House of Commons
Home Affairs Committee

Immigration Control

Fifth Report of Session 2005–06

Volume I

Report, together with formal minutes

Ordered by The House of Commons
to be printed 13 July 2006
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; and the administration and expenditure of the Attorney General’s Office, the Treasury Solicitor’s Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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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. A list of Reports of the Committee since 2001 is at the back of this volume.

Committee staff

The current staff of the Committee are Dr Robin James (Clerk), Mr Mark Etherton (Second Clerk), Kate Akester (Adviser (Sentencing Guidelines)), Martha Goyder (Committee Specialist), Ms Arabella Thorp (Immigration Control Inquiry Manager), Mr Ian Thomson (Committee Assistant), Jenny Pickard (Secretary) and Alison Forrester (Senior Office Clerk).

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Footnotes

In the footnotes of this Report, references to oral evidence are indicated by ‘Q’ followed by the question number. All oral evidence for this inquiry is printed in Volume III. References to written evidence are indicated by the page number as in ‘Ev 12’ (written evidence published in Volume II is indicated as in ‘Ev 12, HC 775–II, and written evidence published in Volume III is indicated as in ‘Ev 12, HC 775–III).
# Contents

## Report

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Summary</td>
<td>4</td>
</tr>
<tr>
<td><strong>1 Introduction</strong></td>
<td>7</td>
</tr>
<tr>
<td>The Committee’s inquiry</td>
<td>7</td>
</tr>
<tr>
<td><strong>2 Context</strong></td>
<td>8</td>
</tr>
<tr>
<td>Increasing numbers of migrants</td>
<td>8</td>
</tr>
<tr>
<td>International migrants</td>
<td>8</td>
</tr>
<tr>
<td>Migration to the UK</td>
<td>9</td>
</tr>
<tr>
<td>Temporary migration</td>
<td>11</td>
</tr>
<tr>
<td>Settlement</td>
<td>12</td>
</tr>
<tr>
<td>Impact of migration</td>
<td>13</td>
</tr>
<tr>
<td>Controlling entry</td>
<td>16</td>
</tr>
<tr>
<td>Historical background</td>
<td>16</td>
</tr>
<tr>
<td>Immigration rules</td>
<td>17</td>
</tr>
<tr>
<td>Immigration authorities</td>
<td>17</td>
</tr>
<tr>
<td>The Government’s current aims</td>
<td>18</td>
</tr>
<tr>
<td>Illegal immigration</td>
<td>21</td>
</tr>
<tr>
<td>Root causes of illegal migration</td>
<td>21</td>
</tr>
<tr>
<td>Numbers of illegal migrants</td>
<td>22</td>
</tr>
<tr>
<td>Categories of illegal migrant</td>
<td>23</td>
</tr>
<tr>
<td>The need to tackle illegal migration</td>
<td>24</td>
</tr>
<tr>
<td><strong>3 Controls overseas</strong></td>
<td>25</td>
</tr>
<tr>
<td>The entry clearance operation</td>
<td>26</td>
</tr>
<tr>
<td>The application process: outsourcing</td>
<td>29</td>
</tr>
<tr>
<td>Information and advice for applicants</td>
<td>30</td>
</tr>
<tr>
<td>Decision-making</td>
<td>34</td>
</tr>
<tr>
<td>Training and monitoring</td>
<td>38</td>
</tr>
<tr>
<td>Internal reviews</td>
<td>40</td>
</tr>
<tr>
<td>Entry clearance targets</td>
<td>40</td>
</tr>
<tr>
<td>Access to information</td>
<td>43</td>
</tr>
<tr>
<td>Tackling forgery and fraud</td>
<td>45</td>
</tr>
<tr>
<td>Fingerprinting visa applicants</td>
<td>47</td>
</tr>
<tr>
<td>Previous recommendations</td>
<td>49</td>
</tr>
<tr>
<td><strong>4 Border controls</strong></td>
<td>51</td>
</tr>
<tr>
<td>Exporting the border</td>
<td>51</td>
</tr>
<tr>
<td>Checks on arriving passengers</td>
<td>55</td>
</tr>
<tr>
<td><strong>5 Immigration decisions taken in the UK</strong></td>
<td>57</td>
</tr>
<tr>
<td>The application process</td>
<td>58</td>
</tr>
<tr>
<td>Decision-making, training and monitoring</td>
<td>58</td>
</tr>
<tr>
<td>IND targets</td>
<td>60</td>
</tr>
</tbody>
</table>
Access to information 61
Management and structures 62
Policy development 63
Internal corruption 63

6 Specific categories 64
Students 64
Student immigration applications 66
New IND units 67
Responsibility of DfES 68
Children 70
 Trafficking 71
 Private fostering 73
 Detention and removal 74
Spouses 75
 Genuine marriage applications 76
 Forced marriage cases 77
 Abusive marriages 80
 Sham marriages 81

7 Appeals 84
Lack of mutual confidence 85
Reviewing refusals before appeal 85
New evidence 86
Interpretation 87
Case Management Reviews 88
Paperwork 89
A one-tier system? 89
Representation 91
 Home Office representatives 91
 Appellants’ representatives 93
Teething problems 95
Removing appeal rights 97

8 Enforcing the controls 98
The need for effective enforcement 98
Current enforcement efforts 99
Enforcement priorities 100
Aligning enforcement with decision-making 103
Increasing the number of removals 105
Reintroducing embarkation controls 107
Gathering information 108
Illegal working 109
A regularisation scheme? 113

9 Customer service 115
Levels of fees 116
Delays 117
Checking progress of applications 118
Handling complaints 119

10 Deportation of foreign national prisoners 122
   Causes of the problem 122
      Rising numbers of foreign prisoners 122
      Warnings were ignored 123
      Serious implications were not recognised 124
   Two aspects of policy 125

11 Lessons to be learnt 127
   A culture of accountability 127
   Joining up 128
      Within the immigration system 128
      Within the Home Office 129
      Across Government 130
   Improving management information and statistics 131
   Targets 133
      Asylum targets 134
      Isolated targets 135
      Speed targets 136
      Misdirected targets 136
   Guidance 137
   Following up recommendations 138
   Oversight: an Independent Immigration Inspectorate? 139

12 Conclusions 140
   List of conclusions and recommendations 141
   Annex: Recent official reports on immigration and asylum 160
   List of abbreviations 162

Formal minutes 163
Witnesses 164
List of written evidence 166
Reports from the Home Affairs Committee 169
Summary

Modern patterns of migration pose particular challenges for the Government. We believe that facilitating travel for tourists, family members, students, businesspeople and workers who meet labour needs that cannot otherwise be met is essential to our national interests. The Immigration and Nationality Directorate (IND) and UKvisas must offer these people a high level of service and cannot simply be organisations designed to exclude people from the country. At the same time, we share the public expectation that the Government must minimise the number of those able to abuse the immigration system.

Although the numbers are inevitably uncertain, it is quite clear that a substantial proportion of illegal migration arises from those who originally entered the country legitimately and legally but who subsequently failed to comply with their leave. As the immigration system aims, rightly, to facilitate legal migration for ever greater numbers of travellers, it is inevitable that illegal migration will continue to be fuelled by those who become illegal once in the country. This represents one of the more fundamental changes to the purpose of the immigration system in the twenty-first century. The focus can no longer remain so heavily weighted towards initial entry and border control. While these controls must be sustained and indeed improved, far greater effort will in future have to go into the enforcement of the Immigration Rules within the UK. A major test of the Government’s new approach to the IND will be the extent to which it has recognised the importance and implication of this change.

It is clearly beneficial to everyone to invest in getting decisions correct at the initial stage. Refusing applications which should have been allowed is not good customer service, can have significant consequences for applicants and their family and friends, and can lead to increased costs further down the system (from complaints, appeals or fresh applications). On the other hand, allowing applications which should have been refused weakens the control and public confidence in it and may increase the risk of overstaying and other forms of illegal migration. Measures that lower the cost of front-line staff at the expense of quality are not likely to be cost-effective.

The Immigration Rules should be consolidated and redrafted to provide a clear, comprehensive and realistic framework for decisions. But it must also be recognised that there will always be questions of judgment over what weight to give pieces of evidence, as well as situations which are not precisely covered by the rules. Entry Clearance Officers and IND caseworkers must be supported with enough training, guidance and experience to exercise their judgment where this is required, and should be regulated to a standard equivalent to that for advisers who do publicly-funded immigration work. Whilst it is right to take pride in the speed of decision-making, there is evidence that this is happening at the expense of quality: targets must allow more time to make decisions and to justify them robustly. UKvisas should work with individual posts to determine local targets that are appropriate to the local situation and security risks and the demands of good customer service. The IND should ensure that a team of managers is given the task of focussing on quality of decision-making in all areas of casework.
We make recommendations in three specific categories where there are particular concerns: students, children and spouses.

We examined the evidential basis of decisions taken in the Asylum and Immigration Tribunal, the quality of Home Office representation and the clear lack of mutual confidence between decision-makers in the IND and UKvisas and the AIT. Taken together we do not feel that the appeals process as it currently operates provides a sound basis for this vital part of the immigration system. Thousands of immigration refusals being allowed on appeal might be better dealt with at an earlier (and cheaper) stage in the process. Introducing a “minded to refuse” stage into the application process both overseas and in the UK might dramatically reduce the number of non-asylum appeals going to the AIT, by allowing applicants to present further evidence to the original decision-maker rather than to an Immigration Judge. This, coupled with more robust internal reviews of refusals, should largely eliminate any real justification for the introduction of new evidence at appeal in the great majority of cases. If the Government is serious about defending appeals, the quality and skills of Home Office Presenting Officers must be improved and it must ensure that Presenting Officers attend every appeal.

The integrity of the entire immigration system depends on the effective enforcement of the Immigration Rules. Current enforcement efforts are clearly inadequate. It is difficult to reconcile the removal of vulnerable individuals or those with strong links in the UK with the principle of harm reduction set out by the IND; whilst continuing action to remove people already living in the UK illegally will of course be necessary, the first priority should be to align the removal system with the decision-making system. We understand that the introduction of e-Borders will effectively mean the reintroduction of embarkation controls: we welcome this development and urge its swift and effective completion, but the Government must also have a clear strategy for acting on the information collected. Anyone who has had to be forcibly removed from the UK because they did not comply with a notice to leave the country should be banned from returning to the UK for a set period.

The employment of illegal workers should be one of the main targets for action against illegal migrants who are already living illegally in the UK. Enforcement work on tax and national insurance should take place in conjunction with all the other legal measures available to tackle abuse in the informal labour market. As well as ensuring that employers complied with their legal obligations, it would reduce the financial advantages of employing illegal workers. There should be a single database which clearly shows a person’s immigration status and right to work and claim benefits. We do not consider that an amnesty would be appropriate or helpful in the current situation.

The calculation of visa fees and in-country fees should be aligned. There is an unacceptable level of delay in the IND’s immigration casework, which leads to tens of thousands of complaints every year to both the IND itself and Members of Parliament. We call for the Government to implement a single immigration complaints system.

We endorse the Government’s moves to reduce the foreign national prisoner population at source. We do not see the benefit of court recommendations for deportation of foreign
nationals, and recommend that they should be abolished, but support the proposal to create a presumption in favour of deportation of foreign nationals who are serious criminals.

Fragmentation and lack of communication is a systemic problem not just within the IND but within the entire immigration system which ought, ideally, to work as a whole. We believe that the failures of management seen in the IND’s handling of foreign national prisoners and elsewhere are all examples of hard work being undermined by a failure to take responsibility for the performance of the system as a whole. There is little doubt that the great majority of those who are employed in the immigration system are working hard and diligently, often under trying circumstances. But the biggest single management challenge for the immigration authorities is to create clear lines of responsibility and accountability.

The various challenges of working across Government provide one incentive for having a Cabinet Committee which can take overall responsibility for the whole of the Government’s efforts to run an effective immigration system. The evidence received in our inquiry on the need for migrant labour, and the economic benefits and drawbacks as well as the social advantages and stresses of migration, also highlighted the disadvantages accruing from the absence of any place within Government with overall responsibility for weighing up these factors and for determining the overall migration strategy for the UK. We therefore recommend that a Cabinet Committee with representatives from all relevant Departments should be established with overall responsibility for all aspects of immigration policy.

There is a serious problem with the way immigration statistics are compiled, presented and used to evaluate and improve performance. Written instructions, targets and performance indicators are certainly important but they must be very carefully set and monitored so that they deal with real issues of concern over immigration and do not have negative impacts on other parts of the system. All immigration guidance must be consistent and coherent across the various relevant authorities, and each section must always have a clear owner at a senior level.

We recommend that the Government establish an Independent Immigration Inspectorate with oversight of every stage of immigration control.

In our view, if the Government adopts these suggestions and builds on some undoubted areas of good practice and innovations—and uses properly the skills and experience of dedicated staff throughout the existing immigration system—many of the current problems may be overcome.
1 Introduction

The Committee’s inquiry

1. In October 2005 the Committee decided to inquire into the policy and practice of immigration control, examining the entry clearance (visa) system, the granting or refusing of further leave in the UK and the enforcement of immigration control. The inquiry considered the degree to which the stated aims of the Immigration and Nationality Directorate (IND)\(^1\) and UK visas are being met; the extent of implementation of recommendations of recent reports and inquiries;\(^2\) and lessons to be learnt from the operation of the current system that might inform the implementation of the new Government policy.

2. In the course of the inquiry we received 128 items of written evidence with numerous annexes and appendices, including much detailed information from the Home Office and other government departments. We held 12 evidence sessions between December 2005 and June 2006. In addition we visited the IND in Croydon, the Immigration Service at Heathrow and the nearby Colnbrook Immigration Removal Centre, the Asylum and Immigration Tribunal and Home Office Presenting Officers’ Unit in London, the immigration controls in Calais, and UKvisas’ operations in posts in Nigeria, Ghana, Pakistan and India. We would like to thank all those who gave us evidence in writing, in person or during our visits, and those who helped arrange the visits.

3. In addition to the staff of the Committee, we received invaluable assistance from the Committee Office Scrutiny Unit and from our three specialist advisers, Dr Heaven Crawley, Professor Guy Goodwin-Gill and Fiona Lindsley.

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\(^1\) A list of abbreviations can be found at the end of this report.

\(^2\) In the last five years there have been dozens of parliamentary and independent reports on aspects of immigration and asylum. A selective list is annexed to this report.
2 Context

4. “Not fit for purpose” was the present Home Secretary’s description to us of the immigration system:

   I believe that…in the wake of the problems of mass migration that we have been facing our system is not fit for purpose. It is inadequate in terms of its scope; it is inadequate in terms of its information technology, leadership, management, systems and processes; and we have tried to cope with this new age, if you like, with a system that has been inherited from an age that came before it.  

5. But what is the purpose of the immigration system in the twenty-first century?

Increasing numbers of migrants

International migrants

6. As the population of the world grows, so does the number of people moving around it. Between 1980 and 2005, the world population grew from 4.4 billion to 6.5 billion, and the number of international migrants almost doubled, from 100 million to 200 million. Over the next fifty years, 2.2 million migrants are predicted each year to travel to the more developed regions of the world from less developed ones over the next fifty years. This is indeed, in the words of Kofi Annan, “a new migration era”.

7. Over the last decade, governments and intergovernmental organisations have started to refer to the need to address migration as a regional or international issue, and to “manage” rather than “control” migration. The Council of Europe has a Migration Management Strategy, the European Commission is developing a common EU immigration policy and, at Kofi Annan’s suggestion, a number of interested states established a Global Commission for International Migration. Dr Khalid Koser, senior policy analyst for the Global Commission, suggested to us that “the great contradiction in migration today is that it is a global issue that people try to manage at a national level” and that “the root causes of migration are so powerful—it is about underdevelopment, disparities in demographic processes, in development, and in democracy—that to an extent…immigration control is treating the symptom rather than the cause”.

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3  Q 866, 23 May 2006
6  UNGA press release GA/10476, International migration can benefit countries of origin and destination, says Secretary-General, presenting new report to General Assembly, 6 June 2006
7  Q 105 and Q 95, 10 January 2006
Migration to the UK

8. The UK—one of a large group of countries in Europe whose population is growing through both net immigration and natural increase— is one of the major destinations for international migrants. The United States is projected to receive the highest number of net migrants of any country in the world in the period up to 2050 (1.1 million annually), but the UK is fourth after Germany and Canada. The latest long-term assumption for net migration into the UK is 145,000 each year. Until the mid-1980s more people left the UK than arrived here each year, but every year since 1994 there has been a gain in the population from net immigration:

Migration into and out of the UK since 1964

9. Net migration into the UK was 223,000 in 2004, significantly higher than in previous years. This increase was mainly due to the rise in the number of people arriving to live in the UK for a period of at least twelve months, growing from 513,000 in 2003 to 582,000 in 2004, the highest on record. The Office for National Statistics (ONS) explains that a major cause of the increase was the expansion of the EU in May 2004: “Net inflows of non-British EU citizens to the UK increased from 14,000 in 2003 to 74,000 in 2004. Citizens of the ten EU accession countries made up an estimated four fifths of the increase between 2003 and 2004.” The net inflow of non-EU citizens was nearly 150,000 in 2004.

8 John Salt, Current trends in international migration in Europe (Council of Europe Publishing, 2005), pp 9-10 and 19
11 Table supplied by the House of Commons Library. Source: Office for National Statistics, International Migration
10. The ONS also tells us that migration is typically most common among younger adults. In 2003 people aged between 15 and 44 accounted for a large majority of both immigrants (84%) and emigrants (75%). Men are more likely than women to migrate, and study or work are now the main reasons for migration. According to the ONS, in 2003 more than one quarter of all immigrants to the UK came to study here (135,000 people). More than one fifth (114,000) came for work-related reasons and had a specific job to go to. Migrants are now apparently intending to stay in the UK for shorter periods than they were a decade ago. In 1995, 42% of migrants to the UK intended to stay for more than four years compared with 34% in 2004, while those intending to stay for one to two years increased from 36% in 1995 to 50% in 2004.

11. As the following table shows, since 1992 there has been an increase of 48% in the number of people resident in the UK who were born abroad, and an increase of 66% in the number of non-UK nationals resident here:

<table>
<thead>
<tr>
<th>Year</th>
<th>UK (000s)</th>
<th>Non-UK (000s)</th>
<th>Non-UK as a % of all residents</th>
<th>UK (000s)</th>
<th>Non-UK (000s)</th>
<th>Non-UK as a % of all residents</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992</td>
<td>51,364</td>
<td>3,831</td>
<td>6.9%</td>
<td>53,231</td>
<td>1,964</td>
<td>3.6%</td>
</tr>
<tr>
<td>1996</td>
<td>53,332</td>
<td>3,979</td>
<td>6.9%</td>
<td>55,303</td>
<td>2,007</td>
<td>3.5%</td>
</tr>
<tr>
<td>2000</td>
<td>53,528</td>
<td>4,445</td>
<td>7.7%</td>
<td>55,509</td>
<td>2,464</td>
<td>4.3%</td>
</tr>
<tr>
<td>2004</td>
<td>53,350</td>
<td>5,264</td>
<td>9.0%</td>
<td>55,574</td>
<td>3,040</td>
<td>5.2%</td>
</tr>
<tr>
<td>2005</td>
<td>53,104</td>
<td>5,669</td>
<td>9.6%</td>
<td>55,515</td>
<td>3,259</td>
<td>5.5%</td>
</tr>
</tbody>
</table>

Change 1992-2005:
- Level (000s): +1,741
- %: +3.4%

Change 2004-2005:
- Level (000s): -245
- %: -0.5%

Notes: All figures are for the Winter quarter of each year. All figures rounded to the nearest thousand.
Source: ONS, Labour Force Survey

It is estimated that 73% (6 million) of the projected 7.2 million population growth in the UK between 2004 and 2031 will be attributable directly or indirectly to migration.

12. Dr Koser suggested to us that there is a trend towards a new diversity of migrants coming to the UK from non-traditional sending countries: “looking at the data for the last
few years we have had increasing numbers of people, for example, from Somalia, from Sri Lanka, from Afghanistan, so generally from war and conflict affected areas".

13. The UK is not the only country with rising levels of immigration. As noted above, global migration is increasing sharply (paragraph 6). The 1.5% increase in the UK’s population between 2000 and 2004 was similar to the rate of increase seen in the 25-member European Union ("EU25") as a whole (1.6%). Across the EU in recent years, inward migration has played a much bigger role than natural change in determining the extent of population growth, accounting for around 85 per cent of the total growth in the population of the EU25 between 2000 and 2004. However, the UK is unusual within Europe in having large migratory flows both into and out of the country. In 2002, the UK was one of the four EU25 countries that, between them, received 71% of the total net inflow into the EU25 area.

14. In 2004, 97.2 million passengers arrived at British air and sea ports to return home, to visit the UK, or to study, work or settle here. Most of these passengers were British citizens (68.2 million), and there were also large numbers of nationals of European Economic Area (EEA) countries (17 million) who can travel under European free movement law. The residual 12 million passengers were non-EEA nationals. 4 million of these passengers were from the United States, almost 1 million from Australia, and 850,000 from Canada.

Temporary migration

15. More than half of the 12 million non-EEA passengers who were admitted to the UK in 2004 were visitors arriving for less than six months (5.7 million ordinary visitors and 1.6 million business visitors). A further 2.8 million passengers were returning after a temporary absence abroad. The next largest category of non-EEA arrivals to the UK was students (294,000 admitted in 2004), and 82,600 work permit holders, who brought with them 41,500 dependants (who are usually permitted to work in the UK as well).

16. The following table shows how the numbers of arrivals in different categories have changed over the last 20 years:

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18 Q 99, 10 January 2006
19 Office for National Statistics, People & Migration: European context, 15 December 2005
20 The European Economic Area (EEA) consists of the EU member states plus Norway, Iceland and Liechtenstein, with a linked agreement for Switzerland
21 Home Office Control of Immigration Statistics 2004: These figures are an estimate of the number of journeys rather than the number of passengers, so might count some people twice. They do not show how many people in each category are in the UK at any one time.
22 Supplied by the House of Commons Library
Passengers given leave to enter the UK by purpose of journey, excluding EEA nationals and Switzerland

<table>
<thead>
<tr>
<th></th>
<th>Total admitted</th>
<th>Visitors</th>
<th>Students</th>
<th>Work permit holders</th>
<th>WP holders’ dependants</th>
<th>Spouse or fiancé</th>
<th>Accepted for settlement on arrival</th>
<th>UK ancestry</th>
<th>Others given leave to enter</th>
<th>Returning after temporary absence abroad</th>
</tr>
</thead>
<tbody>
<tr>
<td>1985</td>
<td>8,550</td>
<td>6,570</td>
<td>147</td>
<td>14</td>
<td>5</td>
<td>8</td>
<td>23</td>
<td>...</td>
<td>804</td>
<td>979</td>
</tr>
<tr>
<td>1990</td>
<td>9,160</td>
<td>6,720</td>
<td>202</td>
<td>35</td>
<td>13</td>
<td>19</td>
<td>11</td>
<td>...</td>
<td>940</td>
<td>1,220</td>
</tr>
<tr>
<td>1995</td>
<td>9,620</td>
<td>6,800</td>
<td>285</td>
<td>41</td>
<td>14</td>
<td>19</td>
<td>2</td>
<td>7</td>
<td>1,090</td>
<td>1,370</td>
</tr>
<tr>
<td>2000</td>
<td>13,000</td>
<td>8,930</td>
<td>312</td>
<td>67</td>
<td>25</td>
<td>30</td>
<td>2</td>
<td>11</td>
<td>1,430</td>
<td>2,200</td>
</tr>
<tr>
<td>2004</td>
<td>12,000</td>
<td>7,220</td>
<td>294</td>
<td>83</td>
<td>41</td>
<td>35</td>
<td>5</td>
<td>8</td>
<td>1,570</td>
<td>2,790</td>
</tr>
</tbody>
</table>

Source: Home Office Control of Immigration Statistics 1990 and 2004

17. Globally, the UK is the second most popular destination for international students (12% of market share) behind only the United States (28%). According to OECD data, there were 255,233 foreign students enrolled in tertiary education enrolment in the UK in 2003, 11 per cent of all tertiary students, although Australia, Switzerland, Austria, New Zealand and Belgium all reported higher proportions of foreign students in their tertiary education system.\(^{23}\) China (30,690) and Greece (22,485) provided the largest numbers of foreign students in the UK in 2003.\(^{24}\)

18. The number of foreign workers in the UK is rising. In 1995 there were 862,000 foreign workers in the UK, rising steadily to 1.4 million in 2003. Other western European countries also show increases in the numbers of foreign workers, although in some countries these increases are attributable to amnesties for illegal workers in Italy, Spain, Portugal and Greece.\(^{25}\)

**Settlement**

19. Looking at grants of permanent settlement, the largest category in 2004\(^{26}\) was refugees and their families (54,310, 38% of the total 144,550 grants of settlement in that year), followed by employment-related categories and their families (42,265, 29%) and family formation and reunion (34,905, 24%):

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23 OECD, *Education at a Glance 2005*, Chart C3.2 and Tables C3.1 and C3.7a
24 OECD, *Education at a Glance 2005*, Chart C3.2 and Table C3.1
25 John Salt, *Current trends in international migration in Europe* (Council of Europe Publishing, 2005) p 33 and Table 12
26 excluding EEA nationals. Source: Home Office, *Control of Immigration: Statistics United Kingdom 2004*, HOSB 14/05 23 August 2005, Figure 3
20. The trends in settlement have changed in recent years. In 2000, the largest group of people settling in the UK were those seeking family formation or reunion (42%) followed by refugees (36%) and employment-related settlement (12%). The Home Office attributes the large number of asylum-related grants of settlement in 2004 to the “Family ILR exercise” (under which families who had claimed asylum in the UK before October 2000 were granted Indefinite Leave to Remain (ILR) in the UK even if they did not meet the usual requirements for refugee status or subsidiary protection).  

21. The increase in settlement from 2003 to 2004 (from 141,335 to 144,550) was also due to a sharp increase in the number of nationals of countries in Europe (outside the EEA) settling here, rising by 85%. There were falls in most other nationality groups, mostly from Oceania, Africa and the Americas.  

**Impact of migration**

22. The Global Commission on International Migration believes that migration has both welcome and unwelcome consequences: “the economic, social and cultural benefits of international migration must be more effectively realised, and…the negative consequences of cross-border movement could be better addressed”. There is a range of views about the economic and social impacts of migration. While there is a growing quantity of research about the former, the latter is much harder to quantify.

23. The United Nations Population Division has argued that Europe might need replacement migration to cope with shortages of working-age populations, payment of

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27 Home Office, *Control of Immigration: Statistics United Kingdom 2004*, Cm 6690, Table 2.4
28 Home Office, *Control of Immigration: Statistics United Kingdom 2004*, Cm 6690, Table 2.5
pensions, and possible shortages of both skilled and less-skilled labour, ranging from around one million to 13 million new migrants per year between 2000 and 2050.\( ^{30} \) This issue has been summed up as “who is going to look after granny?” \(^{31} \) Others have contested such a scale of migration as being unnecessary or impractical,\(^ {32} \) or recognised that migration alone cannot solve these problems.\(^ {33} \)

24. Professor John Salt of University College London has identified the emergence of a “global migration market for skills” in the last two decades, in which the competition is for those with high levels of human expertise, and the main stimuli have come from governments and multinational employers. He cites studies which suggest that the more skilled the immigrants, the greater the economic benefit to the country. However, he adds that comprehensive information on the skill levels of migrants appears to be lacking.\(^ {34} \)

25. The Institute of Public Policy Research (IPPR) published in April 2005 a study into the fiscal contribution of immigrants in the UK which confirmed the findings of an earlier Home Office study. It concluded that the relative net contribution of immigrants to public finances in the UK increased between 1999 and 2004, and that immigrants make a relatively greater net fiscal contribution than people born in the UK and have become proportionately greater net contributors to the public finances than non-immigrants. It estimated that the total revenue from immigrants grew in real terms from £33.8 billion in 1999–2000 to £41.2 billion in 2003–04, a 22% increase compared with a 6% increase from people born in the UK.\(^ {35} \)

26. The House of Lords European Union Committee’s recent report on Economic Migration to the EU concluded that there was a broad consensus that the immigration of low-skilled and unskilled workers does not generally depress wages or take away jobs that would otherwise be done by indigenous workers, but that on the contrary economic migration tends to stimulate further economic activity and create additional jobs.\(^ {36} \) The social consequences of immigration were, the Committee found, more difficult to quantify:

Unplanned immigration, as experienced with the peak arrivals of asylum seekers in the United Kingdom between 2001 and 2003, can add to problems in local communities and impose additional pressures on services; and large scale immigration, if concentrated on particular areas of the country, such as south-east England, can add to the strains on the local infrastructure. The TUC witnesses drew attention to the effect on housing, schools and health services in some rural areas where industrialised farming had developed with a need for unskilled labour without adequate planning. On the other hand, immigration brings social benefits too,


\(^ {31} \) Professor Nigel Harris, Q 137, 10 January 2006


\(^ {33} \) Dr Khalid Koser, Q 107, 10 January 2006

\(^ {34} \) John Salt, Current trends in international migration in Europe (Council of Europe Publishing, 2005) pp 44-47

\(^ {35} \) Sriskandarajah, Cooley and Reed, Paying their way: the fiscal contribution of immigrants in the UK (IPPR, April 2005).

\(^ {36} \) House of Lords, Select Committee on European Union, Fourteenth Report of Session 2005-06, Economic Migration to the EU, HL Paper 58, paras 8-12, 33-37 and 40
providing skills that are in short supply and filling gaps in essential services like the NHS and in other sectors, such as the construction and hospitality sectors.\textsuperscript{37}

27. The RSA\textsuperscript{38} Migration Commission, whose chair, Professor Nigel Harris, gave evidence to us, considers that there is no relation between the numbers of people entering and leaving the country and the level of welfare of its inhabitants. It found that the growth of the high-skilled economy seems to be accompanied by a growth in demand for low-skilled labour, which cannot be met by the domestic workforce at least in the sectors it considered, and that immigration controls which exclude workers from work in the developed countries “constitute the major obstacle to the relief of poverty in developing countries”.\textsuperscript{39} Professor Harris suggested that what concerns people about immigration is the “changing social composition of the population” and that the issue here is who is admitted for long-term permanent settlement rather than those who flow through the country for short periods.\textsuperscript{40}

28. The pressure group Migration Watch UK, however, believes that current large-scale immigration is “contrary to the interests of all sections of our community, adding to the problems of both overcrowding and integration”.\textsuperscript{41} Its chairman, Sir Andrew Green, believes that the economic advantages of immigration should be balanced against its wider economic and social costs, and that the question to be asked is: do the benefits outweigh the drawbacks?\textsuperscript{42} He pointed out that an increasing population means that more houses, schools, hospitals, roads and railways are needed.\textsuperscript{43} He criticised the IPPR study on the economic impact of immigration and suggested that “the economic benefit in terms of the whole GDP is, frankly, trivial”. Sir Andrew also countered the labour market arguments for migration by saying that “immigration satisfies demand but creates other demand”, and added that “by bringing in substantial numbers of people who will work for less you are lowering wages and you are making it more difficult to get people from welfare to work, which is an important government policy”.\textsuperscript{44}

29. Following Sir Andrew’s oral evidence to the Committee, the Home Office supplied us with a short paper responding to his criticisms of the original Home Office research and subsequent IPPR study.\textsuperscript{45} Migration Watch had criticised the Home Office/IPPR work for omitting the costs of educating the UK-born dependent children of migrant parents from the calculation of the costs attributable to migration. The Home Office’s response claims that to treat these children as migrants when their fiscal impact is negative (in childhood) but as being native when it is positive (in adulthood) builds a structural bias into the calculations. The Home Office also asserts that Migration Watch’s most recent calculations make this bias “much worse, to the point where the results are simply meaningless”. It

\textsuperscript{37} para 40
\textsuperscript{38} Royal Society for the Encouragement of Arts, Manufactures and Commerce
\textsuperscript{39} RSA Migration Commission, Migration: a Welcome Opportunity, November 2005
\textsuperscript{40} Q 118, 10 January 2006. See also Qq 122-123, 10 January 2006
\textsuperscript{41} www.migrationwatchuk.org
\textsuperscript{42} Q142, 10 January 2006
\textsuperscript{43} Q 165, 10 January 2006
\textsuperscript{44} Q 179, 10 January 2006
\textsuperscript{45} Ev 391, HC 775–III
concludes that although the Home Office paper “was never intended to be the last word on the subject”, nonetheless “the latest Migration Watch paper is simply wrong, and the broad conclusions of the original Home Office study, and the subsequent IPPR paper, stand”.46

30. The vulnerability of migrant workers to exploitation was described by numbers of witnesses, and is discussed below at (paragraph 70).

31. The link between migration and development was the subject of a report from the House of Commons International Development Committee published in July 2004.47 The main thrust of this report was that “Migration is not a panacea for development problems, but properly managed it can deliver major benefits in terms of development and poverty reduction.” A particular issue which concerned that Committee was ‘brain-drain’: the recruitment of foreign nurses, doctors and teachers from developing countries.48

32. Dhananjayan Sriskandarajah, head of the Migration, Equalities and Citizenship team at the IPPR told us that “watching migration is not about watching the numbers coming in; it is about looking at the economic impacts, looking at the social impacts, managing integration, managing economic dynamism and long-term social dynamism through using migration”.49

**Controlling entry**

33. One of the fundamental attributes of the modern sovereign state is its right to control who enters it. In this section we look briefly at how the UK has chosen to exercise this right.

**Historical background**

34. The origins of current British immigration control lie in the 1960s. Although there have been changes on the surface since then, the underpinning structures remain the same: a rules-based system, enforced primarily through controlling entry.

35. Before 1905 there was little in the way of immigration law in the UK. Legislation to control the circumstances in which those who are not British can enter or remain in the UK has escalated since the 1960s, when the Government’s imperative was to stop unwanted immigration from Commonwealth countries, regardless of labour market needs.

36. The *Commonwealth Immigrants Act 1962* and its successors ended the flow of ‘primary’ (economic) migrants and limited ‘secondary’ (family) migration to the UK. There was no suggestion in Government policy that immigration could have benefits for the UK. The *Immigration Act 1971*, which is still the main piece of legislation in this area, is based on the same approach.

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46 Ibid., section 1
47 International Development Committee, Sixth Report of 2003-04, Migration and Development: How to make migration work for poverty reduction, HC 79
49 Q 155, 10 January 2006
37. The immigration control system put in place by the 1971 Act consists of (1) a set of rules (primary and secondary legislation and the Immigration Rules\textsuperscript{50}), supplemented by policy and practice guidance, which together set out who is allowed to enter or remain in the UK and (2) a set of authorities to apply these rules, whether overseas (visa applications), at the border, or in the UK (applications to stay). There is much less emphasis on dealing with people who are already in the UK in breach of the rules.

**Immigration rules**

38. The primary distinction in immigration control is between people who have the right of abode in the UK and those who do not. The former (British citizens and some Commonwealth nationals) are hardly affected by immigration controls, whereas most of the latter need specific permission or “leave” from the immigration authorities to enter or remain in the UK. The various categories of leave are set out in the Immigration Rules and include for example visitor, student, working holidaymaker, spouse, and minister of religion. Only some of these categories can lead to permanent settlement (indefinite leave). Where a person is granted limited leave, it will usually include restrictions on working or claiming benefits.

39. There is a separate set of rules for nationals of European Economic Area (EEA) countries and their dependants, who benefit from European free movement rights and do not require leave if they are coming to the UK for less than three months, or if they are coming for longer to work, study or do business in the UK or as self-supporting persons (pensioners and the independently wealthy).\textsuperscript{51} In this inquiry we have not focused on migration within the EEA under European law.

40. In some circumstances people who have no right to be in the UK or who have breached conditions of their leave may be detained or removed.

**Immigration authorities**

41. Immigration controls are operated overseas, at the borders and after entry to the UK by a number of different immigration authorities.

42. Overseas decisions are made by Entry Clearance Officers (ECOs) who work for UKvisas, a joint Home Office/Foreign Office unit under the umbrella of the Foreign and Commonwealth Office. UKvisas has over 2000 staff, of whom around 180 work in London and the remainder overseas. In 2004-05 the costs of UKvisas were £122 million, whilst its income from visa fees amounted to £131 million.\textsuperscript{52}

43. Border controls are staffed by Immigration Officers (IOs) in the Immigration Service which is part of the Immigration and Nationality Directorate (IND) of the Home Office. ‘After-entry’ decisions to stay or settle in the UK are made by IND caseworkers based in

\textsuperscript{50} The latest consolidation of the Immigration Rules was in 1994 (HC 395 of 1993-94) but this version has since been subject to constant amendment.

\textsuperscript{51} The EEA consists of the EU member states plus Norway, Iceland and Liechtenstein, with a linked agreement for Switzerland.

\textsuperscript{52} Foreign and Commonwealth Office: Resource Accounts 2004-05, HC 776, 19 December 2005, p29
Croydon, Sheffield and Liverpool. A discrete part of the IND, called Work Permits (UK), makes decisions about work permit and other employment applications. Both IND caseworkers and IOs have important roles to play in detention and removal. Immigration policy is developed by policy teams in the IND who are separate from caseworkers and IOs.

44. Both the staff level and resource budget of the IND have increased dramatically in recent years. In 1996-97 it had a staff 5,868, but by 2004-05 there were 15,002 staff: this constituted approximately three quarters of the total Home Office core staff. Its resource budget, which was £213 million in 1996–97, rose to a peak of over £1.8 billion in 2003: even a projected reduction by 2009 will leave the budget at a level more than double the figure five years ago.53 The IND’ current net resource budget is just under £1.5 billion apportioned between the following major areas:

**Asylum. £655 million.** Mostly asylum support costs, also the cost of processing asylum applications and related appeals.

**Operations. £506 million.** This includes border control, including development of the e-Borders programme; enforcement and removals; and detention, including operating costs of removals centres.

**Managed Migration. Direct costs £106 million; less income of £203 million** (income covers direct costs, as well as an apportionment of relevant overhead costs).

**Policy, Intelligence and Change and Reform: £86 million**

**Corporate Services** (including IT and accommodation costs, also non-cash costs (capital charges and depreciation)): £337 million.54

45. In addition there is an immigration and asylum appeals system, under which Immigration Judges review decisions made by the immigration authorities. The system comes under the Department for Constitutional Affairs.

The Government’s current aims

46. In the 1990s the immigration control system came under pressure from a number of directions: increasing long-distance travel, large flows of refugees, the re-emergence of significant demand for migrant labour and an increase in casual labour.55 Government policy moved towards a new recognition of the benefits of labour migration, coupled with a heavy emphasis on tackling abuse of asylum procedures.

47. A February 2002 White Paper, Secure Borders, Safe Haven: Integration with Diversity in Modern Britain56 marked a radical change in direction, recognising for the first time in Government immigration policy the value of economic migration whilst projecting an increasingly tough stance on asylum. One of the themes of this paper was that these

53 Home Office Departmental Annual Reports, various years
54 Ev 407, HC 775–III
55 RSA Migration Commission, Migration: A Welcome Opportunity, November 2005, Annexes 1 and 2
56 Cm 5387, February 2002, para 38
measures together would prevent the asylum route from being abused by those who want to come to the UK for purely economic reasons.

48. The rhetoric became that of ‘managed migration’, encompassing three classes of migrants who were to be welcomed: (1) short-term, temporary categories: visitors, business visitors and students; (2) employment categories: work-permit holders and a range of other specific categories; and (3) family categories: for marriage, or to join parents or children. A major goal was to facilitate the migration of skilled workers and innovators whose skills would benefit the British economy, but a limited need for temporary and casual low-skilled labour was also recognised.

49. Despite the policy of encouraging some types of migration, the structures of the system still remained those of the 1960s, designed to control strictly the categories of people who can enter or stay in the UK. They do not appear to be based on a recognition that large numbers of people will and should come to the UK and that new approaches may be needed to the management of migration once those people are living here.

50. The current purpose of the immigration system is set out in the February 2005 “five year strategy for asylum and immigration”, entitled Controlling our borders: Making migration work for Britain. This states the Government’s overall strategic aim:

> “Migration is managed to the benefit of the UK, while preventing abuse of the immigration laws and of the asylum system”.

51. This document also set out the Government’s proposals for implementing this overall aim as far as migration is concerned:

- A transparent points system for those coming in to work or study.
- Financial bonds for specific categories where there has been evidence of abuse, to guarantee that migrants return home.
- An end to chain migration - no immediate or automatic right for relatives to bring in more relatives.
- An end to appeals when applying from abroad to work or study.
- Only skilled workers allowed to settle long-term in the UK and English language tests for everyone who wants to stay permanently.
- Fixed penalty fines for employers for each illegal worker they employ as part of the drive against illegal working.

52. The points-based system for work and study is intended to amalgamate the current range of study and labour schemes into a more coherent series of tiers. It does not cover visitors or family categories. A consultation paper published in July 2005, entitled Selective Admission: Making migration work for Britain, added flesh to this proposal (and also added

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57 Cm 6472
58 Home Office press notice, Controlling our borders: Making migration work for Britain. Charles Clarke sets out five year Strategy for Immigration and Asylum, 7 February 2005
a fifth tier to the points-based system). Its stated purpose is “to admit people selectively in order to maximise the economic benefit of migration to the UK”.59 All migrants who want to work, train or study in the UK would come within the new “simplified” scheme; all those apart from investors and the highly-skilled would have to have the support of a sponsor (which could be an employer or college) and some could be asked to deposit a financial bond against departure. The paper also envisages a fully integrated immigration control being in place over the next five years including follow-up checks and electronic embarkation checks.

