for an AR had expired. The individual had not signed an AR waiver. After their removal, the individual made an AR application from overseas but this was rejected by ARU as invalid.

### Case Study 8: Premature removal and rejected AR application

#### **The decision to refuse entry**

A returning UK resident with entry clearance sought to enter the UK for five days. The BFO was not satisfied that the individual was returning to the UK to settle (either then or in the future) and cancelled their leave. The refusal decision notice refused leave as a visitor and removal directions were set for four days from the date of arrival to match the individual's outbound ticket. The individual departed on that date.

The individual had not signed an AR waiver form.

#### **The AR**

Within two weeks of having departed, the individual submitted an AR application from overseas.

#### **Inspectors' comments**

The individual had sought entry as a returning resident but was refused entry under 'Appendix V'. This was a case working error as leave should have been cancelled under General Grounds for refusal (IR320(9)).

The Home Office set removal directions within the period allowed for an AR application, which was in breach of the Immigration Rules as no AR waiver had been signed.

#### **Home Office response**

The Home Office responded that the individual had initially sought entry as a visitor but had also stated they had come to renew their ILR. That was why both were covered in the refusal. However, refusal should have been under 320(9) and not as a visitor. Furthermore,

“The passenger opted to leave the UK in line with [their] original booking and intentions. We have no power to stop a person leaving the UK in those circumstances and we cannot insist a waiver is signed if the passenger does not agree to waive their right to submit an AR. The passenger's passport was retained by Border Force as [they] had been refused entry and [their] passport was returned to [them] on departure.”

### **Independent Chief Inspector's comment**

The Home Office's response to the absence of an AR in this case is inconsistent with its own statement: "If they do not wish to exercise their right to an Admin Review (wish to leave the UK) then they must sign an IS301." The fact that the date of departure suited the individual does not alter the fact that Border Force set removal directions in breach of the Immigration Rules.

While rejection of the individual's AR application as invalid may have been technically correct, it failed to recognise that the Home Office made errors in their handling of this individual for which there has been no redress.

- 7.178** Inspectors asked the Home Office how often the waiver form was used. They were told that this information was "not in a reportable format" as "a record is kept on the port file/CID when a waiver is signed. There isn't a requirement to keep a separate record for waivers and none of the ports spoken to keep additional records".
- 7.179** Inspectors asked about oversight of the waiver process. The Home Office replied that:
- "The Duty Border Force Higher Officer authorising the refusal of leave to enter will be informed by the Border Force Officer that the passenger wishes to waive their right to an Admin Review. The Higher Officer will approve issuing the waiver and at some locations may choose to speak to the passenger or, if satisfied that all protocols have been correctly followed, will leave it to the Officer to arrange further actions in connection with the passenger's removal."
- 7.180** A Border Force AR reviewer told inspectors that there had been an issue with a particular airport terminal where individuals were being asked to sign AR waivers before they had been given their refusal decision notice. The officers involved had attempted to explain this by saying they had given verbal notification of the refusal. The AR reviewer said this was unacceptable.<sup>93</sup> Inspectors were told it had resulted in the Home Office having to concede cases at JR.
- 7.181** Border Force senior management at Heathrow told inspectors that there had been an issue with AR waivers being offered before leave to enter had been cancelled. They were confident that ARs were being explained clearly but had "recently put out information to [remind] officers on the sequence of events".
- 7.182** Inspectors spoke to a number of BFOs about AR waivers. One group noted that some individuals signed the waiver form but still went on to submit an AR application, saying that they did not understand what they were signing. The officers believed that this was not an acceptable excuse. They were also frustrated at having to explain the AR waiver process to an individual who had made false representations. One commented:
- "I say if you don't sign this, you're going into detention. But the DGK (Detention Gatekeeper) will not put them into detention. There's nothing more frustrating than having someone standing in front of you who has committed fraud. If it's false reps, they shouldn't get the right of AR."
- 7.183** In the at the border AR sample, inspectors found two cases where the applicant had complained about the AR waiver process. One is described below.

<sup>93</sup> While AR guidance does not explicitly prohibit this, it refers to the details of the AR process being contained on the IS82.

## Case Study 9: Identifying ARs where there may be grounds for a formal complaint

### **The original decision**

Border Force cancelled the visit visa for an individual due to discrepancies between the answers in their visa application form and what they told the BFO when seeking to enter the UK. Leave was cancelled on the basis of a change of circumstances since the visa had been issued and failure to disclose material facts.

The BFO minute on CID stated that the individual was presented with their refusal decision letter at 11:54 and that the AR waiver form was signed at that time.

Removal directions were set and removal was attempted the same day and again the following day. Both attempts failed as the individual refused to depart the UK. Meanwhile, the individual was detained in an Immigration Removal Centre.

### **The AR**

A Home Office minute written on the day of the second removal attempt recorded that a family member seemed to be alleging that the individual had been deceived into signing the AR waiver form and had been lied to and told that they would be “locked up for seven days and be in prison for 30 days.”

Ten days later, an application for bail was received which required a review of the decision to cancel leave. The BFHO reviewer concluded the Home Office could not argue the case for continued detention before an Immigration Judge due to concerns about the refusal notice, which contained “a lot of apparently irrelevant information”.

A new refusal decision notice was served on the individual, giving them the right to an AR.

An AR was submitted in which the applicant stated that they had been pressurised into signing the AR waiver form and did not understand what they were signing. It also said that the individual had raised with Border Force that they had not received any legal advice.

The AR decision letter stated the reviewer could see no evidence that the individual had been pressurised into signing the AR waiver and upheld the original decision. However, the reviewer strongly advised the individual to make a formal complaint “as that is not the kind of behaviour expected from a Border Force officer and the matter should be investigated thoroughly.”

### **ICIBI comments**

It is unclear whether the AR waiver was signed before or after the refusal notice was given to the individual. CID showed that the refusal notice was printed at 12.00, while the BFO minute noted that the individual was given the refusal decision at 11.54 and that the AR waiver notice was signed at that time.

The individual may have had grounds for a formal complaint but the AR reviewer should have signposted how to do this or forwarded the case to the relevant complaints team.

### **Home Office response**

The AR reviewer checked with the individual whether they had made a complaint and advised them that they could complain if they wanted to do so. It would have been more helpful had they signposted how to make a complaint but an AR reviewer would not make a complaint on behalf of a passenger.

**7.184** Inspectors asked frontline BFOs how often individuals waived their right to an AR. One BFO told inspectors: “I can get seven out of ten to sign an AR waiver”, while another guessed at “50:50”. A Senior Officer commented that “people seem to be happier to waive their right”.

## AR reviewer independence (separation from the original decision maker)

**7.185** At Heathrow, Gatwick and Manchester airports Border Force had dedicated casework teams that were responsible for all cases where there is a legal barrier to removal, complex cases where protracted further enquiries are required, including conducting further immigration interviews and asylum screening interviews, recommending detention or Immigration Bail, responding to PAP letters and JRs, and completing ARs. There were no separate casework teams at any seaports.

**7.186** Officers in the casework teams came under the same senior management as the officers on the PCP but had no involvement in original decisions to refuse entry. To that extent they were independent “in terms of their separation from the original decision maker”.

**7.187** Inspectors were told that most at the border ARs were reviewed at the Heathrow Casework Hub (HCH). Officers spent 6 to 12 months in the HCH before returning to their home port, which meant there was a constant staff “churn”. One manager told inspectors: “If you want a perfect system, the unit would be permanently staffed with permanent experienced people. It keeps switching over or rotating every 12 months. There is a big learning curve.”

**7.188** Smaller airports and seaports did not have dedicated casework teams. Each had its own arrangements for dealing with ARs. In some cases, ARs were sent to another port, possibly to one that had a casework team. In others, ARs were simply given to a BFHO who had had no involvement in the original decision.

