



An inspection of the Home Office Presenting Officer function

(November 2019 – October 2020)

David Bolt

Independent Chief Inspector of
Borders and Immigration

An inspection of the Home Office Presenting Officer function

(November 2019 – October 2020)



© Crown copyright 2021

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.uk/official-documents

This publication is also available at www.gov.uk/ICIBI

Any enquiries regarding this publication should be sent to us at

Independent Chief Inspector of
Borders and Immigration,
5th Floor, Globe House,
89 Eccleston Square,
London SW1V 1PN
United Kingdom

ISBN 978-1-5286-2223-3

CCS1020459030 01/21

Printed on paper containing 75% recycled fibre content minimum.

Printed in the UK by the APS Group on behalf of the Controller of Her Majesty's Stationery Office.

Our purpose

To help improve the efficiency, effectiveness and consistency of the Home Office's border and immigration functions through unfettered, impartial and evidence-based inspection.

All Independent Chief Inspector of Borders and Immigration inspection reports can be found at www.gov.uk/ICIBI

Email us: chiefinspector@icibi.gov.uk

Write to us: Independent Chief Inspector
of Borders and Immigration,
5th Floor, Globe House,
89 Eccleston Square,
London, SW1V 1PN
United Kingdom

Contents

Foreword	2
1. Scope and Purpose	3
2. Methodology	4
3. Summary of conclusions	5
4. Recommendations	10
5. Background	11
6. Inspection findings: Training, Tools and Resources	22
7. Inspection findings: Feedback Mechanisms and Learning from Appeals	40
8. Inspection findings: Transformation and Continuous Improvement	52
9. Inspection findings: Quality assurance	73
10. Inspection findings: Stakeholder engagement	85
Annex A: ICIBI Questionnaire for (Senior) Presenting Officers	91
Annex B: Role and remit of the Independent Chief Inspector	95
Annex C: ICIBI's 'expectations'	97
Acknowledgements	99

Foreword

Certain decisions by the Home Office enjoy a right of appeal to the First-tier Tribunal Immigration and Asylum Chamber (FTTIAC). The types of eligible decisions have reduced in recent years, in some cases to be replaced with an Administrative Review (AR) process. My latest report on the latter and where it needs to improve was published on 20 May 2020.

As a result of the changes to appeal rights, the number of appeals lodged each year has also reduced substantially. Nonetheless, the volumes remain high. The most recent quarterly figures published by the Ministry of Justice showed that between January and March 2020 the FTTIAC received 10,000 appeals (while the Upper Tribunal received a further 1,500).

The Secretary of State is represented in the FTTIAC by Home Office Presenting Officers (POs) and in the Upper Tribunal by Senior Presenting Officers. This inspection examined the PO function, focusing on staffing, the training, guidance and support available to POs, and Home Office learning from appeals, including feedback to decision-making and policy areas to avert decisions that are likely to result in allowed appeals.

The volumes create resource and logistical challenges, and inspectors looked at how the Home Office was managing these, including its involvement in Her Majesty's Courts and Tribunal Service's "Reform Programme", which was aiming to transform the way in which Tribunals worked, primarily through technology-enabled smarter working.

Inspectors also looked at stakeholder engagement. There are obvious stakeholders: internally, the Secretary of State and the department need the PO function to be efficient and effective; externally, the same is true of HMCTS and of Tribunal Judges. Appellants and their representatives may be more ambivalent about POs' effectiveness insofar as this translates into upheld decisions, but still need the PO function to work well. More generally, there is the question of public confidence in the integrity of the UK's immigration system, in which an efficient and effective appeals process has to be a key component.

Ultimately, it is in everyone's interests that the PO function is properly resourced and supported, with well-trained, professional staff and reliable ways of working.

This inspection shows that, although the Home Office is making efforts to improve the PO function and the wider appeals process, there is more that it could be doing to professionalise POs, to connect up its processes, and to position itself with its key external stakeholders.

This report was sent to the Home Secretary on 29 October 2020. In it I have made six recommendations. The Home Office may be tempted to defer some of the recommended actions pending further progress with the Reform Programme. I believe this would be a mistake.

David Bolt
Independent Chief Inspector of Borders and Immigration

1. Scope and Purpose

1.1 This inspection examined the efficiency and effectiveness of the Home Office's Presenting Officer (PO) function, focusing specifically on:

- PO staffing, training, guidance and support
- evidence of Home Office learning from appeals and from feedback and quality assurance mechanisms
- 'transformation' of the appeals process, including Her Majesty's Courts and Tribunal Service's "Reform Programme" and continuous improvement initiatives
- stakeholder engagement

2. Methodology

2.1 Inspectors:

- reviewed open source information relevant to Home Office Presenting Officers and the appeals process, including ‘An inspection of the Home Office’s mechanisms for learning from immigration litigation’,¹ published in January 2018
- on 25 November 2019, published a ‘call for evidence’ on the ICIBI website inviting contributions from anyone with knowledge or experience of the Presenting Officer function
- in December 2019, visited Home Office units in Croydon and Leeds, and observed the First-tier Tribunal in London and Bradford, as part of familiarisation
- analysed the documentary evidence and data provided by the Home Office in response to inspectors’ formal evidence request
- issued a questionnaire to all Presenting Officers and Senior Presenting Officers
- in March 2020, observed Presenting Officers in the First-tier Tribunal in Central London, West London, Newport and Bradford and observed Senior Presenting Officers in the Central London Upper Tribunal
- between 2 March and 8 April 2020, interviewed and held focus groups with Home Office managers and staff from Administrative Assistant (AA) to Senior Civil Servant (SCS) in London, Birmingham, Croydon, Cardiff, Leeds and Sheffield
- on 30 April 2020, presented the emerging findings to Home Office senior management, with a follow-up meeting on 1 May 2020

¹ <https://www.gov.uk/government/publications/an-inspection-on-learning-from-immigration-litigation>

3. Summary of conclusions

- 3.1** Home Office Presenting Officers (POs) represent the Secretary of State (SoS) in appeals heard by the Immigration and Asylum Chamber of the First-tier Tribunal (FtT). Senior Presenting Officers (SPOs) represent the SoS at the Upper Tribunal (UT).
- 3.2** SPOs and POs sit in Appeals Operations, part of UKVI's Appeals, Litigation and Administrative Review (ALAR) directorate. In May 2020, Appeals Operations had 197 POs in post (186.7 full-time equivalents) and 28 SPOs (26.1 FTEs). PO roles are graded Higher Executive Officer (HEO) and SPO roles are graded Senior Executive Officer (SEO).
- 3.3** POs are based in eight Presenting Officer Units (POUs). These are spread around the UK, as are the Hearing Centres, run by Her Majesty's Courts and Tribunal Service (HMCTS), where the Tribunals sit, but over half of the POs are based in London (in the Central and West London POUs), reflecting where most appeals are heard. In addition to POs, the POUs house Team Managers, Senior Caseworkers and administrative teams, all of whom support the PO function. Appeals Operations also has other teams, whose responsibilities include reviewing appealed decisions and identifying those that should be withdrawn rather than proceed to a Tribunal. SPOs sit in the Specialist Appeals Team (SAT).
- 3.4** At the beginning of 2020, almost all of the SPOs in post had previously worked as POs. New POs, meanwhile, were recruited from within the Home Office and wider Civil Service and also externally. Some (S)POs had law degrees, but this was not a requirement. Between 2013 and 2019, POs recruited from outside the Civil Service were required to have a law degree or equivalent. But, in light of the relatively high turnover of law graduates recruited to the role, since 2019 external candidates with any degree or equivalent have been eligible to apply.
- 3.5** The Home Office had recognised, however, that acquiring a legal qualification was both a draw for staff and beneficial to the work of ALAR and had created a 'Legal Careers Pathway' programme to support selected staff to gain a legal qualification from the Chartered Institute of Legal Executives (CILEx) or to qualify as a solicitor. As at May 2020, 20 members of Appeals Operations were working towards qualification for one of three levels of CILEx qualification as a Chartered Legal Executive, and a further seven were working towards qualification as a solicitor.
- 3.6** PO training was one area where stakeholders expressed serious concerns. Since 2016, new POs have attended a three-week 'Foundation' training course and been assigned an experienced mentor to oversee their gradual introduction to presenting cases before a Tribunal. After three to six months, they have received four days' consolidation training, plus a day's training on deportation cases. The latter were treated as a priority, as they involve public protection issues. As such, they were supposed to be allocated to POs only after they had gained some experience and completed the deportation training. However, inspectors found that some deportation cases had been assigned in error to POs who had not received the training.

- 3.7** Inspectors heard from managers that the “learning curve” was “very steep” for some new POs, and that the Foundation training was “rushed” and there was “not enough time to digest and assimilate knowledge”. Several POs told inspectors that they had not felt prepared for “the courtroom environment” and picked out advocacy and cross-examination skills as particular weaknesses of the training course. The Home Office had sought to remedy this by having experienced barristers deliver training sessions in cross-examination. The inspection coincided with a refresh of the training programme, involving the extension of the Foundation course and more structured mentoring.
- 3.8** A separate initiative to provide established POs with a period of ‘intensive mentoring’ had shown that this could bring about a sustained improvement in performance, reinforcing the view that the initial training and mentoring were not sufficient on their own. However, by the end of 2019-20, this intensive mentoring had involved only a handful of POs, with no firm plans to roll it out as standard.²
- 3.9** Appeals Operations had planned to implement the refreshed training programme in June 2020. This timetable, however, was disrupted by Covid-19. Inspectors were therefore unable to examine the impact of the refresh. But, while allowing more time for training and improving the mentoring process should help to prepare POs for their new role, the changes were unlikely to answer stakeholders’ deeper concerns, which include POs not being up-to-date with relevant caselaw and, in some instances, with Home Office policy.
- 3.10** POs also referred to delays in receiving updates, including to policy, which then put them in a difficult position in front of the Immigration Judge. In early 2020, ALAR senior management had reached agreement with Policy colleagues that when an urgent update was required, or a response from Policy was likely to be delayed, the ALAR Director could “sign off” and publish interim guidance for POs and Senior Caseworkers, which would be replaced with formal policy in due course. This was a pragmatic solution to the problem of POs being put at a disadvantage because policy could not keep pace with caselaw but, at the time of the inspection, it was too soon to say whether this process was having an impact.
- 3.11** Stakeholders also highlighted POs’ lack of cross-examination skills, which in their view led to “[a] style of questioning and approach [that was] unnecessarily aggressive, dismissive and unprofessional” and a failure to consider the vulnerability of appellants and witnesses. Clearly, in an adversarial process some criticisms may not be entirely objective, nor is the picture entirely one-sided, as ALAR managers and staff were also critical of the conduct of some legal representatives. But, in the interests of justice and of efficiency, the Home Office needs to do a better job of listening and responding to such concerns. The Home Office complaints system falls well short of what is required, added to which most POUs had a poor grip on complaints. This is unsatisfactory.
- 3.12** In their responses to ICIBI’s ‘call for evidence’, stakeholders argued that POs should be held accountable for their behaviour in court and adhere to the Bar Standards Board ‘Handbook’ and ‘Code’. The Immigration Law Practitioners’ Association (ILPA) recommended that a ‘Code of Conduct’ for POs “should be developed in consultation with key stakeholders”, published online and subject to “an independent oversight and complaints mechanism”. The Home Office should respond positively. Currently, its own thinking on professional standards for POs is a curious mixture of exhortations, instructions and a dress code.

² In October 2020, in its factual accuracy response, the Home Office provided an update: “Further to the successful pilot, capacity had been agreed for 2020/21 to allow 2 Presenting Staff to undertake intensive mentoring on a full-time basis. The first 2 staff undertaking a 6-month period as intensive mentors were in post from August 2020”.

- 3.13** In fact, inspectors found little evidence of an overall strategy or structure to the Home Office's engagement with its external stakeholders. Engagement was irregular and lacked clear objectives. ALAR senior management accepted that more needed to be done.
- 3.14** Better training and more stringent and transparent professional standards are important, and the Home Office should be looking to make improvements in these areas, but they will not affect the other key concern raised repeatedly with inspectors, which is that POs have too little time to prepare before an appeal hearing. This was the view of POs themselves (excluding some long-serving POs who were comfortable with their workload), of several ALAR managers, and of stakeholders, including the Presidents of the Immigration and Asylum Chambers of the FtT and UT.
- 3.15** Here, the challenge for the Home Office is the volume of appeals it contests versus the number of POs it employs. The Home Office aims to be represented at 90% of appeals heard by the FtT and 100% of appeals heard by the UT. To achieve this (though in practice it has missed the 90% target each year since 2017-18), Appeals Operations works to a PO 'utilisation rate' (time spent presenting) of 60% or three days in five. Where POs have a day between their days in court, they are not only preparing cases for the next day but also dealing with administrative tasks (a number of POUs referred to having insufficient administrative support). But, a 60% utilisation rate means that 'back-to-back' court days are unavoidable.
- 3.16** Appeals Operations had made some efforts to address this, including running a pilot to look at the effect on PO performance (measured in terms of 'win rate'), and on PO wellbeing (based on PO feedback), of a reduced utilisation rate. The results showed no improvement in either, but this was predictable since the reduction in the rate had been marginal, 5%, equivalent to one extra day "out of court" a month.
- 3.17** To produce a meaningful result, the reduction in the utilisation rate would need to be much greater. But, Appeals Operations would find this unmanageable unless it was also prepared to reduce the number of contested appeals or increase the number of POs. The latter is more obviously within Appeals Operations' control and easier to achieve in the short-term. In 2019-20, to reduce a backlog of appeals, barristers were contracted to present cases. Though costly, this would be a way of creating the headroom necessary for a more robust test of a lower utilisation rate.
- 3.18** However, considerations of the optimum utilisation rate (one that delivers the best win rate and promotes POs' wellbeing) and, more generally, about the future of the PO role are complicated by the fact that the appeals landscape has changed substantially over recent years and is on the brink of further changes that are, arguably, even more profound.
- 3.19** The number of appeals received annually has fallen (from over 200,000 in 2008-09 to fewer than 50,000 in 2017-18) as the types of decisions attracting a right of appeal have been reduced, in a number of instances to be replaced by an Administrative Review.³ At the same time, the composition of the appeals caseload has shifted, with relatively simple entry clearance and family visit visa appeals replaced with more complex cases involving human rights issues and protection claims. This has made the POs' task of preparing for hearings more demanding. According to long-serving POs, over this period the utilisation rate has increased from 50%, to 55%, to 60%, which appears somewhat perverse.

³ <https://www.gov.uk/government/publications/an-inspection-of-administrative-reviews-may-december-2019>

- 3.20** There has also been a marked change in the Home Office’s overall win rate, which has fallen from 76% in 2008-09, to around 50%. However, drawing conclusions about PO performance from the data for appeal outcomes is not straightforward. The re-classifications of some appeals categories has not helped, but there are many factors upon which appeal outcomes depend, not least the quality of the original decision.
- 3.21** The opportunities for further significant changes arise primarily from HMCTS’s Reform Programme, which aims to “create simpler processes and online routes into our tribunals” and focuses on the digitisation and electronic circulation of the documentation prepared by both parties for an appeal hearing. At the beginning of 2019, a pilot was launched enabling a small number of law firms to submit asylum appeals electronically, with documents relating to the case immediately available to HMCTS and the Home Office.
- 3.22** In autumn 2019, HMCTS and the Home Office had agreed a ‘Roadmap’ with a schedule of key actions and deliverables for both. Prior to this, doubts had been raised about the timetable for the HMCTS Reform Programme and this had had to be extended and re-ordered. In the Home Office’s case, meanwhile, much depended on the development and roll-out of Atlas, the new caseworking system. Other ICIBI inspections have reported that the Atlas programme has been subject to repeated delays, causing problems for business areas across BICS, who were having to adjust and readjust their plans. This was again true here, to the frustration of Appeals Operations senior management, who had compromised on some Atlas requirements in the hope of avoiding delays.
- 3.23** However much ALAR is able to improve the performance of POs, through better training, higher professional standards and more sympathetic workloads, the greatest potential gains in the efficiency and effectiveness of the PO function, and ultimately in the appeals system, lie in avoiding appeals proceeding to a tribunal hearing where they can be resolved without one.
- 3.24** Requests for decisions to be reconsidered were one way of reducing the number of appeals and Appeals Operations ran a “reconsiderations inbox” for this purpose. In December 2019, a senior manager told inspectors that the Home Office was withdrawing around 40% of the cases referred to the reconsideration inbox. This “big improvement” had been achieved by ensuring that requests were fielded more efficiently. Details of the reconsideration inbox were included in all appeal bundles, so legal representatives should know about it. However, there was a risk that unrepresented appellants might not be as aware.
- 3.25** The inspection looked at the feedback mechanisms from Appeals Operations to decision-making areas. Effective feedback was particularly important in trying to avoid decision makers repeating decisions that were being successfully appealed. Appeals Operations had developed a number of ways to provide feedback (Account Managers, reports, ‘deep dive’ reviews, e-feedback) but POs appeared to be unaware of the efforts that were being made. There was a clear case for better communication from managers about these efforts, why they are important, and what they are achieving, and what more POs can do to support them.
- 3.26** The new processes that the Reform Programme is bringing in, including requiring submission of the detailed grounds for the appeal and skeleton arguments, should make a major contribution to the overall efficiency and effectiveness of the appeals process, since the Home Office should be much clearer at an earlier stage about the strength of the appellant’s case (and of its own).

- 3.27** This is expected to have a significant impact on the work of Appeals Operations, with more resources needed to review cases and, potentially fewer POs required and POs redeployed to review roles. Senior managers have sought to keep Appeals Operations staff updated on these and other changes that the transformation programme is likely to involve, but it has been difficult for them to be definitive given the complexity of the reforms and the shifting timescales.
- 3.28** Covid-19 has added to the uncertainties. However, it has also created opportunities. Home Office senior management told inspectors that new ways of working had had to be implemented in response to Covid-19 and had accelerated the roll-out of the Reform Programme, increasing the types of appeal cases that could be processed online from mid-May 2020.
- 3.29** The Covid-19 restrictions had also acted as a catalyst in the roll-out of guidance issued in February 2020, but not immediately implemented, which empowered experienced POs to withdraw decisions without first seeking approval from a Senior Caseworker. In April 2020, 'signed-off' POs were reviewing more cases at the point an appeal was lodged, and all those with a known hearing date, and withdrawing cases before the hearing. In December 2019, managers had told inspectors that 20% to 25% of asylum cases going through the new process had been withdrawn at the review stage, indicating that the process was effective at identifying cases that did not need to proceed to an appeal hearing.⁴
- 3.30** It is in everyone's interests that the Home Office Presenting Officer function is efficient and effective, with well-trained, professional staff representing the Secretary of State in appeals heard by the Immigration and Asylum Chambers of the First-tier and Upper Tribunals, properly resourced and supported, and part of a system that does not allow matters to escalate to an appeal hearing where they can and should be resolved simply and quickly through dialogue.
- 3.31** As well as contributing to the integrity of the UK's immigration system, as POs robustly defend well-founded decisions, this is a matter of public confidence, especially in light of current win rates, and also one of fairness for those reliant on Home Office decisions. As this inspection has shown, though the Home Office is making efforts to improve the PO function and the appeals process, there is more that it could be doing.

⁴ In October 2020, in its factual accuracy response, the Home Office amended this to "c.20% ... reflecting present data."

4. Recommendations

The Home Office should:

- 4.1 Develop an engagement and communication strategy for each of Appeals Operations' key stakeholders, based on the principles of collaboration and transparency, that identifies: principal points of contact, goals, points of agreement and difference, and actions.
- 4.2 Work with internal and external stakeholders to develop a published 'Code of Conduct' for (Senior) Presenting Officers, and to consider what form of oversight and complaints mechanism in relation to (S)PO conduct would be most appropriate.
- 4.3 Involving (Senior) Presenting Officers, their managers, other Appeals Operations staff, and external and internal stakeholders, conduct a skills audit for the role(s) and define: the minimum qualifications, experience and qualities required for entry; initial ('Foundation') training and mentoring; consolidation and specialist training; continuation and refresher training (including 'intensive mentoring'); and professional development (including gaining legal qualifications). This should aim to take account of the increased emphasis on case reviews and withdrawals, plus changes to the role(s) resulting from the Reform Programme, for example, the requirement to submit skeleton arguments.
- 4.4 Use the results of the skills audit to carry out a training needs analysis and produce a training and development plan for each (Senior) Presenting Officer.
- 4.5 Conduct a pilot to test whether a meaningful reduction in the 'utilisation rate' produces an improvement in Presenting Officer performance (the assessment of which should not be based solely on the 'win rate') and wellbeing.
- 4.6 Produce an internal communications plan for Appeals Operations that:
 - a. reinforces the importance of effective feedback to decision-making areas and policy teams from (Senior) Presenting Officers and other Appeals Operations staff, and includes information about current efforts, what they are achieving, and what more POs can do to support them
 - b. engages and informs Appeals Operations staff about initiatives that are looking to improve working practices, such as the utilisation rate and intensive mentoring pilots, interim guidance, and local innovations
 - c. includes regular updates on the Reform Programme and Atlas roll-out, especially where there are delays or changes to published plans

5. Background

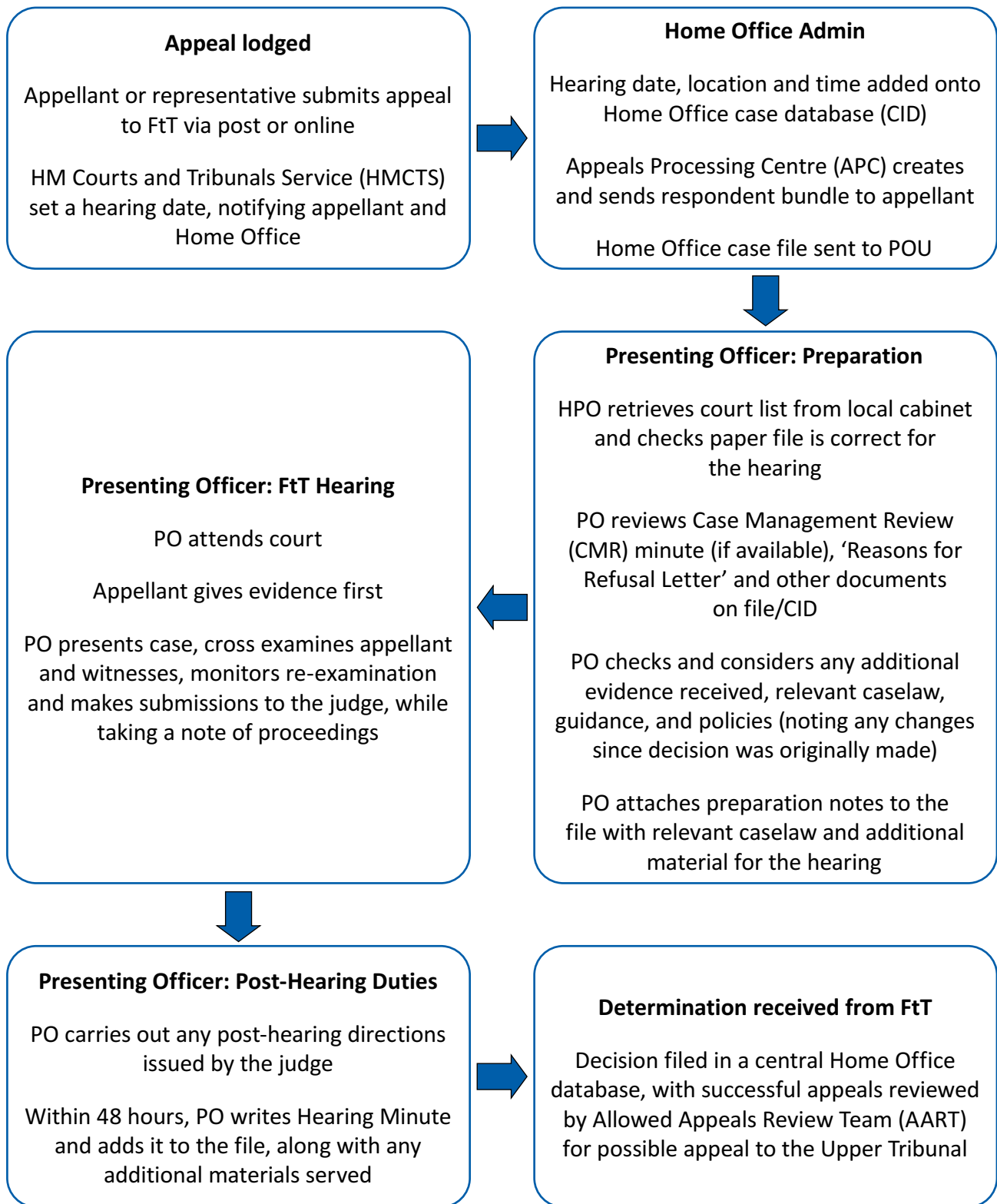
The Presenting Officer Role

- 5.1** Presenting Officers (POs) and Senior Presenting Officers (SPOs) represent the Secretary of State in appeals heard by the Immigration and Asylum Chambers of the First-tier Tribunal (FtT) and Upper Tribunal (UT), respectively. POs are not unique to the Home Office. The Department of Work and Pensions (DWP), for example, employs POs in the Social Entitlement Chamber of the FtT.
- 5.2** Within the Home Office Borders, Immigration and Citizenship System (BICS), POs are responsible for:
- preparing cases for presentation at the Tribunal
 - defending the Home Office’s position in appeal hearings
 - completing post-hearing administrative work
- 5.3** In preparing a case, POs are expected to review the decision under appeal, gather evidence and information in support of defensible decisions, and pursue the withdrawal of any decision identified as unsustainable.
- 5.4** At the tribunal, POs are expected to present the Home Office case in a professional manner, cross-examining appellants and witnesses, as necessary, to test their evidence and credibility, and making effective legal arguments (‘submissions’) to the judge.
- 5.5** After a hearing, POs are expected to produce minutes of the proceedings, update the Home Office’s Casework Information Database (CID), and attend to any tribunal-issued directions.
- 5.6** POs are expected to spend 60% of their working days in court. Preparing cases and completing post-hearing duties are expected to take up to 40%.⁵
- 5.7** On a court day, a PO generally represents the Home Office in all of the appeals being heard by a particular judge. The number of cases on a judge’s daily list varies. Under a system administered by Her Majesty’s Courts and Tribunals Service (HMCTS), each appeal is assigned a point value to reflect the complexity of the case type. A full day’s list will normally have a point value of six. A PO may have up to five cases to present in a court day, depending on the case types on that day’s list, however the Home Office commented that this would be “extremely rare” and “two to three” cases was “typical”. If the listed hearings conclude prior to late afternoon, the PO might be required to represent the Home Office in additional cases drawn from a “float list” of appeals not assigned initially to a particular judge.

⁵ In its factual accuracy response, the Home Office explained that: “Court time (10 am start and normally mid-afternoon finish) does not typically take all of a standard 7-hour 24 [minutes] working day so preparation time is available before and after court hearings for presenting staff.”

Figure 1

The Presenting Officer's Role in an FtT Appeal



Senior Presenting Officers

- 5.8** At the Upper Tribunal (UT), which hears appeals against First-tier Tribunal (FtT) decisions, the Home Secretary is represented by a Senior Presenting Officer (SPO). SPOs are Senior Executive Officers (SEOs). According to Home Office senior management, as at May 2020, almost all the Home Office's 28 SPOs had had extensive experience working previously as POs.
- 5.9** Like POs, SPOs are expected to prepare cases, present them in court, and perform post-hearing tasks. They may also be required to prepare and submit skeleton arguments outlining the legal points upon which they intend to rely. Decisions of the UT turn on whether a determination by a First-tier Judge contains an error in law. UT hearings therefore tend to involve less cross-examination of appellants and witnesses than FtT hearings. In law, the UT is a superior court of record and all of its determinations are published. Caselaw arising from UT decisions can have implications for policy that extend beyond a specific case.