53. A set of aims to implement the reforms of the consultation paper were put forward in the Home Office/DCA/UKvisas Asylum and Immigration High Level Delivery Plan 2005/06 to 2008/09. These include: “A flexible, largely self-financing, managed migration programme that meets the UK’s economic needs and tackles abuse of the system” and “Significantly improved enforcement activity and removal of people living or working illegally in the UK through improved contact management and other measures.”60 This shows a recognition that more needs to be placed on dealing with migrants who are already in the UK, but its proposals on detaining, monitoring and fingerprinting mostly refer only to asylum seekers.

54. The Minister for Immigration, Citizenship and Nationality, Liam Byrne MP, told us that although the strategic objectives of every part of the Home Office are being examined, he did not think those for the IND would alter greatly:

I cannot imagine that we will be moving radically from objectives such as managing migration to the benefit of this country and ensuring that it is something that is positive for us and contributes importantly to our economic growth, but at the same time balances the need for people to come into this country with the need to keep people who live here safe, and to keep communities cohesive…I do not just think IND’s job is…to stop the wrong people coming into the country. I think IND has a crucial role in ensuring that, in the interdependent world of the future, Britain has the right relationships with people.61

55. The Committee recognises that modern patterns of migration pose particular challenges for the Government. We believe that facilitating travel for tourists, family members, students, businesspeople and workers who meet labour needs that cannot otherwise be met is essential to our national interests. The IND and UKvisas must offer these people a high level of service and cannot simply be organisations designed to exclude people from the country. At the same time, we share the public expectation that the Government must minimise the number of those able to abuse the immigration system.

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60 p. 3
61 Qq 1139-1140, 13 June 2006
Illegal immigration

56. In a world of mass migration and a country with immigration controls and a buoyant economy, it is inevitable that some of the people who come to the UK or stay here will do so illegally, especially when, as noted below (paragraphs 69 and 454), employers can be given a competitive edge by recruiting workers who are willing and able to take employment at below minimum wage and/or without social security or tax obligations or entitlements. It is important to look at the factors which might encourage illegal immigration;62 and it is as important to understand the problems illegal immigration causes. As with any illicit activity, it is impossible to know its exact scale.

Root causes of illegal migration

57. In a Home Office study of randomly selected illegal migrants in detention at the beginning of 2002, nearly half of those interviewed said they had left their home country because of violence or intimidation. A quarter mentioned economic factors. (These are not mutually exclusive as multiple responses were allowed.) The most common reason given for choosing the UK rather than other destinations was its reputation for safety and human rights (cited by a quarter of those surveyed), but nearly as many mentioned job opportunities. Three-quarters had worked illegally in the UK, but hardly any had claimed benefits even when they were entitled to.63

58. Professor Nigel Harris, Chairman of the RSA Migration Commission, is one of many witnesses who believed that failing to provide legal migration routes for low-skilled workers inevitably leads to illegal migration:

It is absolutely impossible to force any government to use physical force to prevent workers moving to work, which is effectively what this is about…[Illegal migration] is what meets basic labour demand in the UK for unskilled labour because the Government does not meet it”.

He suggested for example that construction work for the Olympic Games in London will increase the level of irregular migration into Britain.64

59. Dr Khalid Koser of the Global Commission for International Migration agreed to a certain extent: “It appears that we need the labour migrants in certain parts of the economy but we are not allowing them to come in a regular fashion”.65 The IND itself admits that “in agriculture and horticulture illegal activity is not uncommon”, and refers to information obtained by the Temporary Labour Working Group which suggests that “illegal activity is widespread”.66

60. Sir Andrew Green, Chairman of Migration Watch UK, gave a slightly different version of this argument:

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62 Although we use the term “illegal” immigration, many organisations and authors prefer the adjective “irregular”.
63 A survey of the illegally resident population in detention in the UK, Home Office.Online report 20/05, 2005
64 Q 109 and Q 117, 10 January 2006
65 Q 107, 10 January 2006
66 Ev 279, HC 775–III
The reason we have such fairly substantial illegal immigration is two fold: it is that there has been no control over the labour market here, there has been no attempt to deal with the illegal—indeed often exploitative—use of labour, and the other is that because people know that they can come here and work illegally then they are prepared to pay people-smugglers to bring them over.67

61. Mark Boleat, Chairman of the Association of Labour Providers, believed that most illegal workers had entered the UK legally. He told us that most of his Association’s members employed nationals of the accession states, but he had the impression that significant numbers of non-EU nationals from Eastern Europe were successfully passing themselves off as EU nationals, through the use of forged documents.68 He argued that the incentive for illegal working came from the fact that employers of illegal labour successfully avoided paying tax, thus undercutting competitors.69

62. The Zimbabwe Association told us that Zimbabweans have many reasons for choosing to come to the UK but now use illegal methods or routes because of the introduction of visas in November 2002. Many are unaware of asylum procedures or of the possibilities for coming to the UK legally.70

63. Some work has recently been done within IND by way of linking a policy response to illegal immigration to an understanding of its underlying causes. The IND Intelligence Service (INDIS) is currently leading on the development of a “longer-term harm reduction strategy” in line with the demand for tackling underlying problems of organised crime contained in the 2004 White Paper One Step Ahead: a 21st Century Strategy to Defeat Organised Crime.71

**Numbers of illegal migrants**

64. “I have not the faintest idea” was the response of Dave Roberts, IND’s Director of enforcement and removals, when asked how many illegal migrants there are in the UK.72 His response was immediately seized upon by the media. It was an honest but flippant answer. Nobody knows how many illegal migrants there are.

65. Attempts have been made to estimate this - for instance the UN Global Commission on Migration suggests that at least 5 million of Europe’s 56.1 million migrants in 2000 had irregular status73 - but these figures can only be a guess. Some data appear to show that flows of irregular migrants to Europe are decreasing.74 A recent study for the Home Office gave a central estimate of 430,000 people in the UK illegally in 2001 (0.7% of the total UK

67 Q 185, 10 January 2006
68 Q 745, 16 May 2006
69 Qq 751-752, 16 May 2006
70 Ev 326–9, paras 1, 5 and 9, HC 775–III
71 Ev 261–3,pp. 27–31, HC 775–III
72 Q 815, 16 May 2006
73 Global Commission on International Migration, Migration in an interconnected world: New directions for action, October 2005
74 John Salt, Current trends in international migration in Europe (Council of Europe Publishing, 2005) ch 9
population of 59 million, or 13% of the 3.3 million non-UK nationals living in the UK),
but suggested that the number could be as low as 310,000 or as high as 570,000. The study
has not been updated to take account for instance of EU enlargement in 2004. Another
possible indication of the extent of irregular migration comes from the Worker
Registration Scheme for nationals of the new EU Member States: according to a
Government report, up to a third of the 176,000 applicants to the scheme between 1 May
2004 and 31 March 2005 may have already been in the UK, perhaps seeking asylum but
possibly here illegally, before 1 May 2004.76

**Categories of illegal migrant**

66. It is important to recognise that there are different categories of illegal migrant, as more
is known about some than others and different strategies are needed for each:

- Some illegal migrants arrive in the UK completely illicitly, having no contact with
  authorities of any sort.77 They have not applied for a visa, have not had any dealings
  with a commercial carrier and are not checked at the border. Without a system of
  identity cards, this category is clearly the hardest to identify, quantify and tackle.

- Others use fraud or forgery to come here apparently legally. Again it is almost
  impossible to know how many people might do this, but efforts can be and are being
  made to spot fraud and forgery in applications or at the border.

- Those who have come to the UK entirely legally but overstay could be counted if the
  UK had embarkation controls which registered who had actually left the country and
  systems which flagged up those who had not left within the time they should have
done. Overstayers are as hard to trace as the first category of illegal migrant.78

- It should be easier to take action against people who have applied to remain in the
  country but whose applications or appeals have been refused, because their status is
  clear and their whereabouts are often known. We know the numbers of refused
  applications and appeals, but because of the way the statistics are compiled and the lack
  of embarkation controls, we do not know how many of these ultimately leave the
  country, either voluntarily or following enforcement action.

- Finally there are people who are here legally but who are breaching their conditions, for
  instance by working or claiming benefits. The numbers in this category are impossible
to establish and the difficulties of tackling it similar to the first category.

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75 Jo Woodbridge, *Sizing the unauthorised (illegal) migrant population in the United Kingdom in 2001* (Home Office
Online Report 2905, 30 June 2005). This report took as its starting point the foreign-born population recorded in the
UK census conducted in April 2001 and then deducted an estimate of the foreign-born population here legally. The
difference is an estimate of the number of unauthorised migrants in the UK.

76 *Accession Monitoring Report May 2004 - March 2005*, a joint online Report by the Home Office and the Department
for Work and Pensions, HM Revenue and Customs and the Office of the Deputy Prime Minister, 26 May 2005

77 Bobbie Chan, an immigration caseworker, told us that “snakeheads” are now charging £25,000 to take people into
the UK illegally (Q 629, 28 March 2006)

78 This may be one of the largest categories of illegal migrant in the UK: Bobbie Chan, an immigration caseworker,
told us that at least 40% of his clients are overstayers (Q 628, 28 March 2006).
The need to tackle illegal migration

67. There is little doubt that public perception of illegal migration is overwhelmingly negative. Sometimes this feeling extends to legal migrants too, and is associated with claims that immigration is out of control. Dr Sriskandarajah of the IPPR believed that while there were some in the UK whose concern about immigration arose from race issues, a great many were concerned about what he called the governance of immigration, feeling that the immigration system was not under control and that Britain was “a soft touch”. Sir Andrew Green of Migration Watch told us that in his view the public were “not prepared to accept” even legal immigration and that 60% felt that their culture was under threat.

68. Dr Koser from the Global Commission told us that “it would be fairly unacceptable for any country, particularly an advanced country such as the UK, to simply say we accept that some people move in an irregular fashion and work in an irregular way”. Professor Harris of the RSA Migration Committee added that the influx of illegal workers means that there can be no realistic calculation of the size of the labour force, without which managing the economy becomes very difficult.

69. Mark Boleat, Chairman of the Association of Labour Providers, argued that the existence of an “informal economy” which includes illegal workers is damaging, partly because of the loss of tax revenue (he referred to an IPPR study estimating the loss of tax revenue as a result of migrant workers in the informal economy at over £1 billion a year), and partly because those who operate in the cash economy undercut those in the formal economy by anything between 30% and 50%. Many labour users are apparently unwilling to pay labour providers “anywhere near” the £6.70 an hour which the Association of Labour Providers calculates is necessary to pay the legal minimum wage and essential add-ons. In his written evidence Mr Boleat told us that in some parts of the country the strength of the competition from those evading tax apparently means that it is difficult for legitimate labour providers to operate. He referred to some food factories in East Anglia which were “staffed to a large extent by illegal workers who will run out of the factory if people thought to be tax or immigration inspectors arrive”.

70. This situation creates the perfect conditions for exploitation of workers. The Transport and General Workers’ Union suggests that migrant workers are employed in what they call the “3D jobs” - those that are dangerous, dehumanising and degrading. The TGW has provided numerous examples of exploitation of migrant workers, including lower rates of pay than promised or contracted; excessive deductions from pay packets for travel, accommodation and ‘administration’; poor health and safety standards at work; insecure, poor and overcrowded housing; very long hours; and gangmasters allegedly triggering immigration raids the day before pay-day in order to avoid paying workers.
71. Dr JoAnn McGregor of the University of Reading gave us evidence about the problems facing Zimbabweans working illegally in the care industry in the UK, particularly with unscrupulous employers.85

72. Any system of immigration control must tackle illegal migration effectively, otherwise public confidence in the system is undermined, resentment and mistrust abound and exploitation is inevitable.

73. Although the numbers are inevitably uncertain, it is quite clear that a substantial proportion of illegal migration arises from those who originally entered the country legitimately and legally but who subsequently failed to comply with their leave. They may have been refused the right to remain or simply overstayed. As the immigration system aims, rightly, to facilitate legal migration for ever greater numbers of travellers, it is inevitable that illegal migration will continue to be fuelled by those who become illegal once in the country. This represents one of the more fundamental changes to the purpose of the immigration system in the twenty-first century. The focus can no longer remain so heavily weighted towards initial entry and border control. While these controls must be sustained and indeed improved, far greater effort will in future have to go into the enforcement of the Immigration Rules within the UK. A major test of the Government’s new approach to the IND will be the extent to which it has recognised the importance and implication of this change.

3 Controls overseas

74. In our report we follow the path of an applicant through all the various stages of immigration control. The main steps would typically be to:

- apply for a visa at a British post overseas
- have documents checked by the airline before boarding, and then be questioned by Immigration Officers on arrival at the border
- apply to the IND to extend the stay or to settle in the UK

The applicant might also:

- appeal against a refusal decision, and
- if unsuccessful, be detained and removed from the UK.

As we follow this path we shall look at the effectiveness of the immigration system both in allowing into the country those who are wanted here, and in rejecting or removing those who are not.

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85 Ev 304–5, HC 775–III and Qq 552-558, 28 March 2006
The entry clearance operation

75. The first stage of the UK’s immigration control is the entry clearance operation overseas. We visited British visa sections in Nigeria, Ghana, Pakistan and India to see at first hand how it operates.

76. Entry clearance, normally in the form of a visa, is required for people of over 100 nationalities before they travel to the UK, whatever the purpose of their journey. Some countries’ citizens are required to have a visa even for airside transit in the UK. In addition, people of all nationalities outside the EU who intend to enter for more than six months, or to settle or to marry, must also obtain entry clearance. The requirements they have to meet are contained in the Home Office Immigration Rules.

77. The entry clearance operation is managed by UKvisas, a joint unit of the Foreign and Commonwealth Office (FCO) and the Home Office. A Foreign Office Minister (currently Lord Triesman) has ministerial responsibility for UKvisas but it also reports to Home Office ministers and has a joint management board of senior FCO and Home Office officials. In terms of structure, its headquarters is currently being restructured into five divisions, partly in order to bring quality control issues together. Six Directors of Visa Services are based overseas; Entry Clearance Managers (ECMs) at each post report to these Directors and themselves manage Entry Clearance Officers (ECOs) who take most of the decisions on the ground. A new network of Regional Operations Managers - intended to improve decision quality and consistency across specific regions - is in its infancy, and new Risk Assessment Units are being introduced for high-risk and high-volume overseas posts.

78. UKvisas’ aims, as published on its website, state that it aims to:

1. be the overseas arm of an integrated border control to help deliver the Government’s Asylum and Immigration Strategic Plan and the FCO/HO SR 2004 PSA targets, and support the fight against organised crime and terrorism;

2. implement United Kingdom immigration policy by facilitating the entry of legitimate travellers through the provision of an efficient entry clearance service overseas, while preventing the entry of those who do not qualify under the Immigration Rules by operating an effective control.

3. deal honestly, fairly, sensitively and openly with people;

4. provide value for money;

5. maintain the highest possible professional standards.

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86 The list of nationalities, which is amended from time to time, is set out in Appendix 1 to the Immigration Rules (HC 395 of 1993-94, as amended)

87 http://www.ukvisas.gov.uk/servlet/Front?pageName=OpenMarket/XcelerateShowPage&c=Page&cid=1020786334922#datvnationals

88 This unit was originally called the Joint Entry Clearance Unit (JECU), and was established in June 2000.

89 Ev 48, para 37, HC 775–III
79. Within UKvisas, half of the staff must be drawn from the FCO and the other half from the Home Office, and they therefore have different selection processes, pay and conditions. So, for instance, FCO staff are selected on the basis of paper applications, whereas Home Office staff have to have an interview which tests applicants against qualification requirements. This situation is entrenched by the Memorandum of Understanding which established UKvisas: this states that staff must be selected and employed in line with the procedures of their parent department.  

80. Because UKvisas is separate from the IND (which deals with the UK-based aspects of immigration control and with immigration policy), it has different guidance, fees, databases, management structures and targets, even though it applies the Home Office’s Immigration Rules. We look critically at each of these topics later in the report. The Public Accounts Committee has also criticised the differences in opinion on standards for entry clearance between UKvisas and the IND, and ineffective communication between them. UKvisas’ current business plan assumes that it will continue to operate as a joint FCO/Home Office Directorate.

81. We recommend that the Government should look again at the constitution of UKvisas with a view to unifying the terms and conditions of all of its staff. More fundamentally, it may also wish to consider whether it is in the best interests of an effective and comprehensive system of immigration control for the overseas operation to be separate from the IND.

82. UKvisas is meant to be self-financing, but we found it very hard to tell whether this is actually the case. In 2004-05 UKvisas’ income from visa fees amounted to £130 million while its costs were £122 million, leaving a surplus of £8 million. It therefore appears that it does indeed cover its costs. But UKvisas do not currently have a means of breaking down costs into individual activity costs (e.g. issuing visas, processing appeals), although an activity based costing system which would permit this is being developed.

83. A particular problem raised by the overseas posts which we visited was that accommodation costs cannot be met from the resource budget as they are normally capital expenditure, and yet UKvisas does not have its own capital budget. This makes it very

90 Ev 50, paras 48–9, HC 775–III
91 Public Accounts Committee, Foreign and Commonwealth Office: Visa entry to the United Kingdom: the entry clearance operation (HC 312), 2004-05, pp. 3-5.
92 UKvisas Business Plan 2005-06 para. 2.2
94 Ev 377, HC 775–III
difficult for posts with rising numbers of applications and of staff to expand their accommodation accordingly. 95

84. UKvisas’ budgets should be much more transparent if it is to demonstrate clearly that the operation is self-financing. In the light of growing numbers of applications, there should be more flexibility over the accommodation budget.

85. In 2004/05 UKvisas handled 2.54 million entry clearance applications at 156 posts overseas. Overall, 79% of these applications were accepted. The busiest posts are handling around 1,000 applications a day and applications in 37 posts are rising at 30% or more a year. 96

86. The number of visa applications has been rising steadily for several years, and this trend is projected to continue:

UK entry clearance applications received and projected, 1999 to 2007–0897

![Bar chart showing the number of visa applications received and projected from 1999 to 2007–08.]

Note: Figures for 2004–05 to 2007–08 are estimates.

87. UKvisas is taking some steps to deal with the large volume of applications: two recent initiatives have been outsourced application centres (paragraph 90 to 97) and introducing the facility to apply online. However, its business plan suggests that it will make increasing use of temporary staff to deal with increased demand. 98

88. We were told by UKvisas that the year-on-year rise in refusal rates since 2001 (it was then 10% globally, compared with 19% in 2005) shows that the increase in volume has not resulted in a decrease in scrutiny. 99 We are not convinced that this is a necessary conclusion: it may simply mean that ECOs under pressure are not giving applicants the benefit of the doubt.

95 See Report by the Comptroller And Auditor General, Visa Entry to the United Kingdom: The Entry Clearance Operation, HC 367 Session 2003-2004, 17 June 2004 paras 1.19-1.20
96 UKvisas Annual Report 2005 p. 14
97 UKvisas Annual Report 2005 p. 14
98 UKvisas Business Plan 2005/06 para 3.4
99 Q 421, 7 March 2006
89. The number of visa applications looks set to continue rising. UKvisas should not place a heavy reliance on the use of temporary staff to meet this demand. As we state throughout this report, the quality of initial decisions has an impact on the entire immigration system. Measures that lower the cost of front-line staff at the expense of quality are not likely to be cost-effective.

The application process: outsourcing

90. One of the ways in which UKvisas has sought to reduce delays and improve its customer service is through ‘outsourcing’: partnerships in overseas countries with companies such as VFS, FedEx, DHL, Abtran and others who provide some administrative aspects of the visa application process and cover their costs by levying an extra fee from applicants. The company usually provides a network of application centres across the country, meaning that applicants do not have to travel long distances or send valuable documents by post. The actual service offered and the handling charges vary from country to country: for instance FedEx in Pakistan was originally little more than a courier service but now takes visa fees and gives some information to applicants, whereas VFS in India offers a more comprehensive service. None plays any part in the decision-making process, and none is allowed to give immigration advice to applicants.

91. Outsourcing is expected to be in place in “all posts that require support” by 2007. The new post of Regional Operations Manager (ROM) was created in late 2005 with a specific task of ensuring that all posts in their region adopt streamlining measures. ROMs are supported by a dedicated team in UKvisas who assist them in conducting efficiency reviews. Over the past year China, South Africa, Russia, Thailand, Turkey, Jordan, Indonesia and Nigeria have been added to the list of countries with outsourcing arrangements. As the number of countries covered by outsourcing arrangements grows, UKvisas should keep in mind that a record of success by a contractor in one country will not necessarily guarantee a high standard in another, in which the culture and work environment may be entirely different.

92. We visited outsourced visa application offices in Lagos, Accra, Islamabad and New Delhi, and on the whole were impressed with their operations. Queues were manageable, staff appeared professional and knowledgeable about applications and about the limits of their role, and in Nigeria applicants could even track the progress of their applications online through a helpful website. Although applicants have to pay an extra fee for using the application centre, in addition to the visa application fee, we did not feel this was excessive. After initial difficulties in Islamabad, the first post to outsource, the operations now seem to be running smoothly: we got the impression that links with the visa sections were close and measures were in place to monitor quality and tackle any problems as they arose.

93. Outsourcing has allowed ECOs to concentrate on decision-making and this appears to have had a very beneficial impact on backlogs and waiting times. For instance in Lagos, where entry clearance applications more than doubled from 2003-04 to 2004-05 and are
now arriving at the rate of about 1,000 a day, full outsourcing (along with a significant increase in staffing) has allowed queues to be much reduced and a temporary suspension of visa applications from young first-time visitors to be lifted.

94. **Outsourcing the collection of visa applications seems to be of great benefit to both applicants and visa sections, and its expansion should be supported as long as close links can be maintained with visa sections.**

95. In India we were told that 50% to 55% of applications are made through travel agents, and that an on-line system has been introduced for approved travel agents. There is also a business service where applicants can use couriers and do not have to attend in person. This may give rise to concerns about fraudulent applications, but in some countries with similar schemes the risks are reduced by requiring applicants to collect their passports in person.

96. The UK does not have a visa-issuing post in every country in the world, so there are already significant numbers of people whose applications are dealt with outside their home countries. For instance Accra (Ghana) also handles applications from Ivory Coast, Togo, Niger and Burkina Faso. Even in countries with a visa-issuing post, most decisions are made without seeing the applicant (paragraph 150), and despite what the Foreign Office Minister Lord Triesman told us, any interviews were not, in our experience, generally conducted by the same ECO who had looked at the papers. UKvisas has said that it will explore the case for a pilot regional processing centre to handle applications that can be mainly processed on paper.

97. **A comprehensive network of application centres, approved travel agents and couriers should be put in place for collecting visa applications and providing information to applicants, with appropriate measures for preventing fraud and abuse such as requiring applicants to collect their passports in person. Once this is done, we can see no overriding reason why paper-based applications should not be dealt with by country-specific teams in regional processing centres or even in the UK. In principle this could reduce problems of high staff turnover and raise the quality of decision-making whilst reducing the cost of the operation, though interviewing would clearly still have to be done at posts. We recommend that UKvisas should conduct a full feasibility study of this proposal at the earliest possible opportunity.**

**Information and advice for applicants**

98. The applications we saw in posts, both on paper and at interview, suggested that many applicants do not fully understand the evidence ECOs require to make their decisions. ECOs sometimes ask applicants to bring to an interview further documents such as bank statements or photographs confirming family relationships, but since there is simply not time to do this in every case many applications are quite rightly turned down for a lack of evidence. The applicant might be refused for “vagueness”, but then appeal and submit

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102 Q 1173, 13 June 2006
103 UKvisas Business Plan 2005-06 para. 3.4
104 Q 81, 13 December 2005
further evidence at that stage (causing problems that we look at in (paragraph 337 to 341 below), or re-apply. This is clearly less efficient than if they had submitted the required documents in the first place.

99. Guidance leaflets give some information but this tends to be non-specific. For instance, the guidance for students states:

**What supporting documents should I include with my application?**

You should include all the documents you can to show that you qualify for entry to the UK as a student. If you do not, we may refuse your application.

As a guide, you should include:

- any relevant diplomas or educational certificates that you have
- a letter from the university, college or school confirming that you have been accepted on a course of study in the UK, and a statement of charges for the course
- evidence of government sponsorship (if appropriate)
- bank statements, payslips or other evidence to show that you can pay for your stay and your course of studies in the UK, and
- if you are being privately sponsored (for example, by a college in the UK) you should provide a letter from your sponsor giving details of how they will support you during your studies, and evidence that they can do so.

**We will refuse your application if we find that any documents are forged.**

100. The lack of clarity goes deeper than this, in that the Immigration Rules themselves are often vague and imprecise. To continue with the student example, the Rules say that the applicant must show he or she “intends to leave the United Kingdom at the end of his studies” and “is able to meet the costs of his course and accommodation and the maintenance of himself and any dependants without taking employment or engaging in business or having recourse to public funds”. This leaves considerable discretion to the decision-maker. Fiona Lindsley, who was Independent Monitor of entry clearance refusals without the right of appeal from December 2003 to November 2005, suggests that it allows them to make decisions which amount to saying “What you are doing is not something someone of your sort of background would do normally, therefore you must be up to no good”.

101. However, UKvisas guidance to ECOs on student applications is more specific on the documents which an ECO should look for. On students, it says for example that:

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105 UKvisas, INF5, 3 April 2006
107 Q 83, 13 December 2006
“A student should normally provide an up-to-date letter from a school, college or university containing the following information:

- the type of course;
- what qualification it will lead to;
- the duration of the course;
- the number of hours of organised daytime study per week, or confirmation that the course is a full-time degree course at a publicly-funded institution or a full-time course at an independent fee-paying school;
- the cost of the course;
- whether the fees have been paid in part or in full; and
- the level or stage reached (if continuing a course)

The student should have his (original) proof of acceptance on a course ready to show the Immigration Officer when entering the UK.”

102. Whilst this information is available on the UKvisas website, it is by no means clearly signposted.

103. We were not impressed with the argument, raised several times by caseworkers we met on our visits, that providing detailed information on the type of evidence needed is undesirable because it makes fraudulent applications easier by providing greater clarity for bogus applicants too. Fiona Lindsley, former early clearance monitor, suggested to us that UKvisas might be reluctant to set out this kind of detailed information because in certain countries those documents will not be available, but this difficulty could be alleviated by having better sources of advice for applicants.

104. ECOs have specific expectations of the documents needed to support an application. These are not set out in the Immigration Rules nor explained in guidance for applicants. Where there are specific requirements in practice, this should be made clear in the Immigration Rules and in guidance for applicants. Security might be improved by changing the list of required documents from time to time.

105. A well-informed application can be dealt with much more easily than a poor one. However, in addition to a lack of detailed written guidance, there appears to be very little good-quality advice for visa applicants. We asked to meet local immigration advisers on our trips overseas but there seemed to be very few professionals who met this description. The firm we met in Lagos which advertised themselves as immigration lawyers dealt with only a handful of cases each year, and suggested that many applicants are given poor advice by non-professionals. Keith Best of the Immigration Advisory Service told us that
There are all sorts of people who often call themselves ‘travel agents’ and purport to give immigration advice. I think sometimes it is negligent and sometimes it is knowingly wrong in the fact that they just do not bother to find out about current immigration law in this country which, after all, is quite a task in itself because it is changing so rapidly.111

106. In Islamabad we saw “experts” who had set up in the grounds of a Mosque across the road from the FedEx application centre and charge visa applicants for their advice; visa staff told us that they frequently encounter applicants who complain when this advice turns out to be incorrect. We could not assess the quality of their work but there must at least be a potential for abuse and exploitation. We were also told that in Lahore there are advertisements on big hoardings for agents who say they can get anyone student visas for the UK or Australia.

107. There are however some good examples of professional advice for overseas applicants. The Immigration Advisory Service (IAS), a UK-based charity which provides immigration advice as well as campaigning for changes in the law, has recently opened an office in Sylhet in Bangladesh to try to assist clients in getting their applications right first time rather than going to appeal, or (knowing the criteria applied by ECOs) advising them not to apply if they do not have a good chance of success. They feel the project has been very successful and have therefore opened another office in Lahore and have plans for a number of other small offices around the world.112

108. We also heard from a Chinese solicitor in the UK whose firm has recently set up a branch in China. The office is in the same building as the British Embassy: “every time the British Embassy has a problem, they send people up to us and we can explain to them in Chinese what is going on there.”113

109. The former Independent Monitor for entry clearance refusals, Fiona Lindsley, strongly supported the provision of good advice to visa applicants in her 2004 report:

I recommended that IAS be given all possible support in developing these projects abroad: the National Audit Office findings about the difficulties that applicants have in understanding visa requirements from written materials, along with the non-specific position that UKvisas take on documentation make individual advice all the more necessary. I also believe that it would assist in reducing the use of forged documentation: applicants who are told that this will not assist by a source clearly on their side are more likely to take note.114

110. Providing a good advisory service would not necessarily get rid of poor advisers, though, as there are always likely to be people willing to charge less for what they would claim is the same service.

111 Q 230, 17 January 2006
112 Ev 43, para. 6.6, HC 775–III; Qq 230-235, 17 January 2006
113 Qq 581-585, 28 March 2006
111. The Office of the Immigration Services Commissioner (OISC), which is responsible for regulating immigration advisers in the UK, is concerned that the proposals under the Points Based Scheme for deciding more applications abroad will mean an increased reliance on unregulated local advisers at the expense of regulated UK-based advisers. It refers to the Australian scheme for registering immigration “agents” working abroad which was set up because local agents tended to be ill-informed, incompetent and even corrupt. Entry clearance staff in Islamabad felt that an agent accreditation scheme would give people the choice over whether or not to use an approved one, but that it would still be difficult to stop corruption. British posts do already provide lists of local lawyers in some circumstances, but they do not accredit them.

112. The OISC links the provision of immigration advice overseas with trafficking networks: “There are credible reports of human trafficking and general abuse of the UK’s immigration system by overseas criminal networks. It is possible that the provision of deliberately false or improper immigration advice to applicants whilst abroad may actually result in a lucrative sideline for such networks.” It suggests that all those applying for permission to work in the UK should have the opportunity to have their applications checked by a “reputable” immigration adviser.

113. Measures that improve the quality of advice to applicants will improve the quality of initial decisions and reduce the demand on the appeals system. The Government is already considering whether or how to regulate overseas advisers. This cannot simply be an extension of the scheme for regulating UK advisers. We recommend that it either encourages UK-based advisers to operate overseas, or establishes an agent accreditation scheme for local immigration advisers.

Decision-making

114. It is clearly beneficial to everyone to invest in getting decisions correct at the initial stage. Refusing applications which should have been allowed is not good customer service, can have significant consequences for applicants and their family and friends, and can lead to increased costs further down the system (from complaints, appeals or fresh applications). On the other hand, allowing applications which should have been refused weakens the control and public confidence in it, and may increase the risk of overstaying and other forms of illegal migration.

115. Poor quality decision-making at first instance is an issue that is often raised across the whole immigration and asylum system. Our predecessor Committee’s report on asylum applications expressed concern over the poor quality of much initial decision-making by immigration officers and caseworkers. Much of the evidence given to us criticised the

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115 Home Office, A Points-Based System: Making Migration Work for Britain, Cm 6471, March 2006
116 OISC, Making migration work for Britain consultation response, 3 November 2005, para. 10
117 For instance the “Consular Services” section of the website of the British High Commission in Islamabad says “we can give you details of people who may be able to help you in these cases, such as English-speaking lawyers”
118 OISC, Making migration work for Britain consultation response, 3 November 2005, p. 10
119 Ev 54, paras 86-88, HC 775–III
quality of decision-making by ECOs. The IAS developed in some detail their claim that there is a ‘culture of disbelief’ within the entry clearance process. They argued that in some posts ECOs see themselves as a Thin Red Line rather than as modern service providers. They claim that background questions are “in truth designed to elicit reasons for refusal”, and that decisions are based on a distorted idea of average human behaviour in which the worst motives are assumed, often based on racial and cultural stereotypes, and on expectations which are unrealistic given local conditions. IAS gives examples:

“Bank statements are required even where use of banks is uncommon, or birth certificates are required where they are not commonly acquired at birth. In this latter example, a genuine applicant will go to the local registration office and legitimately get an up-to-date retrospective certificate for presentation to the ECO. The ECO then refuses on the grounds that it was not obtained at birth and also takes this as reinforcement of his or her belief that documents are easy to obtain and must be rejected.”

116. IAS claims that “an arms race or escalation situation develops, where unreasonable requirements become local practice at a Post, to which applicants then have to respond. When they do, the requirements are ratcheted up yet further on the basis that the earlier requirements were too lenient and accessible.” They add that ECOs directly as well as indirectly trick applicants into providing reasons for refusal.

117. We also heard about the difficulties that faced those seeking a visa in Zimbabwe. Crispen Kulinji told us that the average salary in Zimbabwe was 9 million Zimbabwe dollars: but an applicant for a visa was expected to show a bank statement with 100 million dollars in the account for three months. The visa fee, when agents’ fees and other expenses were included, was over 39 million Zimbabwe dollars. Given that there was no certainty that a Zimbabwean with a visa would be granted entry on arrival in the UK, and given the presence of Zimbabwean police and security forces around the British High Commission (because of its proximity to Mugabe’s office), it was not surprising, he argued that many Zimbabweans turned to irregular methods of entering the UK, such as using a forged passport from a neighbouring country.

118. The Immigration Law Practitioners’ Association (ILPA) comments that its members’ experience is of “considerable variation in the substance and quality of decision-making between different posts abroad”, and frequent poor-quality decisions by immigration officers, with obvious errors of law and errors arising from failures to consider documents provided. They recommend that consideration should be given to accreditation of ECOs under existing schemes set up for the accreditation of immigration lawyers. We consider this proposal at paragraph 217 below.

119. The former independent monitor for entry clearance refusals, Fiona Lindsley, told us that although she felt UKvisas had made good progress in speeding up decision-making,
the focus now needed to shift to quality of decisions. 125 While she found that ECOs are generally polite, well-motivated and hardworking, 126 she also had many criticisms of the decisions she had seen, alleging that decisions made on the basis of finance were of especially poor quality (even though this is one of the clearer requirements); that frequently no sensible criteria were given for decisions on intention to return (which she thought should be explored at interview rather than assumed); and that decisions based on socio-economic class were made by ECOs who had no understanding of the local culture. 127 In her report for 2004 Ms Lindsley repeatedly criticised ECOs for not applying the Immigration Rules or for imposing requirements which were not in the Rules:

- “It is a nonsensical reason to refuse a visa for not knowing someone in the UK where this is patently irrelevant…it says nothing as to whether these applicants will comply with the Immigration Rules”;

- “It is not lawful to refuse a visa application on the basis that the applicant is associated with someone who has lawfully varied their leave”;

- “It is not a requirement of the Immigration Rules that such applicants should have any understanding of medical matters: it is the letters from the doctors which should explain the condition”;

- “ECOs are effectively adding a number of requirements under the auspices of the requirements to leave at the end of their studies and being able and intending to follow the course set out in the Immigration Rules”. 128

120. During our visits we were consistently impressed by the care and diligence with which entry clearance staff worked, despite often difficult conditions, rising numbers of applications and increasing levels of forgery and fraud. However, we felt that they were not always in a position to make good decisions. A large part of the difficulty is, as we note above (paragraphs 100 to 104) that the Immigration Rules do not provide a clear, precise and comprehensive basis for decision-making. They have also been amended scores of times since their last consolidation in 1994. Colin Yeo of the IAS suggested that they “often present a list of issues to be addressed rather than a list of criteria which you might or might not meet”. 129 They also include a number of what might be called “subjective” tests, including intention to leave the UK, intention to follow a course of study or intention to live together. 130 As a result, there are very few applications which can be decided by an entirely mechanistic application of the Rules. In the decisions we saw during out visits to posts, there was nearly always an element of judgment in deciding on the validity and sufficiency of evidence, even before considering the “subjective” elements of the Rules such as intention to study.

125 Q 67 and Q 70, 13 December 2005
126 Q 83, 13 December 2005
127 Qq 74-83, 13 December 2006
129 Q 211, 17 January 2006
130 See for example Immigration Rules HC 395 of 1993-94, as amended, paras 57 and 281
121. ECOs currently use published and unpublished guidance and their own experience to decide whether or not these conditions have been met. In our experience from the visits they rarely looked at the Rules themselves. Their refusal letters (often using pro forma templates) frequently give grounds which are not in the Immigration Rules, such as “the course is widely available in the applicant’s home country,” or “the course is inconsistent with the applicant’s previous pattern of study”. In cases like these (which we saw during our visits to the AIT) the ECO presumably felt that the application was not justified or realistic, but the reasons given are not in the Immigration Rules. Grounds for a refusal which are not themselves requirements of the Immigration Rules would be struck out if it went to appeal.

122. There are three issues here: the adequacy of the Rules as a basis for good decision-making; how to deal with situations not precisely covered by the Rules; and how to show that a decision has been made in accordance with the Rules.

123. The clearer and more specific the Immigration Rules, and the more closely they deal with realities presented by applicants, the easier it will be for caseworkers to make a correct decision which is unambiguously in accordance with those Rules and fair both to applicants and to the interests of the UK. At the moment it is very difficult for them to do so. The Immigration Rules should therefore be consolidated and redrafted to provide a clear, comprehensive and realistic framework for decisions.

124. It must also be recognised that there will always be questions of judgment over what weight to give pieces of evidence, as well as situations which are not precisely covered by the rules. ECOs must be supported with enough training, guidance and experience to exercise their judgment where this is required.

125. If ECOs’ decisions are to withstand challenge, ECOs must be better trained on how to evaluate both oral and written evidence, and how to express the grounds for their decision in a defensible way. We develop the subject of training and guidance at paragraphs 129 to 143.

126. It has been suggested that, under the new Points Based System for entry clearance decisions on students and workers, the subjective element of decision-making will be removed. The July 2005 consultation document stated that the criteria will be completely “objective and verifiable”.131 We do not see how this can possibly be the case, and we are very concerned about the loss of control if there were no questioning of applicants. Entry clearance staff told us that if the system becomes wholly document-based there will be major abuses in countries such as India, Pakistan and Nigeria. Dhananjayan Sriskandarajah of the IPPR said “you can never make clear, objective, bureaucratic, technocratic decisions about the movement of people”.132

127. Although we can see the advantage of the proposed Points Based System in allowing applicants to work out much more accurately their chances of success, it must be recognised that an element of individual judgment will always be required. This will also be true of the many decisions on categories not covered by the Points Based

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131 Home Office, Selective admission: Making migration work for Britain, July 2005 p.2
132 Q 154, 10 January 2006
System. Therefore there will be a continued need for well-trained, experienced, well-supported ECOs with good local knowledge. We reiterate our concern that under-investment in frontline staff is unlikely to be cost-effective across the system as a whole.

128. One concern about using individual judgment in decisions is that casual assumptions or generalisations which could amount to racism or other kinds of discrimination might go unchecked. Both IND and UKvisas are subject to the general duty under the Race Relations Acts to promote good race relations, and although there is an Immigration Race Monitor she has only a very limited role which does not extend to checking this kind of behaviour. The current role of the Independent Monitor is very limited, and yet both the IND and UKvisas are subject to a duty to promote good race relations. Race monitoring must cover all aspects of the immigration system if statutory duties are to be met. This is not the only area where monitoring is lacking. Below we look at oversight of the immigration system more generally (paragraphs 599 to 603).

Training and monitoring

129. As we have already noted (paragraph 119), decisions can only be well made if ECOs have a good knowledge and understanding of local culture, society and condition, are fully aware of the law, and are well-trained in analysing and judging evidence on paper or in person and in expressing their judgments soundly.

130. At the moment Foreign Office ECOs are given three weeks initial training in the UK, and Home Office IOs undertake an ECO conversion course. We are told that training on decision-making has recently been enhanced. On our visits we were told that measures were in hand to improve the quality of refusal notices, in order to ensure that the evidence on which decisions were based are more clearly and consistently presented.

131. Decision-making is a serious business which includes identifying the relevant facts, identifying material inconsistencies, applying the law to the facts, and exercising discretion where it is required. An ability in these matters takes time to acquire, and needs training, mentoring, monitoring and regular review. The former Entry Clearance Monitor, Fiona Lindsley, is concerned current training is inadequate in showing ECOs what evidence is needed to back up their decisions and how to conduct an interview in ten minutes. Christine Lee, a solicitor, considers that three weeks’ training is not enough, especially compared with the time it takes to qualify as a solicitor. When ECOs arrive in post, the training available varies, with only the larger posts offering in-house training programmes.

132. Because most ECO training is done in London and not all posts offer training on arrival, there is little emphasis on training on local culture. However, there are some good

133 She is appointed to monitor the likely effect of, and the operation of, Ministerial authorisations to discriminate on grounds of nationality and ethnic origin in relation to immigration and nationality functions under section 19D of the Race Relations (Amendment) Act 2000

134 See Q 84, 13 December 2005

135 Q 74 and Q 83, 13 December 2005

136 Q 605, 28 March 2006

137 Ev 49, para 47, HC 775–III
examples: Keith Best of IAS told us of an initiative in Dhaka under which locally-engaged interpreters sat down once a month with the ECOs and talked about their own cultural background and the aspirations of people from that background; and we felt that the ECO training offered in Accra (which was apparently more extensive than in many posts) was strong on local culture—for instance staff had compiled a useful handbook on Ghana. In Islamabad, where we were told ECOs need about two months to get fully up to speed, new arrivals are given training on aspects of Muslim culture.

133. We had the impression that ECOs gain their local knowledge from dealing repeatedly with applications and talking to colleagues, rather than through immersion in local life. We met very few staff who lived amongst local people (in some posts of course security concerns make this impossible). The limited amount of time some ECOs spend in post also means that they are less likely to develop local knowledge.

