



House of Commons
Home Affairs Committee

**The work of the UK
Border Agency:
Government Response to
the Committee's 4th
Report of Session 2010–12**

Eighth Special Report of Session 2010–12

*Ordered by the House of Commons
to be printed 10 May 2011*

The Home Affairs Committee

The Home Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Home Office and its associated public bodies.

Current membership

Rt Hon Keith Vaz MP (*Labour, Leicester East*) (Chair)
Nicola Blackwood MP (*Conservative, Oxford West and Abingdon*)
James Clappison MP (*Conservative, Hertsmere*)
Michael Ellis MP (*Conservative, Northampton North*)
Lorraine Fullbrook MP (*Conservative, South Ribble*)
Dr Julian Huppert MP (*Liberal Democrat, Cambridge*)
Steve McCabe MP (*Labour, Birmingham Selly Oak*)
Rt Hon Alun Michael MP (*Labour & Co-operative, Cardiff South and Penarth*)
Bridget Phillipson MP (*Labour, Houghton and Sunderland South*)
Mark Reckless MP (*Conservative, Rochester and Strood*)
Mr David Winnick MP (*Labour, Walsall North*)

The following members were also members of the committee during the parliament.

Mr Aidan Burley MP (*Conservative, Cannock Chase*)
Mary Macleod MP (*Conservative, Brentford and Isleworth*)

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk.

Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/homeaffairscom.

Committee staff

The current staff of the Committee are Elizabeth Flood (Clerk), Joanna Dodd (Second Clerk), Sarah Petit (Committee Specialist), Eleanor Scarnell (Inquiry Manager), Darren Hackett (Senior Committee Assistant), Sheryl Dinsdale (Committee Assistant), Victoria Butt (Committee Assistant), and Alex Paterson (Select Committee Media Officer).

Contacts

All correspondence should be addressed to the Clerk of the Home Affairs Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 3276; the Committee's email address is homeaffcom@parliament.uk.

Report

On 11 January 2011 the Home Affairs Committee published its Fourth Report of Session 2010-11, *The work of the UK Border Agency*, HC 587. The Government's response to the report was received on 8 March 2011, and is published as an Appendix to this Special Report.

Government Response

The Committee published its report “The Work of the UK Border Agency” on 11 January 2011 and included a number of comments for consideration by the UK Border Agency. The Government response is provided below.

Foreign National Prisoners

The difficulty in tracing and then deporting released prisoners highlights the need to ensure that all eligible foreign nationals currently serving sentences are removed from the UK expeditiously and, wherever possible, are not held for long periods in prison at the taxpayers’ expense when they could be deported. (Paragraph 2)

Government Response

The UK Border Agency has continued to improve the way it deals with the deportation of foreign national prisoners. Since 1 August 2008, provisions within the UK Borders Act 2007 have meant that any non-European Economic Area (EEA) national who receives a custodial sentence of 12 months or more, or a sentence of any length for drug or gun crimes, will automatically be considered for deportation. EEA nationals who receive a custodial sentence of 12 months or more for drug, violent or sex crimes, or 24 months for other crimes, are also considered for deportation.

The UK Border Agency has removed or deported more than 21,000 foreign national prisoners from the UK since 2006, including a total of 5,235¹ in 2010. We continue to ensure that individuals are deported at the earliest opportunity. Where sentence length allows, consideration of deportation is commenced up to 18 months prior to the earliest point of release. Around a third of the foreign national prisoners removed in 2010 were removed before the end of their sentence under the terms of Early Removal Scheme.

Despite the best efforts of the UK Border Agency, deportation of foreign national prisoners is often delayed by the use of judicial challenges and by their failure to comply with the documentation process. This can lengthen the period of time an individual spends in immigration detention. A sampling exercise completed in early 2010 of cases which had been detained under immigration powers for six months or longer, showed that non-compliance was an issue in around two thirds of those cases. We are working with the judiciary and other foreign governments to tackle these issues.

¹ Quarter 1–1340, Quarter 2–1260, Quarter 3–1410. Source: Control of Immigration: Quarterly Statistical Summary. United Kingdom (after data cleansing). Quarter 4–1225–subject to data cleansing

The Facilitated Return Scheme (FRS) continues to deliver significant numbers of removals, and accounted for around half of all foreign prisoner removals from the UK between January and September 2010. FRS offers individuals a financial package to help them build a new life back in their home country. It is a practical solution which saves the taxpayer money in the long run, and means foreign criminals can be removed at as early a point as possible, denying them the opportunity to re-offend or prolong the process with judicial challenges.