Home Office PO grades and recruitment

- 5.10** Normally, Home Office POs are Higher Executive Officer (HEO) grade. The grading is intended to recognise that POs are expected to work autonomously and to make decisions independently in court.⁶
- 5.11** Between 2013 and 2017, some externally-recruited POs were offered fixed-term appointments at Executive Officer (EO) grade. However, since 2017, recruitment has been at HEO only. Since that time, most EO POs have been successful in gaining promotion. According to the Home Office, the small number remaining as EOs are assigned duties appropriate to their grade. Externally-recruited POs are now given 18-month fixed-term appointments, after which some may be offered a permanent position. POs recruited from within the Home Office are normally appointed on a permanent basis, although some take the role on secondment from their permanent post, typically for 12 months.
- 5.12** The Home Office does not require POs to have legal qualifications or experience, but most have experience of the immigration system or of presenting work. Between 2013, when the Home Office began external recruitment, and 2019, POs recruited from outside the Civil Service were required to have a law degree or equivalent. Since 2019, and in light of the relatively high turnover of law graduates recruited to the role, external candidates with any degree or equivalent have been eligible to apply.

'Presenting staff professional standards'

- 5.13** Like all Home Office staff, POs and SPOs are subject to the Civil Service Code, which requires them to carry out their duties with integrity, honesty, objectivity, and impartiality.⁷
- 5.14** New POs undergo 'Foundation' training. The main handout for the three-week course, last updated in April 2020, includes 'Presenting Staff Professional Standards', which is covered on Day 1. Inspectors found an "archived" version of this two-page document on the Home Office intranet, Horizon. The document was archived in May 2015.

⁶ Home Office internal guidance on grading of posts states: "At HEO level, problems and issues will also typically require more in-depth fact finding and analysis to identify the underlying issues and more perceptive judgements (sic) in identifying the best approach or solution from a range of options.... There is also a greater requirement to plan ahead and take independent action without recourse to more senior management".

⁷ Civil Service Code, <https://www.gov.uk/government/publications/civil-service-code/the-civil-service-code>.

- 5.15** In July 2019, the Home Office responded to a Freedom of Information (FOI) request regarding the conduct of POs by quoting the bulk of the two-page document, with minor redactions and amendments.⁸
- 5.16** ‘Presenting staff professional standards’ explains that presenting staff are expected to: “establish a good level of knowledge of immigration law, caselaw, rules, policies, country information and effective advocacy skills”; prepare fully in advance of a hearing and “decide whether the decision can be defended in court”; and “act with a high degree of professionalism” while before the tribunal.
- 5.17** While the archived document states simply that “You should attend court on time”, the FOI response is more explicit. It states that POs and SPOs “should attend court by 9:45 am ... to facilitate any required discussions with Legal Representatives and/or Court Clerks” in advance of the start of hearings; and should “ensure that post hearing minutes are accurate and completed within two working days”.
- 5.18** The archived document also states that presenting staff must “be sensitive to the circumstances of the appellant or witness who may (for example) be a child, a rape victim or a torture victim,” and remind POs and SPOs of their duty to “disclose evidence and material that is relevant to the facts in issue, irrespective of which party to the appeal this assists, in order to achieve a just determination of the case.” This is repeated in the FOI response.
- 5.19** At the end of 2019, the Home Office provided inspectors with a “current” version of ‘Presenting Staff Professional Standards’ as part of its response to ICIBI’s preliminary evidence request. This repeated much of what was in the archived document, with some additions, including the reference to a 9.45 arrival time, appropriate dress for hearings and attendance as a witness or sponsor and not as a PO. However, since this version was not found on Horizon and not used in PO training, inspectors could not be clear about its status.⁹

Home Office structures

- 5.20** POs and SPOs work in Appeals Operations, part of Appeals, Litigation, and Administrative Review (ALAR), a directorate of UK Visas and Immigration (UKVI). The mission of ALAR’s Appeals and Litigation Operations units is “to robustly defend Home Office decisions where it is right to do so,” while resolving issues quickly and “helping the Department to learn appropriate lessons.” The directorate’s vision is to be seen “as a centre of excellence across Government for handling challenges to Government decision-making” and as “a great place to develop your career”.
- 5.21** Appeals Operations is overseen by a Deputy Director (Grade 6), with support from nine Assistant Directors (Grade 7),¹⁰ one of whom manages the separate Administrative Review Team.

⁸ A version is publicly available as a result of a 2019 Freedom of Information Act (FoIA) request. <https://www.whatdotheyknow.com/request/581495/response/1391674/attach/html/4/Response%20FoI%2054027.pdf.html>

⁹ In October 2020, in its factual accuracy response, the Home Office stated that the version shared with inspectors was the “latest” version and that it “had been issued to presenting staff on 2 July 2019.”

¹⁰ In addition to his responsibility for Appeals Operations, the Deputy Director oversees ALAR’s Administrative Review team, whose work has been the subject of a separate ICIBI inspection. See ICIBI report on administrative reviews, <https://www.gov.uk/government/publications/an-inspection-of-administrative-reviews-may-december-2019>

- 5.22** One of the Grade 7s is the Chief Caseworker, responsible for coordinating the national network of Senior Caseworkers. Others manage the different aspects of Appeals Operations: Appeals Training Team (ATT) and intelligence and research functions; the Appeals Processing Centre (APC), responsible for preparing the bundles of papers required from the Home Office for an appeal hearing; a Specialist Appeals Team (SAT), that manages appeals to the Upper Tribunal; a Leeds Appeals Review Team (LART) that reviews appealed decisions lodged under the HMCTS Reform Programme or reconsiders appealed decisions for which new evidence has been received; and a Sheffield Appeals Review Team (SART), that reviews appeals against the refusal of entry clearance or refusal of an EEA family permit under the requirements of Rule 23 of the First Tier (Immigration and Asylum) Procedure Rules.
- 5.23** LART has also carried out reviews of cases being processed through HMCTS's Reform Programme pilot, which enables appellants' legal representatives to submit evidence electronically in advance of a hearing. SART (formerly the International Casework Quality Assurance Team, or ICQAT) moved to ALAR from UKVI's Visas and Citizenship directorate in April 2019. It focuses on cases brought by overseas appellants against entry clearance decisions. Appellants and their legal representatives can flag cases for reconsideration by a review team and draw attention to any new evidence by writing to the Home Office's Appeals Reconsideration Request Inbox at least six weeks in advance of a scheduled hearing.
- 5.24** POs work from Presenting Officer Units (POUs). In September 2020, there were eight POUs: in Central London, West London, Birmingham, Manchester, Leeds, Newcastle, Cardiff, and one in Glasgow covering Scotland and Northern Ireland. The POUs are managed by Grade 7s, some of whom are responsible for more than one POU. SPOs are assigned to the Specialist Appeals Team (SAT) and are based in Fleetbank House (Central London) or attached to a regional POU.
- 5.25** The locations of the POUs reflect the locations of the HMCTS Hearing Centres. For example, POs based at the West London POU attend the FtT at Hatton Cross, while those based in Cardiff attend the FtT that sits in Newport.¹¹
- 5.26** Staffing levels at the POUs, both for POs and overall, are broadly in line with the numbers of outcomed FtT appeals over the past three years. See Figure 2.

¹¹ Some locations are termed "Hearing Centres", for example, Hatton Cross Tribunal Hearing Centre, Taylor House Tribunal Hearing Centre, Field House Tribunal Hearing Centre, Manchester Tribunal Hearing Centre. Others are listed differently: Newport (South Wales) Immigration and Asylum Tribunal; Birmingham Immigration and Asylum Chamber (First Tier Tribunal).

Figure 2

**Presenting Officer Units – Staffing Levels May 2020
(in order of PO Full-Time Equivalents)**

POU	POs		All staff		Outcomed FtT appeals 2017 to 2020
	Headcount	FTE	Headcount	FTE	
Central London	65	61.1	107	101.1	44,152
West London	44	42.8	77	74.6	37,946
Birmingham	33	31.4	52	49.6	24,170
Manchester	20	19.7	35	31.4	13,000
Cardiff	11	10.7	20	18.3	9,158
Leeds	11	9.4	22	21.0	10,647
Newcastle	7	6.0	18	15.3	3,960
Scotland-Northern Ireland	6	5.6	19	17.5	6,821
Stoke (closed Dec 2017)					1,965
Total	197	186.7	350	328.8	151,819

- 5.27** Within POU, Senior Executive Officer (SEO) Team Managers line manage the POs and are responsible for rostering and ensuring that targets for representation at hearings are met. In discussion with senior management, a figure of 90% representation at FtTs was referred to as the performance target agreed with ministers, plus representation at all UT hearings.
- 5.28** The POU also include an administrative team, responsible for processing incoming post, attending to correspondence, preparing files for transfer to court, and completing simple court directions. Meanwhile, SEO Senior Caseworkers provide POs with guidance on caselaw and policy, carry out quality assessments of POs' performance work in court, and discuss feedback with decision makers. POs needing assistance while preparing or presenting a case may contact any Senior Caseworker, not just those who are based at the same POU, for guidance on a point of law or policy, or for authority to withdraw a decision.
- 5.29** In February 2020, new guidance authorised more experienced POs who were 'signed-off' as fully competent to withdraw an unsustainable decision in advance of an appeal hearing. Where a PO is not signed-off, or where a case is in the process of being heard, withdrawal requires the approval of a Senior Caseworker.
- 5.30** SPOs are assigned to the Specialist Appeals Team (SAT). In May 2020, there were 28 SPOs (26.1 FTEs), of whom 22 (20.1 FTEs) were based in Central London. The other six worked from regional POU. See Figure 3.

Figure 3

**Specialist Appeals Team – Staffing Levels May 2020
(including Full-Time Equivalents)**

SAT	SPOs		All staff	
	Headcount	FTE	Headcount	FTE
	28	26.1	39	35.1

The Tribunal System

- 5.31** The work of POs and the processes they must follow are shaped to a significant extent by the policies and procedures of HM Courts and Tribunals Service (HMCTS), which administers the First-tier and Upper Tribunals.¹²
- 5.32** HMCTS was formed in 2011 in a merger of separate courts and tribunals services. It “operates as a partnership” between the Lord Chancellor, the Lord Chief Justice, and the Senior President of Tribunals.¹³ It is responsible for the administration of criminal, civil, and family courts in England and Wales. It is also responsible for the management of tribunals in England and Wales and non-devolved tribunals in Scotland and Northern Ireland.
- 5.33** HMCTS tribunals are “specialist judicial bodies which decide disputes in particular areas of law”.¹⁴ They sit in dedicated Hearing Centres (in each of which a “Resident Judge” serves as the senior judicial official)¹⁵ and in other court buildings around the country. The tribunals range from small, highly-specialised commissions and panels, such as the Pathogens Access Appeals Commission, the Gender Recognition Panel, and the Special Immigration Appeals Commission (which hears appeals against a small number of immigration and nationality decisions made on national security grounds), to judicial bodies that hear tens of thousands of cases a year, such as the Employment Tribunal and the First-tier Tribunal (Immigration and Asylum Chamber).¹⁶
- 5.34** The First-tier and Upper Tribunals were created by the Tribunals, Courts and Enforcement Act 2007.¹⁷ They have heard immigration cases since 2010, when they absorbed the functions of the former Asylum and Immigration Tribunal (AIT).^{18 19} Since 2013, the Upper Tribunal

12 “What the HM Courts and Tribunals Service does,” on <https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service>; “About us,” <https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about>; “Our governance,” <https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about/our-governance>

13 “Her Majesty’s Courts and Tribunals Service” [archived website – 2 June 2011], <https://webarchive.nationalarchives.gov.uk/20110602060255/http://www.justice.gov.uk/about/hmcts/index.htm>; HMCTS Framework Document (July 2014), for details on MoJ-courts-tribunals partnership, <https://www.gov.uk/government/publications/hm-courts-and-tribunals-service-framework-document>

14 “Tribunal Judges,” <https://www.judiciary.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/tribunals/fee-paid-judiciary-page-1/>

15 As well as sitting as a judge, the Resident Judge has leadership and management responsibilities.

16 “About us,” <https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about>; for volume of cases, see: <https://www.gov.uk/government/collections/tribunals-statistics>

17 “Tribunals: Immigration and Asylum” [archived website, 2 June 2011], <https://webarchive.nationalarchives.gov.uk/20110602061032/http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/immigration-and-asylum/first-tier/index.htm>; The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010, <https://www.legislation.gov.uk/ukxi/2010/21/contents/made>

18 The single-tier AIT, in operation between 2005 and 2010, succeeded the Immigration Appellate Authority, a body that had its origins in the Immigration Appeals Act 1969. The arrangements in the 1969 Act, confirmed in the Immigration Act 1971, provided for the appointment by the Home Secretary of adjudicators to consider challenges to immigration decisions, with a further right of appeal to an Immigration Appeals Tribunal (IAT), whose members were appointed by the Lord Chancellor. Both the adjudicators and the IAT were subject to supervision by the Council on Tribunals under the Tribunals and Inquiries Acts of 1971 and 1992. From 1987, the adjudicators were also appointed by the Lord Chancellor, rather than by the Home Secretary.

19 Courts, Tribunals, and Enforcement Act 2007, <http://www.legislation.gov.uk/ukpga/2007/15/contents>; “Tribunal Judges,” <https://www.judiciary.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/tribunals/fee-paid-judiciary-page-1/>

has also considered applications for judicial review of “certain” immigration-related Home Office decisions.²⁰

- 5.35** Decisions of the Upper Tribunal can be appealed to the Court of Appeal in England, Wales, and Northern Ireland; to the Court of Session in Scotland; or, in exceptional circumstances, to the Supreme Court.²¹
- 5.36** The First-tier and Upper Tribunals are divided into specialist Chambers. In addition to the Immigration and Asylum Chamber (IAC), the Social Entitlement Chamber hears appeals against Department for Work and Pensions (DWP) decisions, and the Tax Chamber hears appeals against decisions by HM Revenue and Customs (HMRC).²² Each Chamber of the FtT has a Chamber President who serves as “the senior judicial lead ... taking an active role in ensuring jurisprudential and practical consistency both in decision-making and in the setting and interpretation of practice and procedure throughout their tribunal.”²³ Each Chamber of the UT also has its own Chamber President.

The HMCTS Reform Programme

- 5.37** In 2016, HMCTS launched a “Reform Programme”. This aims to “create simpler processes and online routes into our tribunals” and focuses on the digitisation and electronic circulation of the documentation prepared by both parties for an appeal hearing.
- 5.38** A pilot project in the Immigration and Asylum Chamber, launched in January 2019, enabled six law firms to submit asylum appeals electronically, with documents relating to the case immediately available to HMCTS and the Home Office. Appeals filed in this way are managed by an HMCTS tribunal caseworker, who liaises with the Home Office and the appellants’ legal representative to ensure that all documentation has been received and shared before a hearing is scheduled.
- 5.39** HMCTS planned to extend the use of the new digital system during 2020 to more appeal types and more users but were disrupted by the Covid-19 pandemic.²⁴
- 5.40** HMCTS modernisation will have a significant impact on the work of POUs and POs. Full implementation will require POs, accustomed to referring to paper files while preparing and presenting cases, to change their way of working, but staff expressed cautious optimism that the new system should mean that the problems when document bundles are not received by all parties will be alleviated and late submission of new evidence from appellants’ representatives will be curbed.

20 “Upper Tribunal (Immigration and Asylum Chamber),” <https://www.gov.uk/courts-tribunals/upper-tribunal-immigration-and-asylum-chamber>; date of commencement in Table S1, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/877061/Main_Tables_Q3_2019_20.ods

21 Tribunals, Courts and Enforcement Act 2007, Sections 13–14C, <https://www.legislation.gov.uk/ukpga/2007/15/contents>

22 Different government departments approach representation at a tribunal in different ways. Like the Home Office, DWP employs Presenting Officers to defend its decisions, but they are appointed at a lower grade (Executive Officer) and appear in a smaller proportion of the cases brought against the department. To handle a much smaller number of cases, HMRC relies upon tribunal caseworkers to prepare and present defensible decisions, in coordination with the relevant decision maker.

23 “Tribunal President,” <https://www.judiciary.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/tribunals/salaried-judiciary-page-1/>; “Becoming a Tribunal Judge,” <https://www.judiciary.uk/about-the-judiciary/judges-career-paths/becoming-a-tribunal-judge/>

24 “HMCTS reform update – tribunals,” <https://www.gov.uk/guidance/hmcts-reform-update-tribunals>

Immigration decisions attracting a right of appeal

5.41 In recent years, there have been significant changes to the types of immigration decisions that attract a right of appeal.

5.42 In June 2013, the right of appeal against refusals of family visit visas was removed (except on human rights or racial discrimination grounds).²⁵ Under a new system, refused applicants were able to “reapply as many times as they like” and “provide additional information in support of their application”. The Home Office announcement stated that “46,000 visit visa appeals [were] received last year alone”, and the Immigration Minister commented that:

“Family visitor appeals make up more than a third of all immigration appeals going through the system, with many applicants using it as an opportunity to submit information that should have been included in the first place. Removing the right of appeal will save £107 million over the next decade, making the process faster and cheaper for applicants and allowing officials to focus on more complex cases, such as asylum claims and foreign criminal deportations.”

5.43 In essence, the same argument was repeated in July 2013 in the Impact Assessment in support of the further reform of immigration appeals through the proposed Immigration Bill:

“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.”²⁶

5.44 The Immigration Act 2014 subsequently removed the right of appeal to the FtT for various types of immigration decisions, replacing it with an administrative review process,²⁷ internal to the Home Office, to provide “a proportionate and less costly mechanism for resolving case working errors”.²⁸

5.45 The 2014 Act reduced the types of immigration decision that enjoyed a right of appeal, unless an application was certified as “clearly unfounded”,²⁹ from 17 to four:

- human rights claims
- 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

25 “Right of appeal for family visit visas abolished,” 25 June 2013, <https://www.gov.uk/government/news/right-of-appeal-for-family-visit-visas-abolished>

26 ‘Impact Assessment of Reforming Immigration Appeal Rights’ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/249120/appeals_impact_assessment.pdf

27 See ‘An inspection of Administrative Reviews (May – December 2019)’, <https://www.gov.uk/government/publications/an-inspection-of-administrative-reviews-may-december-2019>

28 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.

29 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/778221/certification-s94-guidance-0219.pdf and https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919742/rights-of-appeal-v8.0.pdf

- 5.46** The removal of appeal rights under the 2014 Act was phased. In October 2014, in-country points-based system (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.
- 5.47** The 2014 Act also made certain appeals “non-suspensive”, meaning that in some cases an appellant could be removed from, or required to leave, the country in line with the decision under appeal, with the hearing of their case taking place only after their departure.³⁰
- 5.48** In January 2020, appeal rights were extended to applicants to the EU Settlement Scheme (EUSS). EUSS applicants are able to appeal against refusals, or grants of pre-settled status where they believe they qualify for settled status, and against refusals of a Family Permit or Travel Permit. A right of appeal applies where a valid application was made “on or after 11pm on 31 January 2020”.

Appeal volumes and types

- 5.49** Since the range of immigration decisions attracting a right of appeal was reduced, the number of appeals heard by tribunals has dropped sharply, however some of this reduction is likely to be attributable to changes in fees for appeals and changes to legal aid.³¹ Appeals received by the FtT (and previously by the AIT) fell from a peak in 2008-09 of 205,891 to fewer than 50,000 a year since 2017-18.
- 5.50** There has also been a significant change in the types of appeals. Prior to the implementation of the Immigration Act 2014, most appeals were against entry clearance and family visit visa decisions. These accounted for 62.7% of all cases lodged with the AIT (up to 2010) and with the FtT between 2007-08 and 2014-15. Since 2014-15, the proportion of appeals brought on human rights grounds and against asylum decisions has increased. Between 2016-17 and 2019-20, nearly half (46.9%) of appeals lodged with the FtT have been based on human rights claims.³² Challenges to asylum decisions as a proportion of all appeals have risen from 9.7% between 2007-08 and 2014-15 to 30.1% between 2016-17 and 2019-20.
- 5.51** Changes to the way appeals have been categorised have complicated comparisons of appeals pre- and post-Immigration Act 2014. For example, some pre-2014 appeals against entry clearance decisions will have been brought on human rights grounds, and some post-2014 human rights cases will have been appeals against entry clearance decisions. Nonetheless, there has been a clear trend over the past decade towards significantly lower volumes of appeals, but with a greater proportion of complex human rights and asylum cases.

30 Immigration Bill Factsheet: Appeals, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/262789/Factsheet_05_-_Appeals.pdf

31 Under the First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011, a £140 fee for an oral hearing was applied to appeals of decisions made on or after 19 December 2011. The First-tier Tribunal (Immigration and Asylum Chamber) Fees (Amendment) Order 2016 briefly raised this fee to £800. However, The First-tier Tribunal (Immigration and Asylum Chamber) Fees (Amendment) (No. 2) Order 2016 reversed this increase and, in 2020, the fee remained £140. Changes to the legal aid regime were introduced through the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which came into effect in April 2013. See <https://www.gov.uk/government/publications/post-implementation-review-of-part-1-of-laspo>

32 Although it remains possible to challenge an entry clearance of a family visit visa decision on human rights grounds, human rights-based appeals relate to a much wider range of immigration decisions.

Appeal outcomes

- 5.52** Some of the appeal types removed in 2013 and 2014 were ones where, historically, the Home Office had enjoyed a higher rate of success. Since the 2014 Act, the percentage of appeals dismissed (where the Home Office decision is upheld) has fallen, from 61% in 2015-16 to 50% in 2019-20, with the proportion of asylum, humanitarian protection, and revocation of protection appeals dismissed having fallen more markedly.³³
- 5.53** However, drawing conclusions from this data is not straightforward. The outcome of an appeal depends on many factors, including: the quality of initial decision-making; new evidence provided by appellants at appeal; the effectiveness of reviews and reconsiderations of appealed decisions (to avoid unnecessary and “unwinnable” appeal hearings); the competence and performance of the PO and of the appellant’s legal representative; and how the judge assesses the evidence and arguments.
- 5.54** While the steep and sustained decline in the number of immigration appeals has relieved some of the pressures on POs, the shift in the composition of the appeals caseload has presented new challenges. The relatively simple entry clearance and family visit visa appeals have been replaced with more complex cases involving human rights issues and protection claims. The task of preparing for a court day has therefore become more demanding.

³³ Between 2007-08 (when the dismissal rate stood at 76%) and 2013-14, dismissal rates for asylum/protection/revocation of protection appeals were never lower than 70% (dipping to 69% in 2014-15). The percentages in the years since then have dropped to 60% (2015-16), 59% (2016-17), 59% (2017-18), 56% (2018-19), and 52% (2019-20).

6. Inspection findings: Training, Tools and Resources

ICIBI 'Expectations'

- 6.1 ICIBI's published 'Expectations' state that anyone exercising an immigration, asylum, nationality or customs function on behalf of the Home Secretary should be "fully competent" and that processes should be "resourced to meet time and quality standards".

The inspection

- 6.2 With this in mind, inspectors examined:
- the availability and appropriateness of training for Presenting Officers (POs)
 - the effectiveness of the tools and guidance on which POs rely
 - whether the resources allocated to support the Presenting Officer function are adequate

Training

'Foundation' training

- 6.3 New POs attend a 'Foundation' training course, lasting three weeks. Training is delivered by Appeals Operations' Appeals Training Team and by staff within each POU who are designated as Business Embedded Trainers (BETs). The course is modular and its present format dates from 2016.
- 6.4 In addition to introducing POs to UKVI, the course covers the technical knowledge POs will need to begin preparing and presenting cases, and signposts them to guidance, policy and where other support or information can be found. The 15-day programme is primarily classroom-based but includes time at the relevant POU with the PO's team, a day of observation in court, and a number of role-playing exercises. Figure 4 provides an overview of the structure and content of the course.

Figure 4

Presenting Officer Foundation training course

Day	Topics covered
1	<ul style="list-style-type: none"> • Corporate induction • Introduction to UK Visas and Immigration • The role of the business area • Immigration control • Appeals, Litigation and Administrative Review induction • The Presenting Officer role • The appeals process • Court structure
2	<ul style="list-style-type: none"> • The Immigration Rules • Standard and burden of proof • The Points Based System • DNA evidence • The EEA Regulations
3	<ul style="list-style-type: none"> • Appeals provisions • Recap
4 and 5	<ul style="list-style-type: none"> • With your team
6	<ul style="list-style-type: none"> • Asylum
7	<ul style="list-style-type: none"> • Humanitarian Protection • LGBT claims • Human Rights
8	<ul style="list-style-type: none"> • Human Rights (continued) • Consent
9	<ul style="list-style-type: none"> • Bail • Documents and reports
10 and 11	<ul style="list-style-type: none"> • With your team
12	<ul style="list-style-type: none"> • Advocacy • Procedure Rules and Practice Directions
13	<ul style="list-style-type: none"> • Fees and costs • Post-hearing casework • Role play
14 and 15	<ul style="list-style-type: none"> • Role play

- 6.5** An experienced Team Manager told inspectors that the Foundation course was a significant improvement on the training that was offered prior to 2016, describing the current version of the programme as a “thorough” course that “covers everything” and provides “practical resources that [POs] can take away with them and links they can access”. The manager acknowledged, however, that the course was “very intense” and that “for some it’s a very steep learning curve”.
- 6.6** In interviews and focus groups, many POs agreed that the Foundation training was intense, with some suggesting that the pace of the course was too fast for them to absorb the information they needed in order to perform effectively. Asylum, humanitarian protection, LGBT claims, human rights cases, and consent were covered in three days, while advocacy skills and tribunal procedure rules were covered in a single day.³⁴ POs cited the training in advocacy and cross-examination skills as a particular weakness of the course. Several told inspectors that they had not felt prepared for “the courtroom environment”. A Senior Caseworker echoed these concerns that the course was “rushed,” adding that “there is not enough time to digest and assimilate knowledge”.

Mentoring

- 6.7** On completion of the Foundation course, new POs are mentored by an experienced PO. They attend appeal hearings with their mentor, to observe how cases are handled, and gradually take on responsibility for preparing and presenting lists of cases, observed by their mentor.
- 6.8** POs said they valued the mentoring period for the exposure to appeal hearings that it provided and the opportunity it gave them to gain experience in, and receive feedback on, the work of preparing and presenting cases.
- 6.9** In answer to an ICIBI questionnaire circulated to POs and Senior Presenting Officers (SPOs), a handful complimented the mentoring they had received: “it really helped me understand the role”, “it helped with getting to know the job”. For some, the mentoring was of more value than the training, but one PO observed that “even that did not equip me with the skills and knowledge required to perform the role to a reasonably high standard”. However, others criticised their mentoring: “I was left on my own and not a lot was fully explained”. Some POs commented that the quality of mentoring was variable, with one describing it as “the luck of the draw”.
- 6.10** Senior managers recognised the importance of mentoring. One said that they were working to put more structure into mentoring, although it was “not as slick” as they would like it to be. Their ambition was to have “a good balance between experience and good people” to mentor staff, but high staff turnover in large POU, like Central and West London, made this difficult.
- 6.11** Another manager said that to support newer staff, mentoring was required “right at the beginning” but also on an ongoing basis. They said there was no formal mechanism for POs to receive additional assistance in areas where they required it and Team Managers and Senior Caseworkers did not have the time to provide the intensive support some staff needed.