134. **We recommend that training for visa staff should be extended and improved.** Training in the UK must pay more attention to evaluating evidence, questioning applicants at interview and writing reasoned refusal notices. Posts should follow the good examples set by Accra and Islamabad, particularly regarding training in local conditions and culture. We have proposed above that paper-based decisions could be made in regional centres or in the UK, but all staff would still need appropriate training and local knowledge. The use of temporary staff must be kept to a minimum.

135. ECOs are managed by Entry Clearance Managers (ECMs). UKvisas told us that ECMs set and monitor objectives and are responsible for operational performance and quality control; they sample a daily percentage of all visa issues; they review non-appealable visa refusals within 24 hours and all appealable refusals following receipt of an appeal; and are available to discuss decisions with ECOs before a final decision is made. However, we got the impression in posts that ECMs did not have time to do all these tasks properly, in particular reviewing appeal decisions. As we conclude later (at paragraphs 336 to 347), the time saved by not conducting effective reviews generates considerable expense and personal distress at a later stage in the appeal system. **UKvisas should ensure that the ratio of managers to ECOs is high enough to allow them effectively to carry out all the quality control checks and reviews required of them.**

136. UKvisas has taken some steps centrally to improve quality control. Three UK-based teams have been brought together to improve the quality of decision-making (Control Quality, Systems Quality and Decision Quality). A new post of Regional Operations Manager has been created with the aim of delivering decision quality and consistency to medium and smaller posts. Risk Assessment Units in high-volume, high-risk posts help ECOs determine the categories of application with the highest risks and assess decision-making processes (see below paragraphs 163 to 165). Home Office Presenting Officers

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138 Q 211, 17 January 2006  
139 See also Q 84, 13 December 2005  
140 Ev 49, HC 775–II  
141 Ev 254, HC 775–III  
142 Ev 49, HC 775–II  
143 Ev 49, HC 775–II
have been travelling to overseas posts to discuss decision-making, evidence and reasons for refusal, and they also fill in some Quality Assurance feedback forms on ECOs’ decisions.\textsuperscript{144} We support the intention underlying the recent measures to improve the quality of decision-making overseas, but urgent consideration should be given to assessing whether quality is indeed improving as a result. The savings resulting from investment in good initial decision-making should also be assessed.

\textbf{Internal reviews}

137. A growing number of visa refusals are overturned when ECMs review them. In 2005-06, 2.3\% of refusals were overturned by ECMs, compared with 1.8\% in 2004-05 and 1.4\% in 2003-04. They are described as an “administrative check on the quality of refusals.”\textsuperscript{145} We have not seen a set of rules and principles for when these internal reviews should be carried out or of what they should consist. They do not appear to amount to a transparent opportunity for unsuccessful applicants to rebut the reasons given for refusal, which means that applicants have to go to appeal instead.

138. The National Audit Office found in 2004 that in 34\% of the successful appeals against entry clearance refusals in its sample, the decision was overturned because of additional evidence (see paragraph 336 below).\textsuperscript{146} We feel that it would be better if such cases, which can effectively amount to a fresh application, were handled quickly and efficiently by posts.

139. Matthew Davies of the Immigration Law Practitioners’ Association suggested to us that there should be a “minded to refuse” stage when an applicant is given a chance to rebut the reasons for potential refusal.\textsuperscript{147}

140. All unsuccessful applicants should be given the opportunity for an internal review of the decision, to which they could submit any further evidence. There should be clear rules and procedures on how such reviews should be carried out, and reviews should be available for appealable as well as non-appealable refusals as they would reduce the likelihood of going to appeal. We believe that the Government should assess the feasibility of a “minded to refuse” stage for both overseas and in-country applications.

\textbf{Entry clearance targets}

141. The National Audit Office (NAO) raised serious concerns about UKvisas’ targets in its 2004 report on the entry clearance operation, saying that their focus on speed meant that staff “did not always have sufficient time to consider more thoroughly applications that raised doubts….in many of the posts that we visited, entry clearance staff considered that the daily processing targets took precedence over control issues.”\textsuperscript{148} Migration Watch UK is concerned that the very rapid increase in visa applications to the UK from throughout the

\textsuperscript{144} Ev 24–246, HC 775–III
\textsuperscript{145} Ev 254, HC 775–III
\textsuperscript{146} Report by the Comptroller And Auditor General, \textit{Visa Entry to the United Kingdom: The Entry Clearance Operation}, HC 367 Session 2003-2004, 17 June 2004, p. 27
\textsuperscript{147} Q 227, 17 January 2006
developing world has led to an emphasis on speed of processing rather than “effective immigration control” at entry clearance posts.149

142. UKvisas’ current PSA targets are almost entirely focused on speed:

PSA 1: 90% of straightforward non-settlement applications resolved within 24 hours

PSA 2: 90% of non-settlement applications requiring further enquiries or interview decided within 15 working days

PSA 3: 90% of settlement applicants to be interviewed within 12 weeks (except in four busy settlement Posts (New Delhi, Bombay, Dhaka and Islamabad), where maximum waiting times for a settlement interview are set by Ministers)

PSA 4: 60% of visa applications to be processed by posts with Risk Assessment Units or visa assessment teams in 2005/06, rising to 70% in 2006/07 and 75% in 2007/08.

143. The NAO compared the turnaround time offered by UKvisas with those of some its major counterparts: Australia, Canada, Germany and the United States. Only Canada had similar targets to those of the UK.150 On our visits overseas we discovered that the US requirement to interview every applicant means that in many countries they have to wait for months. The UK has a much tighter target for speed of visa decisions than most other countries. Turnaround times for applications to Australia and Germany, for example, are seven or fourteen days, whereas those who want to go to the United States often have to wait for months. The degree of contrast between the UK and other countries surprised us. Whilst it is right to take pride in the speed of decision-making, there is evidence that this is happening at the expense of quality.

144. UKvisas is aware of the need to ensure quality as well as speed of decision-making, and is hoping to introduce a new set of targets next year which will give more emphasis to control issues:

“Our current targets focus mainly (PSA targets 1-3) on speed of customer service. The control element is reflected in PSA target 4, but more needs to be done…we are introducing a balanced scorecard throughout UKvisas’ business, focused on outcomes in five areas: Controls, Customers, Costs, Confidence, Capabilities. We aim to agree new PSA targets taken from balanced scorecard measures, in time for the new public spending triennium 2007-08, focusing on Controls and Customers.

“For 05/06, we amended PSA 2 to allow greater focus to be placed on control issues. The target previously allowed up to 10 days to be taken to process an application if an interview was required. The revised target allows up to 15 days to investigate a case if either additional checks or an interview is required. This change has enabled significant numbers of applications to be put through a more rigorous process whilst still meeting PSA targets.”151

149 Ev 98, JC 775–III


151 Ev 377–8, HC 775–III
145. All the ECOs we met felt that current targets meant they were not always able to make the checks they would like, and that this probably led to some people being allowed into the UK who should not have been, as well as some wrongful refusals. Staff in Islamabad told us that there is an inverse relationship between quality of decision-making and tightness of targets.

146. Lack of checks can also work against an applicant and result in wasted time and costs all round. Matthew Davies of ILPA voiced his concern that “the investigation and the inquiry is not thorough enough for those that they are deciding to refuse, and that decision to refuse can have major implications for an individual”. Mr Davies gave us the example of an application for a spouse’s visa where a quick check would have avoided a mistaken refusal and an appeal. The ECO had doubted that a marriage was genuine because he did not think the Islamic marriage certificate looked genuine. When the refusal was appealed, the imam at the mosque gave evidence to say that it was a genuine certificate. By the time of the appeal, the ECO had apparently accepted that it was in fact genuine. Another example of an appeal which was successful because the ECO had not made sufficient checks was provided by Christine Lee of Christine Lee & Co, Solicitors, who says her firm wins 90% of the appeals it brings against entry clearance refusals.

147. ECOs in some posts have only a few minutes to decide applications on the papers. The UKvisas guide Best Practice Entry Clearance Work gives a target of ten minutes for the more straightforward applications, but the reality in Lagos was an average of 7 minutes per application and in Accra it was 12 minutes. This scarcely gives ECOs time to read the application form and the documents submitted, let alone undertake any further checks. ECOs in Islamabad told us that it was hit-and-miss whether or not they spotted forged documents because the targets did not give them enough time. Average times per application are far shorter than for in-country applications handled by IND caseworkers, who get on average 1 hour 24 minutes for postal applications and 1 hour 42 minutes for applications made in person. It is not clear to us how overseas decisions can be made so much more quickly than in-country decisions.

148. Time constraints also make it hard to write a robust set of reasons for decisions. Fiona Lindsley, the former Entry Clearance Monitor, told us that often when she reviewed a file she found that the decision was made badly because the information she would want to make the decision was not there: she could not tell whether it was the right or wrong decision. For instance, she suggested that three-quarters of refusals on forgery grounds are not supported with evidence, when even a note on the file setting out the reasons for considering the document a forgery or the name of the person in a bank who confirmed it was a forgery would suffice. This is clearly unsatisfactory, and causes problems if the refusal goes to appeal. (see paragraphs 342 to 346 below).

152 Q 220 and Q 227, 17 January 2006
153 Qq 594-599, 28 March 2006
154 para. 7.2.2
155 Ev 260, HC 775–III
156 Ev 407, HC 775–III
157 Q 74 and Q 83, 13 December 2005 See also evidence from Bobbie Chan, an immigration adviser, about refusals on grounds of alleged forgery: Q 625, 28 March 2006
149. **Targets must allow more time to make decisions and to justify them robustly. Seven minutes is not enough, in our view, even for apparently straightforward applications.**

150. In both Lagos and Accra, as few as 10% of applicants are interviewed, although the British High Commissioner in Nigeria told us that roughly 40% of their 1,000 applications a day were 'doubtful' cases which needed investigation. The former Entry Clearance Monitor, Fiona Lindsley, was sceptical about how ECOs can assess matters such as intention to leave the UK at the end of a visit without interviewing the applicant, and Keith Best of the IAS suggested that an appeal might be the only time that the applicant has questions put to them which the have an opportunity to answer. There should be greater recognition of the circumstances in which interviews are appropriate, and targets should allow for more interviewing than currently takes place.

151. The NAO reported in 2004 that UKvisas’ targets do not encourage posts to manage their operation in the most cost-effective manner. The Entry Clearance Monitor’s June 2004 report comments on the effect of considerable peaks and troughs in demand over the year: “There is...a notable correlation of the seasonal increase in refusals with the seasonal decrease in applications, posing another explanation that refusal rates rise at times of lesser stress on decision-making entry clearance officers.” Migration Watch UK suggested that this meant that "standards have to be lowered in peak periods to get through the numbers involved... If they lead to additions to the illegal population in the UK they don’t show up in the system whereas visa delays do.”

152. It was also clear to us from our visits that different posts operate under hugely varying pressures. For instance we were told before visiting Pakistan that it was currently exempt from the PSA target because of the difficult circumstances there (though, surprisingly, staff at the post when we visited seemed unaware of the exemption and were still trying to reach those targets).

153. **Current global targets for speed of processing visas are inappropriate, unhelpful, unrealistic and uncompetitive. We recommend that UKvisas sets more generous maximum targets and then works with individual posts to determine local targets that are appropriate to the local situation and security risks and the demands of good customer service. Posts should be given adequate resources to meet realistic yet challenging targets.**

### Access to information

154. One of the consequences of having an immigration system run by a number of different authorities is that it is impossible to track applicants through the system and therefore ECOs cannot tell whether or not they are subsequently deemed to have made a
good decision. UKvisas, the IND and the AIT use a multiplicity of databases,\textsuperscript{163} give people different reference numbers\textsuperscript{164} and do not routinely share information. Unless an entry is made on the Home Office Warnings Index (the secure database against which all applications are checked) and the person makes a subsequent visa application, ECOs will never know whether the person was actually allowed into the UK or complied with the terms of his leave. Individual ECOs are rarely involved in appeals against their decision or informed of the outcome,\textsuperscript{165} though appeals determinations are apparently sent to posts; and they have little confidence in appeals outcomes, a point we develop at paragraphs 332 to 335 below.

155. The Constitutional Affairs Committee has for some time been calling for the adoption of a single reference number for each applicant in asylum and immigration cases to track cases from initial application (both in-country and out of country) to final determination. The Committee felt that this would substantially improve the system by ensuring that the entry clearance operation, the Home Office and the Tribunal all knew who was in possession of the case.\textsuperscript{166} The Government’s response was that key reference numbers from the different stages are now searchable throughout the process, but that a longer-term solution towards the development of a single reference number is likely to be an expensive and complex exercise.\textsuperscript{167} We were told that “there is no recent assessment of the costs and practicalities of introducing a unique reference number”.\textsuperscript{168} However, this may be changing because more recently the Home Secretary has identified the lack of a unique identifier across the immigration and criminal justice systems as one of the problems relating to foreign national prisoners.\textsuperscript{169}

156. One step which must be taken to enable individuals to be tracked through the system is to introduce a single reference number for each individual which is used to identify them in visa applications, in-country applications, appeals and enforcement. Once this is in place, the Government should investigate the possibility of ensuring that it can be transferred into other databases including those for the police, the prison and probation systems and the Department for Work and Pensions.

157. Although each application is checked against the Home Office Warnings Index by a dedicated team before going to the ECO, the computer system used by ECOs, called ‘Proviso’, does not run any automatic checks on applications even within the UKvisas Central Reference System, let alone against other databases. Yet this would clearly help to identify abuses. When an ECO we met in Accra recognised a familiar-looking sponsor’s telephone number and ran a manual check, 23 applications were discovered which used that same number with different names and addresses, and checks on those names and

\textsuperscript{163} Ev 397-8, HC 775–III
\textsuperscript{164} Ev 256, HC 775–III
\textsuperscript{165} Mr Justice Hodge, President of the AIT, was surprised that an entry clearance officer whose decision had been overturned was not automatically sent a copy of that decision: Q 364, 24 January 2006
\textsuperscript{166} Constitutional Affairs Committee, Asylum and Immigration Appeals, paras. 116-117
\textsuperscript{167} Department for Constitutional Affairs, Government Response to the Constitutional Affairs Select Committee’s Report on Asylum and Immigration Appeals, Cm 6236, June 2004, p. 8
\textsuperscript{168} Ev 256, HC 775–III
\textsuperscript{169} HC Deb 23 May 2006 col. 79WS
addresses revealed 25 further applications. We were told in Islamabad that it is not possible to check applications by passport number, meaning that individuals who change name and apply for a passport under their new name effectively wipe out their immigration history. These problems may stem from the fact that the database was developed as a tool for keeping records rather than for purposes of analysis and investigation.

158. Even where ECOs have been instructed to carry out manual checks, it appears that they are not always doing so. This was the case in Islamabad; yet when we happened to ask an ECO to run a check against the sponsor’s details in an application that was about to be granted, it revealed an address in Luton which had been used for about 130 other applications, over 30 of which had been successful.

159. The next version of the UKvisas caseworking system should run automatic checks against all fields in an application which would alert ECOs to possible fraud. Meanwhile staff should be given enough time to carry out systematically those checks which are possible with the current database, and ECMs should monitor this carefully.

160. We are told that from 2008 UKvisas will have access to an expanded system of watch-list checks (from UKvisas themselves, IND, police and HM Revenue and Customs), and that it will also have a new caseworking system intended to enable closer integration with IND.170 UKvisas is also in discussion with the Serious and Organised Crime Agency (SOCA) about a possible Partnership Agreement on sharing information which they hope to sign by the end of the summer. At the moment it cannot run checks on applicants against police databases, though some information from the police is on the Home Office Warnings Index. We encourage UKvisas to continue efforts to work more closely with other authorities, including the police, so that the best possible information on visa applicants is available to them when making a decision.

**Tackling forgery and fraud**

161. Forgery and fraud are now the biggest problems in immigration applications. They are particularly acute at the entry clearance stage in countries where corruption is rife. Mandice Campbell, then Head of UKvisas, told us that “in the overseas environment forged supporting documents [are] a big problem. Obviously in a lot of countries it is difficult to get the authentication of documents and we find there are high levels of fraud with financial documents.” 171

162. In Nigeria, for example, we were told even by the Nigerian lawyers we visited that it was normal for people to rely on forged documents. We saw forged documents at all the posts we visited: British electricity statements which can be bought in the local markets and used to try to meet the “maintenance and accommodation” requirement of the Immigration Rules; numerous forged bank documents, some of which corrupt bank officials had authenticated when questioned; and even a forged letter from a British Member of Parliament on headed notepaper which apparently confirmed an appointment in the House of Commons.

170 Ev 398, HC 775–III
171 Q 416, 7 March 2006
163. Posts are developing their own expertise on the kinds of forgery and fraud common in their areas, for instance in the Forgery Unit at the British High Commission in Islamabad which we visited. They are clearly in the best position to do this. Risk Assessment Units (RAUs), which have a particular focus on forgery and fraud, are now in place in major posts around the world, and the network is expanding.\textsuperscript{172} Their job is to identify applications that present a potentially higher risk and subject these to extra checks, and to examine the effectiveness of decision-making processes. In doing so they work with the IND Intelligence Service.\textsuperscript{173} The aim is to ensure that the riskiest applications are thoroughly checked, and allow applications identified as less risky to be dealt with more quickly. RAUs take a variety of approaches: for instance we saw that the risk assessment process in Islamabad is at arm’s length, assessing patterns and trends of abuse and placing warnings on the computer system, whereas in New Delhi risk assessment staff are more involved in individual applications. Although in the past there had been no way for Risk Assessment Units to record their findings, they now issue practical guidance and in some cases Document Verification Reports.

164. It was not yet clear whether the work of RAUs had had a significant impact on reducing successful fraudulent applications. They do identify areas of particular risk, but what is less clear to us is how resources are re-deployed to tackle those risks effectively, and how the effectiveness of any re-deployment is measured.

165. \textbf{We consider risk assessment work to be a potentially valuable approach which could help ensure resources are targeted at those applications where forgery or fraud are most likely. The Government must ensure that Risk Assessment Units’ findings are clearly and comprehensively recorded and disseminated, and used to re-deploy staff to areas of greatest risk. The effectiveness of these measures in discovering forgery and fraud must be monitored.}

166. Of course it takes time to carry out checks against forgery and fraud. We were told in New Delhi, for instance, that ECOs do not have time to contact universities to find out if the offer letter submitted with a student application is genuine, even though such a check could be concluded within a day or two. This reinforces the concern we express above (paragraphs 141 to 153) about lack of time for making proper checks. Even when applications are turned down on the basis of forgery or fraud, applicants may well simply try again as there is no reason for them not to. A new approach is needed, and the one being followed in Ghana seems to provide a good model. It was described to us by Mandie Campbell, then Head of UKvisas:

\begin{quote}
We have engaged in a programme of work jointly with the Ghanaian authorities to look to drive down the use of fraudulent documents in visa applications. We notify the authorities when forged documents are provided in support of visa applications and they then take action against those individuals. Since we have engaged in this programme with them over the last 18 months they have prosecuted 1,400 individuals for providing forged documents in relation to their visa applications. That is a very good example of how we can drive down abuse jointly. Clearly there
\end{quote}

\begin{footnotes}
\footnotetext{172} One of UKvisas’ PSA targets is to have 75% of applications dealt with in posts with RAUs or smaller-scale Visa Assessment Teams.
\footnotetext{173} Ev 49, para 47, HC 775–III
\end{footnotes}
are issues to work out before we can enter into one of those sorts of programmes. We have to look very carefully at the likely response of the Ghanaian authorities and make sure that the penalties are of an equal level to those in the UK and proportionate to the offence that had occurred. The programme is working very well and it has had a very positive impact on the numbers of forged documents now being produced in support of visa applications.\textsuperscript{174}

167. We were told that the prison in Accra to which offenders may be sent is hardly of British standards, but that many offenders are apparently fined rather than imprisoned. We understand that it is the organised criminals who are reported, rather than individuals who may be simply naïve or badly-advised. Other countries’ visa sections in Accra are looking at following the British example.

168. \textit{In every country where there is sufficient confidence in the criminal justice system, fraud and forgery in visa applications must be reported to the local police.}

169. In response to high numbers of apparently abusive applications, UKvisas sometimes suspends visa services for a whole category of applicants in a particular country. For instance, visa services in respect of Working Holidaymaker applications were suspended in Malaysia, Sri Lanka, Namibia and Botswana in March 2005 and had still not been resumed in June 2006.\textsuperscript{175} In Nigeria an unprecedented level of demand led to a temporary suspension of all applications from first-time visitors aged 18 to 30, a group which took a large amount of time to process because around 80% were refused; the notable increase in the number of student applications during this time was, staff feared, the knock-on effect of the suspension.\textsuperscript{176} There have also been allegations of fraud regarding the UK ancestry visa route for Zimbabweans, which led to a suspension of applications in this category and then increased scrutiny for Zimbabweans over other nationals.\textsuperscript{177}

170. Suspension of visa applications produces inconvenience and frustration for genuine applicants, possibly results in some applicants trying another route instead, and leads to backlogs when the category is re-opened. This is not acceptable. Where high levels of forgery or fraud are detected in a particular category such as the Working Holidaymakers scheme, UKvisas and the Home Office must consider whether such provisions should be modified or removed. Where this is not appropriate, applications should be handled by a specialist team whilst investigations are carried out.

\section*{Fingerprinting visa applicants}

171. In a major initiative aimed at tackling fraud, the Government is gradually introducing biometric visas across its visa issuing posts.\textsuperscript{178} All entry clearance applications in Sri Lanka, Djibouti, Ethiopia, Eritrea, Tanzania, Uganda, Kenya, Rwanda, Democratic Republic of Congo, the Netherlands and Vietnam must now be accompanied by a record of the

\textsuperscript{174} Q 448, 7 March 2006
\textsuperscript{175} Ev 261, HC 775–III. Countries whose nationals can apply under this scheme can be suspended from the list of qualifying countries set out in Appendix 3 to the Immigration Rules, or even removed from it entirely.
\textsuperscript{176} Ev 260, HC 775–III
\textsuperscript{177} HC Deb 18 January 2006 col. 32 WS and Q 450, 7 March 2006
\textsuperscript{178} Ev 52, HC 775–II and Qq 454-459, 7 March 2006
applicant’s fingerprints. By 2008 the Government hopes to be collecting fingerprints electronically from all visa applicants, including visitors, in posts throughout the world and checking this against immigration and asylum fingerprint databases.

172. UKvisas told us that information collected in the initial pilots “is proving effective in revealing applicants who seek to conceal an adverse immigration history from the entry clearance officer by using a false identity”. They add that it is difficult to project what the effect of routine fingerprinting will be on refusal rates, since they cannot tell how many potential applicants were deterred from applying because of the much greater risk of discovery of previous immigration abuse. But they anticipate that the global introduction of fingerprinting will have a lasting deterrent effect.

173. Applications submitted at those posts which require fingerprints accounted for 3.44% of the total number of visa applications in November 2005. From July 2005 until December 2005 there were 8,049 matches against the Immigration Fingerprint Bureau database, from a total of 40,151 applications in these posts (20%). The majority of these (7,596) were matches against previous visa applicants rather than asylum applicants, but a match does not necessarily mean that the current application is fraudulent. In these nine posts, 321 applicants have so far been refused as the result of a biometric match (0.7% of applications).

174. However, fingerprints are not being used as fully as they should be. They are checked at the border to compare them with the prints given with the visa application. We are told that the Biometrics programme in UKvisas is not even part of the e-Borders programme which is intended to introduce comprehensive electronic management of the whole immigration system by keeping records of who travels into and out of the UK (paragraph 445). Nor are fingerprints automatically checked against police databases of fingerprints.

175. A request to the Government for the latest cost-benefit analysis of biometric visas and electronic entry/exit control was not satisfactorily answered. We were told only that there has been some preliminary cost-benefit analysis on the introduction of a complete electronic entry control system, and that “savings in the region of £130 million (discounted) over 25 years could be achieved if the vast majority of EU/EEA nationals with biometric travel documents utilised an electronic entry control system”. We were given a cost of £70 million for introducing fingerprinting worldwide, but this is only the estimated capital cost. The running costs following full rollout are estimated at £10

179 HL Deb. 3 November 2005 col 368
180 Ev 358, HC 775–III
181 Ev 320, HC 775–III
182 Ev 358, HC 775–III
183 Ev 45–46, HC 775–II and Ev 289, HC 775–III
184 UKvisas is currently in discussion with the Serious and Organised Crime Agency over an agreement on the sharing of information (Ev 398, HC 775–III), but we do not know whether access to fingerprint databases will be included.
185 Ev 265, HC 775–III
186 Ev 320, HC 775–III
187 Q 456, 7 March 2006
million per year, including IT service charges, technical support and maintenance and the anticipated impact on staff time.\textsuperscript{188}

176. In its report on Identity Cards, our predecessor Committee in the last Parliament stated that it was essential that the biometrics involved should be subject to exhaustive testing of their reliability and security, and that the results of those tests should be made available to expert independent scrutiny.\textsuperscript{189} The Committee was also concerned about the costings of the ID card system.\textsuperscript{190} The Government’s response to our questions on fingerprinting visa applicants suggests that there are grounds for similar concerns about the extensive use of biometrics in visas.

177. The fingerprinting of visa applicants has the potential to play an important role in an effective immigration control. However, we are concerned about the way the biometric visas programme is being implemented, given that it is an expensive project without a specific cost-benefit analysis and it is not fully integrated into other IT developments such as e-Borders. Its impact must be properly assessed to ensure that the expenditure is commensurate with the benefits it brings.

178. If fingerprinting visa applicants is to be truly effective, in the future applicants’ fingerprints must be checked against police fingerprint databases before a visa is issued, and fingerprints should also taken on arrival and departure and checked against the immigration record.

**Previous recommendations**

179. Many of our observations echo those of a National Audit Office report on the entry clearance operation published in June 2004.\textsuperscript{191} It concluded that UKvisas has taken a number of important steps to respond to the considerable challenges of providing an efficient, high-quality service to applicants. Its international comparisons showed that the service provided by UKvisas compares favourably with other countries. But it considered that UKvisas should continue to evaluate whether posts are striking the right balance between service delivery and control; and to enhance its ability to evaluate trends and outputs for the better management of its business. The NAO’s recommendations to UKvisas included:

- a detailed evaluation of the impact of streamlining initiatives
- adapting targets to give more emphasis to control issues
- improving the range of performance information, particularly on the quality of decision-making

\textsuperscript{188} Ev 358, HC 775–III
\textsuperscript{190} Ibid, p 55
\textsuperscript{191} Report by the Comptroller And Auditor General, *Visa Entry to the United Kingdom: The Entry Clearance Operation*, HC 367 Session 2003-2004, 17 June 2004
• making better use of available information on breaches of immigration rules to inform their approach to risk analysis
• disseminating to posts all relevant United Kingdom-based information, such as immigration and forgery intelligence
• more explicit consideration of the implications of increasing demand and possible development in immigration policy
• developing further its approach to handling appeals
• better training and efforts to retain skilled staff in entry clearance work.

180. The subsequent report from the Public Accounts Committee (PAC) showed that it was impossible to track improvements in the service due to a lack of information on the subsequent actions of visa holders after entry to the United Kingdom. Further problems included differences in opinion on standards for entry clearance between the IND and UKvisas; ineffective communication; and a lack of monitoring. Quality control and consistency of decisions was another area that was criticised. The PAC’s recommendations included improving quality of decisions, allowing for more time to check visa applications, increased use of risk assessments and use of complete, up-to-date and searchable databases for monitoring and intelligence purposes.\(^{192}\)

181. We have not seen a comprehensive update on progress with implementing these recommendations, though we were told that a number of improvements are being made by UKvisas as a result of them\(^{193}\) and that UKvisas’ new mission statement is intended to reflect this:

> UKvisas is the overseas arm of the UK’s integrated border management. Our goals are to bring communities together and improve the UK’s competitiveness as a destination for travel, trade, migration and investment through programmes which prevent immigration abuse, deliver value for money and earn public confidence.\(^{194}\)

There has been a study of the impact of streamlining initiatives;\(^{195}\) targets are being changed; and there is some evidence of improved training. However, on the evidence provided to us we are less convinced of progress against the other recommendations.

182. **We endorse the recommendations of the National Audit Office and Public Accounts Committee on the entry clearance operation and are encouraged by the steps already taken to implement some of them, but have been unable to chart progress on them all.**

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193 see for example Ev 254, HC 775–III
194 Ev 254, HC 775–III
195 Ev 366, HC 775–III
4 Border controls

183. The second stage of immigration control is at the border to the UK. Here, Immigration Officers (IOs) check passports and examine arrivals to determine if they:

- have the right of abode in the UK (mainly British citizens), or
- may enter the UK without leave even though they do not have the right of abode (mainly EEA\textsuperscript{196} nationals), or
- require leave to enter and if so whether they should be granted it (non-visa nationals coming for less than six months), or
- already have leave when they arrive (for example a visa) and if so whether it should be cancelled.

184. These checks will usually happen at a port or airport in the UK, but increasingly checks are made before the person arrives in the UK. This is known as ‘exporting the border’.

185. In 2004 there were 97.2 million arrivals\textsuperscript{197} at the UK’s borders from outside the Common Travel Area,\textsuperscript{198} which was 7% more than in 2003 and part of a steady increase in arrivals. The large majority of these were British citizens or citizens of EEA countries; 12 million were non-EEA arrivals. Although there are now considerably more non-EEA nationals arriving in the UK every year than there were in 1994 (9.2 million), the number has fallen gradually from a peak of 13 million in 2000. Citizens of the USA comprised 34% of total non-EEA admissions, the largest single nationality by far. The next three largest nationalities were Australia (917,000), Canada (852,000) and India (616,000).\textsuperscript{199}

Exporting the border

186. The whole visa operation is in a sense ‘exporting the border’ because it checks applicants before they arrive in the country, but more recent initiatives include:

- requiring carriers to check passengers’ documents;\textsuperscript{200}
- deploying Airline Liaison Officers to help airlines carry out those checks and to make sure that people who are getting on planes are the same people who were granted visas;
- operating what are called ‘juxtaposed controls’ where IOs operate UK immigration controls at French ferry ports and Eurostar stations; and

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\textsuperscript{196} The European Economic Area (EEA) consists of the EU member states plus Norway, Iceland and Liechtenstein, with a linked agreement for Switzerland

\textsuperscript{197} i.e. passenger journeys, so an individual arriving more than once would be counted each time.

\textsuperscript{198} The Common Travel Area consists of the UK, the Channel Islands, the Isle of Man and the Republic of Ireland.

\textsuperscript{199} Home Office, Control of Immigration Statistics 2004 Cm 6690 Table 2.2

\textsuperscript{200} This requirement was introduced in the Carriers’ Liability Act 1987 but now contained in s. 40 of the Immigration and Asylum Act 1999
• using new detection technology such as thermal imaging devices, heart-beat monitors and CO₂ probes at ports in France and the Netherlands;

187. Under carriers’ liability legislation, which was originally introduced in 1987, carriers such as airlines and shipping companies are liable to a £2000 fine for each inadequately documented passenger they bring into the UK. 201 This acts as an incentive for them to carry out document checks and to refuse boarding to those whose documents they doubt.

188. A network of Airline Liaison Officers (ALOs) employed by the IND provides training for airline staff in passport and visa requirements, passenger assessment and forgery awareness. They also go to airports to give on-the-spot advice to check-in staff on the documents presented by passengers and to assist the local authorities in identifying facilitators and racketeers involved in the organised movement of inadequately documented passengers. 202 There are now 34 ALOs in 32 locations, 6 Deputy ALOs and 5 ALO “floaters”. 203 In 2003, 33,000 people were prevented from travelling to the UK from airports where ALOs were stationed, 204 and numbers of Inadequately Documented Arrivals (IDAs) detected after arriving by air have fallen from 14,071 in 2003 to 6,831 in 2005. Over the same period, the number of clandestine entrants detected arriving by sea also fell, from 3,482 to 1,588. 205

189. In future, under the e-Borders programme, it is proposed that the travel industry will supply data on passengers intending to travel to or from the UK, allowing the risks they present to be assessed and ‘alerts’ passed to the relevant border control agency. Under an Authority to Carry (ATC) scheme, carriers would not be permitted to take individual passengers to the UK until fingerprints of visa-holders and information in travel documents and airline booking information had been checked against UK databases. 206

190. This seems an attractive idea, but there are some practical difficulties. Individual airlines and their umbrella organisations have pointed out that charter airlines in particular generally do not hold passenger information in advance of check-in, and that not all UK airports are currently capable of collecting and transmitting passenger information data. They also suggest that it is unlikely that help-desk facilities for passengers denied boarding will be able to deal with all queries, especially if the passenger does not speak English, which could lead to delayed flights or passengers missing their flights. 207 They fear these facilities will also be very difficult and costly to put in place where the airport is seldom

201 Immigration and Asylum Act 1999 s. 40
202 UKvisas Diplomatic Service Procedures ch. 1 Annex 1.7
203 Ev 282, HC 775–III
204 Home Office, Controlling our borders: Making migration work for Britain - Five Year Strategy for asylum and immigration, February 2005, para. 53
205 Ev 281–2, HC 775–III
206 Home Office, Controlling our borders: Making migration work for Britain, Cm 6472, February 2005, Annex 1, and Ev 45–46, HC 775–II
207 Ev 19 and 14, HC 775–II
used for flights to Britain, and refer to the complications caused by the fact that no global standards have yet been agreed.208

191. There is some criticism that all these measures are blunt instruments, in that they may prevent people from travelling even if they have a legitimate reason for coming to the UK. Bobbie Chan, an immigration caseworker at the Central London Law Centre in Chinatown, suggested to us that airline staff are stopping a lot more people coming in than they should because they are worried that they will be fined under carriers’ liability legislation.209 Dr Khalid Koser of the Global Commission for International Migration put forward the view that legitimate efforts to try to stem or stop or reduce irregular migration can have an impact on refugees: “It is increasingly difficult practically for asylum seekers to arrive in countries like the UK (but not just the UK) in a legal, regular fashion.”210 Oxfam and the Refugee Council are concerned that it is not known how many people in need of international protection are stopped from travelling by ALOs, given that ALOs are posted to countries “where human rights abuses are well-documented, from which refugees originate, or through which refugees transit”. Their concern is that extra-territorial controls are unable to identify people with protection needs and that they therefore threaten the structure of the international asylum regime.211 The Independent Race Monitor, Mary Coussey, is concerned that the likelihood of being refused is greater at the juxtaposed controls than at ports in the UK.212 Moreover, in the Prague Airport case, pre-entry immigration control aimed principally at stemming the flow of asylum seekers from the Czech Republic was found to be racially discriminatory.213

192. No efforts have been made by the Government to determine how many people stopped from travelling to the UK may have had a legitimate claim to protection. Our predecessor Committee in the last Parliament acknowledged, in a report published in 2004, that the Government’s “restrictive measures” had made it more difficult for refugees to make a successful claim for asylum, and that this placed a moral responsibility on the Government to explore alternative refugee programmes so that people do not have to resort to illegal methods of getting to the UK. The Committee commented that:

As it becomes increasingly difficult to get into the UK to make an asylum claim, it must be the case that many people who would have a well-founded case for asylum will be unable to make a claim. There is agreement that a large proportion of asylum seekers arrive in the UK as the result of illegal people-smuggling operations conducted by criminal gangs. We also note that the asylum seekers who do manage to make a claim in the UK are not representative of the world’s wider refugee population—they are more likely to be young, male, healthy, educated and with access to significant financial support, and less likely to be old, female, ill, uneducated or poor. We believe this creates a moral responsibility on the British Government to provide alternative legitimate means by which refugees can gain access to this

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208 Ev 14 and 21, HC 775–II  
209 Q 616, 28 March 2006  
210 Q 110, 10 January 2006  
211 Ev 105–107 paras 3.4.3, 4.3 and 4.8.2, HC 775–II  
212 Qq 41-42, 13 December 2005  
213 European Roma Rights Center v. Immigration Officer at Prague Airport, [2004] UKHL 55
country, to assist refugees closer to their country of origin, and to tackle the roots of enforced migration. …

We … support the UK’s participation in the United Nations High Commission for Refugees’ quota refugee resettlement scheme, and call for this to be expanded. We recommend that if the number of successful asylum applications made in the UK declines, Ministers should increase the UK’s resettlement quotas through the scheme each year by a proportionate amount.²¹⁴

193. ‘Exporting the border’ effectively cuts down on the numbers of people travelling undocumented to the UK. We recommend that the use of Airline Liaison Officers should be expanded, and that consideration is given to how to deal with people who are stopped from travelling but may have protection needs. We repeat the call by our predecessors for the Government to be active in seeking to assist refugees in or near to their countries of origin, as well as to expand its policy for assisting refugees through UNHCR.

194. Whilst we were impressed at the series of checks which is carried out at the juxtaposed controls in Calais, by both the French and the British authorities, the equipment is not entirely reliable or effective. It comes up with both false negatives and false positives. The Immigration Service is trying to find better equipment, but we were told during our visit to Calais that for instance a new type of heartbeat monitor for which there had been high hopes would not in fact be any better than the existing ones.

195. In addition, the ‘human element’ will remain important. For example, we were told by the Public and Commercial Services Union (PCS) that:

we have evidence of a vehicle being allowed to proceed when a positive reading had been obtained from detection equipment. IS civil service staff intervened and removed people from the vehicle. On another occasion contract staff were observed searching vehicles without their detection equipment switched on.²¹⁵

PCS argued accordingly that “the use of technology should remain in support of, rather than as a replacement for, immigration staff”.²¹⁶ The PCS Union fears that increasing the number of private contractors working for the Immigration Service will weaken border security: “The union remains concerned that privatisation of many parts of immigration control may become a reality over the next few years. If this does happen we believe it would pose a serious risk to the integrity of our borders and consequently endanger the security of UK citizens.”²¹⁷

196. These high-tech checks may in any case be undermined by the lack of security at the ferry port in Calais. During our visit we learned that the ease with which would-be immigrants can get into the terminal is worrying; we saw group after group of people,

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²¹⁴ Home Affairs Committee, Second Report of Session 2003-04, Asylum Applications (HC 218-I), summary; see also paras 159-61, 287, 291. For the Government’s reply to these recommendations, see Cm 6166, pp 15-17.

²¹⁵ Ev 100, para 23, HC 775–II

²¹⁶ Ev 100, para 27, HC 775–II

²¹⁷ Ev 100, para.20, HC 775–II
mainly young men, waiting for their chance on the roadside, beneath underpasses or in the scrubland near the lorry park. There had been improvements to the perimeter fences, but there still are points at which it is easy for people to climb over fences or gates and into vehicles which have already been through most of the checks.

197. When we visited Calais ferry port, we were given figures on the number of people caught trying to smuggle themselves into the UK. These showed a total of 9,652 in 2005 and 3,174 in the first three months of 2006.218

198. Despite the success of recent measures in detecting people attempting to enter the UK illegally through Calais, the port is a continuing focus of attention for those seeking to evade the UK’s border controls. All aspects of port security in Calais must therefore be kept under constant review and strengthened wherever necessary, and the accuracy and application of new detection technology must continue to be improved.

Checks on arriving passengers

199. Arriving passengers subject to immigration control may be asked basic questions by an Immigration Officer (IO) about the purpose of their visit, the intended length of stay (confirmed by their return ticket), and address in the UK. Most passengers are given leave to enter at this point. If the IO has any reason to doubt a passenger’s reasons for coming to the UK, the passenger is asked further questions. If the delay is likely to last more than an hour, the passenger must be given formal notice.219

200. In 2004, 31,930 passengers were refused entry at port and subsequently removed, compared with 17,220 refusals at port in 1994 and a high of 50,360 in 2002.220 The nationalities most likely to be refused at port in 2003 (excluding nationals of the EU Accession States and asylum applicants) were Malaysian (6.3% of Malaysian arrivals, 1,130 people), Jamaican (5.4%, 1,455 people) and Brazilian (3.3%, 4,385 people).221

201. Between July 2003 and December 2004, fewer than 1% of all non-EAA nationals were delayed for questioning for more than an hour after arrival, but there were ten countries which accounted for 32% of those questioned at length and 38% of refusals, even though they amounted to only 13% of non-EAA arrivals in the period. By purpose of visit, students were most likely to be delayed for questioning, and then visitors; least likely to be delayed were business visitors.222

202. We felt from our visits that there are many obstacles which hinder IOs from stopping people at ports. They are under a lot of pressure (for instance we saw teams in Calais getting to the end of their shift but not being relieved because another team was not available), forgeries can be very difficult to spot especially given the range of documents

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218 These figures refer to numbers of detections: the same individual may well have been caught several times


220 Home Office, Control of Immigration Statistics 2004 Cm 6690 Table 2.1. The removal will not necessarily be in the same year as the arrival, because some of the people removed in this category will have been granted Temporary Admission, for example to make an asylum claim.


which could be encountered, database checks are not comprehensive, there is a lack of proper accommodation for questioning or detaining passengers, it may be difficult to obtain interpreters, and forms have to be filled in.

203. Immigration Officers are allowed to discriminate on the basis of nationality when deciding which passengers to question, but only when they have been given express permission to do so through a Ministerial Authorisation. The list of “priority nationals” subject to the authorisation is issued monthly and disseminated to each port, but it is not published. Priority nationals are listed when adverse decisions and immigration breaches reach more than 50 in total, and 5 of every 1,000 admitted persons of a particular nationality.