The Government is committed to exploring ways of removing foreign criminals even earlier. This will include working with the prisons, courts and the police to build upon our capacity to gather intelligence information on nationality at an earlier stage.

Legacy asylum cases

In cases where severe delays in decision-making have been the fault of the government and not the applicant, and where the passage of time has made evidence harder to find or has led to the applicant's being better integrated into British society, there is an argument in favour of granting the applicant leave to remain. (Paragraph 6)

Government Response

The UK Border Agency applies existing policy and legislation in dealing with older asylum cases. There are no separate policy criteria for these older cases. All decisions will be made on a case-by-case basis using those existing laws and policies. Those who qualify will be granted leave to remain; those who do not the UK Border Agency will seek to remove.

Given the length of time that some of these individuals have been in the UK, we have always been clear that a significant proportion of the legacy cases would be likely to be eligible to remain in the UK. When we first reported to the Committee, 37% of conclusions were grants, although this reduced at one stage of the programme, this has now increased to 40% as at 31 January 2011. We have always been clear that the proportion of different conclusion types would vary throughout the life of the programme, and this rate is considered appropriate given the nature of these cases.

A minimum of 61,000 of the 400-450,000 cases—about one in seven—will eventually be concluded on the basis that the UK Border Agency has been completely unable to trace what has happened to the applicant. While we agree that the UK Border Agency should not spend unlimited time trying to track down missing applicants, we are concerned about the high proportion of cases which will be left, in effect, in limbo. Again, this points to the vital need to deal with cases as expeditiously as possible and not to let backlogs grow. (Paragraphs 7-8)

Government Response

Inevitably there will be legacy cases which are more difficult to trace, for example, because people have left the country.

The Committee will be aware from Jonathan Sedgwick's recent written update that the Agency has now concluded 40,500 controlled archive² cases, therefore currently one in ten conclusions represents an individual that the agency has not been able to locate. We do expect this proportion to increase in light of the 34,000 cases commissioned to the archive that will mature into conclusions in the coming months, but these will be balanced against other conclusion types.

The UK Border Agency makes every effort to trace individuals, writing to them at their last known address and checking a number of internal and external databases. It has also worked with representative groups to ensure that individuals update us with their current addresses. As the public expects, the Agency undertakes the greatest number of checks on those who represent the greatest potential risk to the public.

When it has not been possible to find an individual the UK Border Agency continues to pursue the case as part of its controlled archive which is checked against watchlists and also against the Police National Computer on a regular basis. If this returns any details, the UK Border Agency will follow up on those cases. Alternatively, if an applicant or their representatives make contact with us we will take their case out of the controlled archive.

Once the Case Resolution programme comes to an end later this year, the UK Border Agency's new Case Audit and Assurance Unit will continue to monitor the controlled archive pool and will take forward strategic targeting of potentially traceable cases.

In addition, the Government also supports e-Borders and is committed to reintroducing exit checks, so in time it will be much clearer who has left the country.

We are mindful of the historic issues and processes which led to the accumulation of a backlog of legacy asylum cases before 2006. This is why, in parallel to making a concerted effort to conclude these cases, we have put in place practical measures, through the introduction of the New Asylum Model (NAM), to ensure that new asylum claims are dealt with in an efficient and expeditious way, right through to the granting of refugee status to those who genuinely need the UK's protection, and the removal from the UK of those who it is concluded do not. We do accept that there is still more that can be done and have launched an Asylum Improvement Project to explore new ways of improving the system.

2 Where the Agency's efforts to trace cases, including by checking a number of internal and external databases, fail those cases are placed into a controlled archive which is checked against watchlists every three months. Once a case has been in the controlled archive for six months it is included in conclusions statistics. If an applicant comes to light, the case will be reactivated and any conclusion recorded against that case removed. No cases where the applicant has a positive Police National Computer hit are placed into the controlled archive.