**7.189** With one exception, all of the at the border ARs examined by inspectors had been reviewed by a casework team. The one that had not was an AR submitted in respect of a decision made at the Paris juxtaposed controls. The AR reviewer worked at the Brussels juxtaposed controls. This was under the same regional command, but the BFHO reviewer had had no involvement in the original decision.

## Human rights considerations

**7.190** AR guidance regarding human rights (HR) claims is clear:

“The Home Office will not consider any human rights, asylum or EEA grounds that are raised in the application. This is in accordance with paragraph AR2.6 of [Appendix AR](#) of the Immigration Rules.”<sup>94</sup>

**7.191** Inspectors were told that Border Force AR reviewers followed the guidance. However, inspectors found that different ports had different procedures for handling HR arguments raised within an AR. At some, once the AR had been completed, and if it had been unsuccessful, the HR grounds would be forwarded to the Operational Support and Certification

Unit (OSCU) to consider. At other ports, the AR reviewer would instruct the applicant that they should complete a Section 120 form and the grounds would be considered separately.<sup>95</sup>

- 7.192** There was one example in the 24 at the border ARs examined by inspectors where the AR reviewer wrote: “You have submitted representations that raise Human Rights issues. These will be considered and you will be notified of the outcome of this.” In another, the AR reviewer did not acknowledge that HR grounds had been raised. Commenting on the latter, the Home Office stated: “A Border Force Officer is not in the position to state an HR claim is not relevant. Dealing with HR claims is being reviewed.”

## Quality Assurance

- 7.193** Responsibility for quality assuring immigration casework is devolved to individual ports or business areas. Border Force OAD relies on operational managers to assure and assess activity and record any issues identified, sharing this with OAD. Internal guidance regarding assurance expectations states:

“Managers have responsibility for providing assurance that the expectations for which they are responsible are being met. How that assurance is obtained, and the frequency of any management checks can be decided locally, using a documented, risk-based approach.

Where expectations or indicators are not being met, it is important that managers are honest about weaknesses and put plans in place to facilitate improvement. Assurance and risk management should feed into each other.”

- 7.194** Different assurance arrangements for ARs operated at the ports inspectors visited. At one, BFHO reviewers had autonomy to uphold and overturn original decisions themselves and would only “check with the duty SO [Senior Officer] to see if they’re in agreement” with how they had interpreted the case. They were confident their decision-making process was sound and fair and that referring to the BFSO was “not compulsory”. BFSOs agreed and told inspectors they did not have a huge amount of oversight of the AR process. One BFSO said they would “periodically look through some cases and perhaps pick one out, but we aren’t particularly involved in the process. It’s more out of curiosity – partly just to learn. I wouldn’t actively get involved to change anything.”

- 7.195** At another port, staff said they had a 100% assurance process for all post-IS 81 casework. A dedicated member of staff from the casework team would print off a list of the cases that had been generated in the past week and would conduct a CID check and a physical check of the port file “to make sure that everything is in order”. Any errors found would then be fed back to the BFO who had made the original decision via their line manager. This 100% assurance meant that even cases where an AR application had not been submitted would be assured to ensure there had not been any issues.

- 7.196** Elsewhere, BFHOs were required to refer to a BFSO whenever they wished to overturn an original decision and AR reviewers told inspectors that BFSOs would ‘dip sample’ 10% of all ARs, looking at the port file and at CID. Inspectors saw references in AR records to discussions

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<sup>95</sup> Section 120 of the Nationality, Immigration and Asylum Act 2002 places a requirement on the individual to tell the Home Office if they have any reason or further grounds to stay in the UK (in this case, after an AR has been upheld). For Border Force, this is communicated in a separate letter/document, called a ‘One stop notice’, which should be dispatched with the AR decision letter. The form states: “What you must do now: You must now tell us about any reason you have for wishing to enter or remain in the United Kingdom, any grounds on which you should be permitted to enter or remain in the United Kingdom or any grounds on which you should not be removed from or required to leave the United Kingdom.”



with BFSOs at this port but did not see any evidence that any of the cases examined had been quality assured.

## Feedback to original decision makers

**7.197** The Home Office provided inspectors with an overview of the feedback mechanisms at Heathrow Airport:

“Heathrow Casework Unit has advised that for any AR decision that is overturned a detailed response is provided to the BFO and HO and in addition the terminal SPOC (SO Single Point of Contact) so that the information can be cascaded. The SPOC will feedback via daily briefings. There is also a newsletter that highlights the trends across the whole of HCH casework. There is a new process in place to get the SPOCs together quarterly to review the casework issues and trends.”

**7.198** When inspectors spoke to BFOs, some recognised what they referred to as a “lessons learned email”, which told them if an AR reviewer had found that they had made an error. This email would also be sent to the BFHO who had authorised the refusal. BFHOs told inspectors about “daily briefings” where key messages would be relayed to staff, although this was often a direction to staff to read their emails.

## File sample: Evidence of feedback

**7.199** Ten of the 24 ARs examined by inspectors identified one or more case working errors (eight resulted in the original decision being overturned; two upheld the original decision but one amended the refusal notice and the other removed a refusal reason). However, only four of the ten contained a CID note stating that feedback had been given to the original decision maker or to the relevant BFO to pass on).

**7.200** Inspectors concluded that the recording of both quality assurance and of feedback was unstructured and patchy.

## Performance: The 28-day service standard

**7.201** AR guidance and the Border Force’s ‘Assurance expectations’ reinforce the 28-day service standard for AR decisions. The AR reviewers were expected to monitor this themselves. Management information (MI) on the AR service standard was not routinely generated for senior managers. The latter told inspectors that the low numbers meant that senior management oversight was not necessary.

**7.202** The Home Office was unable to tell inspectors how many at the border ARs received between April 2018 and March 2019 had breached the 28-day service standard as “no such data was available for Border Force”.

## File sample: The 28-day service standard

**7.203** Of the 24 ARs examined by inspectors, only one took longer than 28 days. Border Force AR reviewers told inspectors that the low numbers meant ARs were completed well within the time allowed and a senior manager reported that his casework team had told him that ARs were normally completed within five days of receipt.



## AR fee refunds

- 7.204** AR guidance sets out that the £80 AR fee is to be refunded if the application is rejected as invalid or the decision on review is to grant leave, including where leave was initially granted for the wrong period or subject to the wrong conditions.
- 7.205** Border Force is not involved in processing refunds for ARs that are rejected as invalid as validation of at the border ARs is handled by the ARU team in Manchester. However, Border Force AR reviewers are required to complete a refund request form where a valid AR results in them overturning a decision to cancel leave. The completed form must be sent to the ARU who forward it to a separate charging team based in Liverpool that processes all AR refunds.

## File sample: Refunds

- 7.206** Eight of the 24 at the border ARs examined by inspectors resulted in the original decision being overturned and these applicants were therefore entitled to the refund of their application fee. Of the eight file records:
- five did not contain a request for a refund and there was no indication that any refund had been made
  - two contained a request for a refund of £55, for one of which Border Force stated that a further request to refund the “missing” £25 had been made at a later date, although this was not evident from the CID record
  - one suggested the £80 refund had been made, but this had not been initiated using the specific refund request form set out in AR policy. When asked how payment could have been made outside the documented procedure, the Home Office told inspectors: “ARU should have gone back to BF to request that the form was generated ... before actioning the refund. All ARU staff have been advised of the correct process”.
- 7.207** Inspectors brought all eight ARs to the attention of the Home Office on 23 September 2019. Of the six cases that had not received a refund or only a partial refund only one refund request had been made of the charging team when inspectors checked with the Home Office on 3 December 2019.<sup>96</sup>

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<sup>96</sup> During the factual accuracy stage in mid-January, ARU confirmed that refunds for all of the cases referred have now been processed.