204. In her annual report, Mary Coussey, the Independent Race Monitor who examines the operation of this discrimination, commented that she was impressed with most of the questioning she saw during 2004-05. However, she also observed scepticism amongst IOs, particularly in relation to nationalities on the authorisation list, and different perceptions of nationalities with high refusal rates between IOs at different ports. She found some indication that different standards and profiles were applied at different ports to questions of credibility, and was concerned at marked differences in refusal rates between ports. She concluded that, although there were strong arguments for the use of authorisations, this also carried the risk of treating passengers from priority nationalities more sceptically than others. One of her main recommendations is for more detailed monitoring, in particular of refusal rates by port, in order to provide “greater rigour and a more informed basis for assessing the impact of practices”. The Immigration Service has begun research into refusal rates but it is “subject to resources”.

205. Statistics must be kept on Immigration Officers’ decisions on people subject to race discrimination authorisations, in particular to determine refusal rates by port. Appropriate action must be taken by managers if it is found that these people are treated more sceptically than other passengers.

206. Many of the difficulties of checking people at the border could be avoided if more checks were made on passengers before departure. The Authority to Carry scheme will provide some additional information and checks (see paragraphs 189 to 190 above) but another possibility is to require everyone apart from EEA nationals to get a visa before travelling to the UK. Already there are over 108 countries on the list of those whose nationals require a visa before they travel to the UK for any purpose, and people of all

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223 See Qq451-453, 7 March 2006, for the training and guidance provided on forgeries.
225 Under section 19D of the Race Relations (Amendment) Act 2000. The nine authorisations which were in effect during 2004-05 are listed in an appendix to the Independent Race Monitor Annual Report 2004-5, 5 July 2005
229 Q 39 and Q 52, 13 December 2005
230 The list of nationalities, which is amended from time to time, is set out in Appendix 1 to the Immigration Rules (HC 395 of 1993-94, as amended)
nationalities outside the EEA who intend to enter for more than six months, or to settle or to marry, must also obtain entry clearance. On our calculation, this means that visa-free travel to the UK is currently available only to nationals of 56 countries outside the EEA who are intending to come here for less than six months. It is not clear to us how the decision on which countries should be on or off the list is made. Australia, by contrast, requires visas of all travellers except New Zealand citizens, whatever the purpose of their trip, and then makes it very straightforward and quick to apply for visas which are issued as an electronic record on the department’s computer systems and not necessarily as a label or a stamp in the passport.

207. In view of the difficulties in carrying out checks at port, the Government should continue to develop methods of ensuring that travellers to the UK are checked before departure. Whilst carriers have a role to play in this, the Government should explore the implications of requiring all non-EEA nationals to get visas before any trip to the UK, looking at Australia’s practice as an example and bearing in mind the need for tourists and business visitors to be able to travel to the UK without unnecessary inconvenience.

5 Immigration decisions taken in the UK

208. The third stage of immigration control applies to people who have been allowed to enter or remain in the UK. They can apply to the Home Office for permission to extend their existing leave on the same conditions, to ‘switch’ to a different category or to settle in the UK. If the application is made before their existing leave runs out, that leave will be deemed to continue until they receive a final decision on the new application. The application may be sent by post or, for an extra fee, some applicants may apply in person for a same-day service at one of IND’s Public Enquiry Offices (PEOs) in Croydon, Birmingham, Liverpool and Glasgow.

209. The IND made 384,890 decisions on in-country immigration applications in 2004, a decrease of 21% on the previous year (485,860 decisions). This reverses the previous trend of rising numbers of in-country decisions. The percentage of immigration applications refused by IND has risen from 5.6% in 2001 to 8.4% in 2004. There are far fewer in-country decisions than entry clearance decisions: the number in 2004 was only 15% of the number of visa applications in 2004/05.

210. We visited the IND in Croydon, meeting caseworkers and walking through the same-day application process from the queues outside, through the initial checks and subsequent interviews to the issuing of vignettes in passports. We also met staff who deal with enquiries and complaints, and caseworkers in the student and general teams who deal with paper-based applications and undertake background checks. In addition, there are caseworkers in other parts of the country who handle other types of application, for example work-based applications which are decided by Work Permits (UK) in Sheffield.

231 There are 192 countries in the world, from which the 27 countries of the EEA and Switzerland (whose nationals can travel freely to the UK) and the 108 countries on the visa nationals list are subtracted.

232 Home Office, Control of Immigration Statistics 2004 Cm 6690 Table 4.2
211. Many of the same issues arise with in-country decision-making as with entry clearance: the need for improvements to the application process, quality of decision-making, targets, and the need for more information on which to base decisions along with more confidence in the appeals system.

The application process

212. The queues at Lunar House in Croydon (the IND’s main Public Enquiry Office (PEO), where applications can be made in person) used regularly to snake right around the block. Since the introduction of a new appointments system, they have become insignificant. When we visited on morning in March, there were perhaps 30 people waiting in the covered area outside the security checks.

213. The vast majority of people who make immigration applications in person under the ‘premium service’ now make an appointment first; their applications are checked before they pay the £500 fee; and in Croydon their cases are usually completed (i.e. passports returned or instructions issued to come back with further evidence) within four hours of their appointment time. This certainly seemed to be the case when we visited.

214. Like each of the four PEOs, Croydon handles only certain categories of case. Other applicants, including those whose applications are “of a complex nature” and most non-chargeable applicants, must apply by post. We are pleased to see that European citizens applying under European Community Law for a registration certificate can now apply in person in Croydon. The IND should look carefully at the categories of application it accepts at each of the PEOs and ensure that these are the categories most fitted to an accelerated process.

215. Unlike applications made in person at a PEO, or visa applications at an outsourced application centre overseas, there is no checking service for people in the UK who make an immigration application by post. If they fail to send the right documents, their application is likely to be delayed or rejected without a refund. Consideration should be given to introducing a network of immigration application centres in the UK, perhaps using Post Offices which already check passport applications. This would provide a local service checking that applicants have filled in forms correctly and submitted the right documents, and would also remove some of the administrative burden from the IND. Applicants could be charged a fee for using this service, to cover the costs.

Decision-making, training and monitoring

216. IND caseworkers, like ECOs, have to apply the Immigration Rules in making their decisions. But as we have discussed above (at paragraphs 120 to 125) we do not consider the Rules to be an effective aid to decision-making, and even if they are redrafted as clearly and comprehensively as possible, an element of judgment will always be necessary. Therefore, as with ECOs, a high standard of training and monitoring of IND caseworkers is essential. We were told that the IND College provides training programmes for non-asylum caseworkers lasting between four and 15 days, on a wide range of subjects, and that trainees are mentored and tested. The General Group Caseworker Course lasts for five weeks (two-and-a-half weeks’ classroom training and the rest through mentoring) and
there are various additional courses on reasons for refusal letters, work permits and other work-based schemes.233

217. Chris Randall, Chair of ILPA, did not consider this amount of training sufficient. He proposed that there should be some kind of testing “to see whether people have actually learnt from their training”. 234 An obvious model is the system in place for immigration advisers and solicitors who receive public funding for immigration work. They have to be accredited under the Legal Services Commission’s Immigration and Asylum Accreditation Scheme which has three levels: Accredited Caseworker (Level 1), Senior Caseworker (Level 2) and Advanced Caseworker (Level 3). People applying for accreditation have to pass an assessment, and after three years they have to apply for re-accreditation, which requires further assessment.235 We believe that both IND caseworkers and ECOs should be regulated to a standard equivalent to that for advisers who do publicly-funded immigration work. This would ensure not only that they are competent to begin with but also that their competence is maintained.

218. Whilst UKvisas seems to be taking steps to address quality control issues following the National Audit Office report into the entry clearance operation, (see paragraphs 136 and 179 to 182), IND does not appear to be doing the same for most of its immigration caseworkers. Its efforts to raise the quality of decision-making have largely been focused on asylum caseworkers, for instance through the “quality initiative” project in conjunction with UNHCR.236 However, a new independent quality team for Work Permits (UK) was established in April 2005. It carries out approximately 1,200 random checks each month and provides daily feedback as well as monthly statistical information and comprehensive quarterly reports highlighting the main areas requiring improvements.237 We recommend that the IND should ensure that a team of managers is given the task of focussing on quality of decision-making in all areas of casework. It should gather information which can be used to gauge quality, assess the impact of targets, and use this information to develop training, mentoring and oversight of caseworkers. The quality control measures already in place in UKvisas, asylum casework and Work Permits (UK) may provide useful examples.

219. We were told that there is a new quality sampling system for immigration casework in the IND under which approximately 2% of cases are checked before being issued, and that in addition to this an applicant may ask for a decision to be reconsidered. However, the IND was able to provide figures on the outcomes of these reviews only for Work Permits (UK). They told us that reconsideration requests relating to other immigration applications are “dealt with as casework correspondence and no reliable statistics are available”.238 We have recommended above (paragraph 140) that all applicants be given the

233 Ev 408–II, HC 775–III
234 Q 229, 17 January 2006
235 Legal Services Commission, Immigration & Asylum Accreditation Scheme: Operational Guidance Version 3, 26 March 2004
236 United Nations High Commissioner for Refugees, Quality Initiative Project: Key Observations and Recommendations, February - August 2005
237 Ev 406, HC 775–III
238 Ev 247–8, HC 775–III
opportunity to challenge a refusal, perhaps through a “minded to refuse” stage. A meaningful internal review is likely to be cheaper and quicker for both sides than letting a refusal go to appeal. A strategy should be developed for when and how internal reviews of refusals take place. This should cover those undertaken following a request from an applicant as well as those undertaken as part of quality sampling. Statistics must be kept of the outcome of all these reviews.

**IND targets**

220. The IND has set targets for processing in-country applications which are very different from UKvisas’ targets. They have recently been revised and now state that 90% of charged general casework and 30% of non-charged general casework should be dealt with within 14 weeks. 98% of applications made in person should be decided within 24 hours. The IND was on course to meet these targets in 2005/06.\(^{239}\) Its website shows how long particular types of applications are taking,\(^{240}\) and in June 2006 this suggests it was on target for many types of application:

<table>
<thead>
<tr>
<th>Application type</th>
<th>We are currently working on applications submitted in</th>
</tr>
</thead>
<tbody>
<tr>
<td>Further Leave to Remain (Marriage)</td>
<td>April 2006</td>
</tr>
<tr>
<td>Settlement (Marriage)</td>
<td>April 2006</td>
</tr>
<tr>
<td>Students</td>
<td>April 2006</td>
</tr>
<tr>
<td>Settlement (Other)</td>
<td>April 2006</td>
</tr>
<tr>
<td>Further Leave to Remain (Other)</td>
<td>March 2006</td>
</tr>
<tr>
<td>Indefinite Leave to Remain from Exceptional Leave to Remain</td>
<td>December 2005</td>
</tr>
</tbody>
</table>

221. IND caseworkers have far longer on average to make their decisions than ECOs do. For instance they handle 5.2 charged postal applications in a day (which equates to 1 hour 24 minutes per case), and 4.2 applications made in person per day (1 hour 42 minutes per case).\(^{241}\) ECOs have under 10 minutes on average per application (see paragraphs 141 to 153)

222. A point which has been made repeatedly throughout the inquiry, and during our visits, is that the quality of decision-making falls if targets on speed are unrealistic. The 24-hour target for applications made to the IND in person is actually far exceeded: in Croydon most decisions are made within four hours, and the IND website suggests that in Birmingham, Glasgow and Liverpool the turnaround time is under two hours. Caseworkers clearly cannot be making detailed checks within these timescales, and indeed they raised this concern with us during our visit to Croydon. One told us that he tends to grant applications rather than refuse them, partly because by the time they reached him the documents have been checked: but the initial document checks are intended only to see if the applicant has brought the right documents with them rather than to make a judgment on their validity or evidential value. **We recommend that IND managers monitor**

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\(^{239}\) Ev 257–260, HC 775–III

\(^{240}\) [http://www.ind.homeoffice.gov.uk/applying/makinganapplication/](http://www.ind.homeoffice.gov.uk/applying/makinganapplication/)

\(^{241}\) Ev 407, HC 775–III
caseworkers’ decisions under the same-day service carefully, and compare these
decisions with those on postal applications in the same categories to see if the tight time
targets make a difference to outcomes.

223. Another problem with IND targets appears to be that they result in difficult cases
being left to the bottom of the pile. Witnesses expressed concern to us that although the
targets might be being met, there is no target for the remaining 10% of charged
applications and 70% of non-charged applications. They alleged that this meant the easy
cases are handled within the time targets but the more difficult ones drag on for months,
without affecting performance figures.242 This is exacerbated by the difficulty of finding out
about the progress of an application (see paragraphs 499 to 505). The IND told us that the
longest processing time for a non-charged application in the last five years is 840 days (or
579 working days).243 To avoid applications disappearing into ‘black holes’, the IND
must introduce targets which cover the speed of processing all postal applications yet
which take into account the need for rigorous checks.

224. Delays in decision-making lead to 90% of the 26,000 “operational” complaints to IND
every year. The IND receives a further 40,000 letters a year from Members of Parliament
arising from constituents’ dissatisfaction with its service, many of which are also about
delays.244 The level of complaints about delays in decision-making indicates a serious
problem which belies the impression given by the fact that targets on speed of processing
have been met. We look at delays and the complaints system in chapter 9 below.

Access to information

225. Like ECOs, IND caseworkers do not have access to a full range of information to
inform their decision. Their caseworking database, the Case Information Database (CID) is
different from that used by UKvisas, which is the Central Reference System (CRS),
although IND staff do apparently have access to the CRS through a restricted Government
Intranet. Caseworkers cannot themselves make checks against criminal records held by the
police, but some of this information may be put onto the Home Office Warnings Index, a
database containing a ‘watchlist’ of people of interest to the border agencies.245

226. Again like ECOs, IND caseworkers have little sense of connection with the appeals
system and low confidence in it, and are not given the opportunity to learn from it. Home
Office Presenting Officers will rarely contact the caseworker who made the initial refusal,
so they do not have any chance to explain their decision further, influence the way the
appeal is defended or learn from the result of the appeal. Indeed, one counter officer told us
that he is never informed of the outcomes of appeals against his decisions. We look at the
appeals issue in more depth below (paragraphs 332 to 348).

242 Ev 85, para 9 HC 775–III and Q 285, 17 January 2006
243 Ev 255, HC 775–III
244 Ev 69, HC 775–II
245 Ev 397, HC 775–III
Management and structures

227. On our visit to Croydon in March, Paula Higson (Senior Director of Managed Migration) told us that the IND recognised the need to improve management competence, especially junior management, from its current low base, and that it is looking at the levels of managerial competence required. In May, Lin Homer, the Director General of the IND, told us that the business is “under-managed”, but that the problem was at a more senior level.246

228. The management structures for non-asylum casework teams in IND are set out in written evidence from the Home Office. “General group” in IND, which deals with non-work-based applications for leave to remain or settle in the UK, is organised into four groups in Croydon and two in Sheffield, each of which has an Assistant Director, a Chief Caseworker, a Team Leader and between eight and 20 caseworkers.247

229. It seems to us that the IND recognises there is a problem with management, but is not entirely clear where the problem lies or what to do about it. We recommend that an outside body assess the management structures in the IND to determine how many managers are needed, and at what level, to provide an adequate level of support and control for the number of caseworkers. It should also look at whether managers have the right competencies and priorities.

230. Many IND caseworkers deal with a wide range of applications rather than specialising in any particular type of case. We can see that this provides useful flexibility but it may also risk a lack of expertise.

231. There are some specialist teams of caseworkers who deal with specific types of postal application. For example in Croydon there is a ‘student batch’ team which handles applications submitted by college co-ordinators and appears to have developed an expertise which allows them to deal more effectively with applications; it also seems to have more ‘ownership’ of the cases it handles which means that applicants can contact the person in charge of their cases. Teams in Sheffield and Croydon are being reorganised so the all student cases are dealt with by dedicated teams, and there are teams in both places who specialise in interviewing techniques, who have particularly been used in marriage applications and applications from unmarried partners, cases of domestic violence and also recently for applicants for a UK ancestry visa. There is also a specialist team in Croydon who deal with applications to remain in Britain for medical reasons.248 Four new Managed Migration Intelligence Units have been created to help with different types of application (we visited the student Unit in Croydon): caseworkers can contact them if they are concerned about an application. There do not appear to be any dedicated teams for applications from people in other categories such as spouses or children. The use of specialist teams of IND caseworkers who can develop expertise in particular types of application should be extended further.

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246 Q 973, 6 June 2006
247 Ev 405, HC 775–III
248 Ev 357, HC 775–III
232. IND has introduced a range of measures for improving the way it deals with asylum applications, under the “New Asylum Model”. These measures are described in the February 2005 white paper and include assigning a case manager to each applicant. The case manager is responsible for ensuring the management of asylum applicants and their cases through the system from when their claim is first made right through to either integration or removal.249 This is intended to help with maintaining contact with the applicant throughout the process, which has advantages to both sides. However, the New Asylum Model has not yet been fully applied: at the moment it applies only to about 10% of new asylum claims though the IND aims to apply it to all new non-detained asylum cases by March 2007. It is too early to form a judgment on its effectiveness.250 Case managers should be assigned to immigration applications on a limited trial basis, to take charge of each application all the way through the system. Following the trial the case manager model should be assessed in both immigration and asylum cases.

Policy development

233. On our visit to Croydon we met several impressive caseworkers who could clearly identify patterns in the difficulties they face, and had thoughtful and constructive suggestions for how the system could be improved. One suggested that a points system would work equally well for family applications as for work-based or student applications. She was concerned about making decisions based on inadequate information because that meant that either a refusal or a grant would be on her judgment alone. A “dependent relative” application she was considering at the time of our visit contained no evidence of a link between grandparents and grandson, and no evidence that he had been supporting them. If she refused it, further evidence would almost certainly be raised on appeal. If she granted it, she could not be sure that the applicant had actually met the requirements of the Rules. This is a real dilemma even for an experienced caseworker, and even though it is open to IND caseworkers to ask the applicant for more information, we consider it an example of a case where a “minded to refuse” stage would be helpful (see paragraph 140).

234. Yet we had no sense that caseworkers’ ideas and experiences percolate through to policy teams. The IND must develop ways of integrating both overseas and in-country caseworkers’ experience into policy development, by improving the way their managers gather and pass on information from them, and by encouraging policy teams to seek caseworkers’ ideas or include caseworkers in those teams.

Internal corruption

235. Whilst the Committee was impressed with many of the caseworkers it met, there are some problems. One of these is corruption. Over the last few months there have been several reports of corruption in the IND, with officials allegedly granting immigration status in return for sex or money.251

249 Home Office, Controlling our borders: Making migration work for Britain - Five year strategy for asylum and immigration, Cm 6472, February 2005, Annex 2

250 Ev 405, HC 775–III

251 “Sex for visas” allegations in the Sun on 3 January 2006 led to an internal inquiry: see Home Office, Report on investigation into allegations about the Public Enquiry Office in Croydon, 3 March 2006. Allegations of corruption
236. The IND provided us with figures in February 2006 on the number of allegations of corruption or misconduct involving IND staff which were referred for investigation to the Immigration Service Operational Integrity Unit (169 in 2004-05, of which 120 were pursued) and to the IND Security and Anti-Corruption Unit (703, of which 409 were investigated). The majority of these were still under investigation at the time the figures were given, but 31 people had been referred for prosecution and 79 referred for disciplinary action.252

237. The scale of investigations into corruption in UKvisas appears to be much smaller, even though common sense suggests that the risk of corruption may be higher, and indeed during our visit to Pakistan we were told about instances of corruption: for instance, there had recently been a case where FedEx staff in Peshawar had turned out to be charging an unnecessary settlement fee to people who wanted to join their spouses in the UK, pocketing it and concealing it from UKvisas. The Pakistani police investigated and some funds were returned to the individuals concerned. The Foreign Office Minister, Lord Triesman, told us that UKvisas has an Operational Integrity Section which is charged with investigating any allegations of malpractice in posts abroad, and which also uses IT and other systems to try and identify potential weaknesses.253 According to figures subsequently supplied to us, it investigated 85 cases from 1998 to the end of 2005. Nearly all allegations were substantiated: out of the 85 cases, 63 staff were dismissed, ten received written warnings, three were withdrawn from post and two cases were referred to the police and Crown Prosecution Service. In only seven investigations was it found that there was no case to answer.254

238. Public confidence in immigration control demands the highest levels of integrity from those operating it. Managers in both the IND and UKvisas must take an active role in ensuring that their staff are not acting corruptly or improperly, and they must be supported in this by investigating teams who are equipped to spot potential areas of weakness and patterns of decision-making which could indicate a problem.

6 Specific categories

239. In the course of our inquiry we looked at immigration control in relation to three specific categories of applicant where there seemed to be particular concerns: students, children and spouses.

Students

240. It is an important objective of Government policy to encourage overseas students to come to study in the UK. UK institutions are keen to attract overseas students because of the extra fee income they bring, and international students contribute approximately £5


252 Ev 255, HC 775–III
253 Q1191, 13 May 2006
254 Ev 386, HC 775–III
billion a year to the UK economy. The UK is currently the second most popular destination in the world for international students (12% of market share), behind only the United States (28%). Foreign students made up 11.2% of the tertiary education enrolment in the UK in 2003. China (30,690) and Greece (22,485) provided the largest numbers of foreign students in the UK in 2003. The second phase of the Prime Minister’s Initiative for International Education aims to attract an additional 100,000 overseas students to study in the UK and encourage partnerships between universities and colleges in the UK and overseas. Therefore the immigration system must provide a good service to those applying to study in the UK. We look at general issues relating to customer service in Chapter 9 below, but particular concerns relating to students were raised by a number of witnesses, including the Chief Executive of UKCOSA, Dominic Scott:

It is that perception of the UK as a welcoming country or not as a welcoming country which underpins this whole industry, and so we are very concerned that [the removal of appeals and increased application fees] will have an impact on individuals but it also will have a major impact on the sector of our earnings.

241. In a briefing note on student migration from China to the UK, Wei Shen told us that that Chinese students (who, according to the Chinese Embassy numbered 80,000 in 2004-05) contributed nearly £800 million to the UK economy through student fees and housing and other expenses. In 2004, the UK overtook the US to become the single most popular destination for Chinese students. But he commented that increases in visa and extension fees might deter future students or lead to overstaying by those already here, and that lack of co-ordination between different parts of the immigration system also posed practical difficulties for students already here.

242. We recognise that the vast majority of overseas students complete their courses and abide by the conditions of their leave. But at the same time there are concerns that the student visa route is open to abuse by people who are not genuine students. The immigration system clearly has to tackle this if public confidence in the student visa route is to be maintained.

243. We received a great deal of evidence about abuse of the student route. South Yorkshire Police have identified what they describe as a widespread scam that reveals a loophole in legislation and regulation: “Our investigations have revealed that under the guise of providing educational courses some colleges are charging foreign nationals several thousand pounds to facilitate their entry into the UK. The individuals enter the UK as vocational students but the actual educational component of their training is nil. They are, in effect, put to work without work permits on the pretence that this is ‘on the job’ training”. The British High Commission in Pakistan told us that they think about half of

255 Department for Education and Skills press notice, Prime Minister launches strategy to make UK leader in international education, 18 April 2006
256 OECD, Education at a Glance 2005, Chart C3.2 and Tables C3.1 and C3.7a
257 OECD, Education at a Glance 2005, Chart C3.2 and Table C3.1
258 The Council for International Education
259 Q 640, 9 May 2006
260 Ev 309–314, HC 775–III
261 Ev 315, HC 775–III
the students to whom they grant visas disappear after reaching the UK, although not all of those will have gone to the UK with the intention of dropping out. However, as they did not provide us with evidence to support their assertion we cannot be sure how they reached this conclusion. UCAS, the Universities and Colleges Admissions Service, has told us that there was a five-fold increase in the number of applications cancelled due to missing or forged documents between 2000 and 2005, and that three quarters of applications cancelled for this reason were from people domiciled in Nigeria. In Lagos, entry clearance staff found over 1,000 forged documents in the 6,000 student visa applications verified in 2005. We were told during our visit to Nigeria that Leeds University had 2,500 applications from that country alone for its foundation course, and that about 1,250 of those had been accepted by the university, but that the number who actually turned up was five.

244. The IND told us that although they have extensive data on the sort of abuse detected overseas, “what we have not had is information about how people behave once they are in the country if they have been successful in obtaining a student visa”. Dominic Scott, the Chief Executive of UKCOSA, is sceptical about whether there is any significant abuse after entry, but our evidence includes a number of allegations relating for example to non-attendance. Of course, without embarkation controls it is not possible to tell how many students stay in the UK after their leave has expired.

**Student immigration applications**

245. Any non-EEA national who wants to study in the UK for longer than six months must apply for entry clearance before travelling to the UK. Visa nationals require a visa for any period of study in the UK. The number of applications for student visas has been steadily increasing in recent years, but many are unsuccessful. In 2004-05 276,479 people applied for visas to study in the UK, and 66% were successful. Not all of the 34% of applicants who are refused will appeal, but Universities UK report that of those who do, at least 25% are successful.

246. Whether applying from overseas or in-country, the applicant must meet the relevant requirements of the Immigration Rules. Various changes to the Immigration Rules on students have been made recently. Since January 2005 student visas or leave to remain have been issued only when the college is on the Register of accredited education and training providers run by the Department for Education and Skills (though the register provides no assurance of the quality of the education provided). In addition, switching to a non-degree course or to do another short course has been stopped.
247. ECOs told us that it is difficult at present to carry out satisfactory verification of applications for student visas. On our visit to Pakistan we were given an insight into the pressure under which ECOs work, with high numbers of applications and limited information available about many of the institutions from which applicants claim to have received offers. The UK and Australia remain the key overseas destinations for Pakistani students, mainly postgraduates. After the September 2001 terrorist attacks, the US tightened up its student visas rules, and as a consequence applications to the UK have risen by almost 40%. During our visit we saw large numbers of advertisements in the Pakistani press for educational establishments in the UK. We were told by British High Commission staff that many of these operate out of one or two rooms, and that agents approach students at airports offering to get them a degree at half the price their agent charged them. The British High Commission refuses about 70% of student applications. Some British universities have agents in Pakistan who will assist in screening and verifying applications, but the majority of refused applications are to the lower-quality, more disreputable colleges. An ECO will check whether a college is on the DfES register of accredited education and training providers.

248. **Entry clearance posts must allow enough time for ECOs to conduct proper checks on student applications. However, it should also be the responsibility of the Department for Education and Skills to ensure that there is a secure system of issuing offers which is not open to fraud.**

249. Students will not always be granted a visa which covers the whole length of the course; or they may wish to continue studying when it finishes. They would then have to apply to the Home Office for further leave to remain in the UK. Many universities are now part of the “student batch scheme” under which they collect and co-ordinate applications and then send them to a dedicated team of IND caseworkers for decision. When we visited this team in Croydon the system seemed to be working well. Students at other universities and colleges still have to apply direct to the IND themselves.

250. We were told in Islamabad that a large number of applicants for student visas did not speak English well enough to follow the course for which they were applying. Yet they cannot be refused directly on this ground because the Immigration Rules do not specify language skills as a requirement for student visas. There are several recognised standards for English language skills, including TOEFL (Test of English as a Foreign Language) and IELTS (International English Language Testing System). **There should be an English-language requirement for all student entry clearance applications except those relating to English-language courses. It should refer to a recognised standard such as TOEFL or IELTS, and be graded according to the level of course applied for.**

**New IND units**

251. In April 2004, following a top-to-bottom review of managed migration routes, the Government set up a Student Task Force with members from various parts of IND and DfES, to carry out visits to educational establishments. It checks whether an institution qualifies to be regarded as *bona fide* by looking to see if it will:
- Maintain satisfactory records of enrolment and attendance of students;
- Provide courses which involve a minimum of 15 hours organised daytime study per week;
- Ensure a suitably qualified tutor is present during the hours of study to offer teaching and instruction to the students;
- Offer courses leading to qualifications recognised by the appropriate accreditation bodies;
- Employ suitably qualified staff to provide teaching, guidance and support to the students;
- Provide adequate accommodation, facilities, staffing levels and equipment to support the numbers of students enrolled at the institution;
- Comply with the latest IND guidance on notification of absent students.\(^{270}\)

252. Initially the Student Task Force undertook about 1,200 visits to colleges about which there were suspicions, to establish whether or not they should remain on the register. About 25% of these colleges (amounting to about 2% of all colleges on the register) were judged to be non-genuine,\(^{271}\) and all applications from students to study those institutions were refused.\(^{272}\) In 2005 the student task force carried out 43 compliance visits; of the colleges visited, 16 were removed from the register.\(^{273}\)

253. A month later, in May 2004, a new “Managed Migration Intelligence Unit” was established in the IND, focusing on abuse of the student route. It works with the Student Task Force. When we visited it in March 2006 we were told that it investigates only a tiny fraction of allegations made to it. Since September 2005 it had conducted only six operations, leading to the removal of four people, prosecution of two others, and the removal of some colleges from the DfES register.

254. The Managed Migration Intelligence Unit for student applications appears to be an ineffective response to a serious problem and working at an unsatisfactorily low level. We recommend that its resourcing, role and priorities be reviewed and amended so that it can tackle all the allegations made to it, in conjunction with other parts of IND and UKvisas intelligence services.

**Responsibility of DfES**

255. It is clear that the DfES register of training providers is inadequate at preventing abuse of student immigration to the UK. It is a voluntary register containing about 14,000 entries, of which 13,000 are automatically included and only about 1,000 needed to apply.\(^{274}\)

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\(^{270}\) Home Office Immigration Directorate’s Instructions, Chapter 3, para 3.5.3
\(^{271}\) Qq 495-8, 7 March 2006
\(^{272}\) HC Deb 10 November 2005, col 658W
\(^{273}\) Ev 270, HC 775–III
\(^{274}\) www.dfes.gov.uk/providersregister
Although entry on the register is now mandatory for student applications, the IND appears to consider that a number of institutions on the register are not genuine.\textsuperscript{275} It seems that information about bogus colleges does not find its way to the DfES - we were told in Islamabad that this sort of information is relayed to UKvisas rather than the DfES. In other cases colleges are on the register even if all they do is provide access to distance-learning courses offered by US institutions. The Chief Executive of UKCOSA (the Council for International Education), Dominic Scott, described the register as “unwieldy, unmanageable and not fit for purpose”.\textsuperscript{276}

256. The British Council is concerned that the register is not sufficient on its own and that compulsory accreditation of providers through a single national accreditation scheme such as its “English in Britain Accreditation Scheme” for language schools is desirable.\textsuperscript{277} The IND is developing proposals for a new register of educational institutions that it would own and maintain. An improved register is welcome, but in our view this should be the responsibility of the education sector rather than the immigration system.

257. The Department for Education and Skills should recognise that it has the responsibility for ensuring that colleges attracting overseas students are genuine and offer an adequate standard of education. It should own and maintain an improved register of colleges on which both students and the immigration authorities can rely to provide a reliable and up-to-date guarantee of quality.

258. Under the new proposals in the Points Based System, students applying for a visa to study in the UK will be required to obtain a certificate of sponsorship from an approved educational establishment at which they have accepted a place. Leave would then be tied to the sponsoring institution, so a fresh in-country application would be needed to change institution. The institution would be required to notify IND if students do not attend a course.\textsuperscript{278}

259. We welcome these measures, but there are some practical difficulties. UKCOSA, the council for international education, has suggested that many of the students who do not turn up at the college specified on their visa do so for perfectly valid reasons, for instance receiving multiple offers (especially for a postgraduate course which has no central applications system):

Some students may go to the institution which issued them with the offer which they presented when making their entry clearance applications; others will decide to go to other institutions in the UK which they subsequently decide they would prefer; some decide to go to ‘competitor’ countries instead; and some decide, for a host of reasons, to stay at home.\textsuperscript{279}

260. Under a Joint Notifications Project, providers are already being encouraged voluntarily to report non-enrolment or non-attendance of overseas students to IND. It has

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\textsuperscript{275} Ev 270, HC 775–III
\textsuperscript{276} Q 658, 9 May 2006
\textsuperscript{277} Ev 230, HC 775–III
\textsuperscript{278} Home Office, A Points-Based System: Making Migration Work for Britain (Cm 6741), published March 2006, para 12
\textsuperscript{279} Ev 317, HC 775–III and Qq 648-651, 9 May 2006
found that of the 400 students reported per month the majority have actually enrolled in alternative institutions. The remainder are simply “flagged up in the event that they are encountered for enforcement action”. 280 Only 0.4% of students had entered the country but not enrolled and no UK address was known. 281

261. We welcome the proposals under the Points Based System to tie student visas to particular institutions and to require institutions to notify the IND if students do not attend a course. Having accurate information about the extent of non-attendance would help both to demystify the debate around abuse of student visas and also to target efforts to tackle the problem. However, there must be a straightforward way for students to notify the IND if they change course, and the IND must actively follow up any information it receives on individual students with enforcement activity wherever appropriate.

262. On our visits abroad we heard of various initiatives which helped foreign students gain the benefits of a British education and brought fee income to British colleges and universities, without the student actually coming to the UK. These included: partnerships between British institutions and those overseas; greater use of distance learning; and even British universities and colleges setting up branches overseas. Boris Johnson MP, shadow Higher Education Minister, recently reported for the BBC that Nottingham University has set up a campus in Ningbo in China, and that Liverpool University and Harrow School are following suit. 282 “Building strategic partnerships and alliances” is one of the four strands of the Prime Minister’s Initiative for International Education 2006-11.

263. The Government should put particular emphasis on encouraging the education sector to develop partnerships between British institutions and those overseas, including through greater use of distance learning, and on setting up branches of British institutions overseas. These initiatives benefit both the British education sector and foreign students.

Children

264. Many children come to the UK every year in various different categories: as visitors, students, dependants of temporary migrants, or for adoption or for settlement with parents or other relatives. However, there are no figures which show the total number of children who arrive in the UK. The Government should collect comprehensive statistics on the number of children who come to the UK in each category.

265. Immigration control may be the one point at which vulnerable children being brought into the country come into contact with any authority. Therefore the immigration authorities clearly have an important role to play in identifying children who might need protection. But the police and social services must be responsible for following up this information. We have looked at two particular areas where this may arise: trafficking and

280 Ev 271, HC 775–III and Q 493, 7 March 2006
281 Q 643, 9 May 2006
private fostering. We also received a great deal of evidence about the detention and removal of children.

**Trafficking**

266. The process of identifying children who are actual or potential victims of trafficking is arguably the most urgent issue which agencies face in tackling trafficking. Until February 2006, children visiting the UK could apply for entry clearance at the same time as other close family members, be granted an entry clearance, and then travel to the UK either alone or in the company of an adult other than one of those who applied for a visa along with them. This allowed children to enter the UK in the company of an adult who was unrelated or indeed anyone with whom they had little connection.

267. In February 2006, the Immigration Rules were changed to provide some extra checks where children are applying to visit the UK. There are two parts to the new Rules. Firstly applications for children travelling alone and applying for entry as visitors now have to show that there are arrangements in place for their arrival in the UK and also need to identify the parent or guardian normally responsible for them in the home country. Secondly, applications for children who are seeking entry as visitors accompanied by an adult, whether a family member or not, have to give details of the accompanying adult so that the nature of the journey and the relationship can be established. Children from countries whose nationals require a visa to enter the UK will have to produce, in order to be admitted, a visa or entry clearance that names the accompanying adult in an identifiable way, and will only be admitted to the UK on the same occasion as this adult.

268. Children coming to the UK for settlement or as dependants of temporary migrants already have to prove they are related as claimed and that they will be adequately accommodated.

269. We welcome the new Immigration Rules relating to children visiting the UK, but are concerned they do not impose any duties on other authorities to follow up the information gathered. Except in the case of children travelling to the UK with their parents or legal guardians, we recommend that children should not be granted entry clearance for any purpose until the information on the arrangements in place for them in the UK has been checked by social services and/or the police.

270. Three years ago, the Metropolitan Police and Immigration Service, together with other government welfare agencies and the NSPCC, piloted an operation known as “Operation Paladin Child” to monitor the arrival of unaccompanied children at Heathrow Airport. Social services were asked to undertake assessments of any child who was a non-EU passport holder, under 18 years of age, who was travelling without a parent, legal guardian or older sibling, and not part of a recognised school, church or sporting group visit.

271. According to the report of that exercise, 1,738 children arrived alone from non-EU countries between August and November 2003, the majority of whom were travelling

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283 Statement of Changes in Immigration Rules, HC 819, January 2006

284 See for example Immigration Rules, HC 395 of 1993-94 as amended, para. 297
legitimately for education or holidays. A small number of children gave ‘grave cause for concern’ and police were subsequently unable to locate 12 of the children.\textsuperscript{285}

272. The main difficulty with this exercise is that, although it provides an insight into the wide range of circumstances under which separated or unaccompanied children enter the UK, it tells us very little about trafficking. Neither child protection concerns nor disappearance are verification that trafficking has occurred. The exercise did not include those children who were accompanied on their arrival into the UK, for example by an ‘uncle’ or other adult. Nor were unaccompanied children travelling on EU passports included in the exercise (Victoria Climbié, whose tragic case we refer to (see paragraph 281) came in through France on an EU passport).

273. Debbie Ariyo of AFRUCA (Africans Unite Against Child Abuse) described some of the ways in which children are being brought into the country illegally, including using other children’s European passports and having their details appended to other people’s passports.\textsuperscript{286}

274. The June 2004 report on Operation Paladin Child set out 26 recommendations.\textsuperscript{287} The IND’s children’s taskforce is looking at a number of these recommendations,\textsuperscript{288} but our interpretation of evidence submitted by the Home Office suggests that only seven of them have been fully implemented and a further nine partly implemented.\textsuperscript{289} As a result of the report, several hundred Immigration Officers have been trained in interviewing children, which includes the skills needed in order to recognise signs of children at risk.\textsuperscript{290} 22 ports now have a specially-trained team of immigration officers known as ‘Minors Teams’ who deal with all cases of unaccompanied children.\textsuperscript{291} A joint working team of Immigration Service and Metropolitan Police staff has been established at Heathrow airport, but social services have not been as closely involved as was recommended. We do not have any information on the practical effects of these measures, for instance how many children are interviewed by specially trained officers and what proportion of child interviews does this entail; how many children are seen by Minors Teams and what proportion is this of all unaccompanied children; and what happens to these children afterwards.

275. The Government must ensure that there are clear methods for assessing the effectiveness of new measures on unaccompanied children, and that these assessments focus on the safety of the children concerned.

276. Oyewo Ekelemu, a social worker for Southwark Social Services who was involved in the assessments following referrals from Operation Paladin Child, felt it was a useful exercise, particularly in highlighting the lack of awareness that social workers and


\textsuperscript{286} Q 729, 9 May 2006

\textsuperscript{287} See Metropolitan Police Authority, \textit{Paladin Child: A Partnership Study of Child Migration to the UK via London Heathrow (June 2004)}, pp 31-34

\textsuperscript{288} HC Deb 19 June 2006 col 1679W

\textsuperscript{289} Ev 379–381, HC 775–III

\textsuperscript{290} Ev 358, HC 775–III

\textsuperscript{291} Ev 396, HC 775–III
immigration officers have of each others’ work. She suggested that it should be extended to all major ports in the UK and to work within the community too, and that it should also cover children arriving on EU passports.  

277. The Government is establishing teams of social workers at five ports and asylum screening units this summer, but these are focussing only on unaccompanied asylum-seeking children. They are intended to identify the needs of and develop plans to safeguard their welfare. This suggests that the Government is prioritising asylum cases over non-asylum, even though by no means all children travelling to the UK who are at risk will claim asylum. 

278. The Government must ensure that all the authorities concerned implement the recommendations of the report on Operation Paladin Child. In particular, social services must supply teams at ports to help identify and follow up all cases of concern, not just unaccompanied asylum-seeking children. 

279. Our colleagues in the Joint Committee on Human Rights are currently conducting an inquiry into Human Trafficking which will no doubt lead to further recommendations relating to immigration control. 

**Private fostering**

280. There is a growing concern that children and young people may be being brought into the UK under private fostering arrangements which are unsatisfactory or even exploitative, and that the children do not receive the services and protection to which they are entitled. We were told, for instance, that there is a high level of private fostering in Southwark and that the authorities there are concerned that the foster parents are not providing an adequate level of guardianship and care, and that there was even a fear that some of these young people may turn to crime because of a lack of supervision. 

281. Many private fostering arrangements are of course completely legitimate, but the risks which can be involved in private fostering received widespread media coverage following the death of Victoria Climbié in 2000 (mentioned above in paragraph 272). Victoria was privately fostered by her great-aunt; Lord Laming’s report into her death recommended that the Government review the law regarding registration of private foster carers. This has resulted in calls for a registration and approval system for private foster carers. 

282. Local authorities do not formally approve or register private foster carers. However, under the Children Act 1989 there is a scheme for “enhanced notification” of private fostering arrangements, and it is the duty of local authorities to satisfy themselves that the welfare of children who are, or will be, privately fostered within their area is being, or will

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292 Qq 731-735, 9 May 2006  
293 Ev 397, HC 775–II, and see also Q 491, 7 March 2006  
294 Its inquiry was announced in a press notice of 19 October 2005  
295 See Qq 488-490, 7 March 2006, and Qq 720-721, 9 May 2006  
296 Information received during our visit to Southwark criminal justice agencies as part of our inquiry into young black people and the criminal justice system, June 2006  
297 The Victoria Climbié Inquiry: Report Of An Inquiry By Lord Laming, CM 5730, January 2003
be, satisfactorily safeguarded and promoted. It is not clear that this is happening, though there are some good examples such as Southwark Council which we were told is working with headteachers, social services and NCH to create an infrastructure for registration of private foster carers. Debbie Ariyo of AFRUCA (Africans Unite Against Child Abuse) told us that none of the 80 people they had asked at a recent series of consultative meetings on child trafficking had heard of the law on private fostering or the requirement to notify. In their written evidence, the British Association for Adoption and Fostering (BAAF) was very critical of the current notification scheme for private fostering. BAAF had actively campaigned for the inclusion of changes in relation to private fostering in the Children Act 2004 but was unsuccessful.