³⁴ In its factual accuracy response, the Home Office challenged what inspectors had been told in interviews and focus groups regarding advocacy skills and tribunal rules, stating that “advocacy is practised for the last 3 days of the course”.

Extensions to mentoring period

- 6.12** In most cases, the mentoring period lasts around eight weeks, but it can be extended until the PO's Team Manager and Senior Caseworker are satisfied that they can act independently on a consistent basis across multiple appeal types. POU leadership teams recognised that there was "some variation in how quickly new POs are ready to 'go solo'" and were prepared to extend mentoring.
- 6.13** Some POs felt they were expected to "sink or swim". One commented that the process relied on "the resilience and tenacity of the individual officer" rather than "a robust, tried and tested, flexible and effective training system". Although most POs came into the role with either a legal background or immigration experience, new starters faced a "vertical learning curve". One PO called it "the steepest learning curve you will ever be on", and a number told inspectors they had felt overwhelmed during their first few weeks on the job.
- 6.14** While some POs reported that they had had no difficulty in seeking an extension to their mentoring period so that they felt fully prepared, in answer to the ICIBI questionnaire, 44.1% of respondents (49 out of 111) stated that their formal training and mentoring had not equipped them to perform their role. As a significant number had been trained prior to the revision of the Foundation course in 2016,³⁵ to some extent this may reflect past deficiencies in training that have since been remedied. However, senior management told inspectors it was aware that "staff feel they do not get enough training".

Training refresh

- 6.15** In early March 2020, work was underway to refresh the Foundation training course and mentoring process. The revised Foundation programme was due to be implemented from late June 2020. However, Appeals Operations senior management subsequently noted that there was some uncertainty about the timing due to Covid-19.
- 6.16** The new training programme involves extending the Foundation course over six weeks,³⁶ providing POs with more opportunities to observe and work with their mentors from an earlier stage. The training will be broken down into more manageable units to enable new POs to see what they are taught being applied in practice. Appeals Operations managers hope this will improve understanding and knowledge retention.
- 6.17** New guidance will give mentors more detailed instructions about how to support POs throughout the induction process. Within four weeks of completing the Foundation course, having prepared and presented a number of cases under supervision and with feedback from their mentor,³⁷ new POs will be assessed with a view to them beginning to work independently. As at present, the mentoring period may be extended, if necessary.

³⁵ Of those who responded to the ICIBI questionnaire, almost half (44.6%) had been in post for more than five years.

³⁶ In October 2020, in its factual accuracy response, the Home Office explained that it had since revised its position and the new training programme involved extending the Foundation course over ten weeks.

³⁷ The draft guidance for mentors suggests that, initially, new POs should be asked to present one case per list as they accompany their mentors to hearings.

Consolidation and further training

- 6.18** At the time of the inspection, new POs received consolidation training and training on deportation cases roughly three to six months after beginning to work independently. Under the revised training programme, these courses will be offered approximately 20 weeks after a PO joins ALAR.
- 6.19** Consolidation training lasts four days. The consolidation modules provide a review of the material covered during the Foundation course, as well as additional training on topics such as safeguarding, DNA evidence, and advocacy. Several POs told inspectors they found the consolidation training more effective than the Foundation course, primarily because “it comes at a point where you are more aware of the court” and more familiar with the job.
- 6.20** Training on deportation cases comprises a one-day course, which is usually offered at the same time as consolidation training. Deportation appeals are treated as a priority, as they involve public protection issues. In interviews and focus groups, inspectors were told that these cases were supposed to be allocated to POs only after they have gained some experience and completed the deportation training. However, inspectors learned of instances where, due to administrative errors, deportation cases were assigned to and presented by POs who had not received the training.
- 6.21** Further training is provided on specific topics from time to time. This is planned on a quarterly basis, with topics to be covered identified by senior management based on an analysis of recent trends. Presenting staff can also request support in particular areas from the Appeals Training Team. This training may also focus on new caselaw or emerging issues. In November 2019, inspectors were told that recent sessions had covered cost awards, Article 8 cases, and asylum appeals involving certain nationalities.³⁸
- 6.22** From April 2020, newly-developed training on EU Settlement Scheme appeals was being delivered via Skype. Arrangements were also being made to repeat supplementary training on cross-examination, which had last been offered to staff in 2018-19. POs who had attended the barrister-led sessions on cross-examination told inspectors they had found them particularly helpful. One commented: “This is the type of thing they need to deliver more frequently”, and inspectors found that POs were keen to see more training opportunities focused on courtroom practice.

Refresher training for POs

- 6.23** There was no established programme of refresher training. As a result, some long-serving POs who had joined before the three-week Foundation training course was introduced had not received training on certain modules, for example, cases involving LGBT appellants. While many of the more experienced POs performed well, one Team Manager suggested to inspectors that in some cases their knowledge was “stale”.

³⁸ “Article 8 cases” are those appeals brought on the basis of a human rights claim arising from Article 8 of the European Convention on Human Rights, which guarantees a right to “private and family life”.

‘Intensive mentoring’ initiative

- 6.24** Appeals Operations had introduced opportunities for learning and improvement to POs who were beyond the consolidation training stage. A programme of ‘intensive mentoring’ provides a PO with one-to-one coaching over two weeks, potentially focusing on particular case types. The initiative was developed by an experienced PO at Birmingham POU, where the programme was trialled in 2018-19. A second trial was run at Central London POU from June to October 2019.
- 6.25** An evaluation of the two pilots found that there was a sustained improvement in the performance of members of staff who received this intensive mentoring. A comparison of the proportion of cases won by POs immediately before and immediately after intensive mentoring showed that their ‘win rates’ increased by between three and 28 percentage points, and an analysis of the win rates and ‘win rate indicators’ (a measure that adjusts the win rate to take account of the types of cases) for the initial cohort from Birmingham POU found that they generally continued to perform at a higher level some eight to 12 months after receiving coaching.
- 6.26** The evaluation concluded that it would be realistic to expect a six to nine percentage point increase in the win rate for most attendees and that the initiative will make “mentees more confident in their abilities, reducing stress”. In April 2020, in light of these good results, Appeals Operations was planning to roll the programme out across the national network of POUs in 2020-21. Two members of staff had been dedicated to providing intensive mentoring, and approximately 65 to 70 POs were expected to benefit from the programme over the course of the year.³⁹

Training for other POU staff

- 6.27** Training for other roles in the POUs is less structured than PO training. Newly-appointed SPOs receive training on errors in law and guidance from Business Embedded Trainers and are then mentored by an experienced SPO before being ‘signed-off’ and allowed to present on their own. Thereafter, they are expected to draw on the knowledge and skills they acquired as POs and to seek advice from more experienced colleagues in SAT or Policy, as required.
- 6.28** Senior Caseworkers (SCWs) also rely heavily on their own experience of presenting, with most of their learning and development taking place on the job. One SCW told inspectors it was “difficult to think how a training package for Senior Caseworkers could work, as what is needed for success in the role is a knowledge base built over years”. Some Team Managers said they had received some role-specific training, for example, on topics such as “coaching” and “managing conversations”, but others said they had received no training at all. Several Team Managers said that more formal management training would have been helpful.

Career pathways

- 6.29** Appeals Operations managers were clear that presenting work developed skills that were applicable to a broad range of jobs: “[as a PO] you develop a lot of confidence, time management skills and communication skills”, and this had enabled POs to move on to other Home Office roles in policy and management, as well as to posts in other government departments.

³⁹ The model involves intensive mentoring with mentors supporting more than one PO at a time. It is not more specific but notes that in the Central London pilot mentors worked with more than one PO at a time, and that the wider roll-out would follow that approach. The figures provided to inspectors suggest that a mentor might be working with two to three POs at once.

- 6.30** Nonetheless, some POs felt that the specialised nature of their role left them with relatively few opportunities to progress either within Appeals Operations (a small number might become SPOs, SCWs or Team Managers), the wider Home Office, the Civil Service or elsewhere. Staff based outside London particularly felt that their options were limited.
- 6.31** The picture was different for those POs with law degrees who were looking to pursue a legal career. For them, a period as a PO was a good opportunity to gain courtroom and advocacy experience before undertaking pupillage or moving into another legal role. Meanwhile, inspectors were told in April that in the past year, three SPOs had secured appointments as FtT Judges.
- 6.32** Recognising staff concerns, and with a view to further professionalising its work, since 2019 ALAR has sought through its Legal Careers Pathway programme to support⁴⁰ a number of staff through the process of obtaining a legal qualification from the Chartered Institute of Legal Executives (CILEx) or to qualify as a solicitor. As at May 2020, 20 members of Appeals Operations were working towards one of three levels of CILEx qualification as a Chartered Legal Executive, and a further seven were working towards qualification as a solicitor.
- 6.33** Places are limited and there is a rigorous selection process for those who are interested,⁴¹ but ALAR senior management told inspectors it hoped that opportunities such as these will help the Home Office to attract law graduates and others who aspire to a legal career.

Tools, guidance and support

- 6.34** To be effective, POs must have ready access to relevant caselaw, policy documents, and internal guidance; they must be able to obtain advice from experienced senior colleagues quickly and easily; and administrative support must be provided efficiently.

Home Office staff guidance 2020

- 6.35** In January 2020, the Home Office issued updated guidance to staff on when immigration decisions attract a right of appeal.⁴² This update was issued to cover the newly-introduced rights of appeal for EU Settlement Scheme (EUSS) applicants against refusals or grants of pre-settled status where the applicant believes they qualify for settled status, and against refusals of a Family Permit or Travel Permit, where a valid application was made “on or after 11pm on 31 January 2020”.

40 The Home Office enrolls selected staff in the required training and provides the necessary work experience for participants to gain qualifications.

41 The Home Office provided details of the solicitor pathway. The selection process is bespoke, designed with support from Civil Service Resourcing. It focuses on the strengths and motivation of the applicants, enabling selection to progress across grades with bespoke training delivered to those supporting the selection process. Minimum criteria were established in line with the minimum regulatory requirements to open the opportunity as widely as possible with a view to supporting social mobility. No distinction was made as to where someone studied or what grades they achieved when studying. Applications were blind sifted with an independent blind moderation of sift results. Interview panels were diverse in make up with at least one female and one LGBT+ panel member on each panel and with BAME representation on most panels. Panel members also included experienced solicitors working in other roles within ALAR to complement senior management perspectives. Offers for successful candidates were agreed by the ALAR SLT, who were not involved in the sifting or interview process, based on blind interview data points.

42 ‘Rights of Appeal’ Version 8.0, published 31 January 2020 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/862609/rights-of-appeal-v8.0.pdf

6.36 In addition to EUSS, the guidance explained that:

“Rights of appeal exist against the following decisions:

- refusal of a human rights or protection claim and revocation of protection status – appeal rights are in Part 5 of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act)
- refusal of a visa and refusal to vary leave to remain, in some situations, where the application was made before the Immigration Act 2014 was in force
- refusal to issue a European Economic Area (EEA) family permit as well as certain other EEA decisions where appeal rights are in Regulation 36 of the Immigration (European Economic Area) Regulations 2016
- deprivation of citizenship whereby Section 40A of the British Nationality Act 1981 applies”

Online tools and IT systems

6.37 Inspectors found some differences in the tools used by different POUs.

6.38 Appeals Operations maintains a ‘Presenting Portal’, managed by an HEO. The Presenting Portal includes links to relevant judgments, useful contacts, a “Did You Know” section where users are able to share knowledge and tips, and information compiled by ALAR’s intelligence team. Prior to May 2020, presenting staff were regularly alerted by e-mail when new material, including new caselaw, was added. Since May 2020, new notable Judgments have been uploaded to Horizon, with staff encouraged to use the alert facility to notify them of new material.

6.39 POs are introduced to the Presenting Portal on the Foundation training course. However, from interviews and focus groups, it appeared that POs made limited use of this tool. Few said they used it regularly and some said they found other sources of information more user-friendly.

6.40 Local initiatives at POUs to share knowledge have led to them developing their own tools. At Central London POU, for example, a SCW compiled a body of information in a OneNote file that is now heavily relied upon by POs at the POU, who report that it is user-friendly and particularly helpful.⁴³ At West London POU, in 2019, senior staff built “Launch-Pad”, a “one-stop shop information management application” that brings together frequently used documents and programs, and includes links to determinations, caselaw, preparation guides, contact information, and Home Office bundles. Inspectors were told that the OneNote file and Launch-Pad had been reviewed and had the approval of Appeals Operations management. Launch-Pad had since been rolled out, with a separate folder for each POU, developed with support from the local Unit Improvement Champion.

6.41 POUs have access to caselaw updates through the ‘Electronic Immigration Network’,⁴⁴ an external online service to which the Home Office subscribes, and to guidance and policy documentation through the Home Office’s intranet (Horizon), which provides links to such resources as Country Policy Information Notes (CPINs) and approved “lines to take” on key case types. However, POs said that the time pressures they are under when preparing for court mean that their ability to stay up-to-date with the information available through these

⁴³ OneNote is a Microsoft program that operates as a note-taking application, allowing multiple users to access, and make entries in, searchable digital ‘notebooks’.

⁴⁴ EIN’s website describes it as “the UK’s largest specialist provider of information on immigration and asylum case law and country information via the internet. We’re a registered charity and we’ve been online since 1996.” <https://www.ein.org.uk/>

resources is limited. They added that Horizon was difficult to navigate and, because of its poor search functionality, they often consulted the publicly-available versions of Home Office documents found on GOV.UK or via an internet search.

- 6.42** In the course of preparing cases and performing post-hearing administrative work, POU staff must also consult, enter data, and carry out other functions in a variety of Home Office information management systems, including the Case Information Database (CID), the Central Reference System (CRS), and the Home Office Platform for Storage (HOPS), plus HMCTS's Core Case Data (CCD) system.⁴⁵ Having to rely upon multiple systems, some of which POs described as dated, slow, and difficult to navigate, puts POU staff under further time pressure.
- 6.43** POs told inspectors they hoped that the new Atlas system, which would replace CID, would streamline some of their processes. Integration of Atlas and CCD would be particularly beneficial to POs as it would allow HMCTS to check the validity of an appeal and for the Home Office to receive notifications from the FtT as the case progressed. POs said they understood that Atlas was "due to be deployed shortly", although the timelines for delivery remained vague.⁴⁶ However, because there had been a number of delays with the roll-out of Atlas, some staff were sceptical that it would bring benefits.

Senior Caseworkers

- 6.44** Senior Caseworkers (SCW) are another resource that POs can use when they need guidance. Each POU has a SCW,⁴⁷ but all SCWs are available by telephone for any PO to consult.
- 6.45** While most POs said that it was "usually very easy" to contact an SCW where they had a question or needed authority to withdraw a case, there had been occasions when POs had not been able to reach an SCW, even after trying all the names on the national list, because all the SCWs were in a meeting, or at certain times, for example, on Fridays. This could leave the PO "in a difficult position", for example, where in light of new evidence "everyone in the room knows that an appeal should be allowed" but without an SCW's authority to withdraw the case the PO "can't accept that the decision is wrong." In March 2020, inspectors were told that an SCW from Central London POU now regularly attends the Hearing Centre. POs said this had been "really helpful" in dealing with queries that arose during a hearing.
- 6.46** POs reported that the advice provided by the SCWs could be inconsistent. One said that, if you asked three different SCWs how to proceed with a case, "one will ask for an adjournment, another will say withdraw it, and another will say run it." Others agreed, noting that you can "go to two different SCWs in the unit on the same issues and get two different answers", which meant that in court "the Home Office doesn't have a consistent approach and looks unprofessional". Some POs said they might try to avoid consulting SCWs who were known not to be sympathetic to requests to withdraw a case.

45 CID is the Home Office's primary casework database and is due to be retired in 2021 (when it will be replaced by Atlas); CRS contains information on entry clearance applications submitted overseas; HOPS is a Home Office system that allows for the electronic transmission and sharing of documents; and CCD is HMCTS's case database.

46 In May 2020, the Atlas update stated: "As you will be aware the model office testing was due to commence on Wednesday 25th March but was then caught up in the COVID19 circumstances, notably lockdown. A 2-week user testing on a remote basis by 8 staff has now been completed with a focus on the end-end process and appeal screens. A number of minor issues were identified and resolved. A further round of testing is to be scheduled on a similar remote basis and discussions are taking place as to when the next Beta Phase can commence in current working circumstances. Atlas simulations for statutory appeals are now available as a learning module on Discovery and being undertaken by staff".

47 In October 2020, in its factual accuracy response, the Home Office stated that "medium and large POU's" had "multiple SCWs", citing the Birmingham, Manchester, Central London and West London POU's.

- 6.47** Some SCWs acknowledged regional variations in the advice provided to POs, attributing this to a lack of specialised training for SCWs on emerging issues and changes in policy. A monthly Senior Caseworkers Forum provided an opportunity to discuss trends, promote consistency and share best practice, but some SCWs said more training was needed. However, others referred to the complexity of many of the issues they were asked about and said that there might not always be a single “right” answer and some differences in interpretation were to be expected.

Administrative support

- 6.48** The quality of the administrative support POs received appeared to vary between POUs. Stakeholders highlighted this. One noted that some appeals were:

“hampered by the fact that POs have not personally received copies of important documents, such as appellants’ bundles, even though they were served on the Home Office in a timely fashion. This is clearly outside of the control of the POs, who would benefit from more effective administrative procedures within their places of work.”

Another observed:

“when appeals are adjourned and directions issued against the Respondent, more often than not those directions are not complied with and the HOPO on the next occasion is often unaware of what has happened previously ... Basic administration/conduct of files therefore seems to be lacking.”

- 6.49** The ICIBI questionnaire sent out to all POU staff asked: “What changes would you implement to make the Presenting Officer function more efficient and/or effective?” Of the 111 respondents, 16 (14.4%) referred specifically to a lack of, or insufficient, administrative support for POs, which meant their time was diverted away from preparing for appeal hearings. This was in addition to references to the lack of sufficient preparation time for hearings, and the lack (in most POUs) of dedicated resources to ‘triage’ cases and identify those that are complex and require more preparation time. One PO commented that they were left to:

“fritter away precious preparation time in printing-off decisions and evidence bundles and chasing representatives for evidence and all the myriad, important but predominantly administrative actions a well-run admin team would execute.”

Another stated:

“a huge amount of time is taken by SPOs and POs doing very basic admin work such as printing, filing, adding paper to the copier, getting new ink cartridges, and dealing with the physical files, which eats into valuable time which could be better spent working on the case, doing legal research, complying with court directions etc.”

- 6.50** POs told inspectors about casework team pilots run at Birmingham and West London POUs. In these, dedicated teams processed court directions rather than leaving this to the POs. In their questionnaire responses, some POs expressed the hope that this arrangement would be extended to other POUs.

- 6.51** The lack of sufficient administrative support was highlighted to inspectors by a number of POUs, particularly Central London and Cardiff. One PO said that their POU no longer had “a functioning admin team. It is massively understaffed ... They used to help with copying bundles or scanning or getting other documents”.
- 6.52** Appeals Operations’ requirement for administrative support was not confined to the POUs. The administrative burden of some review processes was also highlighted to inspectors. For example, staff in the Leeds Appeal Review Team (LART) said that the process to review international decisions had changed and was now “far too admin heavy”.
- 6.53** Senior management acknowledged that administrative support across Appeals Operations was variable and felt that the quality of support “seemed to depend on the number and quality of administrative teams in individual places”. In April 2020, inspectors were told that the Scotland-Northern Ireland POU (based in Glasgow) was leading some work to standardise the provision of administrative support to POUs and to establish a forum for administrative team managers. This initiative would include examining training, learning and development, and best practice, with the aim of identifying the “right model” for administrative support across all POUs. It was “at an early stage” and timescales for implementation were unclear.
- 6.54** Meanwhile, managers and staff expected that the administrative teams in the POUs (and the Appeals Processing Centre) would reduce in size as the HMCTS Reform Programme eliminates the use of paper bundles in appeal hearings, making their efficiency and effectiveness all the more important.

Staffing levels

- 6.55** The HMCTS Reform Programme complicates the question of the future “right-sizing” of the POUs. However, the performance targets (the Home Office aims to be represented in 90% of appeals heard by a FtT and 100% of appeals heard by a UT), combined with the ‘utilisation rate’ for POs (60% of their time should be spent in court), enable Appeals Operations to calculate the resources required at present.⁴⁸
- 6.56** In practice, POUs must plan to cover 93% of listed FtT cases to achieve the 90% target, in order to allow for late-notice absences and because the number of cases listed each day varies. Similarly, to achieve a 60% PO utilisation rate POUs have to make allowances for leave, sickness absence, and 15 days per year learning and development time for POs. The result is that Appeals Operations aims to maintain PO numbers at 2.3 times the number of lists expected to be listed at individual Hearing Centres according to HMCTS projections of case volumes.

Representation rates and use of external counsel

- 6.57** In each of the past three business years, Appeals Operations has fallen short of the target of representation in 90% of FtTs. See Figure 5. Moreover, these levels of representation have been achieved only by engaging external counsel to cover some lists.

⁴⁸ In determining which hearings will go without Home Office representation in the context of limited resources and a 90% representation rate target, POU managers refer to a “priority matrix” that specifies which categories of cases “must be represented” (including deportation, deprivation, and certain high-profile cases), which “should be represented resource permitting” (including asylum and domestic violence cases), and which are “other cases to be represented” as a lower priority (including entry clearance and EEA appeals).

Figure 5

**Percentage of FtT hearings at which the Home Office was represented,
by POU and Year (2017-18 – 2019-20)**

Unit	% of Total Hearings	Representation Rate			
		2017-18	2018-19	2019-20	Total
Central London	28.2%	86.0%	91.5%	87.0%	88.1%
West London	25.9%	85.2%	87.8%	88.2%	86.9%
Birmingham	16.1%	91.9%	85.2%	87.1%	87.9%
Manchester	8.8%	96.0%	84.8%	85.6%	88.9%
Leeds	6.8%	97.0%	94.8%	87.4%	93.6%
Cardiff	5.6%	92.7%	93.7%	95.8%	93.9%
Scotland-NI	4.3%	82.4%	94.8%	93.5%	89.6%
Newcastle	2.5%	94.1%	96.6%	96.4%	95.5%
Stoke*	1.4%	88.9%	*	*	89.0%
Total**		88.9%	89.4%	88.2%	88.8%

* Stoke POU closed in December 2017.

** Total figures include an additional 362 hearings over three years in which FtT representation was provided by the Specialist Appeals Team.

- 6.58** In 2019-20, barristers were instructed to provide representation for 3,207 lists, at a cost of £1,531,635. There was heavy reliance on external counsel at the two busiest POU, Central London (where they covered 1,972 lists) and West London (844 lists).
- 6.59** Appeals Operations estimated that an additional 27 full-time, experienced POs would have been required to provide representation for the lists covered by barristers in 2019-20.⁴⁹ Senior managers believed that the cost of instructing external counsel was only marginally higher than the cost of employing this number of additional POs, had it been possible to recruit and train them. “Taking into account all the overheads involved in employing and accommodating POs, the hourly rate works out to be not that different”.
- 6.60** Cost comparisons are difficult, however. According to Home Office figures, in 2019-20 the annual cost of a full-time PO was £50,529 in London and £44,278 elsewhere.⁵⁰ Based on these figures, hiring external counsel was c. £200k more expensive. But this takes no account of any additional demands on other staff because external counsel do not have access to Home Office systems, do not carry out post-hearing tasks (for example, updating CID or following up on any tribunal-issued directions), and may require more input from SCWs. The latter told inspectors that this added to their workloads.⁵¹

49 The estimate appears reasonable, assuming a 60% utilisation rate (60% of a PO’s time spent in hearings) at c. 250 working days in the year, minus annual leave and an allowance for training and sickness leave. This works out at c. 125 lists per PO per year, at which rate it would take 25.66 FTE POs to cover the 3,207 lists covered by barristers in 2019-20. Geography is a complicating factor, since the POs would need to be in the right place at the right time, meaning that in practice more POs might be required.

50 The costs are taken from a Home Office staffing calculator, available on Horizon. They include salaries and benefits, but not overheads (accommodation, training, etc.).

51 In its factual accuracy response, the Home Office noted that “Costs for external counsel do not however involve further overheads or, for example, training costs or time”.

- 6.61** Costs aside, there is also the question of quality of representation. According to senior management, “the quality of [outside barristers’] work varies”.
- 6.62** In March 2020, inspectors were told that Appeals Operations was seeking to reduce its reliance on external counsel. After recent recruitment rounds, senior management believed it had “the right number of POs, but not all in the right place, and not all trained”. As more POs completed training, and if the FtT lists reduced in the medium term, the use of outside barristers was expected to decline.⁵²

Court time versus preparation time

- 6.63** Inspectors were told that the 60% utilisation rate places heavy demands on POs. While POs should have two days out of court in a full week, sometimes they are presenting on consecutive days. POs said that these ‘back-to-back’ court days were especially stressful and difficult to manage, as it often involved having just one day to prepare the cases for both.
- 6.64** While some long-serving POs were comfortable with their workload, inspectors found that most POs had difficulty preparing their cases in the time available. Of the 111 POs and SPOs who responded to the ICIBI questionnaire, 85 (77%) indicated that they were not allocated enough time to prepare for an appeal hearing. While it is difficult to know how much this affects appeal outcomes, it clearly undermines POs’ confidence and their performance in court. This was mentioned by appellants’ legal representatives and by Immigration Judges, who said that it was apparent to them that, in some cases, the PO had not had enough time to prepare their case.
- 6.65** POs expressed frustration to inspectors that the “time is not sufficient to do the job”. One said: “We’re having to skim read things” and “you know you are cutting corners” for lack of time. Another lamented that, with an increasing proportion of cases being complex, “the easy day that enables us to catch up no longer exists”, adding that the “obsession with 60%” was preventing POs from reviewing previous determinations, reviewing guidance, and keeping up-to-date on caselaw. Another said:
- “We don’t have time to read all the caselaw that comes out ... the onus is on us to make the time when we do get a case to refer back to the appropriate caselaw.... We’re not provided with time to do the additional things we need to do. We have to fit it in where and when we can. It’s not a good process, really.”
- 6.66** Workload pressures also impacted staff wellbeing. The PO role is challenging: it is adversarial, it requires confidence and resilience to work independently in the tribunal, it is technically complex. But POs identified lack of sufficient preparation time, to keep their knowledge of caselaw and policy up-to-date and to attend to other duties, as a significant source of pressure and unhappiness.
- 6.67** Long-serving POs told inspectors that the 60% utilisation rate was relatively new, within the past five or so years. Previously, it had been 50%, which had increased to 55% and then to 60%. Management’s aim had been to achieve greater efficiency from the available resources. A senior manager commented that while it was challenging for less experienced POs, the fact those with more experience were comfortable with the 60:40 split showed it was achievable, and all staff should be pushed to reach the same level of efficiency.

⁵² In October 2020, in its factual accuracy response, the Home Office stated: “External counsel has not been used since April 2020 and are not expected to be used for representation during 2020/21. The use of remote hearings by HMCTS as a response to the COVID situation allows for more flexibility of Presenting Staff across different locations”.