# 8. Inspection findings: Organisational Learning

## Continuous improvement

### Decision quality

- 8.1** In November 2013, in a debate on the Immigration Bill, the Immigration Minister told the Public Bill Committee that:

“Administrative review will be a central part of improving decision quality, dealing with case working errors and feeding back review outcomes much better to decision makers.”<sup>97</sup>

### Feedback loops

- 8.2** The Administrative Review Unit (ARU) held monthly conference calls (“telekits”) with original decision makers, sharing thematic or systemic issues, as well as data on overturns. However, Appeals, Litigation and Administrative Review (ALAR)<sup>98</sup> senior management felt that these were often “dry and mechanistic” and were not sufficient on their own to bring about improvements in the quality of original decisions.
- 8.3** Inspectors spoke to Entry Clearance Managers (ECMs) from the Sheffield Decision Making Centre (DMC) dealing with overseas visa applications. They told inspectors that working relationships with ARU had been improving and they understood from ARU and ALAR that “it’s about credibility and procedural fairness” and were trying to address this. However, one said: “If it’s a simple issue Entry Clearance Officers (ECOs) would go along with an overturn, if they feel strongly, they would interview again and possibly re-refuse”. Others described ARU’s decisions as “bizarre” and “some of the things they were overturning were wrong. The AR caseworkers are no more right than us. We feed that back, but they say “we’ve agreed to reconsider”.
- 8.4** Inspectors were told that some decisions were reconsidered and overturned by the original decision-making unit without there having been an Administrative Review (AR) or, in some cases, where it was not an eligible decision. This was contrary to the Rules and guidance and raised concerns about consistency and whether the scope of Administrative Reviews (ARs) needed to be reviewed. A senior manager in one unit remarked that the “AR team will uphold the decision as they don’t apply discretion normally hence why we’re being asked to look at this”. In another, managers told inspectors that there was an inbox where they would accept requests for reconsiderations even though the original decisions did not qualify for an AR.
- 8.5** Inspectors saw evidence of good working relationships and feedback mechanisms between ARU and other litigation teams. ARU told inspectors that the relationships had improved since June 2018 when ARU moved from Refused Case Management to ALAR. However, while ARU

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<sup>97</sup> <https://publications.parliament.uk/pa/cm201314/cmpublic/immigration/131105/pm/131105s01.htm>

<sup>98</sup> Formerly known as Appeals, Litigation and Subject Access Request (ALS)

staff said they were more mindful of a decision having to be robust to prevent overturn at litigation, inspectors were unable to identify what practical effect feedback from litigation had had on ARU's handling of ARs.

- 8.6** ALAR senior management told inspectors that they would like to see better links between litigation teams and ARU, so that feedback could be more fruitful. While they considered that low numbers of successful Pre-Action Protocols (PAPs) and Judicial Reviews (JRs) was a fairly good indicator of the quality of ARs, they would like to be told why JRs and PAPs had failed or succeeded. The importance of making better use of JR data was also identified by the UKVI's Central Operations Assurance Team (COAT), who had recommended more joined-up working with Litigation but had not seen much progress towards this.

## Monitoring AR applications and overturn rates

- 8.7** The number of AR applications has fallen considerably since 2015-16, which is a possible indicator that the quality of original decisions has improved. However, many factors can affect why someone decides to exercise their right to apply for an AR, and without thorough analysis it is not possible to say how much this reflects decision quality or, for example, the perception that the AR process is too slow, is constrained in what it can consider and therefore lacks true independence, and is not value for money.
- 8.8** There are similar problems in relying on AR overturn rates as an indicator of the quality of original decisions. Nonetheless, in 2013 the Home Office said that it would "monitor overturn rates" and compare them with the "60% figure currently down to casework error" that were overturned at appeal. Along with establishing feedback mechanisms "to ensure that lessons learned are fed back to caseworkers", regular reports on the performance of ARs would be sent to senior management.
- 8.9** Inspectors found no evidence that AR overturn rates had been monitored since the Immigration Act 2014 (the 2014 Act) came into force. Had it been attempted, the split of responsibilities for ARs across different directorates and business areas, and the poor quality and disparate data, would have made it more difficult but not impossible if someone owned this issue.

## Learning from assurance

- 8.10** ALAR senior management told inspectors that the AR process was subject to three lines of assurance: quality assurance (QA) completed by senior case working staff at ARU on a percentage of individual cases completed; second line assurance from internal assurance bodies, such as COAT for UKVI and Operational Assurance Directorate (OAD) for Border Force; and third line assurance from external bodies, such as ICIBI and the Government Internal Audit Agency.
- 8.11** Inspectors were told that there were regular calls between ARU and initial decision-making areas, including separate calls for different immigration routes, to provide efficient and effective feedback on initial decisions. There were also regular calls between ARU and COAT to discuss assurance.
- 8.12** COAT reports provided an assessment of ARU's assurance practices, measured against UKVI's Operational Assurance Strategy. COAT told inspectors that it found that ARU was open to criticism and implemented changes based on its feedback. COAT updates were used to judge

the quality of ARU decisions. Its most recent formal assurance report, covering the year to 31 March 2019, was published on 20 September 2019.

- 8.13** In September 2019, COAT reported that it would be assuring the ARU “in the next two months” to assess whether the quality of overseas ARs had improved following the transfer from ICQAT. In October 2019, COAT had begun “secondary sampling” of ARU decisions. There had been meetings to prepare for a formal assurance inspection and another meeting was planned for the following month.
- 8.14** Inspectors asked Border Force OAD about assurance activities in relation to ARs. OAD explained that first line assurance was provided by Border Force Senior Officers (BFSOs) based at the ports, who looked at a percentage of case files selected at random. However, inspectors saw no evidence of this in any of the 24 at the border ARs decided between 1 March and 30 May 2019.
- 8.15** At the ports visited by inspectors, Border Force managers said that they provided feedback to OAD monthly, highlighting any issues. But, OAD commented that the low numbers of ARs meant that they were not generally discussed in management or assurance meetings.
- 8.16** In terms of second line assurance, OAD said that it had:

‘not conducted a specific thematic review of Admin Review thus far because a fundamental part of our risk-based assurance approach is that we do not routinely duplicate reviews undertaken or due to be undertaken by other reviewers. However, when we do conduct port spot checks we always look at casework which could involve cases that have included an Admin Review.’

## External Quality Assurance Panel

- 8.17** In its formal response to the 2015 ICIBI inspection of the AR process, the Home Office stated it would:

“...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.”<sup>99</sup>

- 8.18** Inspectors found that this idea had not been pursued.

## Chief Caseworker Unit<sup>100</sup>

- 8.19** Inspectors spoke with the Chief Caseworker Unit (CCU), which was set up in May 2018, post-Windrush. In December 2018, responding to a Parliamentary Question about changes introduced “to minimise the chance of errors occurring in relation to a person’s immigration status”, the Immigration Minister said: “We have created a Chief Caseworker Unit within UKVI ... to bolster case working expertise and ensure that caseworkers have a clear escalation route where they have a concern or require specialist guidance.”

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<sup>99</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/526205/Home\\_Office\\_Response\\_to\\_ICI\\_Report\\_on\\_Administrative\\_Review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/526205/Home_Office_Response_to_ICI_Report_on_Administrative_Review.pdf)

<sup>100</sup> <https://www.theyworkforyou.com/wrans/?id=2018-12-05.199288.h>

- 8.20** As well as ensuring that discretion was being properly exercised and exploring systemic issues across UKVI, CCU told inspectors that it was now advising on particularly complex cases and trying to build a bridge between policy and operations so that operational areas played a greater role in the design and development of policy.
- 8.21** CCU was keen to get more UKVI referrals. It saw customer insight data for UKVI but found it “very numerically focused”, making it difficult to “get under the skin of what the issues are”. This was evident from the fact that CCU was unaware, for example, of problems with interviewing in overseas Tier 4 cases that impacted on AR caseworkers attempting to identify case working errors.