New asylum cases

We agree that quality should not be sacrificed to speed when it comes to decision-making. From the cases we see as constituency members, much of the delay in concluding asylum and other immigration cases stems from poor quality decision-making when the application is initially considered. We recognise the progress made over the last few years in relation to new procedures and approaches, but we consider that the UK Border Agency still has room for improvement. More consistent and rigorous scrutiny of applications would lead to fewer delays, fewer appeals, less uncertainty for the applicant, less pressure on the officials themselves, and probably lower costs for the UK taxpayer. This may well require greater investment in staff training. It is also likely to require more consistent and considered direction from those setting policy for the Agency than has sometimes been the case. (Paragraph 10)

Government Response

Through close working with the UNHCR, the UK Border Agency has developed a world class audit process to assure the quality of initial decisions and interviews. The Quality Audit Team was established and staff members travel across all regions to sample case owners' work. The Quality Audit Team has further developed its portfolio to include consideration of the appeals process. Quality Auditors produce individual reports, which feed into monthly summaries, sharing best practice to all of our regions. Areas in need of improvement are also identified, and solutions are implemented via our senior caseworker network. The UK Border Agency continues to build on this work with the UNHCR and is sharing its approach to quality with EU and international partners.

In addition, we have developed a new set of performance indicators designed to show the overall health of the asylum system. We are moving away from an exclusive focus on the six month conclusion rate as defined by the old Public Service Agreement target which was the subject of criticism from our corporate partners, the National Audit Office and Independent Chief Inspector. We still believe that measuring our performance in terms of conclusions is the right thing to do but by also looking at the 'vital signs' we can ensure that the asylum system is kept in balance.

Our new approach to performance in the asylum system is in line with the Government's stated aims of increasing transparency and of speeding up the system. So, we will continue to focus on concluding cases—and not just deciding them. As we have outlined, our performance will be measured by a basket of indicators to ensure the asylum system is kept in balance.

The range of indicators includes-

- Intake
- Decisions taken within 30 days
- Quality of decision
- Grant rate

- % decisions overturned at appeal
- Conclusions at 6, 12, 18 and 36 months
- Cases removed by 12 months
- Number and age profile of the outstanding caseload
- Asylum support costs
- Productivity (conclusion per case owner FTE)
- Unit cost.

Our system is more robust and more stable than it has been, but we know there is still a lot to do. We have therefore introduced the Asylum Improvement Project which is our vehicle for making further improvements in how we deal with applications.

Enforced removals from the UK

We are not at all convinced that the UK Border Agency is being effective in making sure that its contractors provide adequate training and supervision of their employees in respect of the use of force. This is a fundamental responsibility of the Agency and is not simply a matter of clauses in contracts or formal procedural requirements. We also note that the risk assessment which has to accompany the person being removed (a copy of which was provided to the Committee) is concerned principally with the possible risks of the deportee absconding or offering violence to the accompanying officials, rather than risks of harm to the deportee him/herself. It is not clear whether the very short section on the deportee's medical condition, which has to be filled in by a qualified medical practitioner, would be completed in such a way as to be understood by a layman, such as an escorting officer: would it, for example, be obvious that the deportee's underlying heart condition or other complaint might make some types of physical restraint potentially lethal? We look forward to the Government's responses to our concerns. (Paragraphs 11 and 12)

Government Response

All Detention Custody Officers (DCOs) complete a comprehensive training course before they are allowed to work with detainees, the contents of which are approved by the UK Border Agency. This encompasses human rights, diversity, self-harm and suicide prevention, child protection, first aid and the use of restraint. The training has a heavy emphasis on using interpersonal skills to persuade detainees to comply with what is required of them, and only to use restraint as a matter of last resort. It also emphasises the requirement to de-escalate any use of restraint as soon as it is safe to do so when the objective has been achieved or the detainee complies. DCOs receive regular refresher training and in the case of restraint, every twelve months.

Restraint training within the UK Border Agency's detention estate is delivered by professional trainers and uses techniques accredited by the National Offender Management Service.

The work of DCOs are overseen and monitored on a number of different levels by the UK Border Agency once they begin to work with detainees:

DCOs are monitored by a team of contract monitors, who use evidence to provide feedback on performance. Evidence includes both personal observations, but also a variety of different reports and CCTV. Although we do not routinely video every removal attempt, given the use of video equipment can itself antagonise detainees, the UK Border Agency does use hand-held devices for high risk removals or those where we anticipate particularly disruptive behaviour on the part of detainee.