- 6.68** Several other senior managers said that, ideally, the rate should be lower, however a reduction was impossible due to resource constraints.⁵³ Appeals Operations estimated that dropping the utilisation rate to 55% would require an additional 19 POs (at an annual cost of £865,588), while dropping back to 50% would require 34 additional POs (at a cost of £1,524,578).
- 6.69** POs felt that senior management was unwilling to consider adjusting the utilisation rate. However, the latter told inspectors that it was aware of staff concerns and was exploring ways they might be eased. The intensive mentoring programme was seen as one way of helping equip POs to manage their workloads more efficiently, and the creation of new administrative teams to process court directions, which had been piloted, would relieve POs of one of their post-hearing tasks. Senior management was also exploring how to make presenting work less “relentless” by eliminating back-to-back court days and allocating case review work to POs one day a week.
- 6.70** Between June and September 2019, Leeds POU ran a pilot to test whether dropping the utilisation rate to 55% would result in an improvement in performance (measured by the win rate) or in staff wellbeing. An evaluation of this pilot concluded that the win rate did not improve, and feedback from staff indicated that they did not feel they had gained any additional preparation time as a result of the change to the utilisation rate. However, as the POs who had taken part observed, the pilot had provided only one additional day for preparation over a four-week period.

People Survey scores

- 6.71** As part of its examination of staff morale and POs’ views about their work, inspectors reviewed the annual People Survey scores from 2018 and 2019 for staff in Appeals Operations, comparing the results for Appeals Operations and UKVI as a whole.
- 6.72** GOV.UK explains: “The annual Civil Service People Survey looks at civil servants’ attitudes to, and experience of working in government departments”.⁵⁴ It is a tool for measuring staff engagement levels and provides a confidential way for staff to air their views. The results provide managers with an insight into areas for improvement.
- 6.73** Staff are asked a number of questions, grouped into the following categories:
- my work
 - organisational objectives and purpose
 - my manager
 - my team
 - learning and development
 - inclusion and fair treatment
 - resources and workload
 - pay and benefits
 - leadership and managing change

⁵³ The comments made to inspectors by different senior managers included: “...in an ideal world, you would have someone on one day on, one day off” ... “if it were down to me, the rate would be 50/50 – there would be benefits for wellbeing, but the win rate might not improve” and “the 60% rate is basically due to funding and the need to maintain a representation rate ... I’m sympathetic to what POs say about the stresses the rate puts on them”.

⁵⁴ <https://www.gov.uk/government/collections/civil-service-people-surveys>

6.74 The answers are used to produce an engagement index score for each unit. The Home Office intranet states: “Research shows that the more engaged an employee is the more effective they will be”.

6.75 Figure 6 compares the People Survey scores from 2018 and 2019 for UKVI, Appeals Operations and Birmingham POU.⁵⁵ From 2018 to 2019, Birmingham POU recorded the biggest changes in scores in Appeals Operations and the highest number of negative changes of all POU. Figure 6 shows that between 2018 and 2019 UKVI’s engagement index fell 1% to 58%; Appeals Operations increased 2% to 57%; while Birmingham POU fell 11% to 42%.

Figure 6

People Survey scores 2018 and 2019

Category	UKVI			Appeals Ops			Birmingham POU		
	2018	2019	+/-	2018	2019	+/-	2018	2019	+/-
Engagement index	59	58	-1	55	57	+2	53	42	-11
My work	68	67	-1	71	73	+2	61	56	-5
Organisational objectives and purpose	80	80	0	81	82	+1	79	65	-14
My manager	64	66	+2	66	69	+3	62	52	-10
My team	78	78	0	73	74	+1	66	46	-20
Learning and development	50	50	0	45	51	+6	45	39	-6
Inclusion and fair treatment	75	73	-2	74	73	-1	63	48	-15
Resources and workload	71	72	+1	68	69	+1	59	48	-11
Pay and benefits	29	29	0	20	18	-2	19	13	-6
Leadership and managing change	47	46	-1	46	50	+4	43	36	-7

6.76 Excluding ‘Pay and benefits’, the lowest scores for Appeals Operations were for ‘Learning and development’ and ‘Leadership and managing change’, although both had improved from 2018 to 2019.⁵⁶

⁵⁵ Only high-level scores at UKVI level are available on GOV.UK.

⁵⁶ In its factual accuracy response, the Home Office pointed out that the ‘Learning and development’ and ‘Leadership and managing change’ scores “mirrored the position for UKVI”.

- 6.77** ALAR senior management told inspectors that Appeals Operations' 'Learning and development' score had improved each year "over the past four years" and was now "similar to UKVI". But, it was difficult to provide POs with learning and development opportunities, for example, caseworking units arranged "team days" but these were harder to organise when POs were expected to attend court. Leeds POU and its associated units (LART and SART) recorded the lowest score (38% in 2018 and 20% in 2019) for 'Learning and development' across all of the POUs. When asked for the reasons behind this, a local manager stated: "If there are too many cases we can't always allow training days".
- 6.78** Regarding 'Leadership and managing change', senior management noted that Appeals Operations had undergone "a lot of change", which could be "difficult for people", but also acknowledged that they were "not always great at explaining change".
- 6.79** The Appeals Operations scores for 'Learning and development' (51%) and 'Leadership and managing change' (50%) were "up on the previous year and above the UKVI average", though the latter set a low benchmark (50% and 46% respectively). A senior manager commented that the "majority of the civil service thinks leadership and managing change isn't done well across the civil service. I think looking at a bare score is kind of dangerous. You need to look at the rest of the civil service". However, given the amount of change that Appeals Operations was going through, they were "genuinely proud" of the score of 50%, but there was "much more" they could do about 'Learning and development', especially for administrative staff.
- 6.80** Figure 7 shows that the POU with the highest engagement index score in 2019 was Newcastle with 74%. Newcastle POU had the highest score for six of the nine categories.⁵⁷ Birmingham POU recorded the lowest engagement index score (42%) as well as the lowest scores for six of the nine categories.

⁵⁷ 'Pay and benefits' category has been excluded from this analysis as this is not delegated to business units.

Figure 7

People Survey scores 2019											
Category	Presenting Officer Units								Specialist Appeals Team	Appeals Processing Centre	Appeals Operations
	Birmingham	Cardiff	Central London	Glasgow	Leeds	Manchester	Newcastle	West London			
Engagement index	42	59	52	61	50	52	74	58	59	66	57
My work	56	85	77	81	70	64	85	75	82	68	73
Organisational objectives and purpose	65	90	86	89	86	71	88	85	78	88	82
My manager	52	83	77	75	70	80	92	67	75	63	69
My team	46	84	75	93	61	79	98	69	80	76	74
Learning and development	39	40	49	68	20	40	63	60	62	59	51
Inclusion and fair treatment	48	88	76	87	70	90	95	64	74	71	73
Resources and workload	48	74	67	74	58	68	81	68	72	71	69
Pay and benefits	13	13	20	12	18	6	38	16	7	22	18
Leadership and managing change	36	58	45	68	30	49	70	39	56	53	50

Green highlights highest score in each category by POU

Red highlights lowest score in each category by POU

6.81 Birmingham is the third largest POU, with 52 staff. Senior Management acknowledged that the engagement index score in 2019 was “down 10%,⁵⁸ but it’s from a low base so it’s not a new issue”. The high turnover in Assistant Directors and previous incumbents not being based in Birmingham had not helped. The management had made efforts to address the issues, including hiring external HR experts, but these had not been successful. The new Assistant Director was responsible for both Birmingham and Manchester POU’s and based in Manchester but was “making a point of spending a significant amount of time in Birmingham”.

⁵⁸ It was actually down 11%.

- 6.82** In March 2020, POs at Birmingham POU told inspectors that they were concerned about the amount of change and how it had been handled: “People weren’t happy with the way managers were communicating change. There was never really any verbal consultation, just ‘we’re changing this’”. They felt there was a lack of engagement from management: “things are done and there’s no engagement with us”. However, they recognised things were improving and acknowledged the work that the new Assistant Director was doing “to try and improve things and change how things are done”.
- 6.83** The Birmingham Assistant Director told inspectors that they were the fifth person in the post in the last three years. They acknowledged that the People Survey scores needed to improve and highlighted some “quick wins” that had been implemented, such as the introduction of a confidential staff suggestion scheme. They were working with the Unit Improvement Champions to understand the reasons for the scores. Four key areas for change had been identified and they planned to spend around six weeks on each, getting staff involved via focus groups. “Crucially, [this included] asking them to put in place suggestions for what we can do better and give them a real say in what happens. We also want to avoid the mentality of ‘this is absolutely rubbish’ and everything needs to change”.

7. Inspection findings: Feedback Mechanisms and Learning from Appeals

Improving decision quality through effective feedback

7.1 Presenting Officers (POs) are in a unique position to see why Home Office decisions are overturned at appeal. By providing timely⁵⁹ and accurate feedback to decision-making areas, POUs have the ability to affect two of ICIBI's six 'Expectations': that "Decisions and actions are 'right first time'", and that "Errors are identified, acknowledged and promptly 'put right'".

7.2 This potential was recognised as one of the key priorities set for Appeals Litigation and Admin Review (ALAR) teams in 2019-20:

"Improve the win rate – we will review all Entry Clearance and other targeted cohorts of Appeals in the system and improve the withdrawals processes. We will also work with the Making Better Decisions Board⁶⁰ and decision-making areas to ensure that lessons from appeals are fed into future decision-making."

7.3 In support of this priority, Appeals Operations introduced a number of initiatives to improve feedback to operational decision-making areas. These included:

- appointing Account Managers to interface with policy and operational areas
- e-Feedback reporting by POs, focusing on specific appeal categories
- bi-monthly reports on international appeals
- 'deep dive' analysis reports

Account Managers

7.4 Four of the seven Grade 7s in Appeals Operations have been allocated an "Account Manager" role, alongside their core duties. Account Managers are the "lead contact point for process and feedback enquiries" for operational areas and provide regular feedback to decision-making teams, with an emphasis on how application types are performing at appeal, whether there are any trends, and what this suggests about the sustainability of decisions.

7.5 Account Managers support other activities, such as facilitating familiarisation visits to the Tribunal for decision makers and providing training on the appeals system to operational colleagues. They also initiate 'deep dive' reviews to establish themes from allowed and dismissed appeals with a view to identifying best practice and process improvements.

⁵⁹ In its factual accuracy response, the Home Office pointed out that the timeliness of PO feedback was affected by waiting times for appeal hearings.

⁶⁰ The Making Better Decisions Board is chaired by the Director of UKVI's Immigration and Protection Directorate. Originally, Appeals Operations was represented by the SCS and Grade 6, but as at early 2020 the regular attendee for Appeals Operations is a Grade 7. The SCS and Grade 6 receive papers, including minutes/actions/agenda and updates from the Grade 7. The Grade 6 attends if the Grade 7 is unavailable or the agenda has a particular appeals emphasis/item.

- 7.6** The four Account Managers work with decision-making teams in eight operational areas; Asylum; Euro (legacy); Family and Human Rights Unit (FHRU); International; Refused Case Management; and Settlement (all UKVI); Criminal Casework; and Returns Preparation (both Immigration Enforcement).
- 7.7** The frequency with which Account Managers and operational areas were in contact varied but was “typically in proportion to the number of appeal types dealt with by individual units”. For example, Home Office records showed that meetings with Asylum Operations took place monthly, reflecting the fact that asylum appeals account for 30% of all appeals (the largest single type), and quarterly with Refused Case Management.
- 7.8** These meetings focused on providing feedback, aligning priorities and joint working, but Account Managers might also arrange a meeting on a specific issue, for example, where a difference has been identified between decision practice and the approach taken by Tribunals, and may involve senior caseworkers (SCWs) and policy staff, if required.
- 7.9** By discussing appeal outcomes, Appeals Operations hopes to reduce the number of cases that proceed to appeal that are unlikely to be upheld. As an example of this working, senior managers told inspectors about how decision makers in the Family and Human Rights Unit had adapted their approach in cases where the appellant had a child who may qualify for British Citizenship as the ‘win rate’ for these cases was very low. As a result of the changes made by FHRU, the win rate had improved.
- 7.10** On the evidence presented, inspectors were satisfied that having Account Managers added value but felt the approach could be more structured in terms of frequency of contact and the tracking of issues and outcomes. The role also needed to be more widely communicated.
- 7.11** An Account Manager argued, reasonably, that it would be difficult to quantify the benefits and to identify specific improvements from the overall appeal statistics. However, inspectors found that a large number of POs seemed unaware of the work Account Managers were doing to feed back to decision-making areas. Responding to questions on feedback in the ICIBI questionnaire, one remarked “there is little time for reflection [or ways] to avoid repetition of poor appeal outcomes. The only working way of doing this at present, to my knowledge, is via email trails – which can easily get lost and may not be sent to all”.

e-Feedback

- 7.12** As part of the annual performance management process, in 2019-20 POs were set “goals”, which included: “Provide regular feedback to decision makers that will assist their understanding of appeals processes and improve future decision-making in accordance with instructions on numbers and types of cases”.
- 7.13** Appeals Operations launched its current “e-feedback” system in June 2019. Where the previous e-feedback template had sought to capture feedback across all appeal case types, the new system captures feedback on one designated decision-making area at a time. The first area designated for e-feedback using the new system was Family and Human Rights Unit (FHRU) appeals. Feedback for FHRU was captured between June and August 2019.

- 7.14** The new e-feedback system was devised to ensure that POs were clear which cases they should be providing feedback on and to enable managers more easily to monitor that they were doing so. As at March 2020, the Home Office was unable to evidence the impact of this initiative and told inspectors that it was not possible to make a direct link between the e-feedback and appeal outcomes, since a number of factors affected the latter. However, over time, it hoped to be able to say how many appeals of a particular type were heard in a given month and how many received feedback via the e-feedback form.
- 7.15** From October 2019, POs have been required to submit feedback using an Excel form. This replaced the former feedback template. The new form asks POs a number of questions, including:
- whether the correct right of appeal was issued
 - whether the decision was made under the correct Immigration Rules
 - if the decision was professionally drafted
 - if fresh evidence was received with the appeal or at the review stage
 - whether fresh evidence could have been submitted earlier in the process
 - if the decision could be used as best practice for training purposes
- 7.16** Most of the cells on the form have drop-down menus. This both speeds up completion of the form and produces consistent responses that can be analysed more easily.
- 7.17** Completed forms are emailed to a central inbox monitored by a designated Senior Caseworker (SCW) in Appeals Operations. The relevant Account Manager analyses the feedback and sends it to their point of contact in the decision-making area.
- 7.18** Inspectors examined 127 feedback forms completed by POs for FHRU appeals heard between 6 June and 27 August 2019. These included feedback on the completeness of appeal bundles, whether all material facts and relevant evidence had been considered in making the original decision, and whether the decision was correct in terms of policy and caselaw.
- 7.19** Of the 127 forms, 97 provided additional comments on a range of factors including: the need for decision makers to reference previous appeal determinations; attaching Police National Computer (PNC) results to the appeal bundle; and the need to include details of family circumstances which are likely to affect appeal outcomes.
- 7.20** Appeals Operations discussed the findings from this feedback with the FHRU in September 2019. From the minutes of this meeting, both Appeals Operations and FHRU appeared willing to learn from the feedback. The minutes recorded that Appeals Operations managers intended feeding back to POs on what had been discussed so that “they could see something is being done”.⁶¹
- 7.21** Inspectors were told that after this initial use of the new e-feedback process, further roll-out to other decision-making areas had been delayed as the hosting platform was not supported beyond October 2019. However, during January and February 2020, POs were asked to provide feedback on International appeals. In March 2020, this data had been collected, but had not yet been fed back to the decision-making area, as analysis had been paused due to Covid-19.

61 In October 2020, the Home Office provided evidence that emails and a slide-pack had been shared with POs in September 2019.

- 7.22** Overall, Account Managers were enthusiastic about the new e-feedback process and the improvements it had delivered on FHRU appeal success rates,⁶² but said that the number of forms submitted was “much lower than the number of appeals heard”.
- 7.23** As with the creation of Account Managers, inspectors found limited awareness of the e-feedback process amongst POs. This was not helped by the fact that a search of Horizon⁶³ produces the message: “The eFeedback tool is no longer available – Presenting Officers who need advice on how to provide Appeals feedback to decision makers, please email: AppealsPOeFeedback@homeoffice.gov.uk”. This refers to the tool that was in use prior to the introduction of the current e-feedback system in June 2019.
- 7.24** Where POs were aware of the “new” process, there was a reluctance to engage with it due to time pressures. One PO commented: “There are mechanisms for recording feedback for decision makers, but these have been tacked on to the Presenting Officer role with no additional time set aside for them to be completed, and I for one have not completed feedback to decision makers because I simply haven’t had the time”.

Bi-monthly feedback on international appeals

- 7.25** International appeals may be lodged when an application for entry clearance has been refused. These appeals are handled differently to other case types. In accordance with the Immigration Tribunal Procedure Rules,⁶⁴ the refusal decision must be reviewed on receipt of the appeal notice from the appellant, along with any additional documentary evidence the appellant has submitted.
- 7.26** The review is carried out by the Sheffield Appeals Review Team (SART), part of ALAR. Reviews are conducted by EOs. At the time of the inspection, there were five reviewers, three of whom had experience of case working international visa applications. There was no formal training, but reviewers begin by working on straightforward cases and build up to more complex reviews. New members of staff have a “buddy” working alongside them and are supported by desk notes and some self-learning.⁶⁵ Initially, 100% of their decisions are reviewed by an HEO. HEOs also review 100% of complex cases. The SART senior manager explained: “If they have met the Rules, we produce a withdrawal proforma and we send it to the PO and decision maker”.⁶⁶ Where SART agrees with the original decision, the appeal proceeds.
- 7.27** In addition to providing individual feedback, SART produces an ‘Appeals Analysis DQ [Decision Quality] – Bi-Monthly Report’. This contains statistics for entry clearance refusal decisions upheld and overturned, with the reasons for those overturned. Inspectors examined the October 2019 Report. This showed that SART upheld 74.1% of the refusals it reviewed in June and July 2019. The primary reason for SART to overturn a decision was that fresh evidence had been presented. Other reasons recorded were “balance of probabilities”, “decision error” and “other”. See Figure 8.

62 Inspectors were told that FHRU win rates were 36% in June 2018 and increased to 55% in August 2019.

63 Search completed at the end of September 2020.

64 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/866217/consolidated-fft-iac-rules-20200201.pdf

65 In its factual accuracy response, the Home Office commented that: “There is no set Foundation training [for SART reviewers] as the team is small with starters typically joining on a solo basis allowing for bespoke training considering previous experience. This has included elements of the Presenting Officer Foundation programme on aspects of law and process where appropriate”.

66 In its factual accuracy response, the Home Office clarified that the withdrawal proforma was sent to “HMCTS, Appellant/Representatives and Decision-Making Centre”.

Figure 8

Outcomes of SART reviews of International Appeals for June and July 2019

	June 2019		July 2019		Total	
	Number	%	Number	%	Number	%
Appeals received	799	N/A	970	N/A	1,769	N/A
Reviews completed	498	N/A	335	N/A	833	N/A
Decision upheld	372	74.7	245	73.1	617	74.1
Decision overturned	126	25.3	90	26.9	216	25.9
– Fresh evidence	104	82.5	80	88.9	184	85.2
– Balance of probabilities	10	7.9	3	3.3	13	6.0
– Decision error	4	3.2	2	2.2	6	2.8
– “Other”	8	6.3	5	5.6	13	6.0

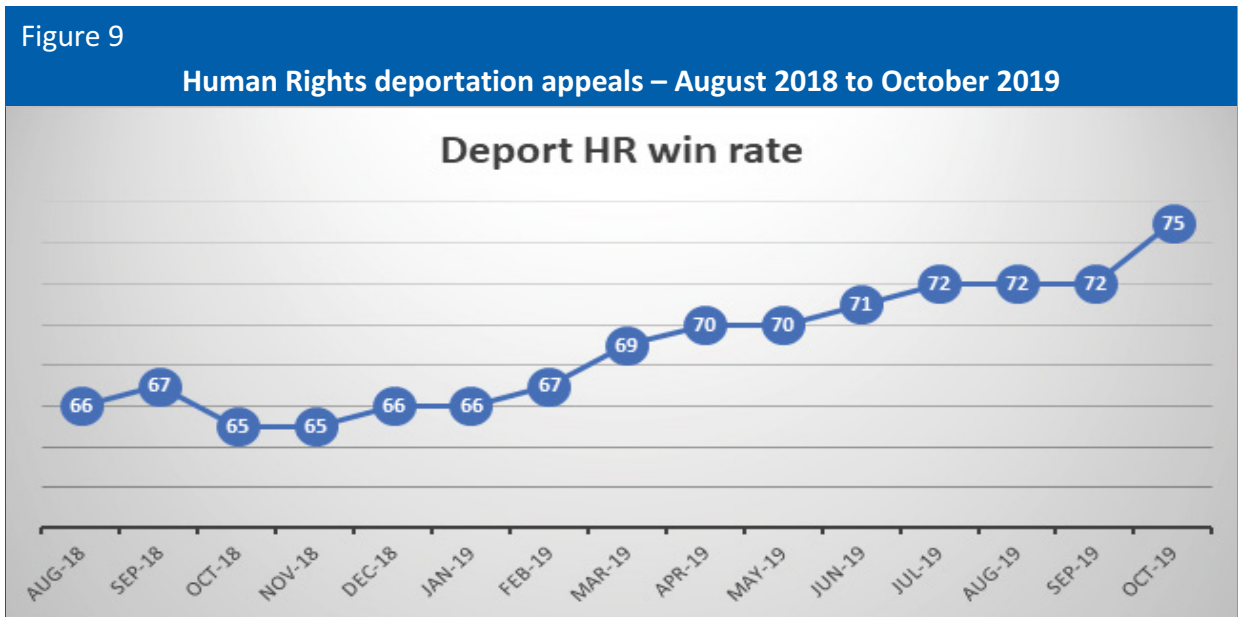
- 7.28** The reviews completed in any month will include appeals received in previous months, so a direct comparison of reviews to appeals received is not possible. Nonetheless, the fact that over these two months twice as many appeals were received as reviews completed raises questions about SART’s capacity.⁶⁷
- 7.29** The October 2019 Bi-Monthly Report also contains details of a specific project, entitled ‘Ghurkha Early Evidence’. Inspectors were told that the aim of this project was to seek early engagement with legal representatives to request that all documentary evidence is submitted ahead of the appeal hearing, in order to prevent cases proceeding to appeal that were unlikely to succeed. POs told inspectors that “invariably” legal representatives in Ghurkha appeals bring their evidence to the hearing rather than submitting it with the appeal.
- 7.30** The final section of the October 2019 Appeals Analysis Report explained how improvements had been made to address the issue of missing documents in appeal bundles, in response to feedback that had been provided by POs.
- 7.31** In September 2020, inspectors were told that the bi-monthly reports had become quarterly.

‘Deep-dive’ analyses

- 7.32** Appeals Operations produces analyses of appeals by case type and of PO performance using a win rate tool. The tool draws data from the Case Information Database (CID), which can be analysed using Excel and Pivot tables. This includes: appeal type; nationality; PO; and appeal outcome.

⁶⁷ In October 2020, ALAR provided inspectors with data for appeals received and reviewed throughout 2019-20, broken down by month. This indicated that 12,059 appeals had been received between April 2019 and March 2020, and 12,016 had been reviewed over the same period. SART upheld 9,591 decisions overall (79.8%), with the monthly rate of upheld decisions increasing steadily through the year from 72.3% in April 2019 to 87.5% in March 2020. The figures in the bi-monthly report for appeals received and reviews completed in June and July 2019 bear no relation to the latest figures for these months: June 2019, 989 appeals received, 989 reviewed; July 2019, 1,263 appeals received, 1,263 reviewed. However, the data provided in October 2020 does not include when the reviews were completed.

- 7.33** Where the win rate is regarded as high or low for a particular case type, Account Managers may carry out a ‘deep dive’ of appeal determinations to identify any common factors. These support conversations with decision-making areas to improve decisions and to review existing appeals with a view to withdrawing unsustainable decisions. Inspectors were provided with examples of ‘deep dives’ on Human Rights deportation appeals and on cases involving Iraqi nationals.
- 7.34** The ‘deep dive’ for Human Rights deportation cases, which was produced in November 2019, contained a detailed review of 40 appeals, of which 20 were allowed and 20 dismissed. The report provided statistics to show an improving win rate for this appeal type. See Figure 9.



- 7.35** The report attributed the improving win rates largely to changes in caselaw. However, it also identified key findings from the sample, including how the outcome may be influenced by the presence of close family members in the UK and the submission of medical and expert reports with the appeal.
- 7.36** The ‘deep dive’ report into cases involving Iraqi nationals was much briefer, providing a one-page summary of data relating to 55 allowed appeals. The report, which was undated, identified the main reasons for the appeal outcome, and a breakdown of appellants by gender and age. It was unclear from the evidence initially provided to inspectors whether the report had been shared with the relevant decision-making area(s), but the Home Office later confirmed that it had been shared with Asylum Operations ahead of the November 2019 Account Manager meeting.
- 7.37** In September 2020, inspectors were provided with a further example. The report, which was shared with the relevant decision-making area in July 2020, examined allowed spouse appeals.
- 7.38** Inspectors found that POs were generally unaware of these ‘deep dive’ reports.

Effectiveness of feedback loops

- 7.39** In interviews and focus groups, POs appeared unaware of the various ways in which feedback was provided to decision-making areas. However, it appeared from ICIBI's questionnaire that they were aware that feedback was provided. ICIBI asked POs and SPOs: "Are mechanisms in place for POUs to provide feedback, following appeal outcomes, to case working units?" Of the 111 respondents, 104 (92%) said that feedback loops existed, but only 9 (8%) thought that they were effective.
- 7.40** It is impossible to say to what extent this view would change if POs were better-sighted on the work of Account Managers, regular reports and 'deep dives', and whether this might encourage greater engagement with e-feedback, but there is a clear case for better communication from managers about the efforts that are being made, why they are important, and what they are achieving.