## **Customer feedback, queries and formal complaints**

- 8.22** Inspectors asked how ‘customer satisfaction’ with the AR was measured and were told that this relied on customers giving feedback rather than the Home Office seeking customers’ views.
- 8.23** The Home Office was not capturing data about ARs from queries to the helpline managed by SITEL.<sup>101</sup> UKVI’s Strategy, Transformation and Performance (STP) Central Operations – Data Systems and Change team confirmed to inspectors that it was unable to provide this information as “the tools used to capture enquiry topics do not have Admin Review as an available topic of contact”.
- 8.24** ARU staff told inspectors that they were forwarded complaints about the AR process from UKVI’s Central Correspondence Team. These were dealt with on an individual basis, no one person had responsibility for managing complaints or capturing this data. However, inspectors were told that ARU did “analyse complaints” and did “keep a record of complaints” but was working to improve this: “There is some space for ARU to do more on this, possibly capturing this information in a more appropriate format.”

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<sup>101</sup> For overseas visa applications, queries are made using a helpline outsourced to SITEL UK. <https://www.gov.uk/contact-ukvi-inside-outside-uk/y/outside-the-uk/english>

# 9. Inspection findings: Administrative Reviews for EU Settlement Scheme decisions

## Background

- 9.1** From 1 November 2018, the Administrative Review Unit (ARU) became responsible for dealing with any Administrative Review (AR) applications in respect of EU Settlement Scheme (EUSS) decisions.<sup>102</sup>
- 9.2** The EUSS Statement of Intent,<sup>103</sup> published in June 2018, had noted that primary legislation would be required to establish a right of appeal for the Scheme, and that:
- “Subject to Parliamentary approval, we intend that those applying under the scheme from 30 March 2019 will be given a statutory right of appeal if their application is refused. This will allow the UK courts to examine the decision to refuse status under the scheme and the facts or circumstances on which the decision was based.”
- 9.3** By the end of 2019, the necessary legislation had yet to be passed. Meanwhile, according to the EUSS “experimental” statistics published by the Home Office on 17 December 2019, up to 30 November 2019 more than 2.2 million applications had been concluded, of which five had been “refused on suitability grounds”.
- 9.4** The EUSS Statement of Intent had also undertaken that “where a valid application made is refused under the scheme, we will provide for the right to request an administrative review of the decision”.
- 9.5** EUSS applications refused on suitability grounds were excluded from the eligible decisions that qualified for an AR. However, where an applicant had been granted either pre-settled status (rather than settled status) or refused status under ‘eligibility’ they became eligible to apply for an AR. Of the 2.2 million EUSS applications concluded by 30 November, 59% had been granted settled status and 41% pre-settled status.

## Wider ARU remit

- 9.6** The grounds for seeking an EUSS AR were set out in guidance for ARU caseworkers and staff working in the EUSS Settlement Resolution Centre (SRC).<sup>104</sup>

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102 The EUSS was opened to all eligible applicants on 30 March 2019, except for those wishing to apply from overseas, who could apply from 9 April 2019, and Zambrano carers, who could apply from 1 May 2019. This followed a series of live tests of the EUSS, beginning on 28 August 2018 with Private Beta Phase 1 (which ran until 17 October 2018), followed by Private Beta Phase 2 (1 November to 21 December 2018), and culminating with Public Beta Phase (which ran from 21 January to 30 March 2019).

103 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/718237/EU\\_Settlement\\_Scheme\\_SOI\\_June\\_2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/718237/EU_Settlement_Scheme_SOI_June_2018.pdf)

104 <https://www.gov.uk/government/publications/administrative-review>

### “Grounds for seeking an administrative review

Where the applicant has received an eligible decision, they can apply for an administrative review if they think:

- the original decision-maker failed to apply, or incorrectly applied, Appendix EU
- the original decision-maker failed to apply, or incorrectly applied, the published guidance in relation to the application
- there is information or evidence that was not before the original decision-maker which shows that the applicant qualifies for a grant, or a different grant, of leave under Appendix EU”

**9.7** The last of these bullet points meant unlike in-country, overseas or at the border Administrative Reviews (ARs), for an EUSS AR the ARU caseworker is not limited to identifying and correcting case working errors but can consider and, where appropriate, request new evidence. ARU caseworkers and managers described this as a new way of working, which they felt raised a number of questions. One senior manager commented:

“It’s like a brave new world. Caseworkers are having to become used to accepting new evidence. It’s a customer friendly scheme ... We can’t pause a review, so it makes the SLA very tight and almost unachievable. It’s been a strange cultural shift.”

Another added:

“We can accept and request new evidence which slows the process down enormously. I think there needs to be a balance but it’s a policy question and they’ve asked for our input. There needs to be a point where the decision-making stops and the review starts.”

**9.8** ARU caseworkers told inspectors that they gave EUSS AR applicants “a reasonable amount of time” to obtain any supporting documents and would always allow extra time even if that meant them missing the 28-day AR service standard.

**9.9** Inspectors asked whether AR caseworkers ever conducted enquiries on behalf of an applicant, for example, contacting another government department to obtain evidence of residence. Caseworkers replied that “we don’t currently do that. We’ve never come across a scenario where we need to, [the evidence] should be on the residence proving system[sic]”.<sup>105</sup>

**9.10** Since the rules relating to the EUSS permit an applicant to make an AR application and a fresh EUSS application in parallel, inspectors asked the Home Office why this was not permitted for other routes. They were told that the current AR policy was designed to avoid confusion, as having an AR and a visa application processed in parallel could lead to a grant of different periods of leave and any refunding of fees would also be more complicated.

## Outcomes

**9.11** An applicant should be granted settled status (Indefinite Leave to Remain (ILR)) if they are able to demonstrate they are a qualifying national (or a recognised dependant of one) and have resided in the UK for five years. If the applicant is accepted as a qualifying national but has not demonstrated that they have resided in the UK for five years they should be granted

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<sup>105</sup> The Residence Proving Service (RPS) is the system used to run automated checks of HM Revenue and Customs tax records and DWP’s records of certain benefits.



pre-settled status (Leave to Remain (LTR)) and be eligible to apply for settled status as soon as they have completed the five years.

- 9.12** As at November 2019, no data had been published on EUSS ARs in the monthly or quarterly statistical releases.<sup>106</sup> However, ARU management told inspectors that a number of Freedom of Information Act (FoIA) requests had been received concerning EUSS ARs and asking “how many we’ve done, overturned, whether new evidence was used”.
- 9.13** Inspectors asked the Home Office for this data. Between April and August 2019, the Home Office had received 466 EUSS AR applications and provided a substantive response to 419. Of the 419, 58 had been rejected as invalid and eight were withdrawn. Of the remaining 353 validated applications, ARU overturned the decision to grant pre-settled status and granted settled status in 288 (82%) cases and upheld the original decision in 65 (18%) cases.
- 9.14** The Home Office was unable to provide inspectors with a breakdown of the reasons for the 58 AR invalidations. However, “locally-held data” for EUSS ARs received in April and May 2019 offered some insights into why such a large percentage of valid ARs succeeded. At that point, the ARU had received 240 EUSS AR applications, of which 185 had been concluded and 148 had overturned the initial decision. Of the 148, 116 (78%) were overturned “as a result of fresh evidence”.