AFRUCA’s view is that there is a clear need for those communities in the UK in which private fostering is widespread to look at what they can do themselves to protect these children, including challenging cultural assumptions if necessary. It has begun some work on this but suggests more needs to be done.

The Government must consider introducing a registration and approval system for private foster carers. It should then explore whether this would allow tighter immigration controls to be placed on children entering the country without their own parents. The Government should also provide support for communities where private fostering is common to develop their own ways of protecting privately fostered children.

**Detention and removal**

Many of our witnesses, including the Children’s Commissioners for Scotland and for England, the Children’s Society and Save the Children, were very concerned about children being held in immigration detention. There were also particular concerns about the removal of children to unstable countries (we refer to paragraphs 418 to 420) to the concerns raised by Chris Mullin MP over the removal of families with young children who have been in this country for all or most of their lives to countries such as Angola or the Democratic Republic of Congo).

A recurrent theme was the UK’s opt-out for immigration matters from the United Nations Convention on the Rights of the Child:

“The United Kingdom reserves the right to apply such legislation, in so far as it relates to the entry into, stay in and departure from the United Kingdom of those who do no have the right under the law of the United Kingdom to enter and remain in the United Kingdom, and to the acquisition and possession of citizenship, as it may deem necessary from time to time.”

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298 amended by section 44 of the Children Act 2004 and the Children (Private Arrangements for Fostering) Regulations 2005

299 See Qq 721-722 and Q 730, 9 May 2006

300 Qq 726-7, 9 May 2006

301 Ev 227, para 4, HC 775–III

302 Q 730, 9 May 2006

303 Ev 116–118, Ev 24–25, Ev 27, Ev 112–114, HC 775–III
287. The Government’s justification for this reservation was set out in an oral evidence session with the Joint Committee on Human Rights, when the then Minister for Children said:

“you could end up with a position where an unaccompanied young asylum seeker who gets to this country is able to say under the Convention, “You should not be able to apply any asylum legislation to me because you are looking at me as a child under the Convention”, and, further than that, because of the rights of the Convention for a child to be re-united with its parents their parents would also have the right to come to this country. The difficulty is to see how that would be compatible with running any type of asylum or immigration system at all.”

288. The Joint Committee did not find this argument persuasive, but the Government maintained its position in its reply to the Joint Committee’s report. The Government repeated recently that it has no intention of withdrawing the reservation.

289. Dr John Simmonds, of the British Association for Adoption and Fostering, argued that “the immigration service needs to be brought within the duties of Sections 10 and 11 (particularly 11) of the Children Act 2004, which places a duty on a wide range of public authorities to safeguard and promote the welfare of children”. He considers that this would for instance place a responsibility on them to notify the local authority of a child in risky circumstances who is moving into their area, which would be better than depending on the particular training and priorities of individual IOs.

290. We do not propose that the Government withdraw its reservation from the UN Convention on the Rights of the Child, but it should include the immigration authorities in the duty under the Children Act 2004 to safeguard and promote the welfare of children.

Spouses

291. Large numbers of people who are British or settled in the UK form relationships with and marry people who are not. Family settlement has always been an accepted aspect of immigration even when other kinds of immigration were not welcome (see paragraphs 35 to 36 above) and we repeat that the immigration authorities must provide a good service for such applicants.

292. However, the evidence provided to us suggests four particular problem areas in relation to spouses (some of which also apply to other partnerships): difficulty in gaining settlement for genuine spouses; forced marriages; abusive marriages; and sham marriages.

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304 Tenth Report of the Joint Committee on Human Rights, Session 2002-03, The UN Convention on the Rights of the Child, HC 81-i, para 84
306 HC Deb 22 June 2006 col. 2128W
307 Q 723 and Qq 738-40, 9 May 2006
**Genuine marriage applications**

293. There are many situations in which people who wish to stay in the UK on the basis of their marriage to a UK resident must return to their country of origin to apply for the necessary immigration status, rather than being able to make their application in the UK.

294. The Immigration Rules currently stipulate that a person who wishes to ‘switch’ to a spouse’s visa cannot do so unless they have been granted at least six months’ leave in another category.\(^{308}\) This requirement is new - previously switching was possible regardless of the length of time for which the applicant had been allowed into the country.

295. The change was intended to deal with applications which were perceived to be fraudulent, and its main effect is to prevent those who are in the UK as visitors from being able to switch. The Government set out its reasons for changing the rules on spouses and partners in the White Paper *Secure Borders, Safe Haven* in February 2002.\(^{309}\) Changes were necessary, the Government argued, because more marriages than had previously been recognised were proving not to be genuine, either because the partner settled here had been tricked or because there was an organised attempt to defraud. That three quarters of those granted leave to remain as spouses in 1999 had entered the UK in some other capacity was (in the Government’s view) evidence of abuse of the system.\(^{310}\) The White Paper suggested (at paragraph 7.13) that consideration would be given to compassionate circumstances where the person applying to remain as a spouse had been in the UK for some time. There is no guarantee that leave will be granted to those who decide to leave the country and apply for entry clearance to return under the Immigration Rules.\(^{311}\)

296. People without limited leave to remain in the country, for instance failed asylum seekers, cannot switch to a spouse’s visa under the Rules. However, a human rights claim may be made to stay in the UK; and family ties must be considered in removal cases.

297. The JCWI refers to difficulties caused by “IND intransigence over rules that foreign nationals who wish to remain in the UK because of partners but who first entered the UK on grounds other than marriage must first return home to obtain entry clearance for marriage even if they were previously in the UK legally and co-operated fully with immigration control”. This is a particular problem where the country is not considered safe or where lengthy delays occur in the entry clearance process.\(^{312}\)

298. In the recent case of *Baiiai*, Mr Justice Silber criticised these rules: “I am concerned by the requirement for the applicants to have to leave the UK for a form of scrutiny which could just as easily take place in the UK without the disruption and expense caused by the

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308 As long as the applicant is not an illegal entrant or overstayer and is not subject to deportation. Home Office *Immigration Rules*, HC 395 of 1993-94 as amended, para. 284


310 Under paragraph 320 of the Immigration Rules, people can be refused entry clearance or leave to enter the UK for a ‘failure to observe the time limit or conditions’ attached to a previous stay, or even simply if ‘it seems right’ to the immigration officer that, considering a person’s character, conduct or association, their exclusion from the UK is conducive to the public good. People can also be turned away if they previously entered the UK by deception.

311 Ev 287, HC 775–III
need for the parties to have to go abroad, and to apply at which time the genuineness of the marriage would have to be scrutinised.”313

299. The pressure group “Brides Without Borders” provided us with ample evidence of the difficulties and indeed hardships caused by these rules. For example the husband of one had to return to the Democratic Republic of Congo, where, we were told, his life was under threat, in order to submit an entry clearance request. We also heard that this journey followed a series of frustrating encounters with IND which could have led to the journey being in vain.314 We heard a similar story about the dangers of an Iraqi Kurd having to return to Jordan.315 Members of Brides without Borders also argued that it made no sense for an application to be processed by a different British Embassy abroad because the visa section in the applicant’s country was closed, as was the case, for example in Iraq.316 Early Day Motion 1285 of 2005-06, also criticising this policy, has been signed by 57 Members so far.

300. In view of the serious difficulties caused to some applicants by the requirement to return home to apply for permission as a spouse, we recommend that where the Foreign Office advises against all travel to a particular country, applications for leave as a spouse or unmarried partner from nationals of that country who are already living in the UK be decided in the UK with an interview.

**Forced marriage cases**

301. Although forced marriage (where a marriage is conducted either in the UK or abroad without the valid consent of one or both parties, and duress is a factor) is an issue in only a small number of immigration cases, it is a serious one nonetheless. Evidence put before us by one of the members of the Committee, Ann Cryer MP, sets out some of the issues it can raise: British citizens married abroad who want to prevent their partner from entering the UK; British citizens who wish their foreign-born spouse to be removed from the UK as a result of an incompatible or abusive marriage; British citizens wishing to prevent second wives from entering the country; non-British citizens who have been abandoned by their British spouse in the UK and non-British women seeking indefinite leave to remain under the Immigration Rules on victims of domestic violence.317

302. UKvisas identifies three situations where forced marriage may involve visa questions: reluctant sponsors (a married person forced against their will to support a settlement application for their spouse to gain entry to the UK), abandoned spouses (normally a woman who has been issued a visa to settle in the UK for two years and has returned to the country of origin with the spouse for a holiday, but once there the sponsor destroys the spouse’s passport and returns to the UK alone) and vulnerable adults (sponsors with learning difficulties or mental health problems who may have been manipulated into supporting applications for entry clearance made by their spouses). During our visit to

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313 R (Baiai and others) v Home Secretary, [2006] EWHC 823 (Admin), 10 April 2006, para. 103
314 Ev 352–354, HC 775–III
315 Ev 351, HC 775–III
316 Ev 17, HC 775–II
317 Ev 232–233, HC 775–III
Immigration Control

Islamabad, we were told that an estimated 75% of forced marriage cases they dealt with involved immigration as one of the objectives.

303. The majority of forced marriage cases known to the British authorities affect British nationals with a cultural background in South Asia, though forced marriage is recognised as not being a specifically Muslim issue. Islamabad handles the largest number of forced marriage cases of any UK visa post. As at 8 February 2006 Islamabad had 299 forced marriage cases outstanding, in the following categories:

- Reluctant sponsor: 216
- Abandoned spouse: 22
- Vulnerable adult: 35
- Miscellaneous: 26

**Total**: 299

304. A number of measures have been taken recently to deal with forced marriage cases. In January 2005 the Home Office and FCO established a new joint Forced Marriage Unit which provides confidential support and information, publishes guidelines for professionals in the field and undertakes preventative outreach work amongst professionals and particular communities. The FCO website sets out what help is available for people at risk of forced marriage. Anyone who fears that they, or someone they know, may be forced into a marriage overseas are advised to contact the Forced Marriage Unit, on a confidential basis. On 16 March 2006 the Forced Marriage Unit launched a national publicity campaign involving a series of radio and press adverts, TV fillers and poster campaigns, aimed at increasing awareness of the issues surrounding forced marriage.

305. Five ECOs in Islamabad deal with the immigration side of forced marriage. In addition, we were told, a Consular Immigration Link Team has been established to work in a secure environment to protect vulnerable clients in partnership with a local NGO. The protection system in place includes a refuge in Islamabad (in cooperation with the local NGO) with guards outside. Victims are escorted to the airport and on arrival at Gatwick or Heathrow they are fast-tracked through passport controls as well as being met by an NGO or by the police. Arrangements can be made for them to stay in women’s refuges.

306. The IND has specialist expertise in interviewing techniques for cases involving marriage. Forced marriages can be reported to the Managed Migration Intelligence Unit who can mark up files with this information so that it is taken into account in any future application for settlement, but it is not clear whether any positive action is taken to remove people from the UK as a result, partly because those who provide the information are not kept informed of the outcome see (paragraph 315 below).

307. Applications for spouses’ visas or leave to remain can be refused on the basis of evidence from a reluctant sponsor, but we were told repeatedly that this is possible only if...
he or she is willing to make the objections public, which may be very difficult. If an
application is refused on the basis of anonymous information it is very hard to uphold on
appeal.

308. Publicity is also a problem in appeal hearings. Appeals may be heard in private only in
certain very limited circumstances: (a) in the interests of public order or national security;
or (b) to protect the private life of a party or the interests of a minor. The AIT should
make more use of its power to hold appeals in private, and if need be its rules should be
amended to make it clear that forced marriage cases might be appropriate for this
procedure.

309. The Danish government has raised the age limit for sponsors and applicants in spouse
applications to 24. A similar response has been suggested to us on the grounds that “Added
maturity and education assists in empowering individuals to make decisions for themselves
rather than simply satisfying the demands of family or community members”. The
Government has already raised the age at which overseas spouses can join their British
spouse from 16 to 18 years on those grounds. Southall Black Sisters argue however that
imposing more restrictive immigration controls did not achieve its purpose: “those who
are determined to take children abroad for the purposes of marriage, are doing so
undeterred”. In their view, “it is the relaxation of the immigration controls which will
help to address problems of forced marriage, since marriage will not be seen as a route to
gaining entry to the UK”.

310. It was suggested to us during our visit to India that it might be easier for fiancé(e)s or
spouses in forced marriage cases to resist pressure if they were still in the UK at the time
the entry clearance application is made. It might also reduce the number of cases in which
consular staff have to rescue British citizens who are being held against their will. We
recognise however that such a requirement might cause problems for applicants where
there is no danger of forced marriage, and that it might not be a proportionate response to
the problem.

311. Forced marriage cases are now handled more sensitively than before, but better
arrangements should be made for refusing spouses’ visas or settlement applications on
the basis of confidential information from a reluctant sponsor. The Government
should consider further steps which might protect young British people from forced
marriages, including interviewing all visa applicants for marriages which have been
arranged at short notice. The Government might also consider encouraging visa
applications for arranged marriages to be submitted before the British spouse leaves
the UK.

319 In Islamabad and also for example by Mandie Campbell, then Operational Head of UKvisas (Q 468, 7 March 2006)
320 Asylum and Immigration Tribunal (Procedure) Rules 2005, SI 230/2005, r. 54 (2) (a)
321 Ev 236, HC 775–III
322 Home Office ‘forced marriage’ website: http://communities.homeoffice.gov.uk/raceandfaith/faith/forced-
mariages?version=1
323 Ev 334, HC 775–III
324 Ev 334, HC 775–III and Q713, 9 May 2006
Abusive marriages

312. For some time now the Government has recognised that foreign spouses who have been the victim of domestic violence are in a very vulnerable position. A ‘domestic violence concession’ has now been incorporated into the Immigration Rules, providing that people in the UK whose marriages ended during the two-year “probationary period” can be granted Indefinite Leave to Remain if they can prove the marriage ended because of domestic violence. However, while their applications under this rule are being considered, they remain subject to all the conditions on their leave, including the requirement that they have “no recourse to public funds”. This means that they cannot therefore access emergency local authority accommodation or refuges for victims of domestic violence.

313. Southall Black Sisters welcomes the changes relating to domestic violence but is still concerned about the restrictive nature of the rule, the quality of decision-making within the Home Office on such applications and in particular the effects of the “no recourse to public funds” rule which are raised in about half of the 40 cases and 180 immigration enquiries on domestic violence it handles each year. They argue that “this continuing restriction defeats the very purpose for which the domestic violence rule was introduced”. They gave us evidence about problems caused by lack of recourse to public funds and provided a series of case studies to highlight the range of problems encountered by women who cannot access safe accommodation or welfare benefits in the UK to support themselves. According to their survey, about 500 women in the UK subject to immigration control are affected by violence and abuse every year. They suggest that sponsors should pay the costs of providing benefits and housing to women who escape violence and abuse.

314. The Government should explore the feasibility of recovering the costs of providing support and safe accommodation for those victims of domestic violence who are subject to a public funds restriction.

315. As Ann Cryer MP’s evidence suggested to us, some British citizens want their foreign-born spouse to leave the country if the marriage has been abusive. If they contact the IND to tell them that they are no longer living together and therefore the foreign spouse has no continuing basis for being in the UK, or simply to ask if the violent spouse has left the country, they are told that they cannot be given any information because they are a “third party”. The IND should re-examine its policy of not providing information to “third parties”, with a view to providing information to sponsors (or their representatives) about the immigration status of people they have sponsored. This could provide welcome reassurance to those in fear of domestic violence. Once

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325 until 2002 this period was only one year

326 Immigration Rules, HC 395 of 1993-94 as amended, paras 289 A-C. Chris Hudson, an Operations Director for Managed Migration, did not know this: Q 484, 7 March 2006

327 Ev 336, HC 775–III

328 Qq 714-717, 9 May 2006 and Ev 336–337, HC 775–III

329 Q 715-716, 9 May 2006

330 Ev 232, HC 775–III
embarkation controls are in place, the IND will have much better information on whether or not a person has left the country.

**Sham marriages**

316. Sham (or bogus) marriages are a threat to immigration control. Registrars have been concerned for many years about the number of marriages which they suspect are intended to circumvent immigration controls, and they have been frustrated about the lack of legal powers to enable them to prevent such marriages taking place. Changes to the registration process in 2001 apparently made little difference to the abuse of the system: Mark Rimmer, the Brent Registrar, estimates that between 2001 and February 2005 approximately 20% of all marriages in Brent were sham, equating to approximately 250 marriages a year (though this appears to be a particularly high rate). He suggests that the incidence of sham marriages increased dramatically in late 2003 and early 2004 and that marriages between foreign nationals and EEA nationals, which are subject to EU free movement rules rather than UK immigration rules, were a particular problem.

317. In response to registrars’ concerns and media coverage of the issue, the Government established a “Bogus Marriage Task Force” in 2004 which included representatives from the Immigration Service, local government, the registration service and IND policy officials. This proposed a new scheme to govern marriages where one or both parties is/are subject to immigration control and does/do not have entry clearance as a spouse or fiancé(e). The new scheme was enacted in section 19 of the *Asylum and Immigration (Treatment of Claimants, etc.) Act 2004* and came into force on 1 February 2005. It has several aspects:

- Notice to marry must be given by both persons attending together at one of 76 Designated Register Offices in England and Wales or any registry office in Scotland or Northern Ireland

- The foreign national must either have entry clearance specifically for the purposes of marriage or apply to the Home Secretary for a Certificate of Approval, at a cost of £135, before being allowed to marry in a civil ceremony (Church of England ceremonies are exempt)

- In order to qualify for a Certificate of Approval the applicant must have leave that was granted for more than six months and at least three months of that leave must be remaining at the time of making the application

318. The subsequent marriage does not automatically confer any immigration benefits: the person would still for instance have to apply in the normal way for leave to remain as a spouse.

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331 He later told us of a survey he did between November 2003 and January 2004 which found that 3,300 of 65,000 marriages (5%) across 121 local authorities were thought to be bogus: Q 704, 9 May 2006.

332 Ev 225, para 19, HC 775–III

333 supplemented by regulations and Home Office Immigration Directorates’ Instructions ch. 1 s. 15
319. When the new provisions came into force, Brent experienced a drop of 50% in the overall number of marriages taking place.\textsuperscript{334} The numbers of reports from registrars of suspicious marriages dropped from 3,740 in 2004 to fewer than 200 between February 2005 and March 2006\textsuperscript{335} and Home Office officials told us in March 2006 that from their perspective the new policy was working very well.\textsuperscript{336}

320. There are however many objections to the new rules. The Joint Committee on Human Rights, reporting on the Bill which contained these provisions, considered that “there is a significant risk that the new procedures for marriage are incompatible with the right to marry because they introduce restrictions on that right which are disproportionate and which may impair the very essence of the right”.\textsuperscript{337} The Joint Council for the Welfare of Immigrants (JCWI) argued that the new requirements were in breach of the right to marry (Article 12 ECHR); a “disproportionate and ineffective response to the alleged problem of ‘sham’ marriages”; and potentially discriminatory on faith grounds. The JCWI told us they receive several phone calls and emails every week from couples affected by the new rules, and their evidence gives several (anonymised) examples.\textsuperscript{338}

321. The JCWI recently intervened in a High Court challenge to the rules - the case of \textit{Baiai and others v Secretary of State for the Home Department}\textsuperscript{339} - which the Government lost. The case concerned three couples: an undocumented non-EEA national wishing to marry an EEA national legally resident in the UK; a couple both of whom had been granted exceptional leave to remain; and a pregnant failed asylum seeker wishing to marry an individual granted refugee status in the UK. All the couples were prevented from, or suffered delay in, marrying because of the new rules. Mr Justice Silber said that there was evidence of sham marriages in the UK and the Government was within its rights to try to combat them, but he ruled that section 19 contravened both ECHR Article 12 (right to marry) and Article 14 (right not to be discriminated against for reasons of, \textit{inter alia}, religion or nationality). The JCWI summarise his ruling thus:

\begin{itemize}
  \item He agreed that there is no necessary or logical connection between the genuineness of a proposed marriage and the length of time which a person has leave to stay in the United Kingdom
  \item It is difficult to see what basis there is for presuming that all marriages in religions other than the Church of England are sham marriages
  \item It fails to take into account a number of factors which could be relevant to considering whether a proposed marriage is sham, such as evidence of a loving and lasting relationship
\end{itemize}

\textsuperscript{334} Ev 225, para 19, HC 775–III
\textsuperscript{335} Ev 284, HC 775–III
\textsuperscript{336} Q 462, 7 March 2006
\textsuperscript{337} Joint Committee on Human Rights, Fourteenth Report of Session 2003-04, \textit{Asylum & Immigration (Treatment of Claimants, etc.) Bill: New Clauses}, HL 130/HC 828, Summary
\textsuperscript{338} Ev 285–288, HC 775–III
\textsuperscript{339} [2006] EWHC823 QB [Admin], 10 April 2006
Under section 19 the only factors considered to be relevant in determining a potential sham marriage in the UK are immigration status and length of outstanding application or appeal.

The regime does not allow those without the necessary leave to remain any opportunity to make their case for getting married without first leaving the UK.340

Mr Justice Silber said that the section 19 regime "affects the Article 12 rights of substantially very many more people than would be necessary to achieve the legislative purpose of preventing sham marriages."341

In a subsequent extended judgment issued in June 2006 the judge made a new distinction, saying that section 19 is incompatible with the ECHR as it applies to people who are in the UK lawfully but not those who are here unlawfully.

Permission has now been granted for the Home Office to appeal against this judgment on three issues: the compatibility of section 19 with the ECHR, the position of people unlawfully present in the UK and damages.

Mark Rimmer, the Brent Registrar, was very concerned at the implications of the High Court ruling:

I think the provisions have been incredibly successful in terms of reducing the problem. Certainly the evidence from my colleagues around the country is that they have witnessed very few attempts at what they consider to be sham marriages since the implementation of these provisions, and we thought that it was working very well. We would be incredibly disappointed—devastated, I think, has been the word used on many occasions—if this law was repealed.342

Following the ruling the Home Office suspended decisions on those Certificate of Approval for Marriage (COA) applications which would normally fall for refusal under current guidelines. COA applications which meet the criteria have continued to be decided. According to the IND website, the Home Office is still considering the full implications of the judgment and may amend the guidelines.343 However, it is likely to wait until the outcome of the appeal is known.

The Government is right to take measures against sham or bogus marriages. The Bogus Marriage Task Force should be reconvened urgently to produce proposals which are non-discriminatory. Meanwhile all marriage applications should be assessed by specialist teams of caseworkers.

Spouses of EEA citizens do not have to apply through the Immigration Rules to come to live in the UK. If the EEA citizen is exercising free movement rights, he or she has the right to be accompanied by family members regardless of their nationality: these family

340 JCWI Press Release, High Court challenge to ‘sham’ marriage provisions succeeds, 10 April 2006
341 Baiai, at para. 91
342 Q 702, 9 May 2006
members’ rights to enter the UK are therefore governed by European law. There is a growing concern that this route is open to abuse even though European law does not give rights where there is evidence of a sham marriage. For instance, we were told during our visit to Accra that in Ghana there had been 51 applications as the spouse of an EEA national in January to March 2006, compared with 9 in the same period last year. Mark Rimmer told us that most of the abuse registrars found concerned foreign nationals marrying EEA nationals rather than British nationals. The Government must explore what measures it can put in place, without breaching European law, to prevent marriage to an EEA citizen being used as a fraudulent way of entering the UK.

7 Appeals

328. Many unsuccessful immigration and asylum applicants currently have a right of appeal. The most obvious exceptions are non-family visitors and students whose courses last six months or less. The current complex law on appeals is set out in the Nationality, Immigration and Asylum Act 2002, as amended, and regulations made under it.

329. The number of immigration and asylum appeals has grown hugely in the last few years. In 2004, 109,000 appeals were determined at the first stage compared with 35,000 in 1997. A growing proportion of these (in 2004 nearly half) were non-asylum appeals. The number of appeals against entry clearance refusals showed a startlingly large increase between 1997 and 2004, from 8,760 to 44,375. This year about 175,000 appeals are expected, of which only 30,000 will be asylum appeals. Overall, 31% of appeals to adjudicators were allowed in 2004, but in entry clearance cases nearly half of appeals were allowed (47%), a much higher allowed rate than for other types of appeal (29% for in-country immigration refusals and 19% for asylum refusals).

330. The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 made wide changes to the appeals system, including replacing the two-tier structure (Immigration Adjudicators and the Immigration Appeals Tribunal) with a new Asylum and Immigration Tribunal (AIT), limiting rights to onward appeals and judicial review and introducing retrospective payment for legal aid for onward appeals. These changes came into force on 4 April 2005. Appeals are heard by Immigration Judges in nine hearing centres across the country.

331. We visited the AIT in Taylor House in London, where we observed appeal hearings and talked to staff, judges, appellants and representatives of both sides.

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345 See also Qq 460-467, 7 March 2006
346 Q 699, 9 May 2006
347 Home Office Control of Immigration Statistics 2004, Cm 6690, Table 7.1
348 Uncorrected evidence taken before the Constitutional Affairs Committee, 21 March 2006, HC 1006-I, Q4
349 Home Office Control of Immigration Statistics 2004, Cm 6690, Table 7.1
Lack of mutual confidence

332. During our visits to the AIT and to visa sections and the IND, we became increasingly aware of a gulf of misunderstanding or even mistrust between those making initial decisions and those involved in the appeals process. The Immigration Advisory Service pointed out this difficulty in their written evidence:

When IAS has visited ECOs at Post we have found them openly to express lack of concern that a decision we have just observed will be overturned if appealed. It appears to be a common belief amongst many ECOs that the appeal process, run by lawyers and judges who are ignorant of local conditions, regularly overturns ‘good’ decisions. ECOs feel no engagement with the appeals process and fail to take advantage of the feedback opportunities and learning opportunities that appeal determinations offer.\textsuperscript{350}

333. Mr Justice Hodge, President of the AIT, felt that any requests by posts to send teams of immigration judges to visit posts was evidence of an attempt to influence the judiciary to be “kinder” to ECO decisions,\textsuperscript{351} but many of the immigration judges we met were in fact keen to improve their local knowledge. We understand that several groups of judges have recently visited entry clearance posts overseas, but we were concerned to hear that ECOs at those posts believed that those judges then absented themselves from hearing cases from those countries to avoid accusations of bias. So far as we can establish, there is no basis for that belief. However, the fact that such a belief was widespread amongst ECOs in post is an indication of the serious breakdown in confidence in the appeals system amongst frontline staff. Another indication of distrust is ECOs’ perception of Immigration Judges as lawyers who are used to representing individual immigration applicants.

334. At the same time, judges we met at the AIT and saw at work there were often extremely critical of the quality of decision-making by ECOs and IND caseworkers, the way they substantiate their refusals and their provision of evidence bundles. We have addressed the quality of initial decision-making above (paragraphs 114 to 128 and 216 to 219), and later in this section we look at the refusal notices and evidence provided by ECOs and IND caseworkers.

335. The lack of mutual confidence between front-line staff and Immigration Judges is very worrying. As a first step, each side must learn more about the other. We particularly encourage Immigration Judges to visit entry clearance posts, and recommend that all ECOs and IND caseworkers visit the AIT as part of their initial training.

Reviewing refusals before appeal

336. Looking at the basis for Immigration Judges’ decisions reveals that there are many cases which perhaps need not have gone as far as an appeal. In its 2004 report on the visa operation, the National Audit Office set out the main reasons why entry clearance
Immigration Control

decisions are overturned on appeal, based on a sample of 180 appeals from entry clearance posts it visited.\textsuperscript{352} The results are striking: 34\% were overturned because of additional evidence; 23\% were based on evidence from the applicant’s sponsor; in 20\% the judge formed a different view of the same evidence; and in only 14\% was the decision not in accordance with the Immigration Rules. \textbf{If these results are repeated throughout the entry clearance operation, they suggest that thousands of immigration refusals being allowed on appeal might be better dealt with at an earlier (and cheaper) stage in the process.}

\textit{New evidence}

337. In 57\% of the cases in the NAO’s sample, the judge made a decision based on different written or oral evidence from that available to the ECO. This is permissible under the current law: as the Foreign Office Minister, Lord Triesman, told us, in entry clearance appeals “the Tribunal may consider only the circumstances appertaining at the time of the decision to refuse”,\textsuperscript{353} but this allows the AIT to look at new evidence relating to the circumstances at the time of the EOC’s decision even though this information may not have been available to the ECO making the decision.\textsuperscript{354}

338. \textbf{In over half of entry clearance appeals, the outcome appears to be not so much a judgment on the original decision as a completely new decision reached on the basis of different evidence.} We reject, therefore, the argument put by several witnesses that the outcomes of appeals decisions can currently be taken as a satisfactory measure of the quality of initial decisions,\textsuperscript{355} although there may nevertheless be benefits to recording this information.

339. But the reliance by the AIT in so many cases on new additional evidence or the evidence of a sponsor strikes us as inherently unsatisfactory, when in principle the AIT should simply be reviewing the decision of the ECO. This is most obviously the case when evidence that could have been presented with the initial application was not provided at the proper time. We understand that the practice of accepting additional evidence has developed in response to the higher courts regularly overturning decisions where any relevant information was not taken into account. Whilst we can understand the legal basis for this, we do not think that this is helpful to the overall integrity of the immigration system. Nor is it clear that evidence from a sponsor in an appeal should be given significant weight in cases where the original refusal was based on the intentions of the applicant.

340. We feel it is more appropriate for new evidence to be considered by the ECO or IND caseworker. We have therefore recommended introducing a “minded to refuse” stage for both entry clearance and in-country applications. (see paragraph 140 above) This would

\textsuperscript{352} Report by the Comptroller And Auditor General, \textit{Visa Entry to the United Kingdom: The Entry Clearance Operation}, HC 367 Session 2003-2004, 17 June 2004, p. 27

\textsuperscript{353} \textit{Nationality, Immigration and Asylum Act 2002} s. 85(5)

\textsuperscript{354} Ev 408, HC 775–III

\textsuperscript{355} Both the National Audit Office and Fiona Lindsley, formerly Independent Monitor of Entry Clearance Refusals, (Q 73, 13 December 2005) have recommended that statistics should be kept on appeals by post in order to assess decision-making quality.
give applicants the opportunity to counter the reasons for potential refusal by submitting further evidence, without having to go to appeal.

341. **Introducing a “minded to refuse” stage into the application process both overseas and in the UK might dramatically reduce the number of non-asylum appeals going to the AIT, by allowing applicants to present further evidence to the original decision-maker rather than to an Immigration Judge.**

**Interpretation**

342. In 20% of appeals in the NAO sample the judge substituted his or her interpretation of the facts: as Lord Triesman put it “judges simply double-guess what the ECO has seen”. The judge may not have seen the primary evidence: for instance the ECO might have interviewed the applicant and the judge would have to rely on the notes of that interview. Several posts raised with us instances of the AIT overturning a rejection because they did not agree with the ECO that a document was forged. We are not able to estimate in how many cases this may have happened, but it is a significant issue with ECOs who cite it as a reason for lacking confidence in the appeals process.

343. **In a further one fifth of entry clearance appeals, it appears that the judge substituted his or her interpretation of the facts for that of the ECO. This can be a particular problem in the case of forgeries. We share the view that staff in posts are in a better position than the AIT to make judgments on forged documents, particularly if supported by specialist teams and appropriate equipment.**

344. On the other hand, many of our witnesses said that ECOs and IND caseworkers do not always properly apply the required standard of proof and do not provide enough evidence to substantiate their decisions. The former Entry Clearance Monitor, Fiona Lindsley, suggested that one of the main reasons why there have been so many entry clearance appeals is because “there is a culture in entry clearance posts which does not understand that they interface with a legal culture in which they must evidence their decisions”. This is particularly obvious when the refusal is on judgmental grounds such as lack of intention to leave the UK, but may also be one of the reasons why the AIT overturns refusals based on allegations of forgery (see paragraph 148 above). Mr Justice Hodge, President of the AIT, said “If the Home Office or the entry clearance people or UKvisas are seriously worried about the way in which our judiciary decide cases then their remedy is to present more clearly and more fully whatever it is they say should be there to support the original decision.”

345. On our visits we were told that measures were in hand to improve the quality of refusal notices issued by posts in order to ensure that the evidence on which decisions were based are more clearly and consistently presented, but we were not in a position to tell whether these had resulted in any improvement (see paragraphs 135 to 137) on training for ECOs). We were also told that IND caseworkers are trained on how to complete a refusal

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356 Q 1175, 13 June 2006
357 Q 83, 13 December 2005
358 Q 349, 24 January 2006
letter and documentation in a new course which has been run by the IND College since April 2005.\textsuperscript{359}

346. If the decisions of ECOs and IND caseworkers are to withstand appeal, their refusal notices must show clearly and fully the reasons for the decision and the evidence on which the decision is based. This requires good training, involving lawyers to emphasise the legal standards required, and also good management. Managers must be more active in reviewing refusal decisions so that those which are not sufficiently substantiated can be either strengthened or conceded before any appeal. Managers should also look closely at the reasons why any refusal is overturned by the AIT and discuss each refusal with the caseworker to see what lessons can be learnt and disseminated more generally.

347. We believe that the introduction of a “minded to refuse” stage, coupled with more robust internal reviews of refusals, should largely eliminate any real justification for the introduction of new evidence at (or just before) appeal in the great majority of cases. This would improve confidence in the appeals service throughout the immigration system.

348. However, in those cases which do still go to appeal, it is important for judges to be in at least as good a position as the person making the initial decision to form a judgment on the evidence. In entry clearance cases, this will often mean good local knowledge and access to local experts, for example in forgery. This points towards hearing entry clearance appeals in the major source countries. Some judges we met on a visit to the AIT told us that they were keen on doing this. One benefit would be that the parties to the original decision could appear (the applicant and the ECO) rather than a sponsor and a Home Office Presenting Officer. It might also help to increase mutual confidence and understanding between ECOs and immigration judges. There may however be practical problems, not least in ensuring an adequate level of representation for appellants. \textbf{We recommend that the Home Office and the Department for Constitutional Affairs work with the AIT to develop a pilot exercise in the near future to assess the potential benefits of holding entry clearance appeals in major source countries abroad.}

\textbf{Case Management Reviews}

349. A further way in which expensive time in court could be saved is through Case Management Review (CMRs). CMRs were an innovation of the new appeals system, in which the case is discussed with the judge and representatives for both sides to highlight the key problematic issues before the substantive hearing. CMRs can be done on paper. However, at the moment CMRs apply only in asylum appeals.\textsuperscript{360}

350. Mr Justice Hodge, President of the AIT, told us during a visit to the AIT that CMRs are to be extended to immigration and entry clearance cases. \textbf{The AIT should introduce Case Management Reviews in non-asylum appeals as a matter of priority. These should}

\textsuperscript{359} Ev 409, HC 775–III

\textsuperscript{360} In its 2004 Report on \textit{Asylum and Immigration Appeals}, the Constitutional Affairs Committee suggested that the new appeals system was designed to deal with concerns relating to asylum appeals rather than immigration appeals.\textit{Second Report of Session 2003-04, HC 211, para 132}
help to prevent delays and adjournments in court and may even result in weak cases being dropped.

**Paperwork**

351. We were also alarmed by the apparent inefficiencies caused by the large volumes of paperwork associated with appeals. When appeals are lodged (most are now lodged directly with the AIT, although appeals from abroad can still be lodged at the Entry Clearance Post which issued the refusal; no fee is payable to lodge an appeal), the process of amassing paperwork begins. The ECO or IND has to provide the AIT with a ‘bundle’ of evidence on the case: the original refusal decision, subsequent internal reviews of that decision (ECMs review all decisions which go to appeal), and any other paperwork relating to the case. The AIT requires these to be sent in hard copy, in triplicate. As a result, entry clearance appeals result in vast amounts of paper travelling around the world. For instance we were told that about 90% of the diplomatic bag traffic in and out of Lagos is immigration-related.

352. We were told that work is in progress on developing electronic systems for appeal notification with posts and for deciding issues relating to timeliness or validity of appeals. An Entry Clearance Working Group (see paragraph 388) is continuing work on the use of electronic systems for document exchange.361

353. The absence of electronic systems for notification of appeals and for subsequent communication about appeals undermines the efficiency of the appeals system. The requirement to send huge bundles of papers, which may play little or no part in the subsequent hearing, is a drain on staff time and resources. The implementation of electronic communications systems must be given a high priority.

354. More fundamentally, we agree with the proposal of the AIT review report that the amount and relevance of evidence submitted needs to be considered. In our visits to the AIT we saw case bundles hundreds of pages long, disorganised, not clearly flagged up and almost impossible to work from. The result is that court time is wasted in trying to work out what the facts and issues are.

355. We support the AIT review report’s conclusions on the amount and relevance of evidence and also call for an urgent review of whether there is any need for original papers to be available to the AIT. It may be suggested that this is necessary in cases where forgery has been alleged. However we have seen no evidence that the AIT has access to the necessary expertise to verify documents in entry clearance appeal cases.

**A one-tier system?**

356. The AIT is described as a single-tier tribunal, but there is a complex reconsideration procedure which will often involve a further three stages and could involve as many as eight altogether. The losing party can apply for reconsideration of an appeal judgment, such applications being decided on the papers only (there is no oral hearing). Nominally
the reconsideration application is made to the High Court, but under “transitional” arrangements it is dealt with first by a Senior Immigration Judge. If he refuses it, the applicant can then apply to the Administrative Court for a renewal of the reconsideration application (again on the basis of the papers). If the application is accepted the case is then usually referred back to a different panel of the AIT for the reconsideration itself.

357. An appeal on a point of law is available to the Court of Appeal from a decision of a panel of three Immigration Judges or from a second determination (reconsideration) of a case by any Immigration Judge. A further appeal can be made to the House of Lords on a point of law from the Court of Appeal. There is no published data on how many immigration appeals get to the Court of Appeal or House of Lords.

358. Challenges to a judge’s decision must be based on an error of law, but the alleged error could be that the judge disregarded material facts or interpreted the facts in a way that no reasonable person would. In the first six months of the AIT's operation, 3,158 applications for review of managed migration (in-country) refusals and 745 relating to entry clearance refusals were decided, of which 24% and 31% respectively resulted in the applicant getting a reconsideration hearing. Although we have figures only for the old system, it seems that very few review applications ultimately lead to the applicant winning an immigration appeal.362

359. Mr Justice Collins, Lead Judge at the Administrative Court, told us that although the AIT is “in form a one-tier system, in reality you have got all the disadvantages of the two-tier system because of the right to apply for reconsideration.”363 The Administrative Court spends a huge amount of its time dealing with immigration and asylum applications: of the total 10,500 cases before the Administrative Court in 2005 in all areas, over 3,000 were renewed applications for reconsideration of AIT decisions.364

360. Mr Justice Hodge, President of the AIT disagreed with Mr Justice Collins’ suggestion that the AIT had not brought improvements. He said that the speed with which cases are dealt with in the new system is “significantly up”, but he made it clear that these improvements were “primarily because the procedural rules require judges to act much more quickly than they did before” rather than because of a reduction in the number of stages.365

361. We were disappointed to find that the AIT does not provide the simple one-tier system that the Government set out to establish. For the reasons cited in this report, we do not have confidence that the AIT as it currently operates could satisfactorily fulfil that role. But the aim of a genuinely single-stage appeal system which effectively reviews first-instance decisions in one hearing and which is able to take into account human rights considerations must remain the right one. We urge the Government to keep the possibility of such a system under constant review.

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362 Ev 389, HC 775–III
363 Q 315, 24 January 2006
364 Q 342, 24 January 2006
365 Q 316, 24 January 2006
Representation

Home Office representatives

362. When the Government defends immigration appeals, the official who made the initial decision does not appear. Instead a Home Office Presenting Officer (HOPO) represents the Secretary of State or the ECO. HOPOs are not required to have legal—or indeed any other—qualifications, or any experience of immigration or asylum work. A recent advertisement for HOPOs in London (at a salary of £23,000) clearly stated that no legal expertise is required, nor any particular experience: “While a knowledge of legal procedures would be an advantage, it is not essential…You could be at any stage in your career. Perhaps you are starting out…”366 Two weeks’ training is given, then a period of mentoring before new HOPOs “go live” in about three months. There is no requirement for accreditation or for meeting the standards of the OISC or professional bodies, as the representatives of the appellant have to do (paragraph 377). Nor do they specialise in particular types of case, country or region: they are allocated to a particular court for the day and have to deal with whatever is being heard there. We were told on a visit to the Presenting Officers’ Unit that there is quite a high turnover of HOPOs but we do not have statistics on this.

363. In the past there has been considerable criticism of the Home Office for failing to send HOPOs to attend immigration and asylum appeals. When this happens, the judge is expected to carry on regardless rather than adjourn,367 and the danger is that the judge then appears to be an “extra prosecutor”.368

364. The situation seems to have improved in the last few years: the number of cases in which no HOPO appears has gone down from around 40% of cases in 2004369 to about 10% of substantive first hearings now.370 However, there is clearly still a problem: on one visit to the AIT we were told that earlier that week there had been two days when four courts had no HOPO all day, and one day when three courts were lacking HOPOs. The Government must ensure that Home Office Presenting Officers attend every appeal that the IND or UKvisas wishes to defend.

365. On the other hand, it is not clear how effective the HOPOs are able to be in defending the initial decision. In the cases we observed, they said little other than to affirm their reliance on the ECO’s reasons for refusal, provided no explanation of the facts or issues and scarcely did any cross-examination.