Appeals Operations engagement with Home Office policy teams

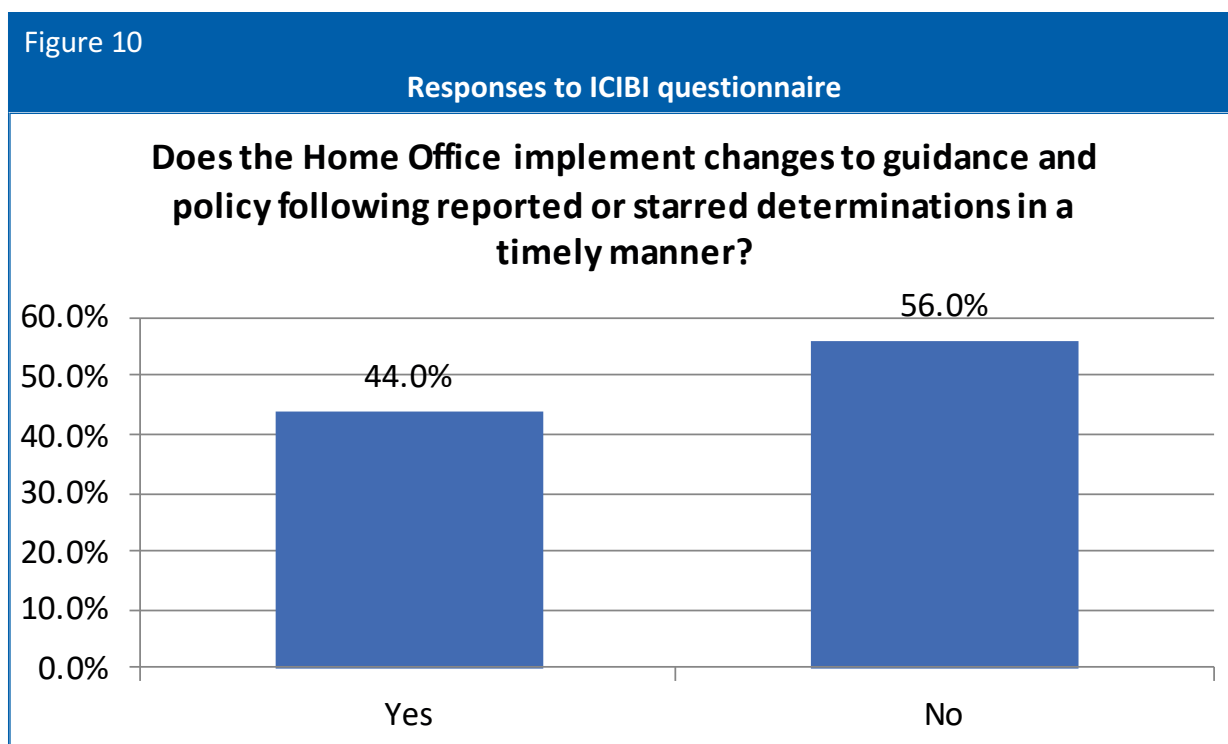
- 7.41** The Home Office's policy teams sit in BICS Policy and International Directorate. While there is an overall policy lead for the appeals process, policy queries relating to specific case types are dealt with by separate policy teams. For example, Human Rights appeals (Article 8) for family cases are referred to the family policy lead, whereas Human Rights appeals (Article 8) for visitor visa cases fall under the remit of the Legal Strategy team (in BICS Policy and International Directorate).
- 7.42** The Appeals Operations Chief Caseworker (Grade 7), who sits in the Specialist Appeals Team, acts as the primary contact with Policy teams. The Chief Caseworker chairs monthly meetings with the Senior Caseworkers from the POUs, in which they discuss matters relating to policy, guidance and caselaw, and share and agree best practice. A representative from the Legal Strategy team (appeals policy) is also invited to the meeting.
- 7.43** There are no formal terms of reference. The meeting minutes from May 2019 to March 2020 showed that the agenda varied each month, though some items were recurrent, such as updates on appeal determinations of interest and deportation cases. There were no formal actions arising from the meetings, and it was unclear whether feedback was provided to POs.
- 7.44** Senior managers told inspectors that specific matters are escalated directly to Policy teams or to one of the themed Virtual Litigation Team (VLT) meetings. The format and attendance at VLTs varied, depending on the issues to be discussed, but they were normally attended by Legal Advisers, Policy, ALAR and Casework representatives. The frequency also varied, but meetings tended to be roughly every three months. Prior to the pandemic, VLTs were in-person meetings with some participants joining by telephone. Since Covid-19, they have been held as video conferences.
- 7.45** Inspectors were given an example of a matter that was escalated to the VLT. This concerned 'qualifying children'. These are typically Human Rights cases involving a child who stands to be removed and who has been resident in the UK for more than seven years at the time of the appeal hearing. Analysis of these appeals indicated that they were being allowed on the basis that "it would not be considered reasonable to remove [the appellant]" due to the 'qualifying child's' circumstances. According to Appeals Operations senior management, Policy was not keeping up-to-date with what was happening in the courts:

“Appeals Operations weren’t given any direction on how we should proceed with these case types initially. And although there was recognition of the problem, Policy was unable to provide any lines to take or confirm whether the guidance could change..... However, approximately 6 weeks later, an agreement was eventually reached after the matter progressed.”

7.46 In interviews and focus groups with Appeals Operations staff and managers, inspectors heard repeated references to frustrations with “Policy” over delays in receiving updates on interpretations of caselaw. Inspectors were told:

“Policy takes a long time to update, which can mean that caseworkers review a number of cases and send [them] to appeal, but the change in policy will mean that they are not likely to succeed.”

7.47 The ICIBI questionnaire produced similar findings. Over half of the respondents felt that timeliness in updating guidance and policy was an issue. See Figure 10.



7.48 POs felt the delays in receiving updates put them in a difficult position in front of Immigration Judges, adding that it was not uncommon for the appellant’s legal representative to be “ahead on caselaw and guidance”.

7.49 However, while stakeholders recognised the problem they had a different perspective on the cause. In response to ICIBI’s ‘call for evidence’, one commented:

“Practitioners regularly deal with HOPOs [Home Office Presenting Officers] who lack knowledge of relevant policy or caselaw. The lack of knowledge of the Home Office’s own policy guidance is particularly striking.

[It reflects a] significant omission in [Presenting Officer] training given the particular focus of the policy on appeals practice.”

7.50 As an example, the stakeholder said that POs were:

“often unfamiliar with the Home Office policy on ‘new matters’, that is, a ground of appeal not previously considered by the Secretary of State and which the Tribunal does not have jurisdiction to consider unless the Secretary of State gives consent for the Tribunal to do so.”

7.51 They went on to suggest that, in the interest of making the best use of Tribunal resources, an adjournment should be sought by the PO (on behalf of the Secretary of State) to allow time to consider the new matter.

7.52 ALAR senior management told inspectors it was aware of the challenges POs faced due to “the lag” between appeal policy and caselaw. Managers had been working with colleagues in Policy teams to agree a process when an urgent update is required, or when a response from Policy is likely to be delayed and POs need a consistent line to take in the interim. In February 2020, ALAR and Policy agreed that the ALAR SCS can ‘sign off’ and publish interim guidance for POs and Senior Caseworkers, which will be replaced with formal policy in due course.

7.53 This appeared to be a pragmatic solution to the problem of POs being put at a disadvantage because policy could not keep pace with caselaw but, at the time of the inspection, it was too soon to say whether this process was having an impact.

Learning from appeals

7.54 ICIBI’s questionnaire asked: “Does the Home Office demonstrate learning from appeal outcomes?” Of 110 respondents to this question, 61 (55%) answered “No”. Inspectors therefore looked at efforts to learn lessons from determinations, withdrawn appeals and complaints.

Determinations

7.55 The decision made by an Immigration Judge having heard an appeal is called “a determination”. Determinations for all FtT allowed appeals are sent by HMCTS via email for review by the Allowed Appeals Review Team (AART) to consider whether the allowed decision should be appealed based on an error in law. POs reported that it was not standard practice for them to be notified if a case they had presented was to be appealed.

7.56 During interviews and focus groups, POs and some managers spoke of the benefits of reviewing determinations for cases they had presented as they could reflect on what had worked well and what had not: “In terms of feedback, that is the best feedback you could get”. Determinations also provide POs with an evaluation of arguments, from both sides, that may be used again in similar cases.

7.57 Previously, a hard copy of all appeal determinations, whether allowed or dismissed, was provided to the PO who presented the case. Now, determinations are saved in a shared area of the Home Office POISE system for POs to access themselves. POs acknowledged that determinations were now easy to locate, but time pressures prevented them from routinely referring to them. One PO commented: “It would be really advantageous to us if we were given a day a month or fortnight to go through previous determinations, guidance or caselaw as a refresher. POs can learn so much from the determinations”.

- 7.58** Inspectors were shown evidence, in the form of four emails dated between 16 July 2019 and 19 March 2020, where updates on reported determinations and Judicial Review decisions were shared with POs and other members of Appeals Operations by a colleague responsible for research and intelligence.⁶⁸ These contained a short paragraph from the determination, with links to the shared area where the full determination could be found. The updates provided POs with quick references to points of law within the relevant determinations.
- 7.59** Senior management commented that “feedback has established that the emails are well received and a preferred format”, but inspectors heard concerns from POs that they have to consult too many information sources and do not have time to read these updates.

Withdrawals

- 7.60** Inspectors found inconsistencies in the approach to withdrawals. Some POs appeared to lack confidence in the advice given by a SCW and called other SCWs until they got the decision they wanted. Some POs were concerned about the costs and inconvenience to legal representatives and appellants if a case was withdrawn on the day of the hearing when they had already travelled to the Hearing Centre.
- 7.61** Meanwhile, some POs felt disincentivised to withdraw cases as they will then have to prepare a case from the ‘float list’ on the day of the appeal hearing, which one PO described as “hurting yourself” and “it is much easier to prepare [the case], perform it and lose it than to withdraw it”.
- 7.62** Stakeholders told inspectors that the Home Office’s withdrawal process was inefficient, because SCWs or line managers were “frequently unavailable”.
- 7.63** In February 2020, Home Office guidance, ‘Withdrawing decisions’, was updated and published on GOV.UK.⁶⁹ A key change from the previous version was to empower POs to withdraw appeals without reference to a SCW. However, this was not implemented immediately.
- 7.64** SCWs said that POs would need to be ‘signed-off’ as ready to exercise autonomy to withdraw cases. The guidance stated that POs are signed-off when all of the following apply:
- they have completed their ‘Foundation’ training
 - they have completed their consolidation training
 - it has been locally agreed by an ALAR SCW that they have authority to withdraw decisions within the agreed assurance processes
- 7.65** The Covid-19 restrictions acted as a catalyst in the roll-out of this new arrangement. In April 2020, signed-off POs were reviewing more cases at the point an appeal was lodged, and all those with a known hearing date, and withdrawing cases before the hearing. A central record had been created for POs who had been signed-off, while POUs were tracking withdrawn appeals and SCWs were dip sampling decisions to provide quality assurance.⁷⁰

⁶⁸ In its factual accuracy response, the Home Office stated that this was “a regular occurrence” and further emails could be provided, if required.

⁶⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/864496/withdrawing-decisions-v3.0-gov-uk_PDF.pdf

⁷⁰ In October 2020, in its factual accuracy response, the Home Office stated that: “The sign-off process was always expected to go live in April 2020 but the escalation of review work as a result of COVID allowed staff to be assessed as appropriate for sign-off quicker given the amount of reviews and withdrawals taking place compared to when presenting”.

Conceding an appeal

7.66 'Withdrawing decisions' makes a clear distinction between withdrawing for reconsideration and conceding during the course of an appeal hearing, where POs have less autonomy:

"Decisions to concede (as opposed to decisions to withdraw for reconsideration) must be approved by an ALAR SCW or G7."

7.67 The guidance explains that: "When conceding an appeal you are accepting that the appeal should be allowed." It notes that there may be more than one ground of appeal and POs "must make clear" whether they are conceding all grounds or just one. In terms of the process that POs must follow, the guidance states:

"You may make concessions during the appeal where appropriate and justified by the evidence. It will not normally be appropriate to concede an appeal at the outset of a hearing as if the decision is unsustainable it should be withdrawn. If after hearing the evidence you consider that it is appropriate to concede the appeal you should ask for a brief adjournment to consult with an ALAR SCW. In respect of the ground you are conceding you should make it clear to the Tribunal whether this means you are accepting that the refusal decision is wrong, or whether you consider the decision sustainable without that particular ground. If you are not aware of any other grounds for refusal, you can say that leave will be granted subject to normal security and other checks being undertaken. If you are minded to withdraw a decision or concede an appeal, you must ensure that you have the necessary approval in place. If the issue arises during the hearing, you should ask for an adjournment to consult a senior caseworker."

Complaints

7.68 The ICIBI's 'Expectations' of asylum, immigration, nationality and customs functions include that "Complaints are handled efficiently, effectively and consistently".

7.69 Home Office guidance defines a complaint as: "any expression of dissatisfaction that needs a response about the service we provide, or about the professional conduct of our staff and contractors". Where a complaint is not resolved immediately by the business area, the complainant is directed to the central complaints process. All written complaints should receive an acknowledgment and be registered on the Complaint Management System (CMS).⁷¹

7.70 There is no separate policy for complaints about Presenting Officers. However, inspectors requested the complaints log for each POU. Only those for Leeds, Newcastle, West London and Central London POUs were provided. Inspectors were told that none existed for Birmingham, Cardiff, Glasgow or Manchester POUs, as "complaints are not common given the context that Presenting Staff operate within a public Tribunal setting overseen by a judge".

71 ICIBI inspected the handling of complaints by BICS in 2019. The report was published in July 2020. <https://www.gov.uk/government/publications/an-inspection-of-the-handling-of-complaints-and-mps-correspondence-by-the-home-office-borders-immigration-and-citizenship-system-bics>

Figure 11

Summary of complaints records provided to the inspection

Presenting Officer Unit	2017-18	2018-19	2019-20	Most commonly reported reasons
Leeds	66	24	53	No/incomplete bundle served Delay in appeal outcome implementation Biometric Resident Permit issue
Newcastle	3	0	1	Delay in appeal outcome implementation
West London	0	0	6	Relating to PO conduct and behaviour
Central London	0	0	1	Delay in appeal outcome implementation

- 7.71** Inspectors asked about the complaints about POs’ conduct and behaviour recorded at the West London POU. Senior management said that the number of new POs and the large collection of legal representatives that appear at the West London POU were factors. At the smaller POU, it was more likely that POs and legal representatives would get to know one another. Inspectors also asked about the high number of complaints recorded by Leeds POU and were told that these mostly concerned delays in implementing the appeal outcome, which is not part of a POU’s remit.
- 7.72** The responses pointed to inconsistencies in the way the POU, have been recording complaints and their reliability as a record. Inspectors therefore asked the Home Office Performance Reporting and Analysis Unit (PRAU) for data on the number of complaints received, including category of complaint, broken down by outcome and POU. However, PRAU was unable to provide this data as these details were not recorded on Home Office IT systems.
- 7.73** UKVI’s Performance, Data and Systems team was also unable to provide this information as the tools used to capture complaints do not record “Appeals” or “Presenting Officer Unit”.
- 7.74** The guidance explains that “complaints are an important way for the business to better understand issues from a customer perspective, learn lessons and make improvements”. Inspectors found no evidence that this was the case in Appeals Operations but, based on the findings from ICIBI’s recent inspection report, this was equally true across much of BICS.

8. Inspection findings: Transformation and Continuous Improvement

Transformation and continuous improvement in the Home Office

The Home Office

- 8.1** The Home Office intranet page on 'Home Office transformation', refreshed in August 2020, states:

"To continue to deliver our mission and the government's agenda effectively, safely and securely, we need to do things in a fundamentally different way."

- 8.2** Responding to the changing nature of the threats with which it deals, will require a "faster, more knowledgeable Home Office." The department also "needs to make significant financial savings", resulting in fewer staff, creating the "need to rethink what we do and how we do it" and an opportunity to build on the changes it has already made.

- 8.3** Four themes define the Home Office's transformation: Home Office staff; use of data; digital processes; and collaboration. Each is relevant to the Presenting Officer (PO) function. From the intranet pages, the key messages in relation to each are that:

"While we will have fewer staff, we will be more expert, with clear career pathways as part of structured professions." ('Our people')

"Better quality and easier access to data, collected once and pooled across government, industry partners and the public domain, will allow all of us to make good decisions faster, improving safety." ('The data theme')

"In the future digital must be how we work, how we take advantage of existing opportunities and create new ones. ... For example, we will rarely issue or ask for paper. Increased automation will mean that many decisions are made without human intervention and we will offer maximum self-service. ... The way we create policy will be speeded up through shared digital platforms and we will be able to model the impact of policies before they are implemented." ('The digital theme')

"The Home Office does not operate in isolation; many of the challenges of keeping the UK safe and secure require input from a wide range of government agencies, industry partners, individuals and communities. Our partners, whether that's the police or airline operators, share responsibility for the response to government priorities." ('The managing demand theme')

UKVI transformation

8.4 The 'UKVI transformation' page on the Home Office intranet, also refreshed in August 2020, refers to its vision for 2020:

"We want to be a world-leading immigration service, working for a safe and prosperous United Kingdom." It states that it will achieve this through a series of missions:

- Control migration
- Deliver world class customer service
- Safeguard the vulnerable and their host communities
- Make UKVI a great place to work

8.5 Of most relevance to the PO function, the measures listed under 'Control migration' include "Reduce appeals/judicial reviews", while under 'Make UKVI a great place to work' it lists "Ensure all people have the working environment they need to deliver".

Transformation in Appeals Litigation and Administrative Reviews

8.6 The aim to "Reduce appeals/judicial reviews" was reflected in the 2019-20 priorities for Appeals Litigation and Administrative Reviews (ALAR) and Appeals Operations, which make a number of references to transformation and continuous improvement:

ALAR [will]:

6. Roll out of new technology – we will ensure all staff are fully supported and engaged as Atlas and other new technologies are developed and then rolled out."

Appeals Operations [will]:

11. Deliver Court Reform – we will work with HMCTS on their reform programme to reduce the paper in the process and make real improvements for everybody using the system.

12. Improve the win rate – we will review all Entry Clearance and other targeted cohorts of Appeals in the system and improve the withdrawals processes. We will also work with the Making Better Decisions Board and decision-making areas to ensure that lessons from appeals are fed into future decision-making.

13. Out of Country Appeals – we will continue to lead on the work to enable colleagues in IE to restart deport first, appeal later for Foreign National Offenders."

Continuous improvement

8.7 The Home Office intranet states that continuous improvement in the Home Office uses “Lean”⁷² principles:

“a way of working that relentlessly seeks to create value for customers and eliminate any activities that do not.” It is a mindset of rethinking everything we do and supporting each other to enable us to deliver outstanding service, long-term success and to motivate our colleagues.

... We rigorously pursue benefits in the key areas of:

- quality
- cost
- delivery
- safety
- morale”

Inspection findings

Approach

8.8 In light of these statements about transformation and continuous improvement, inspectors looked for evidence that the Presenting Officer (PO) function was transforming and improving.

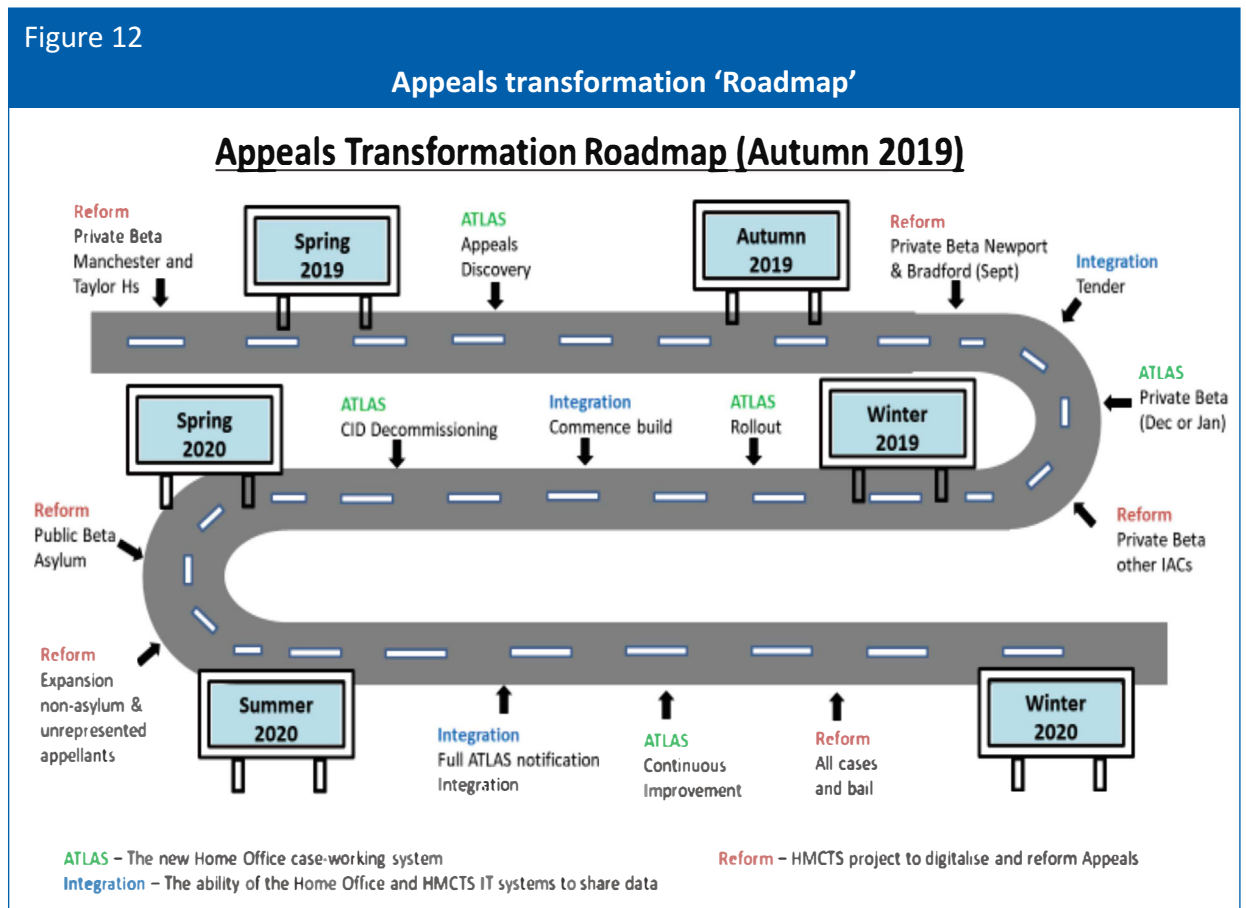
8.9 Inspectors also looked for the “prompt implementation of recommendations from reviews, inspections and audits” in line with ICIBI’s ‘Expectations’ in relation to continuous improvement.

‘Roadmap’

8.10 In 2019, Appeals Operations produced a ‘Roadmap’ to illustrate the transformation of the appeals process. See Figure 12. This showed how Home Office IT upgrades (through the roll-out of Atlas), data sharing through the integration of HMCTS and Home Office systems, and the HMCTS Reform Programme would combine to create the future operating model.

⁷² See: <https://www.lean.org/WhatsLean/> “The core idea is to maximize customer value while minimizing waste. Simply, lean means creating more value for customers with fewer resources.” The principles are: 1) Identify value 2) Map the value stream 3) Create flow 4) Establish pull 5) Seek perfection.

Figure 12



Agreements with HMCTS

- 8.11** The Home Office told inspectors that “working practices and processes with HMCTS are largely governed by the Immigration Tribunal Procedure Rules” and that “specific MoUs are in existence for current and future data and document sharing with HMCTS”.
- 8.12** Inspectors were provided with a copy of an MoU covering the roles and responsibilities of HMCTS and the Home Office in respect of the electronic service of substantive appeal hearing decisions made by the First-tier Tribunal (FtT) and Upper Tribunal (UT). This was dated April 2019. Inspectors also had sight of a data-sharing agreement between HMCTS and the Home Office, dated October 2019, to facilitate “a digital evidence share solution, which enables the sharing of evidence between IAC [Immigration and Asylum Chamber] and the Home Office.” This appeared to be the extent of any formal agreements.

HMCTS Reform Programme

- 8.13** The HMCTS Reform Programme was launched in September 2016 in a joint statement from the Lord Chancellor, Lord Chief Justice, and the Senior President of Tribunals,⁷³ which outlined their shared vision for the future of HMCTS.

⁷³ <https://www.gov.uk/government/publications/transforming-our-justice-system-joint-statement>

- 8.14** The statement highlighted how the UK’s “justice system is the envy of the world” with “an outstanding independent judiciary that is widely admired as an international leader”. However, it acknowledged that there were challenges to address to ensure the legal system continued to be world-leading. These included a need for radical change, modern IT and processes and buildings that are fit for purpose.
- 8.15** The statement also highlighted how “tribunals will be digital by default” and that:
- “by 2020, tribunals [described as “an essential component of the rule of law”] will be part of a single justice system with a single judiciary. They will offer a range of choices to resolve appeals and claims with the needs of people who use the tribunals being put at the centre; from virtual hearings, online decision-making, early evaluation, mediation and conciliation to the traditional face-to-face hearing. Cases will be resolved at the right level for the issues at hand, giving all parties better quality, faster and less stressful resolution of claims.”
- 8.16** Tribunals would have “intuitive online processes put in place to help people lodge a claim more easily”. Once a claim was made, there would be “automatic sharing of digital documents with relevant government departments” to ensure all parties have “the right information to allow them to deal with claims promptly and effectively”.
- 8.17** Updates on the Reform Programme have been provided via GOV.UK.⁷⁴ These pages include reference to how the performance of the Programme is being monitored, including a report by the Public Accounts Committee (PAC) in summer 2018,⁷⁵ which raised questions about the Programme’s timetable for delivery, concluding that the PAC had “little confidence that HMCTS can successfully deliver this hugely ambitious Programme to bring the court system into the modern age” and that HMCTS had “already fallen behind” despite extending its timetable to six years, “delivering only two-thirds of what it expected”.
- 8.18** HMCTS published an update on the Programme in June 2019.⁷⁶ Responding to the PAC report, the update stated that HMCTS had “decided to extend the programme’s timetable to 2023”. In July 2019, in an update published on GOV.UK, it explained: “The extension of the programme by a year to 2023 will allow more time to develop some of the shared systems that sit behind our next set of online services and to review and re-order some of our planned work”.⁷⁷

Immigration and asylum pilot – “Private Beta” phase

- 8.19** In January 2019, a new digital service was launched at two Hearing Centres, in London (Taylor House) and Manchester, as part of an immigration and asylum pilot. The ‘Appeals transformation ‘Roadmap’ described this as the “Private Beta” phase.
- 8.20** Six law firms, selected by HMCTS, were able to submit ‘protection’ or ‘revocation of protection’ appeals online. Inspectors were unable to find any evidence of how the six firms were selected. The appeals were progressed digitally, allowing them to be tracked from the initial application through to the hearing and judicial decision. The pilot also tested the use of video screens, recording equipment and digital bundles.

⁷⁴ <https://www.gov.uk/guidance/the-hmcts-reform-programme>

⁷⁵ <https://publications.parliament.uk/pa/cm201719/cmselect/cmpubacc/976/97602.htm>

⁷⁶ <https://www.gov.uk/guidance/hmcts-reform-programme-reform-update>

⁷⁷ <https://www.gov.uk/guidance/hmcts-reform-update-civil>

8.21 In November 2019, HMCTS ran a webinar for “legal professionals, professional court users, third-sector organisations”.⁷⁸ The presentation slides included a summary of online process:

“**Legal representative** has 28 days from bundle (or 42 days from appeal submission, whichever is longer) to provide a full response in Appeal Skeleton Argument form:

- Summary of the appellant’s case
- A schedule of issues
- Submissions

Home Office has 14 days to undertake:

- A respondent’s review of the appeal; opportunity to withdraw, or concede parts of it
- Provide a ‘counter-schedule’

Tribunal Case Workers proactively manage cases through this process, narrowing the issues and deciding when ready for listing.”

8.22 HMCTS had planned to add more users and appeal types to the pilot throughout 2019 and use the experience to review the online process.

8.23 In early 2020, the HMCTS website included an update, which stated:

“The new digital service successfully launched in January 2020 across our eight hearing centres. ... We have successfully delivered all statutory appeal types to MyHMCTS where the appellant is represented, not in detention, and is inside the UK. These are Protection and Revocation of Protection, Human Rights, European Economic Area and Deprivation of Citizenship appeals. MyHMCTS will soon be able to accept these appeal types where the appellant is detained on immigration grounds, or is outside of the UK, and a bespoke service for appellants in person is currently planned to be introduced by the end of March 2021.”

8.24 According to the programme plan and the ‘Roadmap’, the pilot was due to enter a ‘Public Beta’ phase in Spring 2020 taking in asylum appeals. This would have opened up the online process to all legal representatives. However, this was delayed due to Covid-19.