Figure 35: EUSS AR outcomes for April and May 2019	
Outcome	Number (%)
Overtured	148 (80%)
Upheld	16 (8.6%)
Rejected	15 (8.1%)
Withdrawn	6 (3.2%)

- 9.15** ARU expanded on the reasons for the 32 overturned decisions that were not overturned as a result of fresh evidence:
- “Applicants being confused about what they have actually applied for i.e. Pre-settled or Settled status [which] led to changes to the Android app,<sup>107</sup> to spell out the options to the applicant and confirm what evidence may be required
  - Irish applicant unaware that their rights under the Common Travel Area (CTA) still applied
  - Timescales to submit an AR not being communicated correctly by SRC
  - Resident Proving System (RPS) not being checked for applicants with gaps or no data within the API [application programming interface] data on PEGA<sup>108</sup>
  - Children not being granted in line with related parents”.
- 9.16** Other evidence from ARU showed that the last two reasons were the most common up to May 2019. After that, while decisions continued to be overturned because of RPS issues and because a family member had not been granted in line with a related applicant, the numbers of both dropped considerably, to 11 and four respectively in June and July 2019.

106 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/845451/eu-settlement-scheme-statistics-quarterly-september-2019-hosb2719.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/845451/eu-settlement-scheme-statistics-quarterly-september-2019-hosb2719.pdf)

107 The EU Exit: ID Document Check app enabled applicants to complete the identity check stage of an application under the EU Settlement Scheme via their mobile telephone.

108 The EUSS case working system.



- 9.17** ARU senior caseworkers told inspectors that when the EUSS was fully open, from 30 March 2019, the automatic Her Majesty's Revenue and Customs (HMRC) and Department for Work and Pensions (DWP) checks against an applicant's National Insurance number (NINO) at the EUSS application stage was returning no trace of the applicant for "a small proportion" of applicants even though they had a footprint with one or both of these departments. As a result, some EUSS applicants were considered for pre-settled status despite qualifying for settled status.
- 9.18** ARU staff told inspectors they quickly identified that they were getting a lot of applicants asking "why have you only granted me pre-settled when we've been paying tax for so long?". In May 2019, ARU was given access to RPS, enabling them to conduct another automatic DWP/HMRC check on receipt of an AR. This meant ARU caseworkers could see that an applicant had been granted pre-settled status incorrectly without having to request further evidence. Inspectors were told that, initially, ARU had limited access to RPS, but in June 2019 the unit was allocated additional licences and RPS checks became routine.
- 9.19** The "locally-held data" for April and May 2019 indicated that in 32 (22%) of the overturned decisions there had been no need to request further evidence as RPS confirmed that the applicant qualified for settled status.
- 9.20** Inspectors asked ARU caseworkers if they were able to identify vulnerable EUSS applicants but were told that as there was "no definition of vulnerability" it could not be identified through an AR application. However, senior caseworkers (SCWs) told inspectors that dealing with vulnerable adults had formed part of their training and they would deal any applications on a "case by case basis". Meanwhile, certain cohorts of individuals were exempt from the AR fee, for example, "looked after children". ARU caseworkers commented that it was unclear whether this was sufficiently well advertised on GOV.UK, however the Home Office pointed out that the EUSS AR application form had a specific section for applicants in local authority care and exempt from paying the AR fee.

## ARU performance

- 9.21** ARU managers told inspectors that the ARU had a close working relationship with the EUSS decision-making unit in Liverpool and received daily reports showing how many people had been granted settled and pre-settled status or refused. This gave them some idea of likely future demand on ARU. Appeals, Litigation and Administrative Review (ALAR) senior management told inspectors that EUSS forecasts had overestimated the number of ARs that would be received, however staff at ARU "acknowledge they are not dealing with difficult cases at this time and they are live to the fact that numbers will likely increase". At the time of the inspection, managers did not feel that ARU needed any additional resources to deal with EUSS ARs.
- 9.22** In April 2019, 94% of EUSS ARs were completed within the 28-day service standard. For August 2019, this figure had dropped to 73%. Inspectors were informed that this was partly because more caseworkers had been trained in handling EUSS ARs in July but during August they were still relatively inexperienced in dealing with this type of AR. However, the main reason was having to wait to receive further evidence from applicants before concluding an AR, whether or not this exceeded the 28 days, which it often did. ARU managers told inspectors:

"Around a quarter of cases in August required multiple write-outs for further information before conclusion. Some of these included applicants who were elderly or suffering with

mental health issues where we intentionally made more contacts to the applicants or their family than guidance demanded to guide them through providing the necessary evidence for ILR”.

## Quality Assurance

**9.23** Inspectors were told that ARU caseworker decisions on EUSS ARs had been subject to 100% quality assurance (QA) checks when this workstream started in November 2018. However, checks on overturn decisions had since been reduced to 25% where caseworkers had demonstrated their proficiency, while 100% checks have been maintained where the original decision is upheld, the application is rejected as invalid, or it is withdrawn, as these are considered higher risk. All QA checks were completed before the decision was dispatched.

## Continuous improvement

**9.24** Staff described the training they had received prior to the introduction of the AR route for the EUSS. This was the same training that was provided to EUSS decision makers, plus an AR-specific module on EUSS which had been developed in ARU. All new caseworkers had a period of mentoring and senior caseworkers were confident that “everyone was on the same page in terms of Rules and guidance”. As well as with EUSS decision makers, AR staff had strong links with European and AR policy colleagues, so any changes were communicated and implemented effectively and efficiently.

**9.25** Despite the relatively low numbers of EUSS ARs received, the ARU told inspectors that there had been improvements in the quality of original decision-making as a result of errors and issues that had been identified in ARs. This was corroborated by the EUSS decision-making team.

**9.26** Responding to an FOIA request on this point, the Home Office stated, “we have made improvements to the application process to make clear to applicants, as described above, the scope for them to declare their period of continuous residence and provide additional evidence of their eligibility for settled or pre-settled status as required”. Meanwhile, EUSS applicants were also encouraged to reapply for free rather than apply for an AR at £80.

## New Immigration Rules

**9.27** On 9 September 2019, in a written statement on changes to the Immigration Rules, the Immigration Minister announced the inclusion of additional grounds to allow for the cancellation and curtailment of EUSS status. The minister explained:

“We expect the vast majority of EUSS applicants to be genuine, and for there to be little need for status granted under the EUSS to be cancelled at the border or curtailed in-country. However, it is appropriate that, to safeguard the integrity of the EUSS, its status should be covered by some of the same powers as other forms of immigration leave, so that appropriate action can be taken where necessary.

The changes therefore amend Part 9 of the Immigration Rules to provide additional grounds for the cancellation and curtailment of EUSS status and leave acquired having travelled to the UK with an EUSS family permit, e.g. on grounds this was obtained by deception (such as where the person had claimed to be the family member of an EEA citizen when they were not). The changes also amend Part 9 to provide discretionary grounds for EUSS status and

leave acquired having travelled to the UK with an EUSS family permit, to be cancelled at the border, in a 'no deal' scenario, on the grounds that cancellation is conducive to the public good, as a result of the person's post-exit conduct.

The changes provide a right of administrative review where status granted under EUSS is cancelled at the border because the person no longer meets the requirements for that status."<sup>109</sup>

- 9.28** This inspection came too soon for any possible impact of these changes to have been felt by the ARU or by Border Force.

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109 <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2019-09-09/HCWS1823/>

# 10. Inspection findings: Biometric Residence Permits

## Introduction

### Who, What and Why

- 10.1** GOV.UK explains in simple and clear terms who qualifies for a Biometric Residence Permit (BRP),<sup>110</sup> what personal and other information is displayed on a BRP, including the length and conditions of leave, and why it is important for someone to have a BRP to confirm their identity, their right to study or work in the UK, and their right to use any public services or entitlement to benefits.
- 10.2** Individuals applying for a visa or immigration status do not need to apply separately for a BRP. One is provided automatically. The cost is included in the visa application fee.

### Reporting BRP errors

- 10.3** GOV.UK informs individuals that they have 10 days from receipt of their BRP to report any problem with it, otherwise they may have to apply and pay for a replacement. It explains that problems such as the wrong name, gender or date of birth, or a damaged BRP, can be reported online.<sup>111</sup> In such cases, if reported within 10 days, the Home Office will normally issue a replacement BRP.