366. The Director General of IND, Lin Homer, has recognised that not all HOPOs are sufficiently well-trained to provide adequate representation in certain types of case. Concerns that the Home Office was not properly defending bail applications from foreign

367 Q 331, 24 January 2006
368 Uncorrected evidence taken before the Constitutional Affairs Committee, 21 March 2006, HC 1006-I, Q 41
369 Constitutional Affairs Committee, Asylum and Immigration Appeals, Ev 19
370 Q329, 24 January 2006
national criminals led her to increase the level of HOPO representation in those cases. Her comments suggested to us that in such cases they are now required to be legally trained:

**Chairman:** Are you now represented at a more senior level?

**Ms Homer:** Yes. When I became aware of the issue I did ask that we increase the level of legal representation and legal advice we were taking.

**Chairman:** Are you normally represented by barristers now?

**Ms Homer:** Or lawyers. We have presenting officers within the Immigration Service who are not always fully legally trained.

**Chairman:** They are not legally trained at all, are they?

**Ms Homer:** Some of them are.

**Chairman:** Most of them are not and they have no legal qualifications, have they?

**Ms Homer:** That is right. What I have asked is that our legal team be involved in this decision about the level of representation in individual cases so that we can make the most vigorous applications to oppose in those cases where we feel it necessary.\

We were subsequently told that the requirement is in fact that “only senior and experienced presenting officers appear for the Home Office in these cases.”\(^\text{371}\) We are concerned that the Committee was given a misleading impression of the quality of representation in these sensitive cases of great public concern.

367. It is hard to see how HOPOS can provide a robust defence if they have neither a full understanding of immigration and asylum law and practice nor practical advocacy skills, and might not stay in the job for long enough to build up these attributes. If the Government is serious about defending appeals, the quality and skills of HOPOS must be improved. They should be required to meet at least the same standards as appellants’ representatives.

368. In several of the appeals we saw on our visits to the AIT, HOPOs could not provide a good defence because they had not had the opportunity to prepare. A major problem is a lack of papers. Sometimes none at all arrive in time for the hearing; sometimes only the bare reasons for refusal with no supporting documents; and at other times the bundle reaches the judge but not the HOPO. This is in large part a result of the new lodging arrangements (see paragraphs 381 to 390 below), but we got the impression from our visits to the AIT that there may be wider administrative difficulties.

369. Although in theory HOPOS could contact the ECO or IND caseworker who made the original decision in order to clarify the refusal notice, ask for further information or discuss tactics for defending the decision, in practice the HOPOs we spoke to very rarely did this. In one case we saw during a visit to the AIT, where the HOPO had not contacted the ECO,
the appeal had to be adjourned to get clarification from the ECO because it was a complicated case involving forged documents, fake identity and allegations of serious criminality and the judge had already spent at least half an hour in the courtroom trying to work out from the papers what had happened. On our visits we did not meet a single ECO who had ever been contacted by an HOPO to discuss a case. We understand that decision-making staff in the IND are not routinely contacted to provide further information or explanation of a decision either.

370. Another difficulty is that we were told HOPOS start preparation on a case only the day before the hearing. This means that there is rarely any opportunity to make inquiries or to chase up bundles.

371. **We believe that it is essential that the work of HOPOS is organised so that they have enough time to prepare for appeals and can discuss cases with the ECO or IND caseworker wherever the basis of a decision may be unclear or clearly open to challenge.**

372. The immigration judges we met at the AIT told us of the problems caused by the fact that HOPOS cannot themselves concede cases, even if they consider them unwinnable. They can do so only on the instruction of the official who made the decision. If they do not get such an instruction, the appeal goes ahead, the HOPO says simply that they are relying on the grounds set out in the refusal notice, and the judge has to go through all the motions of making and promulgating a decision. This is a waste of time and money.

373. **HOPOS should also be given the power to concede cases which they consider unwinnable. This would be another way in which court time could be saved.**

374. A recent initiative which seemed to have great potential was sending some HOPOS out to posts on attachment, so that each could learn more about the other. When we visited the Presenting Officers’ Unit we met two HOPOS who had recently done this. Both reported that they had benefited greatly from seeing how ECOs work, and that they had been able to give ECOs a better understanding of how appeals are won or lost. Their reports are due to be compiled and evaluated by UKvisas quality teams.

375. **To increase mutual understanding, we recommend that the current programme of HOPO attachments to posts overseas is extended to allow every HOPO to see at first hand how both ECOs and IND caseworkers work, and to share their own knowledge and experience.**

**Appellants’ representatives**

376. Mr Justice Hodge told us that although the “utterly wicked, incompetent and useless” lay advisers who used to appear in immigration and asylum appeals have “pretty much gone”, there is still a problem with the quality of advocacy in front of immigration judges which in his view is “not much better than it was two years ago”. When we visited the AIT we saw some very good advisers and others who were much less impressive.
The scheme for the regulation of immigration advisers seems to have produced improvements. Since 30 April 2001 the Office of the Immigration Services Commissioner (OISC) has overseen the regulation of legally qualified advisers operating in this area and regulated immigration advice and immigration services provided by other advisers. As well as investigating complaints about regulated immigration advisers, it also identifies and investigates organisations which potentially should be registered. In addition, since 1 April 2005, the Legal Services Commission (LSC) has required all advisers (including solicitors) who conduct publicly-funded immigration and asylum work to be accredited under its own accreditation scheme. We were not in a position to determine the degree to which the quality of representation in immigration appeals has improved since regulation was introduced, but we suggest that one of the ways the OISC could do this is through spot checks on how representatives are performing in the AIT.

However, because it is now much harder for representatives to get legal aid to carry on with an immigration or asylum appeal, the number of cases where the appellant is unrepresented is increasing. The Constitutional Affairs Committee has frequently criticised the Government’s approach to legal aid for asylum and immigration. In entry clearance cases, it is often only the sponsor who will appear. Between 2003/4 and 2004/5 the number of immigration applicants who were unrepresented when they sought permission to appeal to the Immigration Appeal Tribunal rose from 13% to 16% (for asylum applicants the increase was even bigger: 15% to 32% in the same period). Accurate statistics about representation before the new Asylum and Immigration Tribunal are not yet available, but Mr Justice Hodge told us that “anecdotally, we are confident that the number of cases that are represented in front of us has gone down. We think that is not a good thing.”

The lack of representation does not seem to deter people from continuing with their appeal. As Mr Justice Hodge noted, there is no reason why they should not keep appealing: “Something like 65% of people who are refused by my first tier judiciary in asylum cases try the review system because there is absolutely no reason why they should not. They want to stay and there is no cost penalty or anything like that and so they keep going often for as long as they can and quite often unrepresented.” In asylum cases the incentive to stay in the UK for as long as possible may be stronger than in immigration cases because the applicant is likely to come from a dangerous or unsettled country.

Legal aid changes have not resulted in fewer appeals, and any savings may be offset by the disadvantages of having unrepresented appellants. The Government must
investigate other ways of discouraging unmeritorious appeals whilst encouraging those with merit.

Teething problems

381. In the first six months of the AIT’s operations, a backlog of 39,000 entry clearance and family visitor appeals built up. Mr Justice Hodge explained that this had two causes: firstly an “under-estimation by the policy people” of the numbers of new entry clearance appeals, and secondly an under-estimation of the numbers of “transitional” appeals which had been received by the Home Office or posts before April 2005 but not yet passed on to the AIT. This had been estimated at 30,000 but in fact turned out to be 42,000.380

382. Under the old system appeals were lodged with the IND who forwarded them to the Immigration Appellate Authority (IAA) at a fixed rate (normally around 9,000 per month), complete with bundles of evidence.381 Any other appeals waited at the IND but were not logged or counted. Entry clearance appeals were lodged with posts; most were sent to the IND for forwarding but family visit appeals bypassed this and were sent direct to the IAA. Under the new system, with most appeals being lodged directly at the AIT, the AIT was sometimes receiving 3,000 appeals per day which it then had to forward to the IND or posts with a request for bundles.

383. The AIT implemented a Recovery Plan in October 2005 which allowed it to do the initial processing of all these cases by December 2005. All this meant was that the cases were logged on the system and bundles requested (in the case of entry clearance appeals, posts are given 11 weeks to submit bundles in non-settlement cases and 19 weeks in settlement cases). If the AIT does not receive the bundle in time, it lists the appeal for hearing regardless and tells the posts to submit them within a further four or eight weeks. The inevitable result is that appeals go ahead without the bundles. As the Minister for Immigration, Citizenship and Nationality, Liam Byrne MP, recognised, this is most unsatisfactory: “It is completely unacceptable if you have observed cases where papers were not there in time”.382

384. Wherever possible, cases must not be listed for hearing until the bundle of documents has arrived. To provide a disincentive for delay, posts should be required to pay the costs resulting from avoidable delay. There would still need to be an absolute time limit in all cases, beyond which cases would have to be listed, with the Home Office presenting the case as best it can.

385. It may be that, if the AIT revises the requirements on the amount of evidence which has to be submitted and introduces electronic systems for document exchange, these problems will eventually diminish or disappear entirely. But this issue has also highlighted what appears to be worrying lack of communication between the AIT and posts. Each of the posts we visited told us that they had received only a trickle of appeals notices over the

380 Q 311, 24 January 2006

381 We were told on a visit to the AIT that in March 2005 7,100 entry clearance and in-country appeals came through plus about 2,000 family visit appeals.

382 Q 1180, 13 June 2006
summer and then suddenly hundreds would arrive in one day, with no warning. They had not even been told about the AIT’s backlog clearance exercise. Some posts were by now being completely overwhelmed by the number of notices of appeal arriving and were unable to send back bundles in time: in Lagos we were told that they were receiving 800 appeals notices per week, and handling 2,000 at any one time. In other cases the appeals notices did not even arrive until after the deadline. New Delhi told us of a whole set of appeals notices which had been dealt with by the AIT in November and dated December 2005 but not received at the post until after the target date of 21 February 2006.

386. When bundles did not arrive back at the AIT the AIT did not know (or ask) why and simply went ahead and listed cases for hearing. Posts had difficulties contacting the AIT when they needed to know what was happening with individual cases.

387. It appears to us that the AIT’s backlog recovery plan took no account of the effect it would have on posts. Each side blamed the other for the lack of bundles. Judges, representatives and appellants were left frustrated, and justice was not being done.

388. We are told that communication is being improved. The larger posts are now sent daily emails about the number of appeal notices which they will receive. Posts have been given phone numbers and emails for individual contacts at the AIT. An Entry Clearance Working Group, comprising officials from the DCA, UKvisas and IND, is looking at ways to improve processes.383 Apparently the Prime Minister’s Delivery Unit is also conducting a review of the Visit Visa appeal system.384 The report of an internal review of the AIT also makes a number of recommendations.385

389. The outstanding appeal workload is now 87,000, which has been stable since the end of 2005. AIT management envisages that all new cases will be heard and decided within normal timescales by January 2007.386

390. Although the main causes of the current backlog of immigration appeals were the change in the way appeals are lodged and the underestimate of the number of appeals still waiting to come into the system, the resulting problems indicate that the appeals system is quite unable to cope with a surge in demand. This is exacerbated by lack of communication which allows problems to develop in one area which then have an unfortunate effect elsewhere.

391. Although the AIT is legally separate from IND and UK visas, and the responsibility of a different government department, it nonetheless forms a critical part of the decision-making process. Its work needs to be managed so that it enhances the performance of the system as a whole, rather than focussing narrowly on performance against its own targets and measures.

383  Ev 386, HC 775–III
384  Asylum and Immigration Tribunal, The AIT Review Report, April 2006, para. 3.26
385  Asylum and Immigration Tribunal, The AIT Review Report, April 2006
386  Asylum and Immigration Tribunal, The AIT Review Report, April 2006, para. 3.34
392. We recommend that a permanent group comprising representatives from the AIT, Immigration Judges, HOPOS, appellants’ representatives and officials from UKvisas, the IND and the Department for Constitutional Affairs should be established to oversee the operation of the appeals system as a whole, to allow problems to be aired as soon as they develop and to assess solutions in terms of their impact across the system.

Removing appeal rights

393. The Immigration, Asylum and Nationality Act 2006 significantly reduces rights of appeal. When it is brought into force, applicants will be able to appeal against refusal of entry clearance only if they are family visitors or dependants in certain categories, or if they allege race discrimination or a breach of human rights.\(^{387}\) This means that most student or work visa refusals will no longer have a right of appeal. However, Mr Justice Hodge told us that he did not think this would mean any huge change in volumes of work for the AIT.\(^{388}\)

394. The then Immigration Minister stated that these appeal rights will probably not be withdrawn until the new points-based immigration system is up and running.\(^{389}\) The Chief Executive of UKCOSA (the Council for International Education), Dominic Scott, argued that appeals should not be withdrawn until it is proved that under the new system they are not needed:

> We know that the Home Office’s current position is that within the brave new world of the objective, transparent points-based system there will be no need for appeals. What we have argued for is, please, would you actually run this new system, prove that there is no need for appeals and then consider their abolition, but to abolish appeals before this new system is tested, we think, is extremely unwise.\(^{390}\)

395. The Government is proposing a more thorough internal review mechanism for entry clearance cases to compensate for the removal of appeal rights. Details of this are yet to emerge, so it is not yet clear, for instance, whether the new review procedures would also apply to cases which do still have a right of appeal, in order to reduce the likelihood of them getting that far. In addition, the duties of the entry clearance monitor are to be widened and the Secretary of State must report on the new scheme.\(^{391}\)

396. Mr Justice Collins told us that “if you remove appeal rights then the only remedy will be judicial review and that is, of course, on the whole a more expensive procedure than an appeal would be.”\(^{392}\) The AIT’s estimate of the average overall costs of an entry clearance appeal is £626; a substantive Judicial Review hearing costs between £643 and £780.\(^{393}\)

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387 s. 4
388 Q 378, 24 January 2006
389 Stg Co Deb, Standing Committee E, Immigration, Asylum and Nationality Bill, 20 October 2005, col 116
390 Q 639, 9 May 2006
391 Immigration, Asylum and Nationality Act 2006 s. 4(2) and (3)
392 Q 378, 24 January 2006
393 Ev 268, HC 775–III
397. There is a danger that removing appeal rights will result in dissatisfied applicants seeking judicial review instead. To reduce the likelihood of this, the Government must be in a position to show that initial decisions are high quality and that there is an effective avenue of internal review, before further appeal rights are removed.

398. There is little doubt that those who are involved with the appeals process are working hard and diligently, often under trying circumstances. But in this chapter we have examined the evidential basis of decisions taken in the AIT, the quality of Home Office representation and the clear lack of mutual confidence between decision-makers in the IND and UKVisas and the AIT. Taken together we do not feel that the appeals process as it currently operates provides a sound basis for this vital part of the immigration system.

8 Enforcing the controls

399. In the previous chapters we have described the expensive and often complex decision-making structures that determine whether or not an individual has the right to enter or remain in the UK. A substantial number of people are refused that right, come to the end of their leave or breach its conditions, or have avoided the immigration system altogether. The integrity of the entire system depends ultimately on its effectiveness in dealing with those people.

400. People who are in the UK but do not have the right to remain can be required to leave. If they do not leave, they are liable to be arrested, detained and their departure from the UK enforced. There are now four basic ‘enforcement’ procedures: port removals (for people who have not been granted leave), administrative removal (for those who have overstayed their leave, breached its conditions or obtained leave by deception), illegal entry action (for those who enter in breach of the immigration laws, including by deception) and deportation (following a criminal conviction or where it is “conducive to the public good”). Only the last of these constitutes a bar to returning to the UK. In many cases the person may also have committed an immigration-related criminal offence, but the authorities rarely prosecute.

The need for effective enforcement

401. The whole immigration control system is designed to prevent unwanted people from coming into the UK and our evidence suggests a lot of people are working very hard to do this. But it cannot provide a hermetic seal: there will always be some people who get into the UK or stay here in breach of those controls. Indeed, Professor Nigel Harris, Chairman of the RSA Migration Commission, suggested to us that “the migration system itself has the perverse, paradoxical effect of forcing settlement because if it is so difficult to get in and if the costs of getting in mean that you borrow so heavily and that you have to work for such a long period of time to pay off your debts, all this forces settlement”. Dr Khalid

394 Royal Society for the Encouragement of Arts, Manufactures and Commerce

395 Q 123, 10 January 2006, raising the example of the US/Mexico border and the German Gastarbeiter scheme.
Koser, Senior Policy Analyst at the Global Commission on International Migration, suggests that migration policies can stop irregular migration in the short term, “but in the medium to long term…those controls can be overcome.” Therefore the system must also deal effectively with people who are in the UK unlawfully.

402. **At present the lack of removals is felt to undermine the efforts made by thousands of people to ensure that the right people are allowed to enter or stay in the UK.** Mr Justice Hodge, President of the AIT, expressed this frustration:

> One of my judiciary’s concerns always is that you work hard and you produce a result and it does not result in anything very much. As MPs you must feel exactly the same and so does the *Daily Mail* and other worthy journals. Removals is a big, big problem in this field. An efficient removal system would be great.

403. The ECOs, Immigration Officers and IND caseworkers we met expressed similar frustration.

**Current enforcement efforts**

404. The number of removals is nowhere near the likely number of people who are not entitled to be in the UK. Although figures on removal and deportation are published, it is impossible to work out how many of the people who should be removed are in fact removed, partly because the data on removals are not comparable with the data on arrivals and partly because without universal embarkation checks no-one knows how many people leave the UK voluntarily.

405. The most recent official figures gave a total of 10,085 non-asylum applicants removed from the UK as a result of enforcement action in 2004 (and we were told in oral evidence that the current target removing 1,000 individuals a month from the UK was exceeded last year). And yet the IND refused 32,335 applications for an extension of leave or settlement in 2004. Although some of these refusals would have been appealed, not all appeals will be successful: in 2004 6,295 in-country immigration appeals were dismissed or withdrawn.

406. Based on data for failed applications and known removals at May 2004, the National Audit Office estimated the backlog of asylum removals at between 155,000 and 283,500. We are not aware of a similar estimate for a non-asylum removals backlog.

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396 Q 96, 10 January 2006
397 Q 360, 24 January 2006
398 Ev 393, para 4, HC 775–III
399 Home Office, *Control of Immigration: Statistics United Kingdom 2004*, Cm 6690, Table 6.2
400 Q 810, 16 May 2006
401 Home Office, *Control of Immigration: Statistics United Kingdom 2004*, Cm 6690, Table 4.1
402 Home Office, *Control of Immigration: Statistics United Kingdom 2004*, Cm 6690, Table 7.1
407. Unless we make the heroic assumption that all those who are refused but not removed do leave the country of their own volition, it is clear that the current rate of removal is not even keeping up with the increase in the number of those not entitled to remain in the UK.

408. When asked whether he was satisfied over the removal of those who have no right to be in the UK, Dave Roberts, the IND’s Director of Enforcement and Removals, replied “Yes, I am satisfied…that the target that was set for us last year to remove immigration offenders who are not failed asylum seekers was not only met but was exceeded; so to that extent I am satisfied”.  

409. The Director General of the IND, Lin Homer, told us that this target of 12,000 non-asylum removals per year was a management target, based not on the number of removals needed but on the resources available and set as an improvement on the previous year’s target. The Home Secretary agreed with us that this is not the right way to set the target: “I am not defending the indefensible here because that decision was made the wrong way round if that is the case, but you always have to bear in mind the resources which are there, but we ought to be trying to tackle the problem on the basis of what is the extent and nature of the problem.”

410. The difficulty of setting removals targets was illustrated when a previous Home Secretary, Rt Hon David Blunkett MP, had to abandon a target of removing 2,500 failed asylum seekers per month after admitting to our predecessor Committee little more than a year after the target was set that it was “massively over-ambitious” and “was not achievable”.

411. The integrity of the entire immigration system depends on the effective enforcement of the Immigration Rules. Current enforcement efforts are clearly inadequate. The resources made available for enforcement activities should be determined by the scale of enforcement required, rather than the other way around.

**Enforcement priorities**

412. A 2003 study suggested that prioritisation in enforcement was largely determined by the political need to increase numbers of removals, by the likelihood of being able to bring charges or the assumed ease of removal. This seems to be borne out by evidence from the IND’s Director of Enforcement and Removals, Dave Roberts. He surprised us when he said that IND does not track individuals for removal:

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404 Q 812, 16 May 2006
405 Qq 917-21, 23 May 2006
406 Home Office Secure Borders, Safe Haven: Integration with Diversity in Modern Britain (Cm 5387) (2001)
407 Home Affairs Committee Minutes of Evidence for Wednesday 18 September 2002 2001-02 HC 1186 Q86, Q88; see also Home Affairs Committee Fourth Report of Session 2002-03, Asylum Removals, HC 654-I, especially pp. 13-14
Clearly, if we are to target individuals whose leave may have expired, for example, then we would need a very different system of internal immigration control than we have at the moment, and targeting individuals in order to ensure that they are removed is not, I believe, an effective enforcement strategy. What we need to have is a very clear set of priorities which are ranked, if you like, in terms of an understanding of the harm that people who are here unlawfully cause the UK and target our resources accordingly. What I would argue is that, in terms of our targeted resources, we have a number of competing priorities which the Committee are very familiar with. We have a priority to remove failed asylum seekers. That is given us quite properly by ministers as a requirement. It would be quite wrong to say that was our only focus, which was why I explained in my opening remarks how we were doing in relation to non-asylum removals. I do not think the answer is to create an expectation that an adequate enforcement strategy is to pursue individuals at individual level.409

413. We understand Mr Roberts to mean that the IND does not track individuals from the point at which they are in breach of immigration rules until their eventual removal. It appears, however, that most enforcement action is taken against individuals (or families) rather than groups of people (such as those picked up in factory raids). **We regard the inability to identify and track individuals who are in breach of the Immigration Rules as a major weakness in the system.**

414. Enforcement operations as a whole appear to be on the increase. Mr Roberts told us that in 2005 the UK Immigration Service carried out 2,850 enforcement operations “against illegal work”, against 1,618 operations the previous year.410 However, the number of resulting prosecutions is relatively small. In 2005/06, 378 prosecutions were completed, the large majority of which were for “document abuse”:

<table>
<thead>
<tr>
<th>Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>259</td>
<td>document abuse</td>
</tr>
<tr>
<td>29</td>
<td>facilitation</td>
</tr>
<tr>
<td>25</td>
<td>breach of immigration control</td>
</tr>
<tr>
<td>21</td>
<td>marriage abuse</td>
</tr>
<tr>
<td>14</td>
<td>asylum abuse</td>
</tr>
<tr>
<td>10</td>
<td>illegal working (various)</td>
</tr>
<tr>
<td>8</td>
<td>Section 8 (employer)</td>
</tr>
<tr>
<td>3</td>
<td>Section 2 (entry - no documents)</td>
</tr>
<tr>
<td>9</td>
<td>not known411</td>
</tr>
</tbody>
</table>

415. The IND also gave us details of the percentages of staff deployed in different types of removal work in April to December 2005:

<table>
<thead>
<tr>
<th>Type of Work</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential addresses (including family removals)</td>
<td>68.1%</td>
</tr>
<tr>
<td>Illegal working operations</td>
<td>26.7%</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>5.1%</td>
</tr>
</tbody>
</table>

409 Qq 813 and 844, 16 May 2006
410 Ev 279, para 1, HC 775–III
411 Ev 392, para. 2.5, HC 775–III
Immigration Control

Student abuse: 0.1%
Marriage Abuse: 0.1%

416. These figures include all types of enforcement action and it is not clear whether the breakdown of enforcement action is the same for immigration as for asylum cases. At first sight, however, the pattern of enforcement appears hard to understand if priorities are ranked according to the harm that people who are in the UK unlawfully cause. This breakdown suggests instead that individuals and families whose addresses are known cause greater harm than those who have deliberately obscured their location, or those employed as illegal workers, or those who have committed domestic violence. Mr Roberts told us that the main priority is removing failed asylum seekers, and perhaps asylum removals make up the majority of removals from residential addresses. Even so it is hard to correlate the pattern of staff deployment with the principle of harm reduction.

417. As we showed in paragraphs 404 to 407, the current level of removals does not even keep pace with the number of known decisions that an individual should leave the UK. The removal strategy is instead tackling part of the pool of illegal immigrants who are already here, whilst failing to stem the flow of newly illegal residents. This failure undermines the credibility of an immigration system based on the fair application and enforcement of clear immigration rules. Throughout our inquiry all those involved from immigration officers, entry clearance officers, IND staff at Croydon and AIT judges have expressed frustration that all their work is rendered at least partially ineffective by the weakness of the enforcement system.

418. There is a further problem. By failing to prioritise the removal of those who are newly illegal, the IND is ensuring that a proportion of those singled out for removal are people who have established themselves in this country, perhaps with children who have known only this country, and who—despite the public’s general hostility to illegal migration—command significant community support.

419. A recent example is that of a Thai-born man living in Shetland who successfully appealed against deportation, having been convicted in 2004 for fire-raising, but whose local community campaigned for him to be able to stay. Chris Mullin MP raised the issue of the removal of families with young children who have been in this country for all or most of their lives to countries such as Angola or the Democratic Republic of Congo “where the social fabric has all but collapsed”. He also referred to the case of a man from his constituency who was returned to Azerbaijan (despite the fact that the last two Azeris to be removed from Sunderland had been severely beaten on arrival at Baku), but who did not emerge at the airport where his relatives were waiting. Mr Mullin believes this man may now be dead. He suggests that removals like this “make the figures look better, but morally they are difficult to justify”.

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412 Ev 263, HC 775–III
413 “Victory for islanders as Thai avoids deportation”, Telegraph, 8 July 2006
414 Ev 331, HC 775–III
415 Ev 390, HC 775–III
420. **It is difficult to reconcile the removal of vulnerable individuals or those with strong links in the UK with the principle of harm reduction set out by the IND.** Whilst continuing action to remove people already living in the UK illegally will of course be necessary—not least to remove those who have entered the UK by clandestine routes—the first priority should be to align the removal system with the decision-making system.

**Aligning enforcement with decision-making**

421. The first priority must be to avoid adding to the pool of illegal migrants already in the UK. Therefore it is essential that negative decisions are immediately followed up with measures to keep track of applicants and then removal where appropriate. In 2004 the IND refused 32,335 applications for an extension of leave or settlement in 2004 and 6,295 in-country immigration appeals were dismissed or withdrawn. And yet only 10,085 non-asylum applicants were removed from the UK as a result of enforcement action in 2004. Of course, some of the people turned down might subsequently have appealed and been allowed to stay, or might have left voluntarily, but otherwise they are being added to the pool of illegal migrants who might or might not be located and removed.

422. To begin with, efforts must be made to ensure that people do not disappear when they receive a negative decision. When IND decides against an application it simply sends out a refusal letter saying that the person is required to leave the country as soon as their existing leave expires (unless they exercise any appeal rights). Likewise all immigration appeals decisions are issued in writing by the AIT, unlike asylum appeals decisions which may be served in person at reporting centres in order to reduce the risk of absconding.

423. Our predecessor Committee in the last Parliament emphasised the desirability of requiring people who are about to receive their asylum appeal decision to attend at a specified location in person to receive that decision. They commented:

> Requiring asylum seekers to attend in person to receive their appeal decision, with their dependants, would make it possible for them, if necessary, to be detained immediately with a view to speedy removal. This measure would increase the rate of removals and reduce the likelihood of failed applicants remaining in the UK in a state of destitution. We urge the Government to bring forward … pilots at the earliest possible opportunity.

In its reply, the Government stated that it “agrees that in some circumstances there will be cases where it would be beneficial to serve appeal decisions in person, particularly to support a faster removal process for those with no right to remain”.

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416 Home Office, *Control of Immigration: Statistics United Kingdom 2004*, Cm 6690, Table 4.1
417 Home Office, *Control of Immigration: Statistics United Kingdom 2004*, Cm 6690, Table 7.1
418 Home Office, *Control of Immigration: Statistics United Kingdom 2004*, Cm 6690, Table 6.2
419 The IND told us that this is a feature of the New Asylum Model, which at the moment applies to about 10% of new asylum claims but by March 2007 will apply to all new non-detained asylum cases: Ev 405, para 2, HC 775–III
424. Home Office instructions to caseworkers set out what should happen in principle when an immigration appeal is withdrawn or dismissed:

The Presenting Officer’s Unit (POU) will forward the file to the relevant workflow processing team or removal & cessation team. These teams will ascertain if the person concerned is removable. The case will then be forwarded to be starred and operational enforcement officers may then attempt to locate the person concerned and remove them from the United Kingdom.\(^{422}\)

425. The use of the conditional “may” here is illuminating. It is not possible to determine from the published statistics how many appeals are followed by enforcement action, but we suspect not many, given that Dave Roberts clearly told us there will in fact be no attempt to locate individuals.

426. We welcome the commitment of the Home Office to act on our predecessors’ recommendation that all asylum seekers should receive decisions on their applications or appeals in person. We believe that this approach should be progressively extended, as swiftly as possible, to all immigration decisions, so that failed applicants can be told about the possibility of appeal if available, how to organise their departure and any support available for this, and the consequences of breaching immigration control including the fact that this can be held against them in any subsequent application.

427. We were told that a more joined-up approach between decision-makers and enforcement is being developed: in some high-risk cases IND caseworkers issue enforcement notices themselves.\(^{423}\) It is not clear how many cases have been through this streamlined procedure. It seems entirely sensible that the caseworker making a decision should be able to issue enforcement notices. This would be a natural outcome if cases were allocated to caseworkers who ‘owned’ them all the way through the system.

428. After a decision has been issued, contact must be maintained throughout any appeals until the person leaves the country. The Home Office/DCA/UKvisas Asylum and Immigration High Level Delivery Plan 2005/06 - 2008/09 says that by 2009 they want to see “significantly improved enforcement activity and removal of people living or working illegally in the UK through improved contact management and other measures”.\(^{424}\)

429. Some asylum applicants are subject to reporting requirements, but it is not clear what the compliance rate is.\(^{425}\) Nor do we know if those subject to reporting requirements are actually more likely to leave the country or be removed than others.

430. In a statement of 13 March 2006, the then Immigration Minister Tony McNulty had set out the plans of the Immigration Service for increased use of electronic monitoring in an immigration context. This can take three forms: telephone reporting using voice recognition technology; tagging; and satellite tracking. Telephone reporting is aimed at

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\(^{422}\) Home Office Immigration Directorates’ Instructions Ch. 20 s. 1 para. 3.3
\(^{423}\) Ev 51, para 63, HC 775–II
\(^{424}\) p. 3
\(^{425}\) Ev 391–2, HC 775–III
lower-risk cases; tagging on higher-risk cases; and “less use” has been made of satellite tracking. Tagging in particular seems to be used in asylum cases only.426

431. Continued contact with failed immigration applicants must be improved, whether through their being required to report regularly to a reporting centre or police station, or through electronic monitoring. Reporting or monitoring conditions should however be imposed only for a limited time until the case is concluded by granting leave to remain or by the person leaving the country voluntarily or being removed.

**Increasing the number of removals**

432. Even once illegal migrants have been identified, there are several potential barriers to removal: not only human rights claims and asylum claims (and where EEA citizens are concerned the fact that they can be removed only in the more limited circumstances set out in European free movement law) but also practical problems of re-documentation and travel arrangements.

433. Dr Khalid Koser, senior policy analyst for the Global Commission on International Migration, told us that he thought removals have not been used as strongly as they might be by the UK.427

434. The President of the AIT, Mr Justice Hodge, told us that there is a great need for the Foreign Office to help ensure that people can be returned to their home countries:

> This is entirely my own view and not based on anything much, but the Home Office has got to work with the Foreign Office to get this right. The problem is that the countries will not take lots of people back who might be able to go back. I am sure they do work together, but they need to redouble their efforts. It must be right that if you are likely to be sent home, if you are here wrongly and you are discovered to be here wrongly, then the incentive to come here in anything other than a rightful way is reduced.428

435. The Foreign Office is securing an increasing number of readmission agreements with countries to which returns have been difficult. However, we were told during our visit to India that these are being applied only in asylum cases, at least as far as India is concerned. **The Government must confirm that readmission agreements are being used to facilitate non-asylum as well as asylum removals.**

436. At the moment people who have been removed from the UK are not subject to any bar on returning unless they have been deported (following a criminal offence or because their presence in the UK is “not conducive to the public good”). This means that someone removed from the UK can make an application for a visa the next day to re-enter the UK; or if they are not a visa national (and not applying to come to the UK for longer than six months) they can simply present themselves at a port of entry and apply again to enter, although the Immigration Rules do provide that illegal entry and previous breaches of

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426 HC Deb 13 March 2006 cols 88-90W5
427 Q 115, 10 January 2006
428 Q 360, 24 January 2006
immigration control are general grounds for refusal of entry clearance and leave to enter.\textsuperscript{429} 3,497 (3\%) of the 108,904 people who were removed from the UK between November 2003 and September 2005 had already been removed once or more, and one of these had been removed on seven separate occasions,\textsuperscript{430} although it is not clear if these people had re-entered the UK clandestinely or with leave.

437. Anyone who has had to be forcibly removed from the UK because they did not comply with a notice to leave the country, not just those who have been deported, should be banned from returning to the UK for a set period. The ban could be automatic, or there could be a presumption in favour of a ban or even simply the option of imposing one. The length of this ban or presumption should reflect the degree of abuse. A ban or the possibility of one would act as a disincentive to breach the Immigration Rules, would encourage voluntary departure on receipt of a notice to leave the UK because that would not result in a ban, and might help to address the “revolving door” phenomenon whereby people who have already been removed once or more return and are then removed again.

438. Enforcement must also be known to be effective.\textsuperscript{431} At the moment, quite apart from the fact that there is little expectation that any enforcement action would be taken, we suspect that few people are aware of the consequences of what could happen to them. We were told, however, of a new publicity campaign in India called “The Only Way is the Legal Way” which aims to spread information about how people can lawfully come to the UK, but also to highlight the forgery and fraud detection work in visa sections.\textsuperscript{432} On the other hand, there are a number of schemes which reward those with a good immigration history. For example, 58\% of posts have introduced a Fast-Track facility for frequent travellers (and those posts had seen a 73\% increase in productivity compared to those posts that did not have Fast-Track).\textsuperscript{433}

439. The immigration system already rewards people with a good immigration history, by for instance offering them a fast-track visa application process. The Government should also make people aware of the consequences of illegal immigration, not only through better information for unsuccessful applicants but also through widespread advertisements, including in workplaces, colleges, benefits offices and hospitals.

440. The Government recognises the benefit of encouraging voluntary returns over forced removals. Although most of the emphasis has been on voluntary returns of asylum seekers, there is also a programme called Assisted Voluntary Return for Irregular Migrants (AVRIM), introduced in 2004 to assist irregular migrants who have not sought asylum to return to their country of origin. 667 people have so far been assisted under this programme, but promoting the scheme is described as “challenging.”\textsuperscript{434}

\textsuperscript{429} Immigration Rules (HC 395 of Session 1993-94, as amended) para 320(11) and (12)
\textsuperscript{430} Home Office response to Freedom of Information request, 5 December 2005
\textsuperscript{431} See Q 212, 17 January 2006
\textsuperscript{432} Q 408, 7 March 2006
\textsuperscript{433} Ev 377, HC 775–III
\textsuperscript{434} Ev 393, HC 775–III
schemes for those who have not sought asylum should be prominently referred to in refusal letters, with details of whom to contact for further information.

441. It is clearly not necessary to take enforcement action against those who leave the country voluntarily. Many probably do so, not least to avoid jeopardising their future ability to travel to the UK. Under the system we envisage, failed applicants who promised to leave the UK voluntarily should continue to be allowed to do so, and their departure from the UK monitored. To do so efficiently will require the re-establishment of embarkation controls.

Reintroducing embarkation controls

442. In 1994, the Government decided to end the embarkation controls for passengers travelling from ferry ports and small ports to destinations within the European Union, meaning that 40% of departing passengers were not being seen by an immigration officer. The remaining embarkation controls were removed on 16 March 1998 as it was decided that they were “an inefficient use of resources and that they contribute little to the integrity of the immigration control”, and that in any case “experience has shown that the use of intelligence and denunciatory information is the most effective tool against illegal immigration”. The aim was to replace them with a targeted, intelligence-led approach creating a more efficient and effective control.435

443. As a result, there is no way of telling how many people have left the UK compared even with the numbers of arrivals, let alone compared with the number who should have left. Also the door is opened to frauds such as the one we were told of in Nigeria, under which people who are in the UK as visitors and want to stay for longer than six months send back their passports in order to get a fraudulent Nigerian entry stamp which makes it look as if they left the UK; they can then apply under the fast-track process for frequent travellers in which fewer checks are made. We were told that the same problem has recently surfaced in Islamabad too, although there they are tackling the problem by requiring applicants to collect their passports themselves.

444. In the previous Parliament our predecessor Committee more than once called for the reintroduction of embarkation controls.436 Throughout this inquiry witnesses from across the spectrum have repeated this call.437 We have heard from no-one who disagrees with it.

445. The Government says that it will start electronically recording people’s departure from the UK as part of the e-Borders programme which is scheduled to begin in 2008 and go through to about 2014 or 2015.438 We presume this means that embarkation controls will be reintroduced. The Five Year Plan for immigration and asylum states that e-Borders technology will mean that people’s departure from the country is recorded, which “will mean that we will know who has overstayed in the UK, which will help us target our immigration checks.” This is intended to be part of an “audit trail” of passenger

435 HC Deb 16 March 1998 col 506-7W
437 For example Q 160, 10 January 2006 and Q 211, 17 January 2006
438 Q 447, 7 March 2006
movements both in and out of the UK, but IND recognise that there may be difficulties matching the information captured on departure accurately against the identity in which the passenger was granted leave.  

446. The danger of re-introducing embarkation controls is that it might encourage people to stay illicitly rather than risk being caught at the border for overstaying. However, if passports were simply scanned in order for the person’s record to be marked up, and whatever the result the person was allowed to leave, it should then be apparent if the person had overstayed. This could be used as a ground for refusing any subsequent application to come to the UK; if they never wanted to come back to the UK it would be irrelevant.

447. The next stage would be to use the embarkation checks to identify and trace all those who should have left but have not.

448. We understand that the introduction of e-Borders will effectively mean the reintroduction of embarkation controls. We welcome this development and urge its swift and effective completion. However, the Government must also have a clear strategy for acting on the information collected. Firstly, it must be used in subsequent applications: even scanning the passport so that the database shows the person had left and on time would be immensely valuable to anyone deciding a subsequent application. Secondly, it must be used to identify those who entered the country legitimately but have overstayed their visa without attempting to regularise their position.

Gathering information

449. The Immigration Service cannot tackle the problem of illegal migrants alone. Other bodies, including the police, marriage registrars, tax authorities, local authorities, employers and education sector, all have a responsibility too.

450. There are various ways in which the immigration authorities might come to know of people who are living in the UK in breach of the immigration laws. The police can ask people for evidence of immigration status or might receive anonymous information; marriage registrars are under a duty to report suspicious marriages or civil partnerships to the Home Office; local authorities, employers and tax authorities may be required to provide information to the immigration authorities; and the police and immigration officers have the power to enter premises to search for immigration offenders. Members of the public might also contact the Home Office with allegations, and these go to the Managed Migration Intelligence Unit for investigation. The IND told us “it is not possible to estimate how many of these allegations were acted upon and the subsequent outcome”. However, they could tell us that from 1 April 2005 until 5 February 2006, 1891
people were arrested “wholly or partly as a result of denunciatory information of whom 690 (37%) were failed asylum seekers”.444

451. Even more information will be available to IND in the future. Employers and colleges will be under a duty to tell IND about people who leave their job or course;445 and electronic embarkation controls (see paragraph 455 to 448 above) could be used to provide automatic alerts of people whose leave has expired but who are not shown as having left the UK.

452. All information about possible overstayers, whether from database alerts, tip-offs from members of the public or information provided by police, registrars, tax authorities, local authorities, employers or colleges must be followed up with investigation and, if necessary, enforcement action. Data on following up this information must be gathered to measure the IND’s effectiveness.

Illegal working

453. The employment of illegal workers should be one of the main targets for action against illegal migrants who are already living illegally in the UK. There is a growing recognition that the Immigration Service cannot do this alone. It is leading the Joint Workplace Enforcement pilot (JWEP), which is “exploring the scope for closer co-ordinated working, including intelligence sharing, between Government workplace enforcement departments to tackle both the use and exploitation of illegal migrant workers”. The pilot group consists of enforcement and intelligence officials from across Government (the Immigration Service, HM Revenue and Customs, the Department for Work and Pensions, the Department for Trade and Industry, the Health and Safety Executive and the Gangmasters Licensing Authority), “to share information and co-ordinate operations against employers, employment agencies, labour providers and any type of business who are involved in the deliberate use or supply of illegal migrant workers”. So far the JWEP has agreed protocols with all the Departments working with it, and its work has led to one prosecution.446 We are told that an initial evaluation of the pilot will be taking place “shortly”.447

454. When we asked the Chairman of the Association of Labour Providers, Mark Boleat, where he would place a hypothetical 100 extra staff to prevent illegal working, he replied “entirely on tax”.448 He argued that employers of illegal labour avoided paying tax, thus cutting costs by 40%, and suggested that the tax authorities should target customers of labour providers, such as large food plants, who were able to undercut competitors by employing illegal labour.449 In his written evidence he was very critical of the lack of enforcement activity by the tax authorities “even where there is blatant tax evasion which is reported to them”, suggesting that they were ineffective at tackling those who were

444 Ev 253, HC 775–III
446 Ev 393, para 5, HC 775–III
447 Ev 279 para 3, HC 775–III
448 Q 757, 16 May 2006
449 Qq 751-752, 16 May 2006
operating entirely outside the tax system.\footnote{Ev 2372, para 29, HC 775–III} HM Revenue and Customs has been making some efforts to tackle income tax fraud in the informal economy: a new offence of evading Income Tax was introduced from 1 January 2001 (codified in Section 144 of the \textit{Finance Act 2000}) and in addition, “forty two new fraud investigators were recruited in 2001 to investigate cases involving the new offence.”\footnote{Report by the Comptroller and Auditor General, \textit{Tackling fraud against the Inland Revenue}, 28 February 2003 HC 429 of Session 2002-2003 p 26. The report provides a checklist of the recommendations made in the Grabiner Report (HM Treasury, \textit{The informal economy: a report by Lord Grabiner QC}, March 2000) and the Government’s response in each case.} However, the results of these appear to be limited.\footnote{Public Accounts Committee, First report of Session 2003-04, \textit{Tackling fraud against the Inland Revenue}, HC 62, p. 4}

455. Tackling tax and national insurance evasion should become a central feature of the drive against the employment of illegal labour, and the tax authorities must make much greater efforts to tackle these in the informal economy. Enforcement work on tax and national insurance should take place in conjunction with all the other legal measures available to tackle abuse in the informal labour market. As well as ensuring that employers complied with their legal obligations, it would reduce the financial advantages of employing illegal workers.