8.25 In August 2020, the HMCTS update on Immigration and Asylum appeals included:

“Through effective case management we expect the overall number of cases requiring a hearing to reduce and we are already seeing an increase in early withdrawal to grant decisions. For cases that do require a hearing, we expect that hearings will be shorter and the number of appeals adjourned due to missing or incomplete information will be significantly less.”⁷⁹

⁷⁸ <https://www.gov.uk/guidance/hmcts-reform-events-programme#previous-tribunals-events>

⁷⁹ <https://www.gov.uk/guidance/hmcts-reform-update-tribunals#history>

Tribunal caseworkers

8.26 The HMCTS website⁸⁰ contains an explanation of the newly-created role of tribunal caseworkers, a key feature of the new digital service:

“Once an appeal is submitted by the legal representative, all of the subsequent HMCTS case management activities are carried out by the specially trained caseworker under the supervision of the judiciary. The caseworker actively liaises with the Home Office to request evidence, sends directions to parties to comply with providing information, and ensures legal representatives submitting legal arguments comply with a set of pilot directions. For all the pilot cases submitted online, the tribunal caseworker must be satisfied all information required to hold a hearing is complete, before they list the appeal for a judicial hearing.”

8.27 Inspectors spoke to Appeals Operations and to external stakeholders about the tribunal caseworker role. Both expressed concerns about the resourcing of this function.

8.28 One stakeholder highlighted the requirement for tribunal caseworkers to be “proactive”, and they were unsure how tribunal caseworkers would cope with the volume of appeals when the Programme was fully rolled out.

8.29 Appeals Operations managers voiced the same concern. They were also concerned about tribunal caseworkers’ ability to prevent legal representatives submitting additional documentation, outside the agreed process, following the review stage of an appeal. They said this would undermine the decision taken by the Home Office in the review: “The system will only work if it’s enforced. It’s the same as we have now but that wasn’t enforced. The judge will always accept documents submitted on the day.”

Roll-out of Atlas

8.30 Alongside the stages of the HMCTS Reform Programme, the ALAR ‘Roadmap’ highlighted the phased roll-out of Atlas as critical to its transformation plans. According to Horizon:

“Atlas is the new immigration caseworking system for the Home Office. It will replace, old, inflexible systems like CID and offline spreadsheets with a modern and sustainable digital service.”

8.31 Appeals Operations managers told inspectors that the “sole objective of the first iteration of Atlas is to replace CID”. The ‘Roadmap’ showed that “Atlas: Appeals Discovery” was scheduled between Spring and Autumn 2019, but this was delayed. The build and roll-out of Atlas to ALAR started in October 2019, with the roll-out of a version for Private Beta testing scheduled for December 2019 or January 2020. However, roll-out of Atlas was further delayed and in March 2020 Appeals Operations staff told inspectors they did not know when it would happen.

8.32 POs were hoping that Atlas would replace the separate IT systems that they had to refer to when preparing for a hearing and were frustrated by the delays. A senior caseworker explained how the delay had affected local processes: “We tried to use the diary function in CID to improve things but were told that Atlas was coming so we didn’t do it, but it hasn’t come.” The SCW was also concerned that changes were being made without creating the means to gauge their effectiveness: “There are too many IT projects without controls and measures in place to show that something has improved. They’re changing a number of things without putting measures in place to measure Atlas.” They said it was also unclear whether Atlas would “save any resources”.

⁸⁰ <https://www.gov.uk/guidance/hmcts-reform-update-tribunals>

8.33 Appeals Operations senior management echoed the frustrations with Atlas, saying that they had requested a number of specific functions for the new system but had foregone them to prevent any further delays to the decommissioning of CID. They hoped that they would be able to add to Atlas functionality in the future, including automatic creation of electronic bundles. They acknowledged that the new system would bring some benefits, such as a daily operational dashboard which would support the allocation of work, but it also had limitations, for example, the inability to change the details of an appellant’s legal representative, which was a basic requirement for Appeals Operations. In March 2020, one manager told inspectors:

“It would be useful to have a good workflow tool that actually works. We are told that we will be getting Atlas at some stage, but we don’t know when that will be. We are told that it is still being tested so at this point we aren’t even sure if it will be able to do the things we want it to do for us based on the work that we do.”

8.34 In May 2020, the Home Office told inspectors that the “model office” testing scheduled for March had been delayed due to Covid-19. However, two weeks of remote user testing by eight members of staff had been completed. This had focused on the end-to-end process and appeal screens. Some minor issues were identified and resolved. There were plans for a further round of remote testing and discussions were taking place about when the next phase of testing could begin given the Covid-19 working arrangements. Meanwhile, Atlas simulations for statutory appeals were available and being used by staff “as a learning module on Discovery”.

8.35 In September 2020, inspectors were told that “Atlas (Statutory Appeals)” was scheduled to begin Private Beta testing from 12 October 2020, subject to the development of further functionality by the development team to enable users to action a legal challenge in Atlas.

“The plan remains to commence Private Beta Testing through two model offices, Manchester POU and Leeds POU, where a small number of appeal cases (up to approximately 50) will be tested through Atlas by a pre-selected group of staff members. Staff participating in Private Beta at both units will be supported by members of the Business Change Team, Business Embedded Trainer and local Atlas Champions and guided by screenshot packs, online simulations and videos on how to use the system. Provided no major issues are identified Private Beta will be rolled out to include staff members across other units within Appeals. Commencement into Public Beta will only be signed off when it is agreed by the Atlas Sponsor that the system is fully functional and meets requirements.”

Data integration with HMCTS

8.36 The Roadmap shows the milestones for “Integration”. Appeals Operations managers told inspectors that the purpose of the integration project was to enable the Atlas system to share data effectively with the new HMCTS system, CCD. This would allow HMCTS to check the validity of an appeal at the start of the process (in December 2019, inspectors were told that c. 5% of the appeals received by HMCTS are in respect of decisions where there is no right of appeal) and for the Home Office to receive notifications from HMCTS as the case progresses, replacing emails, paper documents and data shared through CID and HMCTS’s current ARIA system. It should result in savings as fewer staff would be required.

8.37 Appeals Operations managers said that while their business case for the integration project had been approved, the funding was spread over two financial years (2019-20 and 2020-21) and was subject to wider Home Office transformation priorities. Initial funding had been released, and a supplier selected in December 2019 to do this work.

8.38 At the beginning of 2020, the project was expected to be completed by September 2020, but managers had concerns about whether funding would be available in 2020-21. In September 2020, the Home Office told inspectors that the project was “on track to deliver the integration API⁸¹ in late October and the notification API in December”. Funding of just over £1 million had been allocated from the UKVI Transformation budget. Development of the APIs had been contracted out, but the Atlas team was developing “the link to Atlas challenge screens which will be utilised by Appeals operations”.

HMCTS-Home Office relationships

8.39 Referring to the Reform Programme, the HMCTS website states that it engages effectively with:

“Partner organisations within the justice system and other government departments, local authorities and third sector organisations. We frequently work closely with the Department for Work and Pensions (DWP), the Crown Prosecution Service (CPS), HM Prison and Probation Service (HMPPS), the Legal Aid Agency (LAA), the Youth Justice Board (YJB), the criminal defence community, and many others.”⁸²

8.40 Inspectors noted the omission of the Home Office. However, HMCTS told inspectors that the relationship with the Home Office was “good” and that it “broadly worked well”. HMCTS believed both departments had a shared understanding of the overall aim of the Programme to ensure that the right decision was reached at the earliest stage of the process. There were monthly performance meetings with the Home Office reform project team⁸³ to discuss progress on roll-out of the Programme, review forecasts and analyse trends and this helped with resource planning.

8.41 Stakeholders had noticed that HMCTS and the Home Office appeared to be working more collaboratively as a result of the Reform Programme. One told inspectors that, previously, the two departments had not demonstrated that they were working together, but now there was much more consultation.

Reforms to the Upper Tribunal

8.42 In July 2019, the HMCTS update on the Reform Programme published on GOV.UK included the statement: “by the end of this year, we will have ... extended the e-filing service to the Court of Appeal (Civil Division), Administrative Court, the Upper Tribunal Chambers and the Employment Appeal Tribunal”.⁸⁴ By September 2020, HMCTS had not published any updates, but according to the Home Office:

“The Upper Tribunal project to deliver a new operating platform will commence for litigation later this year with statutory appeals to follow. This is a separately led project aligned to the Reform of the senior courts. It has not been assigned to a Home Office project team.”

81 Application Programming Interface.

82 <https://www.gov.uk/guidance/the-hmcts-reform-programme#jurisdictional-information-and-updates>

83 The Home Office project team is a virtual team headed by a Grade 7. It covers the HMCTS Reform project and Home Office systems integration. ALAR is represented on the team, and the Grade 7 attends the HMCTS (Immigration and Asylum Chamber) Transformation Board.

84 <https://www.gov.uk/guidance/hmcts-reform-update-civil#the-royal-courts-of-justice>

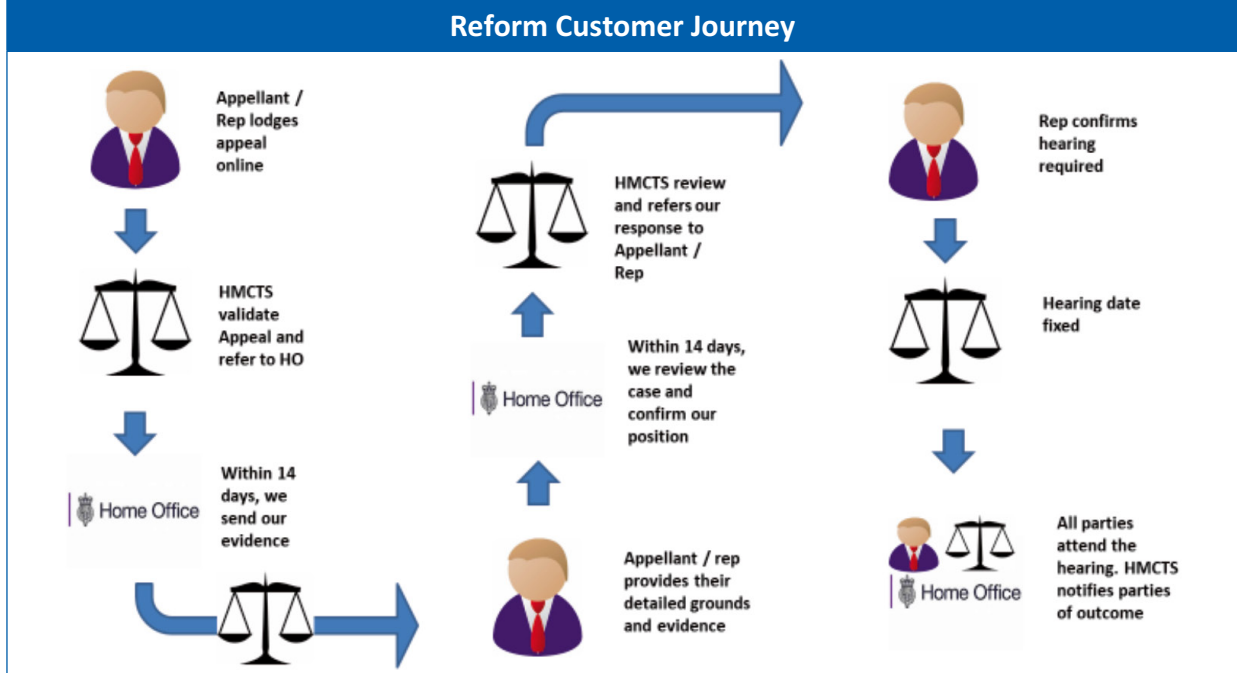
- 8.43** In March 2020, Appeals Operations managers told inspectors they were pleased that digitisation would be encompassing Upper Tribunal cases, but this had not yet happened. Directions arising from a hearing were posted, but panel directions (where a panel of judges sits for deportation appeals, for example) were emailed to Appeals Operations workflow teams who emailed them on to SPOs. It was also now possible to send skeleton arguments electronically.⁸⁵
- 8.44** The managers did not think that the structural changes the Reform Programme would bring to the FtT would be seen in the UT. They highlighted that the UT had decided not to join the FtT database and were concerned that this could cause problems when compiling documents for cases chronologically. Also, HMCTS “seemed happy” that the UT would have access to information on CCD but there was a risk that this could mean that the Home Office would have to serve all of the initial bundle again.

The new “customer journey”

- 8.45** Under the current process, HMCTS notifies the Appeals Processing Centre (APC) of the date an appeal is lodged. A hearing date is received by APC one or two days later. The Home Office then has 14 days to prepare a bundle for asylum and protection cases and 28 days for all other case types. Case management reviews are listed 17 to 18 days after an appeal is lodged, with the intention being that the bundle will be served before that.
- 8.46** Inspectors asked for evidence of “time taken, in days, for each stage of the appeals process for which the Home Office is responsible”. The Home Office responded that:
- “The key parts of the appeals process from a timing perspective are not controlled by the Home Office with listing being a Judicial function. The end-end process map and guidance have been supplied but data is not available from CID or locally kept records to show the timing of many of the micro-processes which form how appeals are delivered. This includes timings of matters such as files called, preparation undertaken, directions etc. These processes are regulated by sampling and basic requirements of the function.”
- 8.47** The Home Office provided data for the time taken from an appeal being lodged to the bundle being sent. This showed that the time had reduced, on average, from 204 days in 2017-18 to 115 days in 2018-19. Between April and December 2019, the average time taken for bundles to be sent was 60 days.
- 8.48** Appeals Operations managers provided inspectors with details of the new “customer journey” under the reform process. See Figure 13. They saw the allocation of a hearing date at the end of the process rather than at the start as the biggest advantage of the new process. This would ensure that all the other tasks were completed first. It would reduce the number of adjournments requested on the day, which were often due to the submission of additional evidence just prior to the hearing, and this could mean they would require fewer POs.

⁸⁵ In October 2020, in its factual accuracy response, the Home Office stated that: “Since April 2020 the Upper Tribunal has been sending all directions electronically to a dedicated inbox.”

Figure 13



- 8.49** However, managers were frustrated by what they described as “HMCTS’s decision” to use asylum cases for the reform pilot. These are generally more complex and harder to review, and therefore not representative of other case types.
- 8.50** In December 2019, managers told inspectors that 20% to 25% of asylum cases going through the new process had been withdrawn at the review stage, indicating that the process was effective at identifying cases that did not need to proceed to an appeal hearing.⁸⁶
- 8.51** Stakeholders welcomed the new process. In response to ICIBI’s ‘call for evidence’ a number expressed frustrations about the absence of mechanisms for POs to “review decisions on receipt of the Home Office bundle and seek a review of the decision by the casework team where they consider that the decision cannot or should not be defended”.
- 8.52** One stakeholder saw huge benefits, in that all parties involved in an appeal would be able to engage much earlier in the process. But they also had concerns that, once the pilot was rolled out more widely, HMCTS and the Home Office would have difficulty coping with the volumes. The stakeholder was concerned that not enough testing had been done prior to the “big bang”. It would require a “culture change”: legal representatives would have to accept that disclosing their case in the skeleton argument would not be giving POs an advantage and the Home Office would need to be receptive to conceding points that were no longer sustainable.

⁸⁶ In October 2020, in its factual accuracy response, the Home Office amended this to “c.20% ... reflecting present data”.

Tribunal statistics

8.53 Under the pre-reform appeals process, it could take up to 60 weeks from lodging an appeal to receiving an appeal outcome. In 2018, the FtT “Work in Progress” (WiP) queue of appeals lodged awaiting an outcome stood at 36,000. By April 2019, as a result of more efficient processes HMCTS had reduced the WiP to below 25,000, and this downward trend continued during 2019-20.⁸⁷ ‘Tribunal Statistics Quarterly, January to March 2020 (Provisional)’,⁸⁸ published by the Ministry of Justice on 11 June 2020 reported that:

“In January to March 2020, FTIAC receipts increased by 1% (to 10,000), compared to the same period in 2019, while disposals decreased by 23% (to 11,000).

In the same period, caseload outstanding decreased by 21% (to 20,000), continuing the downward trend seen since the peak in April to June 2016, due to the volume of disposals being consistently higher than that of receipts since this peak.”

- 8.54** The report goes on to say that “the mean time taken to clear appeals across all categories has decreased by 12 weeks to 28 weeks this quarter compared to the same period a year ago”.
- 8.55** It also notes a reduction in the UT WiP, which stood at 1,300 at the end of March 2020, down a third from the previous year.

Planning assumptions

- 8.56** Previously, Asylum Operations produced an estimate of likely volumes of appeals and Appeals Operations shared this with HMCTS, so that the latter could calculate how many hearing lists would be required. However, HMCTS told inspectors that these estimates had been unreliable, and it now worked with POUs to forecast workloads, looking at a range of figures.
- 8.57** The results of HMCTS’s calculations are fed back to the Deputy Director of Appeals Operations so that Appeals Operations can work out how many POs will be needed. According to Appeals Operations, for 2019-20 HMCTS had planned for 90 lists per day, which meant Appeals Operations having to plan to field around 80 POs per day. In December 2019, senior management told inspectors that HMCTS was currently running at 80 lists per day and that this would bring the WiP down, since the intake of new appeals required 65 to 70 lists per day.
- 8.58** In early 2020, Appeals Operations managers told inspectors that Asylum Operations had recruited more decision makers. However, while this should mean more asylum decisions, they were optimistic that the grant rate would increase as a result of the feedback from Appeals Operations and that the number of appeals would not exceed the estimates already provided.
- 8.59** From March 2020, the Tribunals were affected by Covid-19. In September 2020, the Home Office provided an update on listings. Appeals Operations managers told inspectors that, for September and October, the plan was for 66 lists per day (a mixture of remote and in-person hearings) “rising to c. 72 lists per day for the remainder of the financial year”.

⁸⁷ In its factual accuracy response, the Home Office stated that there were “multiple influences” on the WiP, including “increased numbers of withdrawals by the Home Office”.

⁸⁸ <https://www.gov.uk/government/statistics/tribunal-statistics-quarterly-january-to-march-2019>

Impact on Appeals Operations resources

- 8.60** The Home Office estimated that for every reduction of 10 lists per day it would need 10% fewer presenting staff. Prior to Covid-19, the expected reduction in hearings due to the new process, the benefits of digital working, plus the clearing by HMCTS of the backlog of outstanding appeals, meant that ALAR senior management estimated that over the course of 2020 Appeals Operations would require approximately 20% fewer staff overall.
- 8.61** In light of this, Appeals Operations had adapted its recruitment strategy. Instead of offering permanent positions, internal candidates for PO posts were offered an initial 12-month secondment and external candidates 18-month fixed-term appointments.
- 8.62** While Appeals Operations expected to need fewer POs, the reforms will require an estimated 26 additional HEO staff to review cases once legal representatives have submitted the detailed grounds for the appeal. Appeals Operations believed that these roles could be filled by POs, “harnessing their knowledge of the appeals process and guidance”.
- 8.63** Workforce planning data dated November 2019 showed ALAR as having 468 funded posts by March 2020, with a predicted 19 vacancies. The monthly performance pack for the Appeals Operations senior management team for March 2020 provided an update on these numbers. This showed that in March 2020 staff in post actually exceeded the funded capacity by nine, and in April 2020 by 15.7. The total included 14 EO grade staff who had joined Central London POU for 12 months.
- 8.64** In March 2020, ALAR was forecasting that staffing levels would remain above the funded capacity until August or September 2020. From October 2020, ALAR’s funded capacity was set to increase to reflect the full roll-out of the Reform Programme, with additional EO and HEO posts created in LART and SART to carry out case reviews. Meanwhile, based on an assumed turnover rate that had remained constant since 2018-19, ALAR was forecasting that the number of staff in post would steadily reduce from April 2020 through to February 2021.
- 8.65** When inspectors interviewed Appeals Operations managers in March 2020 the staffing budget for the financial year 2020-21 had yet to be approved. Managers said that the delays to the roll-out of the Reform Programme and the requirement for additional reviewers in LART meant that the reductions in PO numbers that had been planned might no longer be required and staff employed on fixed-term appointments could be made permanent. As one manager told inspectors: “Appeals is a very lean operation. Whenever you want to do something additional there’s no flex in the system”.
- 8.66** Inspectors looked to see how the uncertainties around the HMCTS reform timetable and Atlas delivery and their impact on ALAR’s staffing requirements were reflected in the Appeals Operations Risk Register. The November 2019 version noted operational impacts from the roll-out of Atlas but did not refer to the HMCTS Reform Programme, ALAR transformation or the risk that the reductions to resource costs (estimated at c. £4 million from 2021) would not be delivered.
- 8.67** With regard to Atlas, the Risk Register listed a number of mitigations against Atlas failing to meet its requirements or staff being unable to use Atlas effectively. The latter involved staff training and support. For the former, ALAR was dependent on regular meetings with the Atlas team to check that its requirements were understood. Ultimately, it would decide whether the roll-out was “go/no go”.

Impact on the Appeals Processing Centre

- 8.68** The new operating model will require fewer administrative staff, in particular in the Appeals Processing Centre (APC), where the paper bundles prepared by APC will be replaced by electronic ones generated through Atlas. Inspectors were told that managers had provided APC staff with additional time for training and were supporting all Appeals Operations staff to gain and develop skills and experience for future roles either inside or outside ALAR. This included job-shadowing, secondment opportunities and support with job applications.
- 8.69** The APC, which is divided into an Appeals Data Team, Appeals Processing Team and Business Support Team, is managed by an SEO Operations Manager. In March 2020, it had 55 full-time equivalents, though its headcount was higher as it included a number of part-time and agency staff.
- 8.70** The Appeals Data Team (ADT) is notified of lodged appeals via a data exchange between the HMCTS and Home Office systems. The HMCTS system (ARIA) sends data to the Home Office system (CID) five times a day (Mondays to Fridays). ADT staff told inspectors that this process was “only 50% effective” because of the incompatibility of the two systems (although some staff said that up to 90% of records could contain errors).⁸⁹
- 8.71** Two members of ADT have the task of printing an error report from CID, which rejects the records it cannot update. This needs to be updated manually, and there is a target of doing so within four hours of the error report being produced. This was described as “a convoluted process” in terms of the number of manual updates required and the potential for updating the wrong case on CID.
- 8.72** HMCTS sends APC the appeal hearing dates when the appeal is listed. This can be between two days and six months of the appeal being lodged. This process is also subject to upload errors and requires manual intervention to correct them.⁹⁰
- 8.73** The Home Office does not routinely quality assure the data that is loaded automatically onto the CID system from ARIA “based on the premise that this information would need to be highly accurate to match requiring five separate points of reference”.⁹¹ However, the entries may be dip sampled as part of the quality assurance checks carried out by local data quality managers.⁹²
- 8.74** Inspectors were told that data quality was regularly raised during team meetings. An Appeals Data Quality Network, comprising Local Data Quality Managers (LDQMs) from each POU and the APC, meets fortnightly and reviews Data Quality Reports. The latter monitor four key data fields: No Hearing Listed, Awaiting Determination, Potential Missing Appeal Rights Exhausted Date, and No Permission to Appeal Outcome.

89 In October 2020, in its factual accuracy response, the Home Office stated: “The data list exchange is 36% inaccurate for DL1 (appeals lodged data) and 90% inaccurate for DL3 (appeals hearing details data). This is due to the 5 identifiers required to match using the automatic data list exchange”.

90 In its factual accuracy response, the Home Office noted that: “The upload error rate is impacted by the timeliness of an appeal being listed for hearing”.

91 These include: name, date of birth, nationality, Home Office reference, and unique HMCTS “COHID” reference.

92 In its factual accuracy response, the Home Office stated that data for appeals lodged and appeals hearings was dip sampled on a monthly basis.

8.75 In December 2019, APC told inspectors it received roughly 1,000 appeal notifications per week. Guidance for staff on preparing and serving documents for appeal bundles was updated in April 2020 and is available on GOV.UK.⁹³ It provides end-to-end instructions for staff involved in bundle preparation and servicing, including for decision makers and APC staff on the processes to follow in different scenarios, for example international appeals, virtual and paper bundles, and when there is no physical Home Office file in existence, such as Home Office Platform Storage (HOPS) cases. It also refers to the timescales for bundle preparation: within 14 days for asylum and protection bundles and within 28 days for other appeal types.

8.76 Figure 14 shows that, while the average number of days taken has fallen significantly since 2017-18, APC has routinely failed to meet these timescales. In March 2020, APC management acknowledged that had been the case “for quite some time” especially for international appeals where it was “only on target with those cases 1-3% of the time” not helped by a recent surge in these cases. However, where there had been a shortfall in administrative staff, they now had “the resource to get on top of the backlog”.

Figure 14

Average time taken (days) for appeal bundle preparation

Appeal Type	2017-18		2018-19		2019-20 (To end Dec 19)		Total	Avg Days
	Total	Avg days	Total	Avg days	Total	Avg days		
Asylum	11,894	28	10,443	22	6,892	20	29,229	24
Human Rights/Complex	10,728	284	13,526	114	6,018	54	30,272	163
Euro	8,722	288	7,050	194	3,030	67	18,802	217
International	5,927	328	4,301	230	3,508	165	13,736	256
Further submissions	1,945	66	1,768	43	2,459	20	6,172	41
Deportation	1,669	85	2,039	96	1,254	66	4,962	85
Permanent Migration	1,227	312	2,052	134	1,176	61	4,455	164
Temporary Migration	1,807	266	1,483	135	858	65	4,148	178
Other	655	199	432	166	164	75	1,251	171
Total	44,574	204	43,094	115	25,359	60	113,027	138

8.77 Inspectors were told that “APC staff do not decide which documents to include in the bundle”. Decision makers who refuse an application are instructed, where the decision is appealable, to complete form PF1 on CID to “list all the documents which need to be included in the bundle and label them so that the Appeals Processing Centre (APC) can create the bundle”. However, APC staff told inspectors that the quality of PF1 forms completed by decision makers needed to improve. This had been fed back to managers to raise with decision-making units and had led to improvements in some units. Where there had been no improvement, the matter was being pursued by the Grade 7 Account Managers.

93 <https://www.gov.uk/government/publications/appeal-bundles>

- 8.78** Inspectors were also told that “e-feedback is used as a mechanism for reporting when appropriate documents have not been flagged for inclusion by the relevant decision-making area so that action can be taken on an individual or wider basis”. In addition, POs can “seek to submit any material missing documents that should have been included” when preparing for an appeal hearing.
- 8.79** Prepared bundles are sent to the appellant or their legal representative. If the legal representative has access to the MOVEiT portal, they can access an electronic version of the bundle.⁹⁴ If not, APC sends a printed version by second class post. HMCTS accesses the bundles via the MOVEiT portal. The POU dealing with the appeal can access the appeal bundle through the shared drive on the Home Office POISE system or via MOVEiT.
- 8.80** Where an appellant who is overseas does not have a legal representative in the UK, inspectors were told that “security reasons” prevent APC from sending the bundle by email. It has to go by post. The Home Office explained: “All addresses are checked when the appeal has been lodged. This process is currently under review as part of HMCTS Reform and eventually all bundles will be served by HMCTS on representatives and appellants via the digital CCD system”.⁹⁵
- 8.81** However, inspectors observed an appeal hearing against a deportation, where the appellant joined the hearing via video link to a British High Commission building overseas. The appellant did not have legal representation and the bundle had been sent to the British High Commission. The appellant stated that he had not been allowed to take the bundle out of the building. Inspectors were concerned that this arrangement had made it difficult for the appellant to prepare thoroughly for the hearing.⁹⁶

Creation of LART

- 8.82** The Leeds Appeal Review Team (LART) was established in August 2018 to consider all appeals going through the Private Beta phase of the Reform Programme. LART reviews the appellant’s bundle and, if the decision is to be upheld, produces a response, listing any points from the refusal notice that are conceded by the Home Office following the review.
- 8.83** In December 2019, inspectors were told that, as the number of Private Beta cases for review was limited, LART staff had also been involved in:
- reviews of clusters of cases where caselaw or the decision-making approach had changed, for example, Sudanese asylum claims (where the appellant claims to be a non-Arab Darfurian), and appeals related to the cancellation of leave following the exposure in 2014 of widespread cheating in English language tests⁹⁷
 - assisting the Sheffield Appeals Review Team with reviews of international appeals

94 According to Horizon, “MOVEit is an online file-sharing service that allows you to share data with other government departments, non-departmental public bodies and external organisations in a completely secure environment”. At the time of the inspection, access was restricted to 30 representatives and was free. However, this changed as a result of Covid-19. See ‘Business Continuity’ section at 8.95-102.