### Correcting BRP errors via an Administrative Review

- 10.4** GOV.UK also makes clear that where there are “Mistakes in the length or conditions of your visa ... If you applied for your visa from inside the UK, you can ask for an administrative review” and provides a hyperlink to the ‘Ask for a visa administrative review’ page.
- 10.5** Anyone choosing to apply for an Administrative Review (AR) must do so within 14 days of receipt of the incorrect BRP and pay the £80 AR application fee.
- 10.6** Administrative Review Unit (ARU) caseworkers told inspectors that where an AR confirmed a BRP error they would update the CID notes on the case, which would mean that a new BRP card was automatically sent to the applicant. In such cases, the AR fee would be refunded.

### Scope for confusion

- 10.7** Inspectors found that, notwithstanding the GOV.UK explanatory pages, some stakeholders believed there was scope for confusion over how to deal with BRP errors. One higher education stakeholder provided inspectors with a “cheat sheet” designed to assist immigration advisors

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<sup>110</sup> “You’ll get a biometric residence permit (BRP) if you: apply to come to the UK for longer than 6 months; extend your visa to longer than 6 months; apply to settle in the UK; transfer your visa to a new passport; apply for certain Home Office travel documents.” <https://www.gov.uk/biometric-residence-permits>

<sup>111</sup> <https://www.gov.uk/biometric-residence-permits/report-problem>

with handling BRP issues. This listed five different categories of errors, each with a different route for resolution. The Home Office confirmed that it received reports of BRP errors through several routes, often the wrong one for the particular kind of error, suggesting that some applicants were indeed confused.

- 10.8** While Tier 4 applicants were responsible for checking that their BRP was correct, Tier 4 sponsor guidance<sup>112</sup> requires any sponsoring institutions to report BRP errors if “it becomes aware that any of the students it is sponsoring has been granted leave with the incorrect conditions of stay, for instance if they have mistakenly been granted permission to work”. Some sponsors had a Premium Service Manager (PSM) who could advise them how best to deal with a particular BRP issue, but PSMs were not able to correct Biometric Residence Permits (BRPs) themselves.

## Tackling BRP errors at source

- 10.9** In July 2019, one stakeholder told inspectors that, after a period where there had been frequent errors and a lack of clarity about how to resolve them, the process for correcting BRPs had improved over the past 12-18 months. However, they thought the AR process should not be used to correct minor BRP errors. Another higher education stakeholder told inspectors that they still frequently saw “silly” BRP errors and would try to use the BRP Corrections Service to remedy these wherever possible. However, where the error was more serious than a mis-spelling, the Home Office often insisted that the applicant should submit an AR application.
- 10.10** The 2017 re-inspection of the AR process recommended that the Home Office should consider “if having the Manchester AR Team respond to BRP errors is the most efficient and effective use of UKVI resources without making further efforts to reduce them at source”.
- 10.11** ARU caseworkers told inspectors that in their view it was necessary to use the AR process for more substantive BRP errors, such as those concerning the length and conditions of leave, as in some cases there may have been a more serious error made in the granting of leave. One commented that “you can’t take what the applicant says at face value” as an error could be a sign that a case requires a totally new decision. An ARU senior caseworker added that as many as 20% of the applications that they saw concerning BRP errors turned out to be correct original decisions.
- 10.12** With the point about reducing BRP errors at source in mind, inspectors looked at the feedback loops to original decision makers regarding BRP errors. Between June 2018 and May 2019, the minutes of each of the monthly feedback meetings referred to the prevalence of BRP errors. However, there was no evidence that any measures had been put in place to reduce these errors. With regard to the new case working system, inspectors were told that “no detail from the COS system feeds directly into Atlas. It remains the responsibility of the caseworker to examine the COS including any additional information supplied by the sponsor.”<sup>113</sup>

## AR application time limit

- 10.13** Stakeholders reported that many individuals did not notice errors in the length or conditions of their leave immediately after they received their BRPs and therefore were unable to make an AR application in the time allowed. AR caseworkers also expressed reservations

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<sup>112</sup> <https://www.gov.uk/government/publications/sponsor-a-tier-4-student-guidance-for-educators>

<sup>113</sup> Tier 4 sponsors use the Sponsor Management System to make a change to something on the Certificate of Sponsorship (CoS) or Confirmation of Acceptance for Studies (CAS) after it has been issued, often the work or study dates.

about the 14-day time limit on AR applications. Referring specifically to Tier 4 cases, one caseworker commented:

“I don’t think there should be a time period. Why tie them to 14 days? Even if it’s 2 years later, someone may miss their graduation because of incorrect dates and that seems harsh as we made the mistake. Sometimes applicants don’t realise till later down the line. Some check immediately, as the uni [sic] may check it for them, or they look at their course mates and what they received, but sometimes it isn’t picked up till the end... They are at good universities and are genuine students. There are some instances where we’ve given them too much, or we’ve given them the right to work when we shouldn’t have. We shouldn’t penalise people. If they submit an AR out of time, currently, those are rejected.”

- 10.14** Senior managers expressed similar concerns about the unfairness and lack of logic to the time limit. One observed that this was “not very geared to the customer.” ARU said it had raised the issue with the relevant policy team.
- 10.15** Inspectors asked whether in cases where the Home Office had been made aware that the incorrect leave had been granted but the AR was rejected as out of time, applicants would automatically receive a partial refund of the Immigration Health Surcharge (IHS) and were told that the “expectation is that any partial IHS refunds would be automatically given, but a reminder will be issued to caseworkers”.

### **File sample evidence**

- 10.16** Inspectors examined 19 in-country Tier 4 AR applications. Ten raised a BRP error, nine of which were in time and accepted as valid. One was sent more than 14 days after receipt of the BRP and was rejected as invalid. In all nine of the valid cases, the AR process was effective in identifying and correcting the BRP errors raised by the applicant and in processing the refund for the AR application fee.
- 10.17** However, the CID notes revealed that some of these applicants waited a long time for a replacement BRP, in two cases it took eight weeks, including the time for the applicant to return their original BRP, suggesting that the end-to-end process of correcting BRP errors via ARs was neither efficient nor customer focused.

# 11. Inspection findings: Stakeholder evidence

## ICIBI ‘Call for evidence’

- 11.1** On 3 June 2019, the ICIBI published a ‘call for evidence’ on its website. Non-Governmental Organisations (NGOs), academic institutions, think tanks, faith groups and representative bodies with knowledge and expertise of the Administrative Review (AR) process were invited to write to the ICIBI with their evidence or case studies. The ‘call for evidence’ also made clear that the ICIBI was interested in receiving evidence from individuals, including those who had first-hand experience of the AR process.
- 11.2** Inspectors received 23 submissions. These divided into three main categories:
- higher education institutions wrote regarding Tier 4 applications
  - NGOs wrote regarding the use of AR in Statelessness applications
  - legal practitioners wrote about the overall effectiveness of Administrative Reviews (ARs) as a replacement for appeal rights
- 11.3** Views differed. Overall, there were more negative comments about the AR system than positive ones.

## Administrative Review as a replacement for appeal rights

- 11.4** Some respondents were wholly dissatisfied with the AR process and saw it as an ineffective replacement for the right to an appeal. One commented:
- “The central problem with the removal of appeal rights in favour of an Administrative Review system however is not that it is no longer possible to remedy decisions that are “wrong”, but only those that either the Home Office voluntarily agrees to remedy (through Administrative Review) or those that are so wrong that they are actually irrational or otherwise unlawful (by judicial review). Moreover, a judicial review will generally only lead in practice to a new decision [a reconsideration], whereas an appeal under the old system would generally lead to a grant of leave. It was an efficient and cost-effective system.”
- 11.5** The adequacy of AR compared to the right of appeal was also of concern in the context of Statelessness applications, about which one stakeholder wrote:
- “In statelessness cases the errors or flaws that are the subject of AR are about substantial legal or evidential issues. They are, in many cases, similar to those which are dealt with in asylum cases. They may be about the particular practice of a country, the authenticity (or otherwise) of documents, the truthfulness of a witness, the standard and burden of proof or the interpretation of law (including hearing evidence on the substance and implementation of foreign law). It is our view that these would be better dealt with in the



Tribunal where specialist Judges look at similar issues on a daily basis. It would also mean that cases could be determined with some finality.