456. The ease with which employers can take on people who do not have the right to work in the UK, particularly where sub-contractors are involved, was demonstrated in May this year, when five Nigerians were detained after turning up to work as agency cleaners at the IND. They did not have the right to work, but all of them had apparently worked there before.\footnote{‘Illegals arrested at Home Office’, \textit{BBC news online}, 19 May 2006: http://news.bbc.co.uk/1/hi/uk_politics/4995764.stm Channel 4 News on Friday 19 May reported that each of the five individuals has worked at the IND on a number of occasions, one of them for about three years. The company that supplied the cleaners, Techclean, also told Channel 4 News that four had had their passports and National Insurance cards checked and had visa entry details. The fifth man apparently had a letter from the immigration service confirming his right to work in the UK: “Reid “misled public over illegal immigrants””, \textit{Independent}, 22 May 2006}

457. We were told that there is a large number of Zimbabweans in the UK who are forced into supporting themselves through working illegally. Dr JoAnn McGregor of the University of Reading suggested that the key problems in the care industry, where many Zimbabweans work both legally and illegally, are unscrupulous employers and the “cascading sub-contracting chains” which make it very difficult to say who is the employer.\footnote{Q 551 and Qq 555-6, 28 March 2006} Christine Lee, a solicitor who represents many Chinese employers in the UK, told us that because of the shortage of properly-trained Chinese chefs in the UK, a number of employers turn a blind eye to illegal working.\footnote{Q 606, 28 March 2006}

458. One of the problems is that there is no easy way for employers to verify whether or not a person has the right to work in the UK. National Insurance numbers (NINos), for example, are not proof of the right to work in the UK, partly because they are not withdrawn if a person loses the right to work in the UK or when their leave expires.
459. Certain documents or combinations of documents are considered sufficient to fulfil employers’ duties (under section 8 of the Asylum and Immigration Act 1996) to check that potential employees are allowed to work in the UK. Passports (with an appropriate endorsement if necessary) are enough on their own; a NINo needs to be accompanied by another document such as a full UK birth certificate. But even these cannot be conclusive proof: for instance employers cannot be expected to recognise forgeries. And the requirements are not well understood, applied or enforced despite the Home Office guidance to employers (available in both summary and comprehensive form), and the Employers’ Helpline which advises on the legislation.456

460. NINos appear to cause particular problems. Jonathan Portes, Chief Economist at the Department for Work and Pensions (DWP), explained to us the purpose of NINo and how they are issued:

The important point for us is that NINos (national insurance numbers) are an internal reference number that lets us link an individual with their social security, or their child support, or their tax or their contribution record. It is not proof of identity, and it is not supposed to be proof that you are entitled to work. The interviewing process that we go through is basically about identity fraud. It is to ensure you are who you say you are. It is not supposed to provide a rigorous check on immigration status. There can be quite legitimate reasons why you might require a NINo even if you are not entitled to work in this country. If we do become, or if Jobcentre Plus, who do the NINo allocation process, do become aware of right to work or immigration irregularities - if it becomes obvious that somebody is not entitled to work where there is good grounds for them believing they are not entitled to work and it is pretty clear that the purpose of their applying for NINo is because they are going to work - then we do report that to the appropriate authorities; but it is important to recognise that NINos are not just about the right to work and that is not what they are there for.457

461. A NINo is needed in order to claim most social security benefits and tax credits.458 Because of the complicated position of couples with mixed immigration status there have been situations where even a person who is not allowed to have recourse to public funds was required to get a NINo, but the guidance on this has recently been changed.459

462. Since we took evidence from Mr Portes, it has emerged that National Insurance numbers (NINos) are issued without any check on immigration status or right to work or to benefits. We were very concerned by the Times report that DWP guidance from July 2005 (still in force) instructs Jobcentre staff to issue NINos even when there is evidence that immigration status has been falsified. The guidance says:

456 http://www.ind.homeoffice.gov.uk/lawandpolicy/preventingillegalworking/ .The concerns of Chinese employers were described to us by Christine Lee, a solicitor representing the Chinese community: Qq 567-9 and Q 578, 28 March 2006

457 Q801, 16 May 2006

458 Social Security Administration (Fraud) Act 1997 - see House of Commons Library Research Paper 96/107

Where DWP (Department of Work and Pensions) is satisfied as to the individual’s identity, a NI number would be issued in this situation even if we have suspicions around his immigration status ... Any prosecution action in respect of the falsified immigration documentation would be the responsibility of IND - NOT DWP.460

463. The total number of NINo registrations to overseas nationals in 2004/05 was 440,000, an increase of 69,000 (19%) on 2003/04.461 The Home Office told us that Jobcentre Plus colleagues can themselves check the immigration status of applicants, under a National Partnership Agreement for data sharing, and that there is a network of contacts in both departments to facilitate data-sharing at a local level.462 We have also been told the theory of what happens when the IND is alerted to a possible immigration offence:

Where IND receives intelligence that an immigration offence has been committed, they are centrally recorded, considered and disseminated for IND intelligence units to act upon at the earliest possible opportunity. Intelligence officers will decide whether to refer cases for action through their local Tasking and Co-ordinating Groups whose priorities are set by a control framework at the Senior Managers Tactical and Tasking Group. Even where no action is taken, the information is added to the IND intelligence database, Mycroft. This is helping to increase the body of knowledge that IND has about all areas of abuse of the system and may, where appropriate, be used at a later date.463

We have not been told how often any of this happens in practice.

464. According to DWP figures, approximately 3,300 cases were referred to IND during 2005-2006. This figure is made up of 2,500 relating to apparent immigration offenders (overstayers, or no right to employment) where NINos were issued and IND notified; and approximately 800 cases where it appeared that false documentation was used as a result of which NINos were refused and details of the immigration offence were passed to the IND. The IND has been unable to tell us about the action they took to follow up this information.464

465. Ministers have decided to introduce a new “right to work” requirement for NINo applications:

“From July 2006 the Department for Work and Pensions will introduce a “right to work” condition into Jobcentre Plus’s National Insurance Numbers (NINOs) allocation and decision making process for employment related applications... Any individual applying for a NINO in connection with employment who does not have the right to work here legally will be refused one. This change follows a review

460 ‘Your documents are forged…but you will still get a number’, Times 1 June 2006
461 Department for Work and Pensions, National Insurance Number Allocations to Overseas Nationals Entering the UK, 2005
462 Ev 384, HC 775–III
463 Ev 384, HC 775–III
464 Ev 408, HC 775–III
conducted by the Department into the existing legislation governing the allocation of NINOs. 465

466. It is not clear how individuals will prove to the DWP that they have the right to work in the UK, nor whether those who fail to prove it will be reported to the IND for investigation and possible enforcement action. The DWP will continue to issue NINos in some circumstances to people who are not entitled to claim public funds, partly because they will sometimes have the right to work in the UK. And NINos will not be removed from people when they no longer have the right to live or work in the country. 466

467. We welcome the proposed “right to work” condition for people applying for National Insurance numbers (NINos). We recommend that the Government also consider withdrawing NINos from people who no longer have the right to work in the UK.

468. The difficulty of proving immigration status also causes problems the other way round, according to evidence from ILPA: “DWP offices have been treating people who cannot provide up-to-date IND acknowledgment of their application for leave to remain as overstayers and thus wrongly refusing them benefits”. 467

469. The Government has said it will in the future require all those in the country for more than three months to carry residence permits which will act as identity cards. In its Five Year Plan for immigration and asylum it said that “These will provide a simple and secure means of verifying identity, helping us tackle illegal working, organised crime, terrorist activity, identity theft, and fraudulent access to public services.” 468 The Identity Cards Act 2006 provides for a National Identity Register for everyone resident in the UK for three months or more, which would contain information on a person’s immigration status.

470. There should be a single database which clearly shows a person’s immigration status and right to work and claim benefits. We note that the Government’s National Identity Register is intended to fulfil this function. Employment and access to services could be made conditional on a satisfactory check against such a database.

A regularisation scheme?

471. Even if removal efforts are stepped up, it is hard to see that all illegal migrants will be removed. It was suggested to us that in the care sector in particular it could cause grave problems and upset to have employees removed in immigration raids. 469 Many commentators, trade unionists, NGOs and academics have suggested that the only way to deal with illegal migrants already living in the UK is to regularise their status. Jack Dromey, Deputy General Secretary of the TGWU, is reported as saying:

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465 HC Deb 5 June 2006 cc12-13WS
466 Ev 404, HC 775–III
467 Ev 72, HC 775–II
468 Home Office, Controlling our borders: Making migration work for Britain - Five year strategy for asylum and immigration, Cm 6472, February 2005, para. 63
469 Q 557, 28 March 2006
Yes it is true that there are probably half a million here without documents. The question is what we do about that? They live in fear of a knock on the door and they are exploited by too many employers. What we need therefore is a sensible approach which does not criminalise those good men and women. You can't deport half a million workers. Who would clean? Who would cook? Who would pick in our fields? The time has come for a debate around an amnesty for those workers.  

472. The Institute for Public Policy Research (IPPR) suggests that regularising these people and bringing them into the tax system could bring the Treasury around £1 billion a year, whereas deporting them all could cost around £4.7 billion. Its director, Nick Pearce, said,

Nobody likes illegal immigration. And the subject is a deeply difficult one for politicians to tackle. But the bare truth is that we are not going to deport hundreds of thousands of people from the UK. Our economy would shrink and we would notice it straight away in uncleaned offices, dirty streets and unstaffed pubs and clubs. So we have a choice: make people live in the shadows, exploited and fearful for the future; or bring them into the mainstream, to pay taxes and live an honest life.

473. In its evidence to us, the IPPR suggests that “simply getting tough is unlikely to be effective in tackling irregular migration...Regularisation and the implementation of formal channels for low-skilled migration is a more realistic approach than denying the need for low-skilled migrants or being overconfident about the ability to control them”.  

474. As Dr Khalid Koser of the Global Commission for International Migration pointed out to us, “The grave argument against regularisation...is the question of whether this is a magnet”. If I live in Kosovo and I know that you are going to have a regularisation next year then I am going to come in time to have it. David Blunkett, the former Home Secretary, was reported as saying that it would be impossible to have an amnesty without identity cards and a clean data base. The pressure group MigrationWatch UK is opposed to any amnesty.

475. Many countries have had or are considering widespread regularisation programmes. In the USA, President Bush’s *Fair and Secure Immigration Reform* will allow those currently living irregularly in the US to apply for three-year work permits that are renewable for a further three years. On allowing long-term illegal immigrants a “path to citizenship”, Mr Bush said this was not an amnesty but a “rational middle ground between granting an automatic path to citizenship for every illegal immigrant and a programme of mass deportation”.  

470 ‘Amnesty call over illegal workers’, BBC news online, 20 May 2006  
471 IPPR press release, ‘Legal work for illegal workers could raise £1 billion’, 31 March 2006  
472 Ev 79, HC 775–II  
473 Q 116, 10 January 2006  
474 The Independent, 15 June 2006, p33  
475 Migration Watch UK, *Ten MigrationWatch Achievements 7 May 2006 and An Amnesty of Illegal Immigrants?* 21 May 2006. See also Q 164, 10 January 2006  
476 ‘Bush unveils immigration reforms’, BBC news online, 16 May 2006
476. Spain has just completed its fifth regularisation programme. The novel approach of this latest effort, as part of a much broader programme including reforms to border controls, workplace inspections and removals, has received considerable praise.477

477. An analysis of the concept, history and outcomes of regularisation programmes is given in a Global Commission on International Migration paper. It has mixed conclusions about such programmes: “The possibility of obtaining legal status is a necessary condition to combat irregular migration, but it is not sufficient. Regularization needs to be combined with tighter border controls, employer sanctions and law enforcement” and also removal possibilities for those who do not qualify for regularisation. It concludes that “occasional regularization programmes do not bring sustainable results in terms of minimizing irregular migrant populations or preventing further irregular arrivals” but that ongoing regularization programmes “seem to be a more effective policy option”. Long-term permits in its view support upward mobility, taxing and family reunion: the paper suggests three years in the first instance.478

478. The Minister for Immigration, Citizenship and Nationality, Liam Byrne MP, did not rule out the possibility of an amnesty when he appeared before us on 13 June,479 but the Prime Minister’s official spokesman said the next day that there were “no plans” for an amnesty.480

479. We have two concerns about the current discussions of a possible amnesty. The first is that any amnesty which is introduced before the enforcement of immigration controls is working satisfactorily would be likely to encourage further illegal immigration and achieve little lasting benefit. The experience of other countries lends some support to this. The second concern is that by encouraging the view that breaches of the immigration rules may in some way be rewarded, confidence in the immigration system may be diminished. Having considered the arguments for and against, we do not consider that an amnesty would be appropriate or helpful in the current situation.

9 Customer service

480. We now consider the treatment of those who come into contact with the immigration system. The idea that immigration control must provide a good service to customers has not been fully realised in the work of the immigration authorities.481 As we have said above, the majority of the people they deal with are foreign nationals who pay a fee and whom we wish to be able to travel easily to this country. Many are relatives of British residents, and others are tourists, students and business people whose travel here is beneficial to the


478 Aspasia Papadopoulou, ‘Regularization programmes: an effective instrument of migration policy?’, Global Migration Perspectives No. 33, May 2005

479 Q 1225, 13 June 2006

480 www.pm.gov.uk/output/Page9675.asp

481 Dr Ann Barker, the Chair of the IND Complaints Audit Committee, commented that her predecessor “did a very good job of raising officials’ awareness of the fact that they had customers”.Q 14, 13 December 2005
short- and long-term health of the economy (see paragraphs 22 to 32) But the other side of the immigration authorities’ role is control - ensuring that people do not enter or stay in the UK unlawfully - and it is this aspect which has been dominant.

481. **We acknowledge the conflicting pressures on the IND and UKvisas, but emphasise that the need to maintain the integrity of the immigration system must be balanced against the need to ensure a high-quality service to the millions of people whom we wish to be able to travel easily to the UK.**

482. Applicants have to pay substantial fees and yet they have many complaints about delays and the difficulty of checking progress on their applications. Immigration control also provides a service to the resident population in attempting to ensure that only those people who are entitled to be in the UK are actually here, and yet there is considerable frustration that allegations of immigration violations are not apparently followed up (we deal with this issue at paragraphs 449 to 452.

**Levels of fees**

483. Most people applying for visas or leave to remain in the UK now have to pay a fee. Visa applications have for a long time incurred a fee, but charging for in-country immigration applications to cover the costs of this service began only on 1 April 2003.

484. In April 2005 the fees for in-country applications were raised. The “premium service” for certain applicants who apply in person and receive a same-day service costs £500, and the standard fee for postal applications for leave to remain is now £335. Students applying by post pay a smaller fee of £250, and applying by post to have existing leave transferred to a new passport costs £160. Some categories of applicant are exempt from paying a fee. 482

485. The IND tells us that the new fees have not put people off applying: “Demand has remained strong overall, exceeding forecast, with no evidence that the price of our fees has had an effect on overall demand.” 483

486. UKvisas is supposed to meet the full cost of the visa operation from its fees. In July 2005 these fees were revised: a six-month visit visa now costs £50; most other temporary visas, including student and employment, cost £85; and settlement and marriage visas cost £260.

487. It is not at all clear why the fees are so much higher for the IND than for UKvisas. When we asked for an analysis and comparison of overseas and in-country fees, we were told that this was not possible “on a like for like basis” because the two organisations are “discrete businesses, each governed by its own regulatory regime and functioning on an independent cost base.” 484

488. The two sample cost breakdowns sent to us, relating to the cost of student applications, revealed surprising results, for instance that the salary costs per student

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482 Levels of fees are set out in regulations made under s. 5 of the Immigration and Asylum Act 1999 (as amended)
483 Ev 52, HC 775–II
484 Ev 390, HC 775–III
application were calculated at £62.71 for UK applications but only £34.16 for overseas applications. Dominic Scott of UKCOSA said that he finds it difficult to understand why a student visa costs £85 but an extension costs £250 or £500, particularly since the initial application involves detailed checks but allowing someone to stay an extra year or move college should be an extremely simple process.485

489. UKvisas has not produced Regulatory Impact Assessments of increases to visa fees. By contrast, the Home Office carried out two RIAs when considering the increase to in-country application fees from 1 April 2005.

490. We know from our own experience as constituency MPs that the £160 fee for transferring a stamp to a new passport is the cause of many complaints.

491. The calculation of visa fees and in-country fees should be aligned at least in terms of what costs are taken into account and the impact assessment which accompanies them. If the levels of fees are to remain so different, the Government must be able to provide a clear and valid justification.

**Delays**

492. Delay is the cause of 90% of complaints to the IND (see paragraph 509 below). The IND receives 40,000 letters a year from Members of Parliament (almost two a week on average from each of the 464 MPs) arising from constituents’ dissatisfaction with the IND’s service.486 Most of these are about delay. Delay is also the subject of thousands of telephone calls to the MPs’ hotlines.

493. As we noted above (paragraphs 223 to 224), the IND’s targets appear to result in difficult cases being left to the bottom of the pile. Witnesses alleged that easy cases are handled within the time targets but the more difficult ones drag on for months.487 The IND told us that the longest processing time for a non-charged application in the last five years is 840 days (or 579 working days).488

494. There is an unacceptable level of delay in the IND’s immigration casework, which leads to tens of thousands of complaints every year to both the IND itself and Members of Parliament. The IND must address this problem at its source by investing in initial decision-making and instilling a culture which does not allow cases to disappear into ‘black holes’.

495. MPs’ correspondence is handled by a separate section of IND which is not part of the Complaints Unit and provides a different level of service. The AIT has also recently introduced a specialised unit for handling MPs’ correspondence. Both the IND and UKvisas have telephone hotlines which only MPs and their staff are allowed to use.

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485 Q 652, 9 May 2006
486 Ev 69, HC 775–II
487 Ev 85, HC 775–II and Q 285, 17 January 2006
488 Ev 255, HC 775–III
496. Although constituents do come direct to MPs with their immigration problems, many immigration applications are referred to MPs by advisers because that is seen as the only way of making progress with a case. In some circumstances they will charge their clients for writing a letter to an MP asking him or her to take up the case with Ministers, a service which MPs provide for nothing. Many Members find a large proportion of their constituency caseload taken up by immigration cases.

497. It would not be appropriate for the Committee to advise Members of Parliament how to carry out their constituency duties, but we believe that they should consider carefully whether, when the appeals system has clearly been exhausted, it is wise to pursue an immigration case, as this is likely only to cause further delays which are inconsistent with the aim of a smoothly functioning and efficient immigration and appeals system.

498. We do not believe it to be appropriate that Members of Parliament have become an integral part of the immigration system upon which even representatives rely to make progress with a case. UKvisas, the IND and the AIT must improve their systems for handling inquiries and complaints so that applicants and representatives do not need to short-circuit the system by going through their MPs.

Checking progress of applications

499. Providing information to applicants about the progress of their cases is a basic customer service, yet we were told of considerable dissatisfaction.

500. The IND’s Immigration and Nationality Enquiry Bureau (INEB) is the main telephone contact centre for the Croydon, Sheffield and Liverpool operations. As well as handling calls asking for general information, it also deals with telephone enquiries about individual cases. INEB caseworkers we met on our visit there suggested that nine out of ten calls are about the progress of a case, but they told us that they are not allowed to put the caller through to a caseworker who could answer the question. Nor are they allowed to divulge the information about the case which is available to them. Callers are told instead that they have to write to or fax the caseworkers, but often they receive no response. This leads to frustration and complaints.

501. ILPA told us about the problems they as representatives encounter in contacting the IND via INEB rather than directly, and also about delays in responses to inquiries from posts abroad: “I cannot think of any other business with which you might chose to engage where, when you have given them your money and made an application and when you ring up you are told you cannot speak to anybody who is dealing with this matter”. The one good example in their view is Work Permits (UK), which they find accessible and efficient.

502. IAS notes variations in accessibility of visa sections overseas:

Some Posts are relatively accessible and it is possible to telephone, fax or email and receive a reply. Other Posts appear impervious to communication, making it
extremely difficult to negotiate or to ask for a decision to be meaningfully reviewed. An expensive appeal then becomes necessary. This also applies to the Immigration and Nationality Directorate, with which it is virtually impossible to communicate by any means.491

503. UKvisas has a central telephone enquiry number but it is no longer available to most callers from overseas. Overseas callers are encouraged instead to contact their local British visa section, or to email, write or fax UKvisas.

504. In some cases we recognise that there might be security implications to keeping applicants informed of progress on their case, but in all others we think it would be beneficial. In at least some cases a knowledge of the reasons why an application was delayed might enable an applicant or sponsor to provide or clarify relevant information and thus reduce the pressure on the system. Some progress towards this has been made: in the outsourced visa application centre we visited in Lagos we were shown the centre’s website which included a facility for applicants to track the progress of their cases online.492

505. The frustration caused to applicants by being unable to find out the progress on their applications leads to large numbers of complaints, and is unacceptable. The Government should carry out a review of the information given to applicants and their representatives on the progress of their cases, with a view to providing as much information as possible, even to telephone callers. A system which would let all applicants track the progress of their case online would enormously reduce the number of enquiries and complaints.

Handling complaints

506. The IND Complaints Unit acts as the central point of contact for all complaints about the IND. Complaints are categorised as either operational or formal. Operational complaints relate to the way the IND works, so may for instance be about the time taken to process an application, or the lack of accurate information or facilities. The department responsible for investigating the complaint will be responsible for informing the complainant of the outcome. Formal complaints are about the conduct of an individual member of IND staff, for example if an applicant considers staff to have been inefficient, rude, offensive or unprofessional. The IND Complaints Unit will take responsibility for coordinating these investigations, and when the investigation of a formal complaint is complete, the complaint file will be audited by the IND Complaints Audit Committee (CAC), an independent panel set up in 1994. The IND aims to provide an answer to operational complaints within four weeks and the findings of formal investigations within eight weeks.

507. The new Chairman of the CAC, Dr Ann Barker, is scathing in her criticism of the IND’s complaints system:

There are three major problems: one, that the system is so fragmented that it is not working at all efficiently and that customer satisfaction is not what it should be; two,
that the quality of investigations is low; and, three, that operational complaints are not being addressed at all adequately and no one knows quite how many there are.\textsuperscript{493}

508. There are 500 to 600 formal complaints a year, about one third of which are so serious (for instance allegations of assault) that they should, in Dr Barker’s opinion, be referred to the police.\textsuperscript{494} The CAC’s recent audit of formal complaints against named individuals indicated a very low quality of service: it found that in three out of four investigations the evidence-gathering was inequitable (complainants are not interviewed, there is no attempt to test their evidence, and little independent evidence on their side, in contrast to “quite detailed investigation on the side of the official in regard to independent witnesses and any other corroborating evidence”),\textsuperscript{495} and in two replies to complainants out of three, the reasons given were “indefensible”.\textsuperscript{496} And yet these investigations cost £3,000 each.\textsuperscript{497}

509. Dr Barker notes that the CAC has hitherto not audited “operational complaints”, i.e. those relating to the way the IND works as opposed to formal complaints relating to the attitudes and behaviour of staff. The CAC has carried out an initial scoping exercise which indicates that the number of formal complaints is dwarfed by the number of operational complaints, of which there are about 26,000 a year. 90\% of operational complaints arise from delays in decision-making.\textsuperscript{498} Dr Barker told us that “it is completely unknown how much is being spent” on these complaints, but that a “large and incalculable amount of money is being wasted”\textsuperscript{499}

510. Dr Barker concludes that the problems with the complaints system in the IND have arisen for reasons which include:

- a “defensive culture in regard to complaints” within the IND
- a lack of real customer focus with complaints being seen as a nuisance and accorded low priority
- complaints not being viewed as a source of business intelligence or management information
- lack of relevant skills amongst officials
- fragmentation of the complaints handling system (the IS and the IND operate separate systems; databases are incompatible; there is poor file management and tracking)
- a lack of agreed standards and effective procedures for handling operational complaints, and inadequate guidance on handling formal complaints.\textsuperscript{500}

\textsuperscript{493} Q 2, 13 December 2006
\textsuperscript{494} Qq 16-20, 13 December 2005
\textsuperscript{495} Q 5, 13 December 2005
\textsuperscript{496} Ev 69, HC 775–II
\textsuperscript{497} Q 21, 13 December 2005
\textsuperscript{498} Ev 69, HC 775–II
\textsuperscript{499} Q 12 and Q 21, 13 December 2005
\textsuperscript{500} Ev 69, HC 775–II
511. She calls for “a fundamental reform of the way complaints are viewed and handled”, with “a strategic realignment of complaints management within the business cycle”. She makes the following recommendations:

- there should be a single complaints system (and a single central database) for the whole organisation, but with a variety of channels for making a complaint to it

- complaints should be categorised more effectively so that each receives an appropriate response

- there should be more intensive investigation of complaints of serious misconduct (one third of complaints against individuals fit into this category) with reference to the Independent Police Complaints Commission in the most serious cases

- the option of informal resolution should be available for less serious complaints of misconduct

- the system should provide real-time business intelligence to enable managers to improve their performance.  

512. On this last point, she suggested that at the moment “The opportunity to redress service deficiencies has been lost. The organisation cannot learn from its mistakes.”

513. When we visited the Complaints Unit on our visit to the IND in Croydon we were told that it is in the middle of a period of change, that it is looking to redefine complaints to remove the artificial distinction between formal and operational complaints and that new software is being introduced to improve the monitoring of complaints and include follow-up action.

514. Fiona Lindsley, formerly Independent Monitor for Entry Clearance Refusals without the right of appeal, told us that although relatively few people complain about visa applications, in about two thirds of cases she found responses to complaints unsatisfactory. UKvisas does not have an equivalent of the CAC.

515. Whilst we welcome the extension of the IND Complaints Audit Committee’s role to cover the huge number of “operational complaints”, we call for the Government to implement a single immigration complaints system, covering both the IND and UKvisas, with a variety of channels of complaint and a variety of methods for dealing with those complaints, ranging from informal resolution to intensive investigation. We particularly emphasise the need for the organisation and individuals within it to learn from substantiated complaints.

501 Ev 70, HC 775–II
502 Ev 69, HC 775–II
503 Q 27, 13 December 2005
10 Deportation of foreign national prisoners

516. Late in our inquiry it emerged that over a thousand foreign national prisoners had been released from prison over the last seven years without the IND considering whether or not to deport them. We held three additional evidence sessions to examine how this problem arose and, most importantly, what it could tell us more generally about the IND. We have not attempted here to provide an exhaustive account of the problems surrounding foreign national prisoners or their deportation, though much of this is covered in the evidence that we received. We were presented with a consistent picture of how a problem was allow to grow over time; how warnings about it were ignored; and how the serious implications went unrecognised until too late in the day. The evidence highlighted clear failings in the management of IND, including the failure to alert ministers until the last few weeks before the crisis broke. We believe that the failure to consider so many foreign prisoners for deportation in a timely and effective manner has a great deal to tell us about the management and culture of IND as a whole. In this chapter we look at the background to the problem, and in the next chapter draw out the lessons to be learnt from these events as well as more broadly from our whole inquiry.

Causes of the problem

517. We now know that for many years the IND has been failing to consider for deportation some foreign prisoners before the end of their sentence. This leads to one of two possible outcomes: the prisoner is either detained beyond his or her release date, or released despite the risk of absconding. Neither is an acceptable outcome. The underlying cause of the problem is that the number of foreign prisoners rose beyond the capability of the system for dealing with them (it has more than doubled in the last 10 years). However, it is accepted that the responsibility for tackling the problem was left in the hands of managers at too junior a level to respond effectively. Despite warnings from a number of sources, senior managers did not establish or understand the nature of the problem, nor did they ensure that the resources available were being targeted at the most serious cases.

Rising numbers of foreign prisoners

518. The Government has for some time recognised that the dramatic rise in the number of foreign national prisoners was causing problem. From June 1996 to May 2006 the number of foreign nationals in prison in England and Wales alone rose from 4,259 to 10,232. Indeed, the then Home Secretary, Charles Clarke, referred to the issue when he appeared before us in October 2005. It is clear, however, from the evidence of the then Permanent Secretary Sir John Gieve that at that stage Mr Clarke had not been made aware
of the problems concerning deportation. By April 2005, when he had been alerted to the problems, Mr Clarke was blaming the IND’s failure to consider all serious foreign prisoners for deportation on this rise in numbers, saying it was “clear that the increasing numbers of cases being referred for consideration [for deportation] led to the process falling down”. Lin Homer, Director General of IND, described it to us as “a relatively classic case of demand outstripping supply”.

519. In a Westminster Hall debate in November 2005, Home Office minister Fiona McTaggart described the Government’s attempts to reduce the number of foreign nationals in British prisons, including repatriation to serve their sentence at home, an early removal scheme for foreign national prisoners and collaboration with other Governments over drug trafficking (much of the foreign national prisoner population is associated with drug trafficking). She did not however see the need for automatic deportation, though had the Minister been made aware of the serious problem it is possible that she might not have taken such a sanguine position.

520. In 2005, 108 foreign prisoners were sent overseas to serve their sentence or part of it. The repatriation agreements which govern such transfers usually require the consent of the prisoner, which is not always forthcoming. 333 foreign prisoners were returned to their home countries under the Early Removals Scheme in the first three months of its operation. Clearly neither scheme currently makes a significant impact on numbers. Hundreds of foreign national criminals are even detained in prison beyond their release date, “usually” because they are awaiting deportation. One third of these are held for more than six months. The Times reported on 23 June 2006 that at least nine foreign prisoners were seeking compensation because the Home Office failed to deport them on time under the Early Removals Scheme.

521. We endorse the Government’s moves to reduce the foreign national prisoner population at source through tackling drug trafficking in partnership with other countries. Given the difficulties with repatriation of prisoners, the early removals scheme should be given priority and re-documentation efforts redoubled.

**Warnings were ignored**

522. Her Majesty’s Inspectorate of Prisons (HMIP) has been drawing attention for some time to the problems of foreign national prisoners and their deportation, and has been critical of failings at both policy and operational level. In its annual report for 2002/03, the
The inspectorate drew attention to what it described as the “dilatory attitude of the Immigration Service which, unless pressed, was not monitoring those liable to deportation, and making arrangements for this to take place as soon as sentence had expired”. A year later, the inspectorate again criticised inefficiencies in the IND and poor communication between the IND and prisons.

The National Audit Office highlighted the issue again in July 2005, observing that the IND had struggled to meet its targets for timely removal of foreign nationals convicted of criminal offences because consideration of deportation was being started too late to allow preparations for removal to be made before the prisoner was released, and that the number of cases where this had happened was not known. In October 2005 the Public Accounts Committee heard from the then senior director for operations at the IND, Brodie Clark, that some foreign prisoners who had been released pending deportation would have absconded.

The IND did recognise as far back as 2003 that its Criminal Casework Team, which deals with foreign prisoners, was under-resourced in relation to the growing numbers of foreign prisoners. Staffing and resources in this area have been increased in recent years and since July 2005 almost £3 million extra has been provided for dealing with foreign prisoners.

However, the IND did not appear to heed the warnings about poor communication, so it did not, for instance, learn from prisons staff or from its own staff who was being released without being considered for deportation. Nor did it take steps to assess whether the extra staffing and resources put in place were actually solving the problem. And finally, it did not take action even when the National Audit Office found that the IND did not know how many foreign nationals had been released from prison without having been considered for deportation.

Serious implications were not recognised

IND management did not appear to realise either the number of foreign prisoners being released without consideration for deportation or the basis on which cases were selected for consideration. They were therefore not in a position to tackle the problem. Lin Homer, Director General of the IND, told us that:

the full extent of the failure was only understood at a relatively junior level…I think it must have been clear to caseworkers and the junior manager in charge of the team that they were not dealing with all the cases that were coming through the door.

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519 ibid: ev 1
520 Report by the Comptroller and Auditor General: Returning Failed Asylum Applicants HC 76 of Session 2005-06, 14 July 2005, p. 20; HC Deb 26 April 2006 col 563; and Q 1027, 6 June 2006
What was not clear, I think, was that one of the consequences of that was the more serious cases were amongst those not being considered.521

527. Sir John Gieve, former Permanent Secretary at the Home Office, told us that even when he was told that there was a problem it was not considered a serious one, and that he very much regretted he did not recognise the problem earlier.522

528. This in turn meant that Ministers were not told that there was a problem. The Home Secretary told us that "the first time any minister was told that there was a problem of magnitude, even without figures, was 17 March [2006]".523

529. This culture appeared to be persisting at the time of our inquiry. Neither junior staff nor managers, who were aware that released foreigner prisoners who had been located and detained were now winning applications for immigration bail, appeared to realise that senior managers and the Home Secretary should be informed. As a result, serious embarrassment was caused to the Home Secretary, who was forced to amend evidence given to our Committee within 24 hours (see paragraph 567 below) When Lin Homer appeared before us she was unable to update the Committee on the number of successful bail applications.524

Two aspects of policy

530. Although the policy on deportation of foreign offenders is largely outside the scope of our inquiry, we do want to draw two conclusions about future policy.

531. Firstly, there are at the moment two circumstances in which a person can be deported following a criminal conviction: where the court has recommended deportation and the IND has decided to pursue this; and where the court has not made a recommendation but the IND has nevertheless deemed deportation to be “conducive to the public good”.525 (Foreign criminals might be removed instead of deported if they entered illegally or have breached conditions of their leave.526) Between April 2005 and March 2006 the Crown Court made 1,528 recommendations for deportation,527 and 160 of the foreign nationals identified as having been released without consideration for deportation had had a court recommendation for deportation.528

532. Although a criminal court can recommend deportation when it is sentencing a foreign national, the decision to deport always rests with the Home Office regardless of whether or not there is a court recommendation. We do not see the benefit of court
recommendations for deportation, and recommend that they should be abolished. All deportations should be considered by the Home Office solely on the grounds of whether deportation is conducive to the public good.

533. Secondly, the Government has announced that it wishes to consult on changes to the law to create a presumption in favour of deportation of some foreign national criminals. On 3 May the Prime Minister said “I think that it is now time that anybody who is convicted of an imprisonable offence and who is a foreign national is deported”.529 The then Home Secretary, Rt Hon Charles Clarke MP, set out a rather more nuanced proposal less than an hour later:

I want to state clearly that where deportation can properly be considered, the clear presumption should be that deportation will follow unless there are special circumstances why it cannot. We will consult on whether that presumption should be made statutory through primary legislation. Such a presumption would include all criminals sentenced to imprisonment, all those convicted for an offence listed in an order under section 72 of the Nationality, Immigration and Asylum Act 2002, all those on the sex offenders register, repeat offenders and, of course, all those recommended for deportation by the sentencing judge. We believe that there is a strong case for extending those proposals to any individual who is convicted of an imprisonable offence, whether or not a sentence of imprisonment was actually given, and we will consult on that too.

Those proposals would replace the current practice of considering for deportation only non-European economic area nationals with a sentence of 12 months or more; EEA nationals with a sentence of 24 months or more; cases in which the individual has three lesser convictions in a five-year period; and all cases in which the sentencing judge has recommended deportation.530

534. The following week the Prime Minister was referring to a presumption for “foreign prisoners”,531 and then on 17 May the phrase he used was “the vast bulk” of foreign prisoners.532 The current Home Secretary told us “the presumption should be that anyone who is here who is a foreign national who does not, in return for the privileges and rights of being in this country, observe our laws and commits a serious offence for which there is a custodial sentence given should face deportation.”533

535. We support the proposal to create a presumption in favour of deportation of foreign nationals who are serious criminals. In practice there will be those for whom deportation is inappropriate, for example those whose offences may only just cross the threshold of seriousness but who have lived otherwise law-abiding lives in this country for a long time and who have an established family in the United Kingdom. But the
principle should be established that in all such cases the offender should have to make their case as to why they should not be deported.

11 Lessons to be learnt

536. In this chapter we draw out the lessons that need to be learnt across the immigration system and beyond, not only from the handling of the foreign prisoners issue but also from the whole of our inquiry.

537. The Home Office is currently conducting two reviews ordered by the Home Secretary in the wake of the foreign prisoner debacle: one into the Home Office as a whole, and the other into the IND. Both are due to be published before Parliament’s summer recess and both are chaired by the Minister for Immigration, Citizenship and Nationality, Liam Byrne MP. He told us that the IND review is in three phases: the first looking at the strategic objectives of the IND over the next one, three and five years; the second a wide-ranging organisational review looking at “core processes; culture; organisation; IT; and, crucially, human resources” and also the cross-cutting issues of resource allocation and the relationship to the Home Office; and the third phase looking at action plans for the next six to twelve months. He highlighted in particular the need to address the way that processes operate, the culture of transparency and accountability and the need to have the right people doing the right jobs. 534

538. We are very glad to see that the IND is being reviewed in its wider Home Office context, and emphasise the need for the review to take into account the recommendations of this report.

A culture of accountability

539. In her evidence to us, the Director General of IND, Lin Homer, recognised that staff do not yet feel a responsibility for the overall work of the IND:

   I think that is my responsibility, to create that culture in which the organisation believes they share a responsibility with me for the organisation performance of the whole and not, if you like, just the piece they are tasked to do. 535

540. This was most apparent in how the problems with foreign national prisoners were handled. As we have seen, although junior staff would have been aware that not all foreign national prisoners were being deported, and that this included some serious criminals, they did not—or were not in a position to—recognise the implications of that information or take responsibility for passing it on. The picture has been painted by many witnesses of junior staff struggling to deliver with inadequate resources and leadership whilst neither their own immediate management nor more senior management felt they had the responsibility to insist on an appropriate response being made. 536 We cannot claim to have

534 Q 1142–1143, 13 June 2006
535 Q 946, 6 June 2006
536 Q 944, Q 973, Qq 1101–1102 and 1117, 12 June 2006
studied all aspects of the management of IND. But we saw enough during the course of our inquiry to make us concerned that similar problems exist in other parts of the organisation.

541. We believe that the failures of management seen in the IND’s handling of foreign national prisoners, when senior management failed to make it clear upon whom and at what level the responsibility lay for identifying and acting upon problems as they arose, highlight a problem that may exist in many parts of the organisation. The failure of the enforcement and removal operation to meet the needs of an effective immigration system, the failure to develop a complaints system capable of improving the quality of customer service and the absence of effective feedback mechanisms from AIT decisions to ECOs are all examples of hard work being undermined by a failure to take responsibility for the performance of the system as a whole.

542. The Home Secretary told us that, while the Home Office is not “intrinsically dysfunctional”, it suffers from weak management. He has asked the Permanent Secretary at the Home Office, Sir David Normington KCB, to look at the whole of the management systems and structures across the Home Office. Sir David told us that he wants to ensure that people are held accountable for how they perform.

543. The biggest single management challenge for the immigration authorities is to create clear lines of responsibility and accountability, and to establish a culture at each level where staff are required to feel a responsibility for the overall performance of the system as well as for their own tasks. Without such a profound cultural change, individual targets or performance measures are unlikely to produce the required results.

Joining up

544. Throughout the report we have identified the need for ‘joined up’ Government, both within the immigration system and between it and other authorities within and beyond the Home Office who deal with immigrants.

Within the immigration system

545. “Fragmentation and silos” was one of the issues which Home Secretary identified as a key problem in the Home Office in the light of the foreign prisoner issue. To give one example, he told us that there had been discussion going back at least as far as 1995 on the failure to consider deportation before foreign prisoners were released, but the scale of the problem and the priorities for tackling it did not reach senior managers in IND, still less Ministers. It appears that the channels of communication which should have allowed this were not in place.

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537 Qq 868-71, 23 May 2006
538 Q 869, 23 May 2006
539 HC Deb 23 May 2006 col. 81WS
540 Q 867, 23 May 2006
546. Other examples of fragmentation we have found within the immigration system are: the differences between targets for ECOs and IND caseworkers; the lack of mutual trust between caseworkers and immigration judges; the difference between overseas and in-country application fees; the inability of the organisation to learn from complaints; and perhaps most vividly the plethora of incompatible databases and reference numbers in the immigration system which make it impossible to determine what has happened to an individual as he makes his way through the system.

547. We were told about various ways in which people at a senior level ‘join up’: for instance “UKvisas is fully integrated into IND decision-making structures from the Ministerial Strategy Board downwards…It is fully engaged in IND policy development at all levels”. But at a more junior level it appears to be different. For example, before the recent programme of attachments for Home Office Presenting Officers at entry clearance posts (see paragraph 374 to 375), most had no direct experience of how the decisions they are supposed to defend every day are made.

548. **Fragmentation and lack of communication is a systemic problem not just within the IND but within the entire immigration system which ought, ideally, to work as a whole. It is not only computer databases which should be encouraged to talk to each other but people, at all levels in all the immigration authorities.**

**Within the Home Office**

549. Even within the Home Office there are obviously problems with ‘joining up’. The Director General of IND acknowledged to us that there was not “an adequate level of communication” between the IND and the criminal justice authorities over foreign prisoners. Phil Wheatley, the Director General of HM Prison Service, also alluded to these communication problems in his evidence to us, and the former Home Secretary Charles Clarke MP commented in his letter to us of 26 June 2006 that “the problem fell across a key Home Office fault-line”. The main problem here was communication between prisons and the IND, but the police also have a responsibility to inform the IND about foreign criminals, and the probation service too when it has foreign criminals in its care. The fact that we still do not know how many foreign national prisoners were released from prison in Scotland and Wales without being considered for deportation shows that these problems are exacerbated when they go across borders.

550. The problems with compiling statistics on foreign national prisoners and with tracking them through and across the immigration and criminal justice systems were caused partly by incompatible computer systems and the lack of a unique reference number.

551. At the moment neither UKvisas nor the IND can run checks on applicants against police databases, though some information from the police is put on the Home Office
Warnings Index against which all applications are checked. If fingerprinting visa applicants is to be truly effective, applicants’ fingerprints must in the future be checked against police fingerprint databases before issuing a visa.

552. The police and the Immigration Service have started working more closely together to identify vulnerable children, but only Heathrow airport has a joint team.

**Across Government**

553. Right across Government and beyond there are bodies which have an interest in attracting migrants to the UK and/or need to take some responsibility for dealing with them. This creates both conflicts and gaps.

554. As we have noted, attracting foreign students is very important to the education sector in the UK and the Prime Minister, but this can conflict with the attempts of the immigration control system to tackle abuse of the student route to the UK. The Department for Education and Skills is failing to take adequate responsibility for the students who are attracted to the UK or for maintaining a reliable register of colleges. Neither of these should be left to the IND.

555. Local authority social services departments are not working closely enough with the Immigration Service to identify and protect children who may be at risk. New joint initiatives are only for unaccompanied asylum-seeking children even though there are many children coming through immigration control who may be at risk of neglect or worse, including through private fostering.

556. The employment of illegal workers raises issues not only for the Immigration Service but also for a range of other Government Departments. The Joint Workplace Enforcement Pilot might potentially be a good model for joined-up working, but it has yet to prove its effectiveness.

557. The Department for Work and Pensions has until very recently failed to consider the impact on illegal migration of its policies on issuing National Insurance numbers, and is still offering only a limited response.

558. HM Revenue and Customs has not yet realised that its work against tax and national insurance evasion in the informal sector is essential to reducing the incentive to employ illegal workers. The same applies to enforcement of the national minimum wage: illegal workers are attractive to some employers because they feel they can with impunity pay them less than the national minimum wage.

559. If the Department for Trade and Industry did more to make migrant workers aware of their rights, there would be less of the exploitation of these workers about which we have been told.

560. The Minister for Immigration, Citizenship and Nationality, Liam Byrne MP, told us that he thought it was unrealistic “for any one department or any one locus within government to take full responsibility for managing migration…helping to manage
immigration and asylum has to be a bit of everybody’s business.” 545 We agree that all parts of Government need to recognise their responsibilities in relation to migration, but feel that precisely because there are so many aspects to it there is a need to see the whole picture.

561. The various challenges of working across Government provide one incentive for having a Cabinet Committee which can take overall responsibility for the whole of the Government’s efforts to run an effective immigration system. The evidence received in our inquiry on the need for migrant labour, and the economic benefits and drawbacks as well as the social advantages and stresses of migration, also highlighted the disadvantages accruing from the absence of any place within Government with overall responsibility for weighing up these factors—which are sometimes in tension with each other—and for determining the overall migration strategy for the UK. It is generally believed that the Home Office exercises this function but in our view it is not in a position do so effectively. We therefore recommend that a Cabinet Committee with representatives from all relevant Departments should be established with overall responsibility for all aspects of immigration policy.

**Improving management information and statistics**

562. The Director General of the IND, Lin Homer, stressed to us that developing proper performance management information and targets were central to her strategy for the IND:

> I suspect it will continue to take us a number of years to become as strong on performance management as I would want and expect us to be… I do not believe we yet have a good enough set of performance management indicators for it to be easy for me to track every key area of business every week, every month, and be confident that things have not slipped under the radar. 546

563. Ms Homer also recognised that performance management indicators are not enough on their own. The Minister for Immigration, Citizenship and Nationality, Liam Byrne MP, confirmed that in his view more and better targets were needed. 547 In our evidence and visits we found case after case where a poor selection of targets or their interpretation by management are making the immigration system less effective than it should be.

564. The immigration system seems to be managing on the basis of available information rather than relevant information. Reliable and meaningful management information is essential both to selecting and setting targets and to assessing performance against them. The NAO raised this issue several times in relation to UKvisas in its June 2004 report on *Visa Entry to the UK*. 548 It had also made a number of recommendations about statistics on asylum, migration and enforcement in an earlier report, and many of the asylum

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545 Q 1146, 13 June 2006
546 Q 945 and Q 1063, 6 June 2006
547 Q 1161, 13 June 2006
recommendations there could apply equally to immigration statistics. There was no reference to improving performance information in the subsequent UKvisas business plan.

565. A serious problem with the accuracy and reliability of Home Office statistics is recognised at the most senior levels. The Home Secretary told us that the lack of numbers is in his view one of the main obstacles in the way of effective immigration control. The Director General of the IND, Lin Homer, admitted that “the truth of the matter is our data collection systems are not good…the importance of good quality accurate information being collected, being used and being shared is clearly no driven through my organisation yet”.

566. Once again, the foreign prisoner issue provides a good example. In 1990 the Home Office effectively admitted it did not know how many prisoners were subject to orders for their deportation at the conclusions of their sentences or otherwise liable to be deported (“The information requested is not recorded centrally and could be obtained only at disproportionate cost.”). It was only in 1999 that the Home Office began keeping any records in this area. In July 2005 the NAO found that the IND “did not have figures available on how many failed applicants had been released from prison because removal could not be arranged”. By March 2006, the Public Accounts Committee had been told that 403 foreign nationals had been released from prison between 2001 and 2005 without deportation proceedings being completed. In April 2006, it emerged that the figures given to the Public Accounts Committee had been wrong and the true number (going back as far as 1999) was given as 1,023. By 23 May this had been revised to 1,019, following the discovery of some duplicates, and then to 1,013 on 29 June 2006, but this figure still does not include those released before 1999, those released from prisoners in Scotland or Northern Ireland, or foreign criminals released from secure hospitals.

567. When the Home Secretary appeared before us he warned us about the vagaries of Home Office statistics: “I do not think I could remember a fact or figure I have been given in the past fortnight that has not been revised quickly”. He did not have to wait long for his prophecy to be fulfilled. That very night he found out that some of the figures he had given us on progress with dealing with the foreign criminals identified were wrong, because 11 of them had been released on bail by the AIT over the previous ten days. Even

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550 Q 890, 23 May 2006
551 Q 947, 6 June 2006
552 HC Deb 9 July 1990 col. 66w
553 HC Deb 3 May 2006 col. 970
554 Report by the Comptroller and Auditor General: Returning Failed Asylum Applicants HC 76 of Session 2005-06, 14 July 2005, para. 3.10
556 HC Deb 25 April 2006 col. 37-38WS
557 HC Deb 23 May 2006 col. 78-81WS
558 Ev 402, HC 775–III
559 Q 867, 23 May 2006
560 Ev 387, HC 775–III
once further checks had been done, the figures supplied to us still came with a warning that they would “inevitably be subject to a margin of error”. A letter from the Director General of the IND to our Chairman of 29 June 2006 says that an investigation had concluded that there were “insufficient management information systems and data to ensure the provision of up to date and accurate information”.

568. When giving evidence to the Public Accounts Committee on 26 April 2006, Sir David Normington, Permanent Secretary at the Home Office, was still unable to say whether the target of removing 85% of foreign prisoners within 28 days of their release was being met. The Director General of IND, Lin Homer, could tell us that the IND seeks deportation orders in about 60% of the cases of foreign criminals it considers, but could not tell us how many of these are actually deported because of the way the statistics are gathered and presented.

569. A Home Office review of immigration statistics is being conducted at the moment, run by an independent consultant, but the most recent publication related to it (an “early findings” paper) was from August 2005. This publication, drawing from the results of a user questionnaire, noted the low profile given to any strategic consideration of the data needed to efficiently and effectively develop, implement, monitor and evaluate immigration control policy and its effects. A particular issue is that current statistics are process-based rather than person-based.

570. There is a serious problem with the way immigration statistics are compiled, presented and used to evaluate and improve performance. We recommend that the Government should conduct or commission a thorough investigation, based on the ongoing work of the review of immigration statistics, to determine which statistics are needed to produce a meaningful picture of the effectiveness of the immigration system as a whole. The IND’s statistics must be not only up-to-date and accurate but also capable of providing information about whether targets are being met and about how people move from one stage of immigration control to another.

**Targets**

571. The problems which may be caused by a Home Office reliance on targets were highlighted by the former Chief Inspector of Prisons, Lord Ramsbotham, in a *Guardian* article dated 26 May 2006:

“At the heart of all this [dysfunction] is what is called the “cult of managerialism”, the erroneous belief that results can be achieved by the issue of written instructions, targets and performance indicators. No one can fault the Home Office for the amount of these that spew forth. But their individual merit is clouded by the fact that

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561 Ev 402, para 3, HC 775–III
562 Ev 404, para 20, HC 775–III
563 Uncorrected transcript of oral evidence taken before the Public Accounts Committee on 26 April 2005, HC (2005-06) 1079-i, Q39
564 Q 1035, 6 June 2006
the impact of any one on any other part of the system never seems to be worked out.”

572. **We have seen four different ways in which targets have had unintended impacts on other parts of the immigration system:** (1) major political targets on asylum meant other work may have been sidelined or even deliberately manipulated; (2) targets were set for only one part of a system without consideration of the effect elsewhere; (3) targets on speed had a negative impact on quality; and (4) targets were being met without having any impact on the underlying objective.

**Asylum targets**

573. As Stephen Boys Smith, Director General of IND from 1998 to 2002, told us, “asylum and all the problems associated with it were the dominant issue for IND”. This appears still to be the case: the only two “key priorities” in the *Asylum and Immigration High Level Delivery Plan 2005-06 to 2008-09* were to deliver the asylum “tipping point” target, by removing more failed asylum seekers than the number of new unfounded applications; and to make a further substantial reduction in asylum support costs. We fully recognise the need for and effectiveness of these asylum targets, as set out for us by Sir John Gieve, former Permanent Secretary at the Home Office.

574. However, our concern is that this overriding objective may detract from other important matters. Sir John Gieve told us that resources were not moved from other areas of the IND in order to meet asylum targets: “there was no explicit trade-off”. Stephen Boys Smith said that although asylum was given top priority because otherwise it would escalate beyond control, ministers were told about other areas of weakness. Home Office officials assured us that asylum targets do not skew the system because they try to balance priorities “to get the right result in terms of maximising our impact on the risks that have been identified.” However, there are many examples of how, in practice, other work may be affected by asylum targets.

575. The NAO found in 2004 that the Government’s decision to prioritise asylum cases had led to a build-up of 7,000 entry clearance appeals. Mr Justice Hodge, President of the AIT, has pointed out that the legislation, particularly the procedure rules, still prioritises the handling of asylum cases over immigration cases, even though there are now nearly as many immigration appeals as asylum ones.

576. The Director of Enforcement and Removals at the IND, Dave Roberts, told us that asylum removals were his top priority, and this is reflected in the very small proportion of

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567 Q 1093 and Qq 1116-1124, 12 June 2006
568 Q 1094, 12 June 2006
569 Q 1121, 12 June 2006
570 Q 418, 7 March 2006
572 Uncorrected evidence taken before the Constitutional Affairs Committee, 21 March 2006, HC 1006-I, Qq 5-6
enforcement work devoted to illegal working, sham marriages and abuse of the student route (see paragraph 415).

577. It has been suggested that the immigration authorities deliberately did not initiate deportation action against foreign national prisoners, in case this generated more applications for asylum and made it harder to meet the ‘tipping the balance’ target. A former senior immigration officer was quoted in the Sunday Times as saying

“There was an unwritten rule that immigration officers could not go to prisons because senior officials knew that most of the prisoners up for deportation would automatically claim asylum. This was one of several ‘creative’ solutions thought up by senior officials to please ministers. By not addressing the issue of people coming out of prison who were likely to claim asylum, the official figures would be reduced. That was definitely the bottom line.”

578. At Prime Minister’s Questions on 3 May, the Prime Minister insisted that this was not so. Mr Boys Smith told us that if officials had deliberately not initiated deportation action against foreign prisoners in case this generated more asylum applications, this would have been unknown to him: “That would constitute massaging of the targets and that was not acceptable conduct to me or my senior colleagues”.

579. There is no doubt that the achievement of successive asylum targets has been a notable success of the IND, and the criticism we make in this report should not detract from that. It is difficult to avoid the conclusion, however, that the existence of and single-minded focus on the asylum targets contributed to an environment in which the foreign prisoner problem was not recognised early enough.

**Isolated targets**

580. If a target is set for one part of the system in isolation from the rest, meeting that target can cause problems around it.

581. When the AIT set its targets for clearing the backlog of immigration and entry clearance appeals, it did not appear to take into account the problems this would cause posts in preparing bundles (see paragraphs 381 to 390) or the High Court in handling subsequent reconsideration applications.

582. The former Entry Clearance Monitor, Fiona Lindsley, suggested to us that focusing resources on people who do not have a right of appeal against entry clearance refusals, not enough time is spent on paperwork and the processing of appeals leading to backlogs there.

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573  ‘Criminals not deported “to avoid asylum claims”’, Sunday Times, 30 April 2006
574  HC Deb 3 May 2006 col 959
575  Qq 1122-4, 12 June 2006
576  Q 314, 24 January 2006
577  Q 93, 13 December 2005
583. A related concern is the “black holes” - if the target of, say, dealing with 90% of applications within 14 weeks is met, what happens to the remaining 10% is irrelevant from the point of view of meeting targets (see paragraph 223 to 224).

584. **The setting of individual targets must take into account their likely effect on the performance of the organisation as a whole.**

**Speed targets**

585. A general point which has been made repeatedly throughout the inquiry, and during the Committee’s visits, is that targets which stress the need for speed can have a negative impact on quality. We saw this most clearly in visa applications (see paragraphs 141 to 153) but also in the same-day ‘premium’ service at the IND (see paragraph 222 above). In both cases the time targets dominated the work of those making the decisions and they acknowledged that this meant they were unable to carry out the proper checks. We were also told that performance indicators for IOs at ports also focused on speed rather than quality of decisions.\(^{578}\)

586. Beverley Hughes MP resigned as Immigration Minister in 2004 after revelations that hundreds of visa applications from Eastern European migrants were approved without proper checks because officials had rushed through applications in order to meet targets for clearing a backlog.\(^{579}\)

587. **As we have emphasised throughout the report, targets which focus only on speed must be balanced with those which emphasise quality.**

**Misdirected targets**

588. Other targets may simply be based on the wrong goal. The Director General of IND, Lin Homer, told us that the target of 12,000 non-asylum removals per year was set not on the basis of how many people need to be removed but according to the resources available and as an improvement on the previous year’s performance.\(^{580}\) Dave Roberts told us he was content with the level of removals to the extent that the target had been met or exceeded;\(^{581}\) but this is clearly going to make little impact even on the continuing accretion of illegal migrants let alone the number of people estimated already to be in the country illegally.

589. **Written instructions, targets and performance indicators are certainly important but they must be very carefully set and monitored so that they deal with real issues of concern over immigration and do not have negative impacts on other parts of the system.**

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578 Q 66, 13 December 2005
580 Q 917, 23 May 2006
581 Q 812, 16 May 2006
Guidance

590. The foreign national prisoner issue highlighted problems with the guidance given to staff on immigration issues. Guidance on what to do with foreign prisoners is set out in a surfeit of documents from various authorities:

- guidelines for criminal courts deciding whether or not to make a recommendation for deportation;\textsuperscript{582}
- a Prison Service Order which requires prisons to notify the Immigration Service as soon as a foreign national is received into prison;\textsuperscript{583}
- instructions to prisons to notify the Immigration Service of their release dates once calculated;\textsuperscript{584}
- a Home Office Circular to the police from December 2004 which advises them on liaison with the IND, reporting of convictions to the IND and deportation procedures;\textsuperscript{585}
- the Immigration Rules which list factors which will be taken into account in deciding whether or not to deport;\textsuperscript{586}
- an unpublished Home Office notice, DP3/96,\textsuperscript{587} which provides guidance to officials on whether or not removal action is likely to be appropriate in all cases of people who are liable to be removed or deported but who have married a person who is settled in the UK.
- IND instructions to caseworkers which record the circumstances in which the police may bring foreign criminals who may or may not be in prison to the Home Secretary’s notice;\textsuperscript{588}
- IND guidance on enforcement;\textsuperscript{589}
- IND guidance to asylum caseworkers;\textsuperscript{590}
- IND guidance on deportation of EEA nationals.\textsuperscript{591}

\textsuperscript{582} R v Nazari [1980] 3 All ER 880. New guidelines are due later this year: the Sentencing Advisory Panel has concluded its Advice on Recommendations for Deportation, which is currently being considered by the Sentencing Guidelines Council. The Panel’s Advice will be published along with the Council’s Consultation Guideline later this year, probably in September or October

\textsuperscript{583} Immigration and Foreign Nationals in Prison, PSO 4630, 3 May 2006

\textsuperscript{584} HC Deb 26 April 2006 col, 576

\textsuperscript{585} Home Office Circular 070/2004, Notification of convictions to Immigration and Nationality Directorate (IND), 1 December 2004

\textsuperscript{586} Immigration Rules, HC 395 of 1993-94, as amended, para. 364

\textsuperscript{587} Home Office, Marriage Policy, DP3/96, 13 March 1996, unpublished

\textsuperscript{588} Home Office, Immigration Directorates’ Instructions: Chapter 13: Deportation and Administrative Removal

\textsuperscript{589} Home Office, Operational Enforcement Manual, Chapter 13 para 13.2

\textsuperscript{590} Home Office, Handling Applications From Convicted Criminals, Persons On Remand And Detained Cases 3rd edition 20 June 2005
591. The Home Secretary criticised the guidelines for deportation. In his statement of 23 May 2006 he said that “the criteria governing which individuals should be considered for deportation appear to have been varied over time on authority which is unclear”. He also said that the Immigration Rules’ criteria for deportation “currently go wider that the requirements of the Human Rights Act and the European Convention on Human Rights would stipulate”. Lin Homer told us “it is clear…that we did not help the case workers by having…clear, concise, easy to understand interpretation of our guidance in place.” The Home Secretary approved the issuing of new guidance in yet another form - a “Process Communication” which instructs caseworkers that if they are minded not to deport on compassionate grounds outside the Human Rights Act, the case must be referred to Ministers for a decision. The Immigration Rules themselves have not been changed, nor have any of the other pieces of guidance.

592. A lack of coherence and consistency in immigration guidance is by no means confined to the foreign prisoner issue. For instance ECOs we met in Pakistan raised with us the difficulty of finding the right information in amongst the range of guidance they are issued, and would prefer to see all the relevant guidance combined into one source.

593. Caseworkers rely heavily on guidance throughout the immigration system, and yet there is such a mass of documents in so many different series that it is very difficult for them to find the correct, up-to-date and most authoritative information. All immigration guidance must be consistent and coherent across the various relevant authorities, and each section must always have a clear owner at a senior level who has approved it and checked it with owners of other sections.

**Following up recommendations**

594. The Home Office receives reports almost every week urging it to act, from Inspectorates, the NAO, the Audit Commission and independent monitors, not to mention Select Committees. A list of recent reports relating to immigration is appended to this Report.

595. As we have noted above in relation to the NAO report on the entry clearance operation (paragraphs 179 to 182), there may be a lot of work going on to implement recommendations, but it is very difficult to determine this let alone to assess whether the steps being taken do actually meet the requirements.

596. In other cases recommendations go unheeded, particularly if they come from an unexpected quarter. It was perhaps because warnings to the IND about foreign prisoners came from HM Inspector of Prisons that they were not adequately followed up (see (paragraphs 522 to 525).

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591 Home Office *European Casework Instructions*, Ch. 8

592 Chris Hudson, and Operations Director at IND, had told us on 7 March 2006 that IND had already taken steps to ensure that all of their guidance is cleared at a senior level, so “there should not be any ambiguity”; Q 439

593 Q 1052, 6 June 2006

597. Sir John Gieve, former Permanent Secretary at the Home Office, told us that whilst there was no comprehensive system for following up recommendations, there is generally an action plan and monitoring:

   It depends what the report is on, who it is from and what it is about. Generally, there will be a directorate or senior official who is responsible for that area of work. They will prepare a response because nearly all these reports have responses. They will know that there will be a follow-up. The Inspector of Prisons is making many annual reports and will come back to these later so they know there is a follow-up. Usually, an action plan is drawn up. We decide what we are going to do in whichever area it is and then there is a monitoring process to make sure it happens.595

598. Given the stream of reports and recommendations relating to immigration which appear every year, a clear method for keeping track of the Government’s progress in responding to each of them is essential. Annual checklists should be published showing what progress has been made across Government on recommendations from independent monitors, audit committees, the National Audit Office, Select Committees and other official reports.

Oversight: an Independent Immigration Inspectorate?

599. At the moment there is very little independent oversight of the immigration system, and what exists is fragmented, under-funded and with very limited powers. There is a race monitor, but only for some types of decision; and a monitor for entry clearance, but only for refusals where there is no right of appeal. There is also a series of audit committees for the IND, on finance and governance issues, complaints and the Immigration Service.596 In addition the Parliamentary Ombudsman, HM Prisons Inspectorate and the Commission for Racial Equality have certain immigration-related roles.

600. Both Mary Coussey, Independent Race Monitor, and Fiona Lindsley, former Independent Monitor for Entry Clearance Refusals, told us that they had “no budget”.597 Mary Coussey added that she does not have any powers to ask for things to be done, merely to make recommendations, which the Government can simply reject.598 Fiona Lindsley recommended that there should be a monitor of the whole visa system not just for people without rights of appeal, in order to look at the system as a whole including how focussing on one area of the system impacts on others.599

601. The IPPR has suggested that a “Managed Migration Policy Committee” be set up, an independent or autonomous or semi-autonomous body that could oversee immigration control and immigration statistics and report to Parliament. Sir Andrew Green, chairman
Immigration Control

of Migration Watch UK, agreed that this may be a possible means of reassuring the public about immigration.600

602. We have not taken enough evidence to form an opinion on whether immigration policy should be set by a body at arm’s length from Government. However, the evidence does point towards the clear need for specialist comprehensive oversight of the immigration control system.

603. We recommend that the Government establish an Independent Immigration Inspectorate with oversight of every stage of immigration control: overseas, at the border, in-country, enforcement (including detention) and appeals. It should be looking for high-quality decisions, active management, clear lines of responsibility and of reporting, easy communication within and across authorities, meaningful statistics, effective and non-distorting targets, excellent customer service and promotion of good race relations. The Inspectorate must be independent, properly resourced and with the authority to make recommendations to which the Government has to respond.

12 Conclusions

604. In our report we have identified a number of structural and operational failures, ranging from the local to the systemic, in the Government’s overall response to the challenges posed by the worldwide phenomenon of increased migration, both legal and illegal. In our view it is a failure of successive Governments that these flaws have been allowed to persist, and their continued existence has exacerbated the problems the Government now faces. But we have also identified measures which the Government should take to address these failures. If the Government adopts these suggestions and builds on some undoubted areas of good practice and innovations—and uses properly the skills and experience of dedicated staff throughout the existing immigration system—many of the problems may be overcome.

605. There is little doubt that the great majority of those who are in employed in the immigration system are working hard and diligently, often under trying circumstances. But the biggest single management challenge for the immigration authorities is to create clear lines of responsibility and accountability and to establish a culture at each level where staff are required to feel a responsibility for the overall performance of the system as well as for their own tasks. Without such a profound cultural change, individual measures are unlikely to produce the required results.
List of conclusions and recommendations

Context

1. The Committee recognises that modern patterns of migration pose particular challenges for the Government. We believe that facilitating travel for tourists, family members, students, businesspeople and workers who meet labour needs that cannot otherwise be met is essential to our national interests. The Immigration and Nationality Directorate and UKvisas must offer these people a high level of service and cannot simply be organisations designed to exclude people from the country. At the same time, we share the public expectation that the Government must minimise the number of those able to abuse the immigration system. (Paragraph 55)

2. Any system of immigration control must tackle illegal migration effectively, otherwise public confidence in the system is undermined, resentment and mistrust abound and exploitation is inevitable. (Paragraph 72)

3. Although the numbers are inevitably uncertain, it is quite clear that a substantial proportion of illegal migration arises from those who originally entered the country legitimately and legally but who subsequently failed to comply with their leave. They may have been refused the right to remain or simply overstayed. As the immigration system aims, rightly, to facilitate legal migration for ever greater numbers of travellers, it is inevitable that illegal migration will continue to be fuelled by those who become illegal once in the country. This represents one of the more fundamental changes to the purpose of the immigration system in the twenty-first century. The focus can no longer remain so heavily weighted towards initial entry and border control. While these controls must be sustained and indeed improved, far greater effort will in future have to go into the enforcement of the Immigration Rules within the UK. A major test of the Government’s new approach to the IND will be the extent to which it has recognised the importance and implication of this change. (Paragraph 73)

Controls overseas

4. We recommend that the Government should look again at the constitution of UKvisas with a view to unifying the terms and conditions of all of its staff. More fundamentally, it may also wish to consider whether it is in the best interests of an effective and comprehensive system of immigration control for the overseas operation to be separate from the IND. (Paragraph 81)

5. UKvisas’ budgets should be much more transparent if it is to demonstrate clearly that the operation is self-financing. In the light of growing numbers of applications, there should be more flexibility over the accommodation budget. (Paragraph 84)

6. The number of visa applications looks set to continue rising. UKvisas should not place a heavy reliance on the use of temporary staff to meet this demand. As we state throughout this report, the quality of initial decisions has an impact on the entire
immigration system. Measures that lower the cost of front-line staff at the expense of quality are not likely to be cost-effective. (Paragraph 89)

7. Outsourcing the collection of visa applications seems to be of great benefit to both applicants and visa sections, and its expansion should be supported as long as close links can be maintained with visa sections. (Paragraph 94)

8. A comprehensive network of application centres, approved travel agents and couriers should be put in place for collecting visa applications and providing information to applicants, with appropriate measures for preventing fraud and abuse such as requiring applicants to collect their passports in person. Once this is done, we can see no overriding reason why paper-based applications should not be dealt with by country-specific teams in regional processing centres or even in the UK. In principle this could reduce problems of high staff turnover and raise the quality of decision-making whilst reducing the cost of the operation, though interviewing would clearly still have to be done at posts. We recommend that UKvisas should conduct a full feasibility study of this proposal at the earliest possible opportunity. (Paragraph 97)

9. Entry Clearance Officers have specific expectations of the documents needed to support an application. These are not set out in the Immigration Rules nor explained in guidance for applicants. Where there are specific requirements in practice, this should be made clear in the Immigration Rules and in guidance for applicants. Security might be improved by changing the list of required documents from time to time. (Paragraph 104)

10. Measures that improve the quality of advice to applicants will improve the quality of initial decisions and reduce the demand on the appeals system. The Government is already considering whether or how to regulate overseas advisers. This cannot simply be an extension of the scheme for regulating UK advisers. We recommend that it either encourages UK-based advisers to operate overseas, or establishes an agent accreditation scheme for local immigration advisers. (Paragraph 113)

11. It is clearly beneficial to everyone to invest in getting decisions correct at the initial stage. Refusing applications which should have been allowed is not good customer service, can have significant consequences for applicants and their family and friends, and can lead to increased costs further down the system (from complaints, appeals or fresh applications). On the other hand, allowing applications which should have been refused weakens the control and public confidence in it and may increase the risk of overstaying and other forms of illegal migration. (Paragraph 114)

12. During our visits we were consistently impressed by the care and diligence with which entry clearance staff worked, despite often difficult conditions, rising numbers of applications and increasing levels of forgery and fraud. However, we felt that they were not always in a position to be able to make good decisions. (Paragraph 120)

13. The clearer and more specific the Immigration Rules, and the more closely they deal with realities presented by applicants, the easier it will be for caseworkers to make a correct decision which is unambiguously in accordance with those Rules and fair both to applicants and to the interests of the UK. At the moment it is very difficult
for them to do so. The Immigration Rules should therefore be consolidated and redrafted to provide a clear, comprehensive and realistic framework for decisions. (Paragraph 123)

14. It must also be recognised that there will always be questions of judgment over what weight to give pieces of evidence, as well as situations which are not precisely covered by the rules. ECOs must be supported with enough training, guidance and experience to exercise their judgment where this is required. (Paragraph 124)

15. If ECOs’ decisions are to withstand challenge, ECOs must be better trained on how to evaluate both oral and written evidence, and how to express the grounds for their decision in a defensible way. (Paragraph 125)

16. Although we can see the advantage of the proposed Points Based System in allowing applicants to work out much more accurately their chances of success, it must be recognised that an element of individual judgment will always be required. This will also be true of the many decisions on categories not covered by the Points Based System. Therefore there will be a continued need for well-trained, experienced, well-supported ECOs with good local knowledge. We reiterate our concern that under-investment in frontline staff is unlikely to be cost-effective across the system as a whole. (Paragraph 127)

17. The current role of the Independent Immigration Race Monitor is very limited, and yet both the IND and UKvisas are subject to a duty to promote good race relations. Race monitoring must cover all aspects of the immigration system if statutory duties are to be met. (Paragraph 128)

18. We recommend that training for visa staff should be extended and improved. Training in the UK must pay more attention to evaluating evidence, questioning applicants at interview and writing reasoned refusal notices. Posts should follow the good examples set by Accra and Islamabad particularly regarding training in local conditions and culture. We have proposed above that paper-based decisions could be made in regional centres or in the UK, but all staff would still need appropriate training and local knowledge. The use of temporary staff must be kept to a minimum. (Paragraph 134)

19. UKvisas should ensure that the ratio of managers to ECOs is high enough to allow them effectively to carry out all the quality control checks and reviews required of them. (Paragraph 135)

20. We support the intention underlying the recent measures to improve the quality of decision-making overseas, but urgent consideration should be given to assessing whether quality is indeed improving as a result. The savings resulting from investment in good initial decision-making should also be assessed. (Paragraph 136)

21. All unsuccessful applicants should be given the opportunity for an internal review of the decision, to which they could submit any further evidence. There should be clear rules and procedures on how such reviews should be carried out, and reviews should be available for appealable as well as non-appealable refusals as they would reduce the likelihood of going to appeal. We believe that the Government should assess the
feasibility of a “minded to refuse” stage for both overseas and in-country applications. (Paragraph 140)

22. The UK has a much tighter target for speed of visa decisions than most other countries. Turnaround times for applications to Australia and Germany, for example, are seven or fourteen days, whereas those who want to go to the United States often have to wait for months. The degree of contrast between the UK and other countries surprised us. Whilst it is right to take pride in the speed of decision-making, there is evidence that this is happening at the expense of quality. (Paragraph 143)

23. Targets must allow more time to make decisions and to justify them robustly. Seven minutes is not enough, in our view, even for apparently straightforward applications. (Paragraph 149)

24. There should be greater recognition of the circumstances in which interviews are appropriate, and targets should allow for more interviewing than currently takes place. (Paragraph 150)

25. Current global targets for speed of processing visas are inappropriate, unhelpful, unrealistic and uncompetitive. We recommend that UKvisas sets more generous maximum targets and then works with individual posts to determine local targets that are appropriate to the local situation and security risks and the demands of good customer service. Posts should be given adequate resources to meet realistic yet challenging targets. (Paragraph 153)

26. One step which must be taken to enable individuals to be tracked through the system is to introduce a single reference number for each individual which is used to identify them in visa applications, in-country applications, appeals and enforcement. Once this is in place, the Government should investigate the possibility of ensuring that it can be transferred into other databases including those for the police, the prison and probation systems and the Department for Work and Pensions. (Paragraph 156)

27. The next version of the UKvisas caseworking system should run automatic checks against all fields in an application which would alert ECOs to possible fraud. Meanwhile staff should be given enough time to carry out systematically those checks which are possible with the current database, and managers should monitor this carefully. (Paragraph 159)

28. We encourage UKvisas to continue efforts to work more closely with other authorities, including the police, so that the best possible information on visa applicants is available to them when making a decision. (Paragraph 160)

29. We consider risk assessment work to be a potentially valuable approach which could help ensure resources are targeted at those applications where forgery or fraud are most likely. The Government must ensure that Risk Assessment Units’ findings are clearly and comprehensively recorded and disseminated, and used to re-deploy staff to areas of greatest risk. The effectiveness of these measures in discovering forgery and fraud must be monitored. (Paragraph 165)
30. In every country where there is sufficient confidence in the criminal justice system, fraud and forgery in visa applications must be reported to the local police. (Paragraph 168)

31. Suspension of visa applications produces inconvenience and frustration for genuine applicants, possibly results in some applicants trying another route instead, and leads to backlogs when the category is re-opened. This is not acceptable. Where high levels of forgery or fraud are detected in a particular category such as the Working Holidaymakers scheme, UKvisas and the Home Office must consider whether such provisions should be modified or removed. Where this is not appropriate, applications should be handled by a specialist team whilst investigations are carried out. (Paragraph 170)

32. The fingerprinting of visa applicants has the potential to play an important role in an effective immigration control. However, we are concerned about the way the biometric visas programme is being implemented, given that it is an expensive project without a specific cost-benefit analysis and it is not fully integrated into other IT developments such as e-Borders. Its impact must be properly assessed to ensure that the expenditure is commensurate with the benefits it brings. (Paragraph 177)

33. If fingerprinting visa applicants is to be truly effective, in the future applicants’ fingerprints must be checked against police fingerprint databases before a visa is issued, and fingerprints should also taken on arrival and departure and checked against the immigration record. (Paragraph 178)

34. We endorse the recommendations of the National Audit Office and Public Accounts Committee on the entry clearance operation and are encouraged by the steps already taken to implement some of them, but have been unable to chart progress on them all. (Paragraph 182)

**Border controls**

35. ‘Exporting the border’ effectively cuts down on the numbers of people travelling undocumented to the UK. We recommend that the use of Airline Liaison Officers should be expanded, and that consideration is given to how to deal with people who are stopped from travelling but may have protection needs. We repeat the call by our predecessors for the Government to be active in seeking to assist refugees in or near to their countries of origin, as well as to expand its policy for assisting refugees through UNHCR. (Paragraph 193)

36. Despite the success of recent measures in detecting people attempting to enter the UK illegally through Calais, the port is a continuing focus of attention for those seeking to evade the UK’s border controls. All aspects of port security in Calais must therefore be kept under constant review and strengthened wherever necessary, and the accuracy and application of new detection technology must continue to be improved. (Paragraph 198)

37. Statistics must be kept on Immigration Officers’ decisions on people subject to race discrimination authorisations, in particular to determine refusal rates by port.
Appropriate action must be taken by managers if it is found that these people are treated more sceptically than other passengers. (Paragraph 205)

38. In view of the difficulties in carrying out checks at port, the Government should continue to develop methods of ensuring that travellers to the UK are checked before departure. Whilst carriers have a role to play in this, the Government should explore the implications of requiring all non-EEA nationals to get visas before any trip to the UK, looking at Australia’s practice as an example and bearing in mind the need for tourists and business visitors to be able to travel to the UK without unnecessary inconvenience. (Paragraph 207)

Immigration decisions taken in the UK

39. The IND should look carefully at the categories of application it accepts at each of the Public Enquiry Offices and ensure that these are the categories most fitted to an accelerated process. (Paragraph 214)

40. Consideration should be given to introducing a network of immigration application centres in the UK, perhaps using Post Offices which already check passport applications. This would provide a local service checking that applicants have filled in forms correctly and submitted the right documents, and would also remove some of the administrative burden from the IND. Applicants could be charged a fee for using this service to cover the costs. (Paragraph 215)

41. We believe that both IND caseworkers and ECOs should be regulated to a standard equivalent to that for advisers who do publicly-funded immigration work. This would ensure not only that they are competent to begin with but also that their competence is maintained. (Paragraph 217)

42. We recommend that the IND should ensure that a team of managers is given the task of focussing on quality of decision-making in all areas of casework. It should gather information which can be used to gauge quality, assess the impact of targets, and use this information to develop training, mentoring and oversight of caseworkers. The quality control measures already in place in UKvisas, asylum casework and Work Permits (UK) may provide useful examples. (Paragraph 218)

43. A meaningful internal review is likely to be cheaper and quicker for both sides than letting a refusal go to appeal. A strategy should be developed for when and how internal reviews of refusals take place. This should cover those undertaken following a request from an applicant as well as those undertaken as part of quality sampling. Statistics must be kept of the outcome of all these reviews. (Paragraph 219)

44. We recommend that IND managers monitor caseworkers’ decisions under the same-day service carefully, and compare these decisions with those on postal applications in the same categories to see if the tight time targets make a difference to outcomes. (Paragraph 222)

45. To avoid applications disappearing into ‘black holes’, the IND must introduce targets which cover the speed of processing all postal applications yet which take into account the need for rigorous checks. ( Paragraph 223)
46. It seems to us that the IND recognises there is a problem with management, but is not entirely clear where the problem lies or what to do about it. We recommend that an outside body assess the management structures in the IND to determine how many managers are needed, and at what level, to provide an adequate level of support and control for the number of caseworkers. It should also look at whether managers have the right competencies and priorities. (Paragraph 229)

47. The use of specialist teams of IND caseworkers who can develop expertise in particular types of application should be extended further. (Paragraph 231)

48. Case managers should be assigned to immigration applications on a limited trial basis, to take charge of each application all the way through the system. Following the trial the case manager model should be assessed in both immigration and asylum cases. (Paragraph 232)

49. The IND must develop ways of integrating both overseas and in-country caseworkers’ experience into policy development, by improving the way their managers gather and pass on information from them, and by encouraging policy teams to seek caseworkers’ ideas or include caseworkers in those teams. (Paragraph 234)

50. Public confidence in immigration control demands the highest levels of integrity from those operating it. Managers in both the IND and UKvisas must take an active role in ensuring that their staff are not acting corruptly or improperly, and they must be supported in this by investigating teams who are equipped to spot potential areas of weakness and patterns of decision-making which could indicate a problem. (Paragraph 238)

Students

51. We recognise that the vast majority of overseas students complete their courses and abide by the conditions of their leave. But at the same time there are concerns that the student visa route is open to abuse by people who are not genuine students. The immigration system clearly has to tackle this if public confidence in the student visa route is to be maintained. (Paragraph 242)

52. Entry clearance posts must allow enough time for ECOs to conduct proper checks on student applications. However, it should also be the responsibility of the Department for Education and Skills to ensure that there is a secure system of issuing offers which is not open to fraud. (Paragraph 248)

53. There should be an English-language requirement for all student entry clearance applications except those relating to English-language courses. It should refer to a recognised standard such as TOEFL or IELTS, and be graded according to the level of course applied for. (Paragraph 250)

54. The Managed Migration Intelligence Unit for student applications appears to be an ineffective response to a serious problem and working at an unsatisfactorily low level. We recommend that its resourcing, role and priorities be reviewed and amended so
that it can tackle all the allegations made to it, in conjunction with other parts of IND and UK Visas intelligence services. (Paragraph 254)

55. The Department for Education and Skills should recognise that it has the responsibility for ensuring that colleges attracting overseas students are genuine and offer an adequate standard of education. It should own and maintain an improved register of colleges on which both students and the immigration authorities can rely to provide a reliable and up-to-date guarantee of quality. (Paragraph 257)

56. We welcome the proposals under the Points Based System to tie student visas to particular institutions and to require institutions to notify the IND if students do not attend a course. Having accurate information about the extent of non-attendance would help both to demystify the debate around abuse of student visas and also to target efforts to tackle the problem. However, there must be a straightforward way for students to notify the IND if they change course, and the IND must actively follow up any information it receives on individual students with enforcement activity wherever appropriate. (Paragraph 261)

57. The Government should put particular emphasis on encouraging the education sector to develop partnerships between British institutions and those overseas, including through greater use of distance learning, and on setting up branches of British institutions overseas. These initiatives benefit both the British education sector and foreign students. (Paragraph 263)

Children

58. The Government should collect comprehensive statistics on the number of children who come to the UK in each category. (Paragraph 264)

59. We welcome the new Immigration Rules relating to children visiting the UK, but are concerned they do not impose any duties on other authorities to follow up the information gathered. Except in the case of children travelling to the UK with their parents or legal guardians, we recommend that children should not be granted entry clearance for any purpose until the information on the arrangements in place for them in the UK has been checked by social services and/or the police. (Paragraph 269)

60. The Government must ensure that there are clear methods for assessing the effectiveness of new measures on unaccompanied children, and that these assessments focus on the safety of the children concerned. (Paragraph 275)

61. The Government must ensure that all the authorities concerned implement the recommendations of the report on Operation Paladin Child. In particular, social services must supply teams at ports to help identify and follow up all cases of concern, not just unaccompanied asylum-seeking children. (Paragraph 278)

62. The Government must consider introducing a registration and approval system for private foster carers. It should then explore whether this would allow tighter immigration controls to be placed on children entering the country without their own parents. The Government should also provide support for communities where
private fostering is common to develop their own ways of protecting privately fostered children. (Paragraph 284)

63. We do not propose that the Government withdraw its