95 In October 2020, in its factual accuracy response, the Home Office stated: “Further to a review, bundles to all overseas appellants are now able to be sent by email. There is a process to verify email addresses and appellants need to actively confirm their preference for digital receipt”.

96 In its factual accuracy response, the Home Office stated: “Bundles to appellants for section 94(b) video appeals are served in the normal manner. However, it is standard practice to ensure that a copy of the bundle is available to the appellant during the course of the video hearing. This avoids adjournments and makes allowances for any appellant that is without the bundle on the day.” adding “Video appeals are a well-established process governed by the test in AJ (UKUT 115 – 28/2/18) to ensure fairness of all parties. This would include application or consideration for an adjournment and consideration by the Judge that it is appropriate for the appeal to proceed”.

97 See <https://www.nao.org.uk/wp-content/uploads/2019/05/Investigation-into-the-response-to-cheating-in-English-language-tests.pdf>

- 8.84** LART senior management told inspectors that LART EO reviewers were externally-recruited law graduates. LART EOs were appointed on a fixed-term basis for 18 months to retain flexibility around future staffing requirements. In March 2020, while a degree remained a requirement, it did not have to be in law, although managers said that this was preferred.
- 8.85** Senior management also told inspectors that they expected the review function would need to increase in capacity as the Reform Programme was rolled out further and became the standard process for all appeals.
- 8.86** The Home Office provided inspectors with a spreadsheet dated January 2020 with calculations of productivity and staff required for the review function. This showed an increase in EOs from eight in April 2020 to 19 by March 2021, and in HEOs from five to 13 over the same period. Management told inspectors that these staffing plans were “subject to budget agreement for 2020-21 onwards”. They explained that the expansion could be within LART or at other locations.
- 8.87** The monthly performance pack that monitors appeals performance for the Appeals Operations senior management team provides updates and forecasts for workforce numbers. The pack for March 2020 showed the LART headcount almost doubling between March and April 2020, and then doubling again between September and October 2020, in order to support the Reform Programme schedule for case reviews: 50% of asylum cases from April to September, as part of Public Beta; 25% of in-country, human rights and Euro, from July; and all cases from October 2020. It noted that HEO POs should be considered for recruitment to these posts “as court lists reduce”.

Reconsideration inbox

- 8.88** In May 2018, the Home Office began a review of older appeals that were awaiting a hearing. At this time, it created a ‘reconsideration inbox’ “to provide a clear and consistent process for further evidence and other substantial requests for review to be made ahead of FtT hearing by consolidating and replacing local processes and other routes for reconsideration requests to be made”. The review identified a number of cases where the decision was no longer valid and was therefore withdrawn and on this basis the Home Office decided to “maintain a dedicated resource to review new evidence and substantiated grounds that are submitted”.
- 8.89** Inspectors were told that the reconsideration inbox had been publicised via ILPA and at stakeholder meetings, which the Home Office used to highlight the proportion of decisions that it had withdrawn in order to encourage use of the facility. Details of the reconsideration inbox are also included on all PF1 appeal bundles,⁹⁸ ensuring it is known by all appellants.
- 8.90** Reconsideration requests are considered initially by a LART EO to check that they relate to a valid appeal and that they are not general correspondence. They are then allocated to the Specialist Appeals Team (SAT) and considered by a Senior Presenting Officer within 14 days. LART is informed of the outcome and informs the appellant or legal representative. Reconsideration requests received close to the date of the hearing are referred to the relevant POU to review the evidence as part of the PO’s preparation for the hearing.

⁹⁸ When an appealable decision is made, the decision maker must complete a PF1 form listing all the documents which need to be included in the bundle and label them so that the Appeals Processing Centre (APC) can create the bundle.

- 8.91** In December 2019, a senior manager told inspectors that the Home Office was withdrawing around 40% of the cases referred to the reconsideration inbox. Senior Caseworkers said this was a “big improvement”. The process of allocating cases for reconsideration requests had been formalised, where previously it had been a struggle to find someone to take responsibility for considering them. A Team Manager described it as a good way of reducing the appeals backlog, improving the ‘win rate’ and providing better customer service, which they described as “a real issue for international appeals where families were separated”.
- 8.92** A stakeholder told inspectors that while they welcomed the Home Office’s creation of the inbox as “pragmatic”, it had not been widely publicised and they were concerned that few people knew it existed. Appeals Operations staff also recognised that unrepresented appellants might not use the inbox because they were unaware of it.
- 8.93** Another stakeholder said that, despite the Home Office highlighting the creation of the reconsideration inbox at the time, “the extent to which action is taken in practice is unclear and there appears to be no automatic review of cases where further evidence is submitted to determine whether it is appropriate to pursue the appeal or whether it should properly be conceded”.
- 8.94** When the reconsideration inbox was created, the Home Office said it intended responding within seven days. While this had since been extended to 14 days, the feedback on the reconsideration inbox was generally positive and it was recognised that it had led to more cases being withdrawn by the Home Office.

Internal Home Office communications about transformation

- 8.95** Inspectors were told that the Appeals Operations senior management team was “committed to open and honest communication” with staff, providing updates and giving them the opportunity to ask questions about transformation in the business.
- 8.96** Since Spring 2018, the Appeals Operations Deputy Director had delivered six-monthly transformation updates to staff in all POUUs. However, no formal communications had been published on transformation and the impacts on staffing, as there were “a considerable number of unknowns in relation to timings and impacts of the various transformation initiatives”.
- 8.97** The strategy was therefore to “keep staff informed as the picture develops” and to encourage staff to focus on their learning and development to ensure that they had the necessary skills and experience to move on to other roles. This applied especially to administrative staff, where the biggest reductions were expected. A presentation on training and development opportunities was given to administrative staff in June 2019.
- 8.98** Senior management believed that communication about transformation had been good and staff knew that the changes were coming. They also believed that the new ways of working would mean that staff would want to stay, rather than look for other posts, and would improve their wellbeing. In staff interviews and focus groups, inspectors found different levels of awareness of transformation plans, related to how far staff felt they were likely to be personally affected.

- 8.99** However, LART staff told inspectors it was unclear whether their unit would get the resources needed to manage the workloads resulting from the Reform Programme and they expected to reach a point where they would not “be able to cope with current staffing [levels]”. Managers in another unit described the difficulty of balancing wanting to be open with staff with the uncertainties about the impact of the changes. Managers in a third unit said that they ensured staff were kept updated on the process and contacted any staff directly affected by the changes, but they noted that staff were anxious about anticipated headcount reductions and that some information may have been shared with them too early.
- 8.100** Some managers felt that they had had more briefings on new IT systems than on the Reform Programme but they had had little opportunity to input into them. The changes were generally welcomed but the need for adequate training was stressed so that staff were able to use the new systems effectively.
- 8.101** Senior Presenting Officers were concerned that the work of the Upper Tribunal (UT) was not included in HMCTS’s initial plans for reform. They thought that the UT would “struggle to get on board with digitisation”.

Business continuity during Covid-19

- 8.102** Since mid-March 2020, Covid-19 has impacted the appeals process, as it has the Home Office more generally. Following the instruction from the government for people to stay at home, the courts initially remained open. However, on 20 March the UT decided to postpone hearings and after 24 March the FtT stopped holding oral hearings.
- 8.103** As the situation unfolded, Appeals Operations managers updated inspectors that planned training courses for POs had been cancelled and staff were working from home. This was possible as most staff had laptops, although not some administrative staff for whom efforts were made to procure them.⁹⁹
- 8.104** The Home Office told inspectors that:
- “There was no break in APC processing during lockdown. The office was not available to the majority of staff after 20 March 2020 reflecting the requirement to work from home where possible. Digital working for production of appeal bundles meant that staff were able to undertake this work from home and continue processing work. The effect of lockdown was to bring forward digital working plans with Asylum, Criminal Casework, Returns Preparation and Refused Case Management decision areas to allow this work to be completed remotely. A roster of staff continued to attend the office to deal with essential tasks such as scanning, printing and dealing with physical mail which were not able to be undertaken remotely.”
- 8.105** Appeals Operations worked with HMCTS to conduct bail hearings by telephone and, as a priority, to move towards conducting them via video conferencing, which required them to resolve a number of data security issues to allow them to proceed.

⁹⁹ In October 2020, in its factual accuracy response, the Home Office stated that: “By the end of April 2020 in excess of 99% of Appeals staff had been issued with a laptop”.

- 8.106** The majority of POs were re-allocated to carrying out reviews on international appeals. This produced learning opportunities for some. One PO told inspectors that it made them realise how complicated it was to withdraw a decision rather than uphold it. However, another said they were “not really trained to do it” and “just told to get on with it”. Overall, POs thought that managers were mindful of their wellbeing during the lockdown, maintaining regular contact.
- 8.107** Senior managers said that, at the start of the pandemic, communication with the judiciary had sometimes been difficult. A series of practice directions were issued which were “well intended”, but Appeals Operations managers felt that the judiciary had acted without consulting and had been “slow to work with us on the finer detail”. Stakeholders also had some issues with practice directions during this period.
- 8.108** The managers acknowledged that their good working relationship with HMCTS had helped them work through amended procedures together. “There has been great joint work with HMCTS to set up video hearings. There have been lots of data security issues to work through”.
- 8.109** On 17 April, the APC Operations Manager had written to immigration practitioners encouraging them to use the MOVEiT portal to enable evidence bundles to be shared securely and quickly. The letter stated:
- “In the current circumstances, using the Moveit portal allows both parties to share data securely and quickly, meeting the requirements set out recently by HMCTS.”
- 8.110** At the beginning of April, the HMCTS pages on GOV.UK began providing a weekly update on the courts and tribunals that were functioning.¹⁰⁰ On 22 April the update explained:
- “Some of our buildings have been temporarily closed since Monday 30 March 2020. We’ve moved work into fewer buildings so only essential face-to-face, video and telephone hearings will take place. We’re also following the government and public health advice to limit movement and maintain social distancing. This will help us protect the safety of all our users.”
- 8.111** On 11 May 2020, the update stated:
- “The work of courts and tribunals will be consolidated into fewer buildings, maintaining the safety of all in the courts and in line with public health advice. We have 159 priority court and tribunal buildings open for essential face-to-face hearings.”
- 8.112** A number of these buildings were open for Immigration and Asylum Tribunals.
- 8.113** Home Office senior management told inspectors that the new ways of working that had had to be implemented in response to Covid-19 had accelerated the roll-out of the Reform Programme, increasing the types of appeal cases that could be processed online from mid-May.¹⁰¹

¹⁰⁰ <https://www.gov.uk/guidance/courts-and-tribunals-tracker-list-during-coronavirus-outbreak>

¹⁰¹ In its factual accuracy response, the Home Office drew attention to the Presidential Practice Statement (dated 11 June 2020), which took effect on 22 June 2020, regarding cases to be lodged and processed online: <https://www.judiciary.uk/publications/immigration-and-asylum-tribunal-chamber-presidential-practice-statement-note-covid-19-pandemic/>

- 8.114** In terms of any build-up of unheard cases, senior management said that while fewer appeal cases were being heard, the effects of Covid-19 on decision-making¹⁰² meant fewer new appeals were being generated. Meanwhile, Appeals Operations would work through the appeals that had been lodged and identify those that could be withdrawn so that they would “have more of a fighting chance when it comes back online”.
- 8.115** In July, the HMCTS weekly update noted that: “From 17 July 2020, we are no longer publishing the tracker list as most of our courts and tribunals buildings are now open in line with public health advice”.

102 In September 2020, the Home Office told inspectors that: “Asylum decision-making did not cease during lockdown with work continuing to take place where interviews had already taken place or there was sufficient information to make a decision. Decision-making is paused on any case where medico-legal reports (MLR) are delayed due to medical professionals who complete them being asked to work on the Covid-19 response for the NHS. The service of asylum decisions was suspended until 27 April 2020. Face-to-face asylum interviews ceased on 17 March 2020 and restarted at the end of July 2020, having put in place a mobile digital and video interviewing solution to support remote interviewing. The numbers of interviews completed are now increasing at pace across the UK, however Asylum Operations continues to explore plans to increase interview numbers further”.

9. Inspection findings: Quality assurance

Quality assuring the work of Presenting Officers

- 9.1** Appeals Operations assures the work of Presenting Officers (POs) by three means: dip sampling, appeals quality assurance assessments (AQA), and 'win rates'.

Dip sampling

- 9.2** Team Managers line manage POs. This includes dip sampling each PO's file management and the quality of their updates and notes on the CID system at least three times a year. Cases are dip sampled after the appeal hearing has taken place.
- 9.3** The dip sampling template used by Team Managers contains 11 questions, each requiring a "Yes" or "No" response. The questions cover: case preparation ahead of the hearing; updates to CID system; a clear summary of the appeal hearing; and confirmation that the file was sent to the correct location on completion of the PO's actions.
- 9.4** If the answer to any question is "No", it is an automatic "Fail". There is a box for comments and follow-up action(s) recommended by the manager, but "Fails" are discussed with the PO to understand the reasons and the actions required to avoid a recurrence. Team Managers also use dip samples to identify gaps in training or mentoring.
- 9.5** Though Team Manager dip sampling is "light-touch" and limited in terms of the level of assurance it is able to provide, the template is used by all POUs and works as a basic quality management tool for POs' "paperwork".

Appeals Quality Assurance

- 9.6** Appeals Quality Assessments (AQAs) enable Appeals Operations to assess the quality of presentations by POs and SPOs across all POUs. Senior Caseworkers (SCWs) assess POs and Special Appeals Team (SAT) Grade 7 managers assess Senior POs. Internal guidance explains that there are two main purposes to these assessments:
- "to contribute to continuous improvement and drive up quality
 - to monitor performance by helping to identify and recognise S/POs who perform well and ensuring that S/POs who perform less effectively can be identified and receive appropriate support to improve"

- 9.7** Since April 2017, Appeals Operations has used two tools to review the quality of presentations: QATRO and ZENITH. These tools “standardise quality assessments throughout UKVI”. They:
- “Give credit for demonstrating good behaviours, skills and knowledge, even if there are areas where there is some development needed.
 - Give clear guidance on what is considered to be best practice.
 - Differentiate between those behaviours, skills and knowledge which are particularly significant and/or higher risk from those which are less so.
 - Ensure that should a S/PO make a significant error in one or more assessment criteria the highest overall mark he/she can obtain is ‘DQ3’, rather than ‘DQ1’, or ‘DQ2’”
- 9.8** The guidance states that assessments will be conducted twice a year in the case of “effectively performing S/POs” and three times a year where “relatively minor areas for improvement” exist, and at least four times a year if “significant weaknesses” are identified.

QATRO

- 9.9** QATRO is used across UKVI and provides “a systematic method of assessing, scoring and collating” performance. All UKVI staff have received briefings on the process and the marking standards. The results are fed back orally and in writing. In the case of POs, the SCWs and Team Managers work together to identify individual issues and training and development needs.
- 9.10** Inspectors examined the process guidance. It set out clearly that an assessor would observe an appeal unannounced; complete an assessment sheet (containing 36 questions across five categories: Preliminaries, Cross-Examination, Submissions, Overall and Pre & Post Hearing Work); save it on the QATRO system; and review the case on CID two days later to check that the relevant post-hearing work had been completed. The assessor then emails a copy of the assessment to the PO and their Team Manager and arranges a date to provide feedback within seven days of the appeal hearing.
- 9.11** Appeals Operations senior management receives a monthly report with the QATRO scores for the Presenting Officer Units (POUs), which also shows the results for the previous 12 months. The scores for the year ending March 2020 are at Figure 15. The data shows that the PO’s performance was assessed as “Satisfactory”¹⁰³ in 146 (82.4%) of 177 assessments completed. However, it is unclear what this says about the overall quality of POs’ work as 177 assessments represent just 0.39% of the 45,577 FtT appeals that received an outcome in 2019-20.

¹⁰³ A “Satisfactory” assessment is where Decision Quality (DQ) is assessed as either 1 (fully effectively presented) or 2 (generally effectively presented, but with minor errors). “Not satisfactory” is where DQ is assessed as 3 (not effectively presented, contains one or more significant errors), 4 (not effectively presented, needs significant development) or 5 (not effectively presented, needs major development). None of the assessments for POUs for 2019-20 scored DQ5.

Figure 15

QATRO assessments for Presenting Officer Units for 2019-20

Overall Quality Scores	Satisfactory				Not satisfactory				Total
	DQ1		DQ2		DQ3		DQ4		
Birmingham	37	80.4%	1	2.2%	1	2.2%	7	15.2%	46
Cardiff	5	83.3%	1	16.7%	0	0%	0	0%	6
Central London	28	90.3%	2	6.5%	1	3.2%	0	0%	31
Glasgow	1	50.0%	1	50.0%	0	0%	0	0%	2
Leeds	3	50.0%	0	0%	1	16.7%	2	33.3%	6
Manchester	16	84.2%	1	5.3%	1	5.3%	1	5.3%	19
Newcastle	6	85.7%	0	0%	0	14.3%	0	0%	7
West London	40	66.7%	4	6.7%	14	23.3%	2	3.3%	60
Total	136	76.8%	10	5.6%	19	10.7%	12	6.8%	177

9.12 Inspectors therefore also looked at Home Office data for QATRO assessments over a longer period. Between April 2017, when Appeals Operations first used QATRO, and December 2019, 142,409 appeals to the First-tier Tribunal received an outcome. The Home Office was represented at 129,400 hearings. Over the same period, 810 QATRO assessments were completed, equivalent to 0.63% of all hearings attended by a PO. The concern about whether this is sufficient to assure the overall quality of POs' work therefore stands.

ZENITH

- 9.13** In 2019, Appeals Operations held staff workshops to review the AQA strategy and marking criteria to ensure that first-line assurance was "robust, focused and reliable". Revised marking criteria were produced for assessments of POs and of the Allowed Appeal Review Team (AART). These were incorporated into ZENITH, a bespoke tool for conducting Appeals Operations AQAs.
- 9.14** Roll-out of ZENITH across all POUs began in January 2020. The tool is intended for use by SCWs and SAT Grade 7 managers in the way they had previously been using QATRO.
- 9.15** ZENITH assessment covers 28 questions, which for POs are grouped into seven categories: Preparation; Preliminaries; Cross-examination; Submissions; Behaviours; Post-hearing; and "Overall". Figure 16 shows the marking standards used in ZENITH.

Figure 16

ZENITH marking standards	
Standard	Definition
Correct	The actions of the Presenting Officer fully adhere to legislation, policy and guidance. There are no risks/negative impact for the Appellant, Home Office or UK.
Minor errors	An error which does not materially detract from the overall quality of the presentation of the appeal and would not negatively affect the appeal outcome. There are no apparent risks/negative impact for the Appellant, Home Office or UK. The error can be quickly rectified.
Significant errors	An error which detracts from the overall quality of the presentation of the appeal and may negatively affect the appeal outcome. There are potential risks/negative impact for the Appellant, Home Office or UK as a result. The error requires attention to address serious weaknesses or omissions.
Fail errors	An error which not only detracts from the quality of the presentation but also has a clear, negative impact on the outcome. There are significant risks for the Appellant, Home Office or the UK as a result. Immediate action is required to address the critical failure(s).

9.16 Like QATRO, ZENITH uses a five-point Decision Quality (DQ) scoring system. See Figure 17.

Figure 17

ZENITH Decision Quality scores	
Score	Criteria
DQ5	Any “fail errors” and “overall” is recorded as “Probably Wrong”.
DQ4	Any “fail errors” and “overall” is recorded as “Probably Correct” or “Not Possible to Conclude”.
DQ3	Any “Significant errors”.
DQ2	If more than 20% of checks, [excluding those] recorded as N/A, are recorded as ‘Minor’.
DQ1	If none of the above apply.

9.17 SCWs told inspectors that all POs should be assessed in the first half of the year. Where a PO failed an assessment for something “significant or fundamental”, which happened “quite often”, SCWs would flag it with the PO’s line manager and highlight the need for training. They would then conduct a follow-up assessment.

9.18 All POs should be assessed again in the second half of the year. This meant each would have been assessed a minimum of twice and maximum of four times a year, which was in line with the previous QATRO expectations, where effective performers were supposed to be assessed twice a year, and those identified as needing to improve either three or four times.

- 9.19** SCWs were generally complimentary about ZENITH, having been involved in its development. They said that it framed questions “in a useful way”. It was quicker than the QATRO Excel database, which frequently crashed. It was also better-suited to their needs, as it was “not targeted at asylum cases as QATRO had been”. They had started using it immediately after completing their in-house training and found the instructions and guidance clear and the new marking scheme “a lot more helpful” in terms of how to determine a “minor” or “significant” error or an “outright fail”. However, assessments were still “time consuming” and it was “effectively a day out of the office by the time you’ve written it up”.
- 9.20** The Chief Caseworker told inspectors that they monitored the ZENITH data for any trends or issues but the small volume of this data made it difficult to spot things. Appeals Operations had a quality assurance target of 2% of all appeal cases. According to one SCW, the 2% figure was “the minimum the auditors want” but “with everything else, it was one of the things that gets left”. They understood that they were going to be required to increase assurance checks to achieve the minimum level but believed that a more targeted approach that looked at win rates would be better.
- 9.21** POs told inspectors that “it would be more useful if they did it more often as a development thing, rather than twice a year because they need to”. The ICIBI questionnaire asked POs whether they received feedback on the quality of their work. Of 111 who answered this question, 92 (83%) said that they did and of these 75 (78%) said that they found the feedback helpful.

Win rate

- 9.22** Team Managers also look at win rates when reviewing and assessing PO performance. The Home Office defines the win rate as the percentage of appeal hearings dismissed at the First-tier Tribunal.
- 9.23** In 2019-20, Appeals Operations’ priorities included:
- “Improve the win rate – we will review all Entry Clearance and other targeted cohorts of Appeals in the system and improve the withdrawals processes. We will also work with the Making Better Decision Board and decision-making areas to ensure that lessons from appeals are fed into future decision-making.”
- 9.24** A ‘win rate indicator tool’ (a spreadsheet) enables managers to compare the performance of POs and of different case types. The tool collects data from CID, and “uses a coefficient method to evaluate PO performance against peer groups, largely removing (real or perceived) variables such as case type or the area a PO presents in”. Team managers can use the tool to view management information and examine local trends and comparisons, and to identify training and development needs.
- 9.25** Inspectors were told that, for 2019-20, Team Managers had a performance goal of “Increasing win-rate”, with five success criteria that detail how they will work towards improving and maximising the win rate of the POs in their team. This goal was repeated for 2020-21, with the rubric, “Ensure that the Unit contributes fully towards the aspiration to increase the appeal win-rate steadily throughout the year”.

- 9.26** However, POs told inspectors that using the win rate to measure individual performance could “encourage adverse behaviours” and that there were also occasions where decision-making teams were reluctant to withdraw cases that they were likely to lose, preferring to let the appeal proceed in order to produce a determination that would serve as caselaw or to understand the judiciary’s view of certain types of cases.
- 9.27** Senior managers (Grade 7s and above) monitor the win rate data on a monthly basis, looking to spot any trends in appeals outcomes, which might lead to “deep-dive” reviews. Inspectors were told that “public perception aligns win rate with decision quality”, although managers acknowledged that this was not always the case as the Home Office “can win [or lose] cases irrespective of the quality of the [original] decision”. However, they believed there was “room for improvement” in the win rate.
- 9.28** Decision-making areas also have access to the win rate tool “to facilitate monitoring of win rate, analysis and management information”. There was a user guide on how to create and use spreadsheets with the tool. This appeared to be comprehensive. It contained the useful graphs and data that could be produced, such as win rate dashboards with breakdowns by application category and nationality.
- 9.29** The overall win rate has fluctuated over time and this has influenced the performance target for POs. In November 2013, in answer to a written question from Lord Lester of Herne Hill about PO performance targets, the Home Office stated that: “The expectation is that [POs] succeed in upholding 70% of asylum decisions and 60% in all other cases they present.”¹⁰⁴ The Home Office told inspectors that its “expectations” with regard to the win rate had since been amended “to reflect the changing complexity and types of appeals” that were being heard. In March 2020, the Chief Caseworker told inspectors that the win rate was currently 50%. One manager observed that “far more work is undertaken now on the win rate because it is lower”.
- 9.30** The win rates for the POU varied. According to the Chief Caseworker, there were a number of reasons. For example, one POU dealing with a large volume of appeals had a number of inexperienced POs, due to high turnover. Meanwhile, a combination of factors contributed to low win rates: late submission of evidence that cannot be considered before a hearing; weak decisions by the Home Office, especially on credibility grounds; expert evidence given at hearings; changes in caselaw between the date of refusal and date of the hearing; and hearings where the Home Office has asked to withdraw a decision, but the judge decides the appeal should proceed.
- 9.31** The win rate by appeal type also varied over time. In October 2018, the overall win rate was 45%. In October 2019, it was 49%. Over this period, the monthly win rate reached 50% only once, in January 2019. See Figure 18.

¹⁰⁴ <https://www.theyworkforyou.com/wrans/?id=2013-11-04a.11.0&s=%22presenting+officers%22+section%3Awrans+section%3Awms#g11>
In September 2020, the Home Office told inspectors that: “[The] 70% win-rate was an improvement aspiration rather than a target but was only referenced in 2017-18.”

Figure 18
Appeals ‘win rates’, October 2018 to October 2019

Month	Asylum	Human Rights/ Complex	International	Euro	Overall
Oct 2018	55%	37%	38%	46%	45%
Nov 2018	58%	43%	38%	49%	48%
Dec 2018	57%	40%	36%	44%	47%
Jan 2019	59%	47%	39%	55%	50%
Feb 2019	55%	45%	37%	45%	48%
Mar 2019	53%	43%	41%	44%	47%
Apr 2019	53%	45%	38%	52%	48%
May 2019	53%	49%	38%	53%	48%
Jun 2019	51%	47%	36%	44%	46%
Jul 2019	49%	47%	39%	47%	47%
Aug 2019	53%	53%	36%	49%	49%
Sep 2019	49%	51%	38%	46%	49%
Oct 2019	52%	52%	40%	47%	49%

9.32 Inspectors also looked at the win rate for asylum appeals since 2017-18. See Figure 19.

Figure 19
Asylum appeals ‘win rates’, 2017-18 to 2019-20

Year	Asylum	All types
2017-18	55%	43%
2018-19	51%	38%
2019-20	48%	41%

9.33 The Home Office shared a presentation given to POUs by a senior manager in Spring 2019. Referring to the win rate data at that time, the accompanying commentary stated: “overall win-rate has ranged between 45% and 50%, despite the incredible amount of work that has been done”. This included the review of 20,000 older appeals, which had resulted in around 3,000 cases being withdrawn in the previous year,¹⁰⁵ and “extensive work with decision-making teams and Policy to improve decision-making and align it with judicial interpretation; and training, Preparation Guides and coaching for Presenting Officers”.