DCOs are required to report any use of restraint or use of handcuffs, even if used as a precautionary measure. Such reports are reviewed by a senior manager and are then passed to the relevant contract monitor for review. It is open to the manager or contract monitor to commission an investigation if they feel there are questions as to whether the use of restraint was appropriate or justified.

All immigration removal centres and escorting vans are fitted with CCTV, and recordings are sampled by senior managers and contract monitors.

The UK Border Agency operates a comprehensive complaints system as part of our monitoring arrangements: detainees are told how to complain on arrival in a removal centre and upon escort, and forms are widely available in a range of different languages. Monitors review outcomes of complaint investigations and the UK Border Agency has a separate team which considers trends, both those substantiated and also those which are not substantiated. Complaints are also the subject of investigations by the Prisons and Probation Ombudsman, a copy of whose reports are sent to the Director of Detention Services. Any allegation of excessive use of force is passed automatically to the police for them to consider whether to conduct their own parallel investigation.

Furthermore, Independent Monitoring Boards work in all our Immigration Removal Centres and a number of short-term holding facilities, including Heathrow Airport, and report regularly to the contract monitors, and annually to the Home Secretary. Their reports are published on their website. The Chief Inspector of Prisons also provides a programme of announced and unannounced inspections, reporting to the Home Secretary.

Several thousand immigration detainees pass through the immigration detention estate each month or are removed from the UK, and the UK Border Agency is increasing the number of monitors by eight specifically to provide continued assurances in relation to the escorting service.

We have noted the Committee's concerns about the risk assessment process for detainees with medical conditions. The Person Escort Record (PER), a copy of which was presented during Lin Homer's oral evidence to the Committee in November 2010,

and which is being piloted by the UK Border Agency, has a dedicated section for healthcare clinicians to complete to highlight medical and mental health issues, as well as suicide and self-harm risk factors. The form also provides the contact number of the person completing the assessment in case of questions or queries. The form is countersigned by a senior officer and it is open to this individual or the escorts themselves if they do not understand an entry or wish to clarify a matter further. We are not aware of any particular concerns. Detainees who are being escorted and who are not part of the pilot are also carefully risk assessed, using information from a number of sources.

Detailed medical information is usually a matter of clinical confidentiality between the detainee patient and healthcare staff, but if deemed clinically appropriate, and with the patient's consent, information can be shared with escorting staff to assist the detainee's management during the removal process to ensure their health and well-being at all times. To share information without the detainee's consent would be a significant clinical event, which may be rarely necessary in the clinician's judgement, but every effort will always be made to obtain informed consent.

Where healthcare clinicians feel that a medical escort is required, we provide one. A medical escort will have full access to the individual's medical record, which accompanies them. A medical escort was provided for 990 removals in 2010.

The UK Border Agency is working with the Department of Health to consider how the existing measures can be strengthened further.

Treatment of detainees with special medical needs

We requested a copy of the audit (report into Rule 35 of the Detention Centre Rules). We are disappointed that, as of the last sitting date in 2010, this has not been forthcoming. (Paragraph 14)

Government Response

Further analysis of some of the data in the original evaluation has now been completed and a report was published on 1 March 2011—a copy of which was provided to the Committee.

MPs' Correspondence

When Members write to Ministers it is expected that the reply will at least be signed by the Minister. It is therefore unacceptable that the head of an agency should delegate this task to junior officials.

The UK Border Agency, in recent years, has received the highest volume of letters from Members and Peers: of the 66,320 intake for 2009 (latest figures available) approximately 30% were where Members wrote to Ministers. In line with Cabinet Office guidelines, where an MP has written to a Minister about the day to day operations of the

Agency the Minister has authorised the Chief Executive, or their deputy, to reply. We encourage MPs to write direct to UK Border Agency officials in such instances.

We have been working with MPs to help them understand the best way to communicate with the Agency. We have put in place a range of channels that can be used as an alternative to letters that will provide quicker and more tailored responses. This included introducing named Account Managers for all MPs, a dedicated telephone enquiry line, an on-line correspondence tracker and improved handling of email enquiries. As a result of this we have received a significant reduction in letters from MPs over the past year.