The Guidance does not do justice to the complexity found in cases where there is an overlap between statutory appeals and AR. There is, as a matter of law, an appeal right against a refusal of a human rights claim. Some statelessness applications also raise human rights issues (either as integral to the statelessness claim or where there is also family life). The Home Office may take the view that there is no human rights claim or that the particular way in which the Human Rights claim is made does not give rise to a right of appeal. Jurisdiction on this is a matter for the Tribunal.”

- 11.6** Another stakeholder drew attention to “the acute protection needs of stateless persons” and to it being critical that if errors are made the available remedies to correct these errors are effective. This stakeholder raised concerns about the limited scope of Judicial Reviews (JRs) in that they normally addressed only whether the correct procedures had been followed and not the substance of the decision, and also criticised the time they took and the costs. This bore on the overall effectiveness of the AR system as, other than reapplying for a visa, the only route for an applicant who was dissatisfied with an AR outcome was a Pre-Action Protocol (PAP) letter and JR. Emphasising the link, one immigration solicitor wrote that “the AR system felt a bit pointless” and was “just a stepping stone we have to cross so we can start JR”.

## The effectiveness of ARs in Tier 4 cases

- 11.7** Other respondents were more positive about ARs. As well as receiving written responses from stakeholders in the education sector, inspectors had meetings with four higher education representative bodies and institutions.
- 11.8** One Tier 4 sponsor told inspectors that while they did not agree with removing the right of appeal they understood the rationale for the AR system as a way of streamlining and “cutting resources”. Another saw the benefits. ARs were “faster than appeals if there are errors that need to be corrected”. And, where an AR overturned a visa refusal it had the effect of “clearing the applicant’s immigration record”.<sup>114</sup>
- 11.9** A higher education membership body had asked its members whether they felt ARs were effective at identifying and correcting case working errors. The members were content that ARs identified and corrected “objective errors that did not rely on an individual’s interpretation” but felt they did not work for subjective decisions. The membership body wrote:
- “Credibility refusals are subjective in their nature and not merely administrative. As such, the Administrative Review process is not appropriate to consider errors. Where a refusal is on a subjective basis and not an administrative basis, students should have recourse [to] the Immigration Tribunal.”
- 11.10** A number of other stakeholders also raised concerns about Tier 4 applications that had been refused under the Genuine Student Rule (GSR) and the ability of an AR to deal with this type of decision. One Tier 4 sponsor argued that, rather than testing whether the initial decision was reasonable in light of the available evidence, ARs often resulted in a “subjective decision on top of another subjective decision”. Another was “concerned that AR decisions are generally supportive and reinforcing of bad decision quality [that is] present in refusals on GSR”.

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<sup>114</sup> Once a person is refused a visa, this remains on their record and may have a negative impact on any future visa application that they might make.



Meanwhile, a third commented that ARs had “an appearance of fairness” when in fact they simply “legitimise an inaccurate and subjective decision”.

- 11.11** Stakeholders also raised concerns about access to interview transcripts in GSR refusal cases. An individual who has been refused a Tier 4 visa on GSR grounds is likely to need to refer to the transcript of their interview but these are not routinely provided to applicants, although extracts are often quoted in refusal letters. One stakeholder said this made it “impossible for errors to be clarified”. Some Tier 4 sponsors told inspectors that they routinely requested transcripts on behalf of applicants via their Premium Account Manager (PAM) but that without a PAM they would not have known how to request a transcript as there was no guidance in the decision letter or on GOV.UK.
- 11.12** One Tier 4 sponsor said that they normally advised refused students to apply for an AR. However, where there was a “very obvious case working mistake”, for example mistaking the currency on a bank statement, the sponsor thought that “as a matter of customer service” the Home Office should be able to correct this more easily, as applying for an AR in such circumstances was “a cumbersome process”.
- 11.13** Meanwhile, another commented that original decisions for overseas Tier 4 applications appeared to have improved in the first half of 2019: “I’m maybe submitting AR [on behalf of applicants] less frequently because the decisions are better.”

## Overturns and reconsiderations

- 11.14** A legal practitioner noted an issue with “serial refusals”. These were cases where the original decision was overturned at AR and sent back for reconsideration. After a significant wait, a new decision was issued “in which it is accepted that the original decision was made in error for the reasons given, but the application is refused again for unrelated reasons and the process starts again”. Respondents argued that: “This tends to undermine faith in the system and compounds the sense of unfairness.”
- 11.15** A law clinic told inspectors that where an AR was overturned the decision letter did not include the reviewer’s reasoning. This meant some applicants had to resort to a subject access request (SAR), which “sometimes [takes] many months and involves another part of UKVI”. They commented: “If the AR decision letter were to include the reasons (as the Guidance requires and the template letter suggests) this would be a real improvement in the process.”
- 11.16** Home Office guidance instructs AR reviewers:
- “If you need to refer a case back to the original decision making team after withdrawing a decision, you must ... send the applicant an ARN.0004 decision notice to tell them that their administrative review has been successful and why, that the decision has been withdrawn and will be remade by the original decision making team.”
- 11.17** However, in all of the ARs examined by inspectors where the original decision was overturned by the ARU the following template was used:
- “Your application has been sent back to the original case working team for reassessment. They will make a new decision on your application and inform you of the outcome. If your application is refused you will be entitled to apply for a fresh administrative review of the decision.

The decision making centre where your application is being assessed will be in contact with you regarding the new decision.”<sup>115</sup>

**11.18** Stakeholders referred to the absence of any timescale for a new decision where an AR resulted in a reconsideration, despite the fact that the new decision was often “identical or almost identical” to the original decision. One stakeholder told inspectors about an applicant who waited over six months for a new decision. Meanwhile a Tier 4 sponsor said that, once the original decision was overturned, it took one of their students nearly six months before they received a new decision. Although the new decision was to grant a visa the delay meant the applicant missed the start of their course and had to re-apply for the next year. Another sponsor stated that:

“Even once a decision has been overturned, the communications sometimes break down. Even if the AR has a positive outcome, getting a passport back with a visa can take a long time and involves a lot of chasing up. We wonder how students manage if they are managing the process independently.”

## ARs to correct Biometric Residence Permit (BRP) errors

**11.19** Referring to Biometric Residence Permits (BRPs) issued with errors, one Tier 4 sponsor told inspectors that they “submit ARs within 14 days, then wait 28 days to do AR, and then an undisclosed period for the correct BRP to be printed and dispatched”. In one case, an in-country Tier 4 application was submitted towards the end of September 2018. The applicant received a response in December 2018 but there was an error on the BRP. They applied for an AR to correct the BRP error in mid- January 2019 but did not receive a new BRP until the end of March 2019.

**11.20** The sponsor said that these delays were “extremely disruptive for academics and researchers who travel frequently” because without a BRP they may find that they are not permitted to re-enter the UK when returning from their travels. Another sponsor, who had applied for 14 ARs in the academic year 2018-19 due to a wrong end date being printed on the BRP, said that students were reluctant to apply for an AR to correct BRP errors because they wanted to travel and needed their BRP.

## Relationships with the Home Office

**11.21** The Home Office shared details with inspectors of quarterly and annual stakeholder engagement events, including meetings with steering groups, working groups and route-specific visa specialists. However, one stakeholder who was in regular contact with the Home Office described it as “not exactly a team player”. They said that meetings “meandered” and stakeholders often felt they were being told what the Home Office planned to do rather than being consulted.