9.34 Data on the HMCTS website relating to the number of appeals determined by outcome category and case type showed broadly the same win rate (“Dismissed/Refused”) pattern for 2017-18 to 2019-20 as the Home Office data (Figure 18), though the figures differed, in some cases substantially. See Figure 20.

105 The c. 3,000 withdrawn cases represented 60% of all withdrawn cases during that period.

Figure 20

**First-tier Tribunal appeals determined at hearing or on paper
by outcome category and case type, 2017-18 to 2019-20**

Year	Asylum/Protection/Revocation			All types		
	Total	Allowed/ Granted	Dismissed/ Refused	Total	Allowed/ Granted	Dismissed/ Refused
2017-18	15,246	41%	59%	52,500	49%	51%
2018-19	14,424	44%	56%	45,174	52%	48%
2019-20	13,185	48%	52%	39,487	50%	50%

- 9.35** The Home Office explained that there were several reasons for the discrepancies, including difficulties with recording multiple appeal hearings and outcomes on CID, including remitted and reinstated appeals. Since the HMCTS data on receipts and disposals is published this is what is normally used when responding to enquiries. However, the HMCTS data does not offer the granularity required for internal management information purposes and analysis.

Initiatives to improve the win rate and overall performance

- 9.36** Managers told inspectors of various initiatives that appeared to have had a “positive impact” on win rates. These included focusing the e-feedback tool on one appeal type at a time, policy changes, and workshops with decision-making units. The win rate for family and human rights cases, for example, had increased from 35% in July 2018 to 50% in July 2019 and by the end of 2019 was averaging “about 55%”. However, managers acknowledged that these initiatives would need further monitoring to provide more accurate assessments of the results.

‘Intensive mentoring’ initiative

- 9.37** Following an initial trial at Birmingham POU, funding was made available for two members of staff to provide intensive one-to-one mentoring for POs, tailored to individual needs. This would include established POs. A pilot was run in Central London POU in 2019.
- 9.38** Figure 21 shows the results of the Birmingham trial. The win rates improved for all those who received intensive mentoring. The in-year improvement varied between 3% and 28%. Since then, the win rates for two of the six POs had continued to improve; one had maintained the improved win rate; and, in two cases the win rate had decreased. However, all five POs who were still in post in November 2019 had win rates above the overall Appeals Operations average.

Figure 21

Analysis of PO 'win rates' – Birmingham POU intensive mentoring trial

PO	April 2018 pre-mentoring	From mentoring to March 2019	'Win rate' in 12 months to 22 Nov 2019
1	54%	65%	52%
2	53%	60%	62%
3	43%	49%	55%
4	42%	57%	N/A
5	53%	56%	56%
6	42%	70%	65%

9.39 Figure 22 shows the results of the Central London POU pilot following a two-week period of intensive support for the POs. Again, all four POs improved their win rates. The figures illustrate the value of having the mentor at hand, however the sustained improvement is also evident.

Figure 22

Analysis of PO 'win rates' – Central London POU intensive mentoring pilot

PO	YTD performance pre-mentoring	During mentoring	From mentoring to the end of the YTD
1	39%	48%	45%
2	43%	48%	52%
3	41%	59%	67%
4	35%	49%	54%

9.40 Although it noted the small sample size, Appeals Operations concluded from the results from Birmingham and Central London that POUs could expect to see a “sustained increase in win rate of between 6-9% for each PO who undergoes this intensive mentoring programme”.

Utilisation rate pilot

9.41 The ICIBI questionnaire asked POs “What changes would you implement to make the Presenting Officer function more efficient and/or effective?” Of the 111 respondents, 79 (71%) said that they would like more time to prepare for an appeal. This included keeping themselves up-to-date with changes to policy and caselaw. It would require a reduction in the ‘utilisation rate’, that is the time they are expected to spend in court, which is set at 60%.

9.42 The Home Office provided inspectors with a copy of the report of a pilot run at the Leeds POU that examined whether a reduction in the PO utilisation rate from 60% to 55% improved performance and staff wellbeing. The background section states: “there is no direct correlation between the date the 60% utilisation target was introduced and the beginning of the decline in the win rate”.

9.43 The pilot ran from June to September 2019. Six Leeds POs had their utilisation rate lowered to 55% (11 days out of 20 in court) for the period of the pilot. It was stated that this would “effectively give them an extra day every 4 weeks to prep, catch up on reading etc”. The win rates for the six POs before and during the pilot were compared. See Figure 23.

Figure 23		
Leeds utilisation pilot ‘win rate’ comparison		
PO	Overall win rate (Feb to May 2019)	Overall win rate (June to Sep 2019)
1	37%	35%
2	30%	36%
3	45%	43%
4	50%	36%
5	40%	54%
6	55%	51%

9.44 The report states that “it is difficult to ascribe either the increases or decreases to the change in utilisation pattern”. Without a more detailed analysis of the other “variables” (for example, case types and levels of experience) this is clearly true.¹⁰⁶

9.45 In terms of wellbeing, the report states that the six POs were asked “a set of welfare questions before and after the pilot to ascertain what benefits they thought it would have for them and what benefits they actually felt during it”. The questions were:

- “How have you found the change to 55% representation so far?”
- What have been the benefits?
- What have been the disadvantages?
- What do you think could be done differently or improved?”

9.46 The POs said that they could not perceive any difference in their wellbeing and they had not “got any benefit from the reduction in utilisation”. One PO said that having one day less in court in a four-week cycle made little difference overall and suggested a “50% pattern as a more meaningful reduction if we wanted to see performance and wellbeing improvements”. Two POs said their utilisation rate had not changed during the pilot, but their Team Manager said that this was not correct. Only one PO said they felt they had more time to prepare, but their win rate had reduced significantly.

9.47 The report concludes that this “reinforces the perception that an extra day to prepare makes little difference”. Overall, Leeds POU concluded:

“Based on the performance figures and results of the wellbeing questions, the pilot does not support the conclusion that reducing the utilisation target to 55% will lead to an increase in win rate.”

9.48 Inspectors noted that the report did not contain any next steps or recommend if another pilot should be carried out, whether over a longer period or for a different utilisation rate.

¹⁰⁶ In its factual accuracy response, the Home Office noted: “Staff in the pilot all had a similar level of experience to remove that as a variable. A 4-month period also assisted in reducing list and case variance.”

- 9.49** Meanwhile, Appeals Operations senior management acknowledged that: “It’s true that, even if [the utilisation rate] is reasonable, it is quite relentless”. They were looking at ways to enable it to be reduced to 50%, for example by assigning POs to pre-appeal review work one day per week. This “would make it less relentless, getting rid of ‘back-to-back’ work, without reducing efficiency”.
- 9.50** In interviews, focus groups and in response to the ICIBI questionnaire, the utilisation rate was the most common cause for concern raised by POs. It appeared to be a widely-held view amongst POs that reducing the utilisation rate from 60:40 to 55:45 or lower would improve win rates. Other Appeals Operations staff agreed.

Casework Team pilot

- 9.51** Appeals Operations ran a Casework Team pilot at Birmingham POU from September 2019 to January 2020. This was in response to concerns expressed by POs about the 60% utilisation rate. POs had indicated that it would help them to meet this target if they did not have to deal with court directions.¹⁰⁷ This “would give them more time to prepare cases and in turn improve wellbeing”. Senior Caseworkers had also raised concerns about having to deal with more directions because POs did not have time to deal with them and prepare for hearings. By reducing the demand on SCWs, the hope was that they would have more capacity to conduct AQAs.
- 9.52** A Casework Team was created to deal with directions and casework issues raised by legal representatives before the hearing, plus certain administrative tasks, in order to reduce the pressures on POs and SCWs. An EO “directions caseworker” reviewed all the directions received by the POU and allocated them to POs or SCWs as appropriate.
- 9.53** A dedicated Team Manager/Senior Caseworker HEO role was created to provide oversight of the casework and administration teams, enabling the Team Managers to concentrate on their core functions. Team Managers had been concerned that otherwise the additional management demands would have affected their “ability to hold regular coaching sessions with staff”.
- 9.54** The administration team had raised concerns about duplication of work and a lack of consistency in the training provided for their roles. The team was therefore split into separate administrative and casework functions. There were issues around the grade of some functions and some resistance to the changes. However, process maps, job roles and new performance goals were produced and, according to the report of the pilot, overall feedback from the team was positive.
- 9.55** Inspectors reviewed the report, entitled ‘Casework Team Pilot – Improving Wellbeing of Presenting Officers’. POs reported having additional time to prepare for appeal hearings and said that their wellbeing had improved. However, there was no attempt to quantify the outcomes. The report concluded that, while it was too soon to examine any impact on appeal win rates, the pilot was a success and the new structure should become “business as usual”. It noted that the Central London and West London POU already had a similar casework function or a member of staff dealing with directions and suggested that there would be benefit in ensuring consistency in these roles across all POU.

¹⁰⁷ Directions can be oral, given to a PO by an Immigration Judge during a hearing, or written, given by the judge in an appeal determination. POs are expected to work on directions during their court preparation days. They told inspectors that this took up valuable preparation time.

- 9.56** Managers in Birmingham told inspectors that communications about the pilot had not been well handled. The reasons for it had not been explained to the staff most affected, the POs and the administrative team. They believed this had contributed to Birmingham’s poor People Survey results in 2019. (The pilot had overlapped the People Survey).
- 9.57** When inspectors spoke to staff involved in the casework pilot in April 2020 it seemed that communications continued to be a problem. They said that they had not been informed about the future of the pilot following submission of the report. They were unclear what was happening about their roles. But, they were clear that reverting to the previous structure would result in “chaos, resentment – morale would be through the floor”.
- 9.58** Appeals Operations senior management, also speaking in April 2020, said that the pilot would “continue on a smaller scale” and that the POU “should be aware of this”. However, the pilot would not be expanded “to other units at this stage” and further roll-out was dependent on other ongoing work to examine the processes in other units and determine best practice.

10. Inspection findings: Stakeholder engagement

Appeals Operations engagement with its stakeholders

- 10.1** There is a broad range of stakeholders involved in the efficient and effective delivery of the Home Office Presenting Officer (PO) function. Inspectors set out to capture the perspectives of key stakeholders on POs and their role in the appeals process.

Internal stakeholders

- 10.2** Within the Home Office, Appeals Operations' key stakeholders are the decision-making business areas, and the corresponding policy teams, whose decisions POs defend in tribunal hearings. Given the numerous decision-making areas and many hundreds of decision makers, and the separate policy teams, it is challenging for Appeals Operations to ensure that its engagement with these stakeholders is efficient and effective. The intention behind the creation by Appeals Operations of Grade 7 Account Managers was to ensure that its engagement with its internal stakeholders was effectively managed (see Chapter 7).

External stakeholders

- 10.3** Inspectors asked Appeals, Litigation and Administrative Review (ALAR) senior management about the key external stakeholders for the PO function. They identified three: Her Majesty's Courts and Tribunals Service (HMCTS); the Judiciary; and legal professional bodies, such as the Immigration Law Practitioners' Association (ILPA), the Law Society and the Bar Council. Sitting over the myriad of working-level interactions that take place day-to-day, senior managers engage with these stakeholders on an ad hoc basis as required.
- 10.4** Inspectors sought views directly from these three key stakeholders, and also published a 'call for evidence' on the ICIBI website, inviting submissions from anyone with experience and knowledge of the PO function.

Her Majesty's Courts and Tribunals Service

- 10.5** It is a moot point whether HMCTS is best characterised as a "stakeholder" or "partner", given the symbiotic relationship with Appeals Operations. The mutual dependency has increased as a result of the HMCTS Reform Programme, which is expected to have a major effect on the PO function and which is likely to result in a number of current POs being redeployed as case reviewers.

- 10.6** In its evidence for this inspection, the Home Office referred to “regular contact [with HMCTS] ... at all levels of the organisation”, both formally and informally. The head of ALAR (a Senior Civil Servant) has direct contact with the HMCTS Deputy Director for Tribunals and attends the HMCTS Reform Programme Board. The Appeals Operations Deputy Director reported that he had met with the HMCTS operational lead on six occasions between January and November 2019. The Home Office did not provide further details of these senior-level meetings, such as agendas, minutes or actions arising, so inspectors were unable to determine their impact on the PO function.
- 10.7** The operational lead for the HMCTS Reform Programme told inspectors that the relationship with the Home Office was “good”, which echoed Home Office senior management, though, oddly, the Home Office is not mentioned as a key partner on the HMCTS Reform pages on GOV.UK.¹⁰⁸
- 10.8** At a working level within Appeals Operations there were some criticisms of HMCTS, suggesting that the relationship was lopsided. While the HMCTS operational lead described the creation of the Leeds Appeals Review Team (LART) as “really positive”, LART reviewers were less enthusiastic. They were frustrated that despite providing feedback to HMCTS about the reform pilot their voices were not being heard.
- 10.9** POs also expressed their frustration that HMCTS appeared unaware or unconcerned about the impact of its processes on the PO function. For example, POs told inspectors that lists can collapse the day before a hearing date rendering the PO’s case preparation work nugatory. POs felt this indicated that the relationship between the Home Office and HMCTS was not strong enough to address these concerns. Inspectors raised this with senior managers and were told that, although the matter was discussed with HMCTS, “the Home Office did not have much leverage to effect any significant changes”.

The Judiciary

- 10.10** Inspectors asked the Home Office for details of regular and ad hoc meetings between ALAR and the Judiciary. They were told that the head of ALAR has ad hoc meetings with the FtT and UT Presidents. Meanwhile, an ALAR Grade 7 attends the quarterly UTIAC Stakeholder Group meetings. These are chaired by the UTIAC President and provide an opportunity to raise any issues relating to the UT.
- 10.11** Inspectors were also told that Grade 7 managers in Appeals Operations liaise with Resident Judges directly and through the Practitioners’ Liaison Groups, chaired by the Resident Judge and attended by Tribunal Judges, legal representatives, Government Legal Department and the Home Office. Inspectors were told that POs had an open invitation to attend, but the Home Office did not provide any evidence of PO attendance.
- 10.12** Copies of the minutes and action logs for three Liaison Group meetings held at Field House, London, during 2019 showed that a wide range of issues were covered, not all of which were relevant to the PO role. In one, the Home Office was asked about delays in providing legal representatives with refusal decisions on appeal applications. The minutes showed that it agreed to investigate and “consider how best to ameliorate the process”.

108 <https://www.gov.uk/guidance/the-hmcts-reform-programme#who-were-working-with>

10.13 Inspectors spoke informally with some judges on their visits to Hearing Centres but did not carry out any formal interviews as the Resident Judges believed it would not be appropriate for them to comment about POs. Instead, the Independent Chief Inspector wrote to the President Judges of the Asylum and Immigration Chamber of the First-tier and Upper Tribunals seeking their views.

10.14 In May 2020, the two Presidents provided a joint response highlighting five points that largely echoed evidence inspectors had received from other sources and their own observations. They noted that:

“There is, however, a particular importance in the respondent having professional representation. For instance, the respondent may have decided the appellant lacks credibility and will therefore need to cross-examine the appellant at the hearing.

On occasion in both the First-tier and the Upper Tribunal, it can appear that a presenting officer may have had inadequate time to prepare for an appeal. In particular, we understand that there have in the past been issues regarding the late delivery of files to presenting officers.”

In the First-tier’s emerging digital reform process, presenting officers can be expected to perform a pivotal role. ... This will require further skill-sets and training and the need of thorough preparation.

In the Upper Tribunal, resource issues can impede Presenting Officers’ ability to file rule 24 responses and otherwise address a case sufficiently in advance, to enable it to be satisfactorily resolved without the need for a hearing.

Although we are, of course, well aware that resource issues are difficult to address, particularly at this time, it is our view that a fully-functional system of Presenting Officers significantly assists the administration of justice, by helping our Chambers to decide cases justly, without unnecessary delay.”

10.15 Separately, at the end of April 2020, the Home Office wrote to the President of the First-tier Tribunal requesting written feedback when an appellant is granted bail as “it would assist the Home Office to fully understand the reasons why bail has been granted, not least to improve our own decision-making in the future”.

10.16 In response, the President advised:

“As independent judiciary we decide bail applications in accordance with the law, which includes the guidance which has been issued. There has been no change in either the law or the guidance. The primary function of detention is accordingly to facilitate removal, and unless there are very powerful reasons to the contrary bail should be granted if there is no removal of the bail applicant within the reasonably foreseeable future.”

10.17 The exchange neatly illustrates the tension inherent in the relationship between the Home Office and the Judiciary. While it is both reasonable and necessary for the Home Office to look to learn from judicial decisions in order to become more efficient and effective in its own decision-making, which in principle should also benefit its “customers” and lead to fewer disputed decisions, it is equally essential for judges to remain, and be seen to be, wholly independent. The head of ALAR told inspectors that he accepted that judges were reluctant to engage in conversation with the Home Office but any feedback they did provide was helpful in improving the performance of the PO function.

10.18 In relation to bail hearings, in June 2020, adding to their original response to ICIBI’s call for evidence, one stakeholder wrote again to express their concerns that, despite a decision by the FtT to implement a “minded to grant” process to help reduce “the strain on the tribunal” while Covid-19 restrictions were in place, the Home Office continued to challenge the majority of these decisions without producing any additional evidence to support why it was opposing the order. The stakeholder described this as “counterproductive”, noting that it put additional pressure on their resources.

Immigration Law Practitioners’ Association

10.19 The Immigration Law Practitioners’ Association (ILPA) is a professional association and registered charity, the majority of whose members are barristers, solicitors, advocates, and advisers regulated by the Office of the Immigration Services Commissioner (OISC), who practise in all aspects of immigration, asylum and nationality law. ILPA also has members who are academics, non-governmental organisations (NGOs) and individuals with an interest in the law.

10.20 The head of ALAR told inspectors that he had a good relationship with ILPA’s Chief Executive and that they speak regularly about policy and operational issues.

10.21 ILPA is a regular contributor to ICIBI inspections and is also a member of the Independent Chief Inspector’s ‘Refugee and Asylum’ and ‘Adults at Risk’ [in detention] stakeholder groups, and the Independent Advisory Group on Country Information.¹⁰⁹ ILPA provided a detailed submission in response to ICIBI’s call for evidence, which it also published separately.¹¹⁰ The key points are covered below along with the other evidence received in response to the call for evidence.

Call for evidence

10.22 On 25 November 2019, ICIBI published a call for evidence on the ICIBI website. This invited “anyone with relevant knowledge and expertise”, including those with “first-hand experience with Home Office Presenting Officers” to write “with supporting evidence or actual case studies they are able to share” and “views on what is working well and not so well, and what improvements you would like to see”. The Independent Chief Inspector also wrote directly to a number of stakeholders to encourage them to contribute.

10.23 The call for evidence closed on 10 January 2020. ICIBI received 18 submissions: six were from members of the public; six from Non-Governmental Organisations (NGOs); five from legal organisations, including ILPA; and one from an academic body. Inspectors analysed the submissions for common themes and key points and also held a number of follow-up conversations to ensure that they fully understood what stakeholders were saying.

10.24 There was a general acknowledgement that the PO role was challenging and that most POs did the job that was required of them, which was to robustly defend the Home Office’s decisions. However, stakeholders were concerned that the Home Office appeared to be “focused on winning at all costs”.

¹⁰⁹ Details of these groups can be found on the ICIBI website. <https://www.gov.uk/government/organisations/independent-chief-inspector-of-borders-and-immigration>

¹¹⁰ <https://ilpa.org.uk/wp-content/uploads/resources/35905/20.01.17-ICIBI-HOPO-response-AS-SUBMITTED.pdf>

- 10.25** A number of positive comments were made about POs and about particular POUs, citing their “professionalism”, “notwithstanding the pressure upon them”, and stakeholders prefaced some of their criticisms by saying that they did not apply to “all” or even “most” POs. However, all of the stakeholder submissions identified areas for improvement, including to the system by which cases were allocated.
- 10.26** Over two-thirds (13) of the submissions referred to POs’ lack of cross-examination skills. These stakeholders had experienced instances where, in their opinion, the PO’s style of questioning and approach had been unnecessarily aggressive, dismissive and unprofessional. There were also instances where POs had failed to consider the appellant’s vulnerabilities, which were often central to the case, and the PO’s “adversarial cross-examination techniques” had undermined the appellant’s confidence, leaving them feeling uncomfortable, extremely upset and re-traumatised by having to relive their experiences.
- 10.27** Half (nine) of the stakeholder submissions included case studies illustrating the issues they raised, such as poor cross-examination techniques, failure to consider the vulnerability of appellants and witnesses, and protracted and distressing credibility questioning despite medico-legal reports. One wrote:
- “when a 15-year old’s appeal was heard, despite being diagnosed with moderate depression and displaying symptoms of PTSD, the HOPO’s cross examination approach completely disregarded the psychiatrist report and instead, focussed on credibility issues, ignoring the risk to further distress and child trauma.”
- 10.28** Another stakeholder described instances where POs had made inappropriate comments, including one where the PO asserted that the appellant’s representative was “unqualified, untrained, inexperienced and their input was heavily biased”, and another where the PO displayed prejudice and stereotypical attitudes during cross-examination, arguing that “the appellant could not be a lesbian because she has a son”.
- 10.29** Stakeholders linked their criticisms to the need for POs to receive further or better advocacy training, including how to deal with vulnerable witnesses, and several of them said they were willing to engage with the Home Office to assist with the development and delivery of this training.
- 10.30** More generally, stakeholders felt that a more up-to-date training package for POs would improve their overall performance. ILPA recommended that the training should include all aspects of asylum and human rights law, noting “useful and positive precedents for the engagement of stakeholder organisations, individual applicants with direct experience of the determination process, and frontline Home Office staff in the development and delivery of Home Office training on credibility and on claims involving sexual orientation”.
- 10.31** A dozen submissions stressed that POs needed to have a better understanding of Home Office policy and guidance. Half of them said that POs also demonstrated a lack of knowledge and understanding of caselaw, noting that this was clearly reflected in weak defence arguments. This was backed up with examples in relation to LGBTI asylum claims. Stakeholders said this was linked to POs needing more time to prepare cases. One referred to a relatively new PO not having reviewed the skeleton argument prior to the appeal hearing, which became more apparent during the PO’s lengthy cross-examination which was based on a fundamentally flawed legal proposition and which cited irrelevant caselaw, resulting in the appeal being allowed.

- 10.32** ILPA believed that some of the fault for POs being underprepared lay with the system for allocating cases as much as with individual POs. It recommended that “criteria should be applied to the distribution of appeals so that, for example, a highly complex sensitive case is not allocated along with four others the night before to a junior HOPO”.
- 10.33** In half (nine) of the submissions, stakeholders said that POs should have greater autonomy to make “on the spot discretionary decisions” to narrow or concede points that are indefensible. The call for evidence submissions pre-dated the ‘Withdrawing decisions’ guidance issued by the Home Office in February 2020 (see Chapter 7), but while this introduced some autonomy for POs in relation to the withdrawal of cases in advance of the scheduled hearing, and clarified that “you may make concessions during the appeal where appropriate and justified by the evidence”, it did not empower POs to concede an appeal that was in progress without seeking an adjournment and getting the approval of an ALAR senior caseworker or Grade 7.
- 10.34** Similarly, half of the submissions raised the importance of being able to engage with the PO prior to a hearing. Some stakeholders felt POs deliberately made themselves unavailable in order to restrict communication with the appellant’s legal representative, although POs emphatically disagreed with this when inspectors raised it with them. Stakeholder concerns centred on the time and resources that were wasted, and the unnecessary cross-examination of appellants, because it had not been possible to discuss and narrow the issues in advance of the hearing.
- 10.35** Finally, nine of the stakeholder submissions included the view that POs should be held accountable for their behaviour in court and be made to adhere to the Bar Standards Board ‘Handbook’ and ‘Code’¹¹¹ as was the case for appellants’ legal representatives. ILPA’s submission included a recommendation that a ‘Code of Conduct’ for POs “should be developed in consultation with key stakeholders”, published online and subject to “an independent oversight and complaints mechanism”. Significantly, in addition to the PO’s duties to the court, ILPA recommended that:

“The Code should also ensure that HOPOs are explicitly advised that their role involves acting in accordance with the role of the Home Office in ensuring that those in need of refugee and human rights protection are granted leave to remain, and not simply in winning cases before the Tribunal.”

111 <https://www.barstandardsboard.org.uk/for-barristers/bsb-handbook-and-code-guidance.html>

Annex A: ICIBI Questionnaire for (Senior) Presenting Officers

1. Please indicate your current role

- Presenting Officer
- Senior Presenting Officer

2. Please indicate the location of your POU

- Birmingham
- Cardiff
- Central London
- Glasgow
- Leeds
- Manchester
- Newcastle
- West London

3. How long have you been in your current role?

- Less than six months
- More than six months but less than one year
- More than one year but less than five years
- More than five years

4. Please indicate your working pattern

- Full time
- Part time
- Other (please specify):

5. Please indicate your gender

Male

Female

Prefer not to say

6. Did you have any training when you started your current role?

Yes

No

7. In your opinion, did the training equip you to perform your role?

Yes

No (please expand):

8. Have you had any refresher training?

Yes

No

9. If you answered 'Yes' to the previous question, please indicate when you last received refresher training

In the last three months

In the last six months

In the last year

More than a year ago

10. In your opinion, does the Home Office provide sufficient guidance to help you perform your role?

Yes

No

11. Do you know where to find Home Office guidance to help you perform your role?

Yes

No

12. In your opinion, is the Home Office guidance easy to follow and understand?

Yes

No

13. In your opinion, is the Home Office guidance updated regularly enough?

Yes

No

14. In your opinion, are you allocated sufficient time to prepare for an appeal hearing?

Yes

No

15. Does the Home Office provide a Presenting Officer for all appeal hearings that require one?

Yes

No (please provide more detail):

16. Does the Home Office demonstrate learning from appeal outcomes?

Yes

No

17. Please provide more detail to your previous answer

18. In your opinion, does the Home Office implement changes to guidance and policy following reported or starred determinations in a timely manner?

Yes

No

19. Are mechanisms in place for POUs to provide feedback, following appeal outcomes, to case working units?

Yes

No

20. If you answered 'Yes' to the previous question, do you think the feedback mechanisms are effective? (i.e. do they improve decision making?)

Yes

No

21. Do you receive feedback on the quality of your work as a Presenting Officer?

Yes

No

22. If you answered 'Yes' to the previous question, do you find this feedback helpful?

Yes

No

23. Do you feel supported in your work by your manager?

Yes

No

24. Do you feel able to raise issues and concerns without fear of any consequences?

Yes

No

25. Would you recommend the Presenting Officer or Senior Presenting Officer role to others?

Yes

No

26. Finally, if time and money were no object, what changes would you implement to make the Presenting Officer function more efficient and/or effective?

Annex B: 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 to 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 & 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 eight 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 C: ICIBI's '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

The inspection team is grateful to the Home Office for its cooperation and assistance during the course of this inspection and for the contributions from the staff who participated. We are also grateful to the stakeholders who contributed.

Inspection Team

Lead Inspector	Hollie Savjani
Project Manager	Chris Green
Inspector	Posy Hartstone
Inspector	Halbert Jones
Inspector	Joy Worrell
Overseeing Inspector	Caroline Parkes