Salaries

We consider that in the current situation of wage constraints and reductions in posts in the public sector, it would be appropriate to offer a significantly lower level of salary than the £208,000 currently paid—the appointee should be paid no more than the Permanent Secretary of the Home Office. In addition, we think that no bonuses should be paid to senior staff in the current financial climate. (Paragraph 16)

Government Response

The Chief Executive of the UK Border Agency post will be filled following a fair and open competition. All civil service salaries are competitive and designed to ensure the tax payer gets value for money, whilst also attracting the most talented individuals to challenging and high profile roles.

The Home Office follows Government policy in awarding non-consolidated performance bonuses to its Senior Civil Servants (SCS). The Prime Minister has stated that bonus awards for the SCS will be restricted to the top 25% only.

To take account of current financial pressures, the Permanent Secretary of the Home Office decided that less than half of the available provision should be spent for the 2009/10 SCS Performance and Reward Review. Arrangements for performance-related payments for 2010/11 have not yet been finalised.

Bogus Colleges

We therefore request the Government to implement our predecessor committee's recommendations in full, and specifically those regarding the need for unannounced inspection visits to educational establishments, a statutory restriction on the use of the term 'college' limiting it to accredited institutions, and an account of how the relevant authorities ensure that they investigate the intelligence provided by legitimate colleges and others about potential bogus institutions. (Paragraph 17)

Government Response

Since April 2010 at least 50% of post licence visits undertaken by UK Border Agency visiting officers have been unannounced. Additionally, visits commissioned by the Agency's sponsor investigations team are all unannounced. Where appropriate information about institutions about which the UK Border Agency has concerns is shared with other government departments such as the Department for Business, Innovation and Skills.

Since the introduction of Tier 4 of the Points Based System on 31 March 2009, a total of 60 education providers have had their sponsor licences revoked and the UK Border Agency is revoking more each year. In the period between 1 April 2010 and 20 January 2011 a total of 32 education providers had their sponsor licences revoked. This is an increase of 19% on the 27 revocations of sponsor licences between 31 March 2009 and 31 March 2010.

As proposed in our consultation about the reform of the student immigration system, we are working closely with all departments responsible for education across the UK to review the work of the currently approved accreditation bodies, to establish what more can be done to ensure the quality of education provision within the private sector. Early findings from the consultation indicate widespread support for the review of the current system in order to improve quality standards across the private, further and higher education sector. We are analysing the responses received to the consultation and will publish our findings and final policy proposals, including on the future of the accreditation system, in due course.

Restricting the use of the term 'college' and closing down bogus colleges as a result of intelligence gathered are matters for the Department of Business, Innovation and Skills.

Immigration statistics

We consider that it would help both those engaged in the formation of immigration policy and the general public seeking to understand it, if the Government—and indeed others—were to adopt a clear set of criteria for the measurement of inflows to and outflows from the UK (whether, for example, they include UK citizens, whether they relate to those settling in the UK and, if so, for how long, and so on) and to use only figures that meet these criteria when discussing migration, asylum and related policies. We also note that unless and until the UK has records of all those entering the country and leaving the country, many of the uncertainties highlighted in this Report will continue into the future. (Paragraphs 18-19)

Government Response

Home Office Statistics are looking at ways of presenting the data in a more comprehensive way; by clearly setting out the criteria used in the measurement of each statistic and the relationships and differences between the various statistics. This will

allow users, whether the general public or those engaged in policy formation, to continue to have access to the data that they require for various purposes and to gain a better understanding of the data. This work is being undertaken in conjunction with a forum of representatives from a range of external statistical users and the Office for National Statistics which is responsible for official estimates of UK migration.

Data are provided to suit a wide range of needs, including making internationally and historically consistent comparisons. This requires publishing data to internationally recognised definitions, such as the UN definition of 'net migration', and asylum, but also data which allows the public to be informed about the performance of the UK Border Agency. In some cases these do not use the same definitions. In addition data supplied to the EU by the UK Border Agency is required to meet definitions that may differ from those used nationally. Wherever possible we try to align these different definitions and make clear to statistics users where these differences occur and the meaning of each particular set of data.

As part of the development of plans within the e-borders project to re-introduce exit checks, Home Office Statistics and Office for National Statistics are considering the data that might in due course be provided on outflows; these will be notified in the Control of Immigration publication.