**11.22** In June 2017, a Tier 4 sponsor had begun a dialogue with an original decision-making unit and had got together 14 other institutions to work with UKVI to improve decision quality. They had had a couple of meetings and another was planned. The sponsor commented that some Home Office decisions had “demonstrated a real lack of cultural understanding”, so the institutions had tried to explain why they recruited from certain “high risk” countries and why students applied for certain courses. Other sponsors told inspectors that communication with the Home

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115 Copied from an overturn letter from ARU.

Office was limited to conversations with their PAM. However, most belonged to and received feedback from membership bodies who were in frequent contact with the Home Office.

**11.23** Other Tier 4 sponsors told inspectors they found it difficult when they were not made aware in good time that a student to whom they had issued the Certificate of Acceptance for Studies (CAS) had been refused a visa, resulting in refusals being maintained against them as sponsors. A Home Office manager told inspectors they were aware that Tier 4 sponsors had asked to be notified of negative visa decisions and would be “happy to do this” but it was not possible with the current IT system. The manager was “hopeful that the introduction of ATLAS might allow this”.

## Stakeholder views on how the AR system could be improved

**11.24** Stakeholders offered a number of suggestions of ways to improve the AR system:

- remove the AR application fee
- permit a refused Tier 4 applicant simultaneously to re-apply for a Tier 4 visa and apply for an AR in respect of the initial decision<sup>116</sup>
- provide interview transcripts with all refusals on GSR grounds
- establish an alternative remedy for credibility refusals
- introduce a way to challenge an AR decision other than through Judicial Review

## The Appeals, Litigation and Administrative Review (ALAR) perspective

**11.25** Despite significant evidence of stakeholder engagement, it appeared that ARU and ALAR management were not aware of particular concerns about ARs. The latter told inspectors that they were regularly in touch with industry bodies within the legal sector:

“[The] agenda is led by them in terms of what we discuss. We discuss whatever they are concerned about. They have never mentioned any issues with Admin Review – never once.”

**11.26** ALAR management cited a Chief Executive of a professional association, again in the legal sector, who when asked if their members had raised any concerns about AR “performance” said that none had and their impression was that ARs were “going ok”.

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<sup>116</sup> At the time of this inspection, an applicant was unable to apply for an AR and submit a fresh Tier 4 application. The latter resulted in the AR automatically becoming invalid. According to stakeholders, simultaneous applications had previously been permitted and had been helpful because it gave students the best chance of arriving in the UK for the start of their course while retaining the possibility of clearing the initial refusal from their immigration record. In such cases, they would qualify for refunds of the second visa application and AR fees.

# Annex A: Role and remit of the Independent Chief Inspector

The role of the Independent Chief Inspector of Borders and Immigration (until 2012, the Chief Inspector of the UK Border Agency) was established by the UK Borders Act 2007.

Sections 48-56 of the UK Borders Act 2007 (as amended) provide the legislative framework for the inspection of the efficiency and effectiveness of the performance of functions relating to immigration, asylum, nationality and customs by the Home Secretary and by any person exercising such functions on her behalf.

The legislation empowers the Independent Chief Inspector to monitor, report on and make recommendations about all such functions. However, functions exercised at removal centres, short-term holding facilities and under escort arrangements are excepted insofar as these are subject to inspection by Her Majesty's Chief Inspector of Prisons or Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services (and equivalents in Scotland and Northern Ireland).

The legislation directs the Independent Chief Inspector to consider and make recommendations about, in particular:

- consistency of approach
- the practice and performance of listed persons compared to other persons doing similar activities
- the procedure in making decisions
- the treatment of claimants and applicants
- certification under section 94 of the Nationality, Immigration and Asylum act 2002 (c. 41) (unfounded claim)
- the law about discrimination in the exercise of functions, including reliance on section 19D of the Race Relations Act 1976 (c. 74) (exception for immigration functions)
- the procedure in relation to the exercise of enforcement powers (including powers of arrest, entry, search and seizure)
- practice and procedure in relation to the prevention, detection and investigation of offences
- the procedure in relation to the conduct of criminal proceedings
- whether customs functions have been appropriately exercised by the Secretary of State and the Director of Border Revenue
- the provision of information
- the handling of complaints; and
- the content of information about conditions in countries outside the United Kingdom, which the Secretary of State compiles and makes available, for purposes connected with immigration and asylum, to immigration officers and other officials

In addition, the legislation enables the Secretary of State to request the Independent Chief Inspector to report to her in writing in relation to specified matters.

The legislation requires the Independent Chief Inspector to report in writing to the Secretary of State. The Secretary of State lays all reports before Parliament, which she has committed to do within 8 weeks of receipt, subject to both Houses of Parliament being in session.

Reports are published in full except for any material that the Secretary of State determines it is undesirable to publish for reasons of national security or where publication might jeopardise an individual's safety, in which case the legislation permits the Secretary of State to omit the relevant passages from the published report.

As soon as a report has been laid in Parliament, it is published on the Inspectorate's website, together with the Home Office's response to the report and recommendations.

# Annex B: ICIBI ‘Expectations’

**Background and explanatory documents are easy to understand and use** (e.g. statements of intent (both ministerial and managerial), impact assessments, legislation, policies, guidance, instructions, strategies, business plans, intranet and GOV.UK pages, posters, leaflets etc.)

- They are written in plain, unambiguous English (with foreign language versions available, where appropriate)
- They are kept up to date
- They are readily accessible to anyone who needs to rely on them (with online signposting and links, wherever possible)

## **Processes are simple to follow and transparent**

- They are IT-enabled and include input formatting to prevent users from making data entry errors
- Mandatory requirements, including the nature and extent of evidence required to support applications and claims, are clearly defined
- The potential for blockages and delays is designed out, wherever possible
- They are resourced to meet time and quality standards (including legal requirements, Service Level Agreements, published targets)

## **Anyone exercising an immigration, asylum, nationality or customs function on behalf of the Home Secretary is fully competent**

- Individuals understand their role, responsibilities, accountabilities and powers
- Everyone receives the training they need for their current role and for their professional development, plus regular feedback on their performance
- Individuals and teams have the tools, support and leadership they need to perform efficiently, effectively and lawfully
- Everyone is making full use of their powers and capabilities, including to prevent, detect, investigate and, where appropriate, prosecute offences
- The workplace culture ensures that individuals feel able to raise concerns and issues without fear of the consequences

## **Decisions and actions are ‘right first time’**

- They are demonstrably evidence-based or, where appropriate, intelligence-led
- They are made in accordance with relevant legislation and guidance
- They are reasonable (in light of the available evidence) and consistent
- They are recorded and communicated accurately, in the required format and detail, and can be readily retrieved (with due regard to data protection requirements)

## **Errors are identified, acknowledged and promptly 'put right'**

- Safeguards, management oversight, and quality assurance measures are in place, are tested and are seen to be effective
- Complaints are handled efficiently, effectively and consistently
- Lessons are learned and shared, including from administrative reviews and litigation
- There is a commitment to continuous improvement, including by the prompt implementation of recommendations from reviews, inspections and audits

## **Each immigration, asylum, nationality or customs function has a Home Office (Borders, Immigration and Citizenship System) 'owner'**

- The BICS 'owner' is accountable for
  - implementation of relevant policies and processes
  - performance (informed by routine collection and analysis of Management Information (MI) and data, and monitoring of agreed targets/deliverables/budgets)
  - resourcing (including workforce planning and capability development, including knowledge and information management)
  - managing risks (including maintaining a Risk Register)
  - communications, collaborations and deconfliction within the Home Office, with other government departments and agencies, and other affected bodies
  - effective monitoring and management of relevant contracted out services
  - stakeholder engagement (including customers, applicants, claimants and their representatives)



# Acknowledgements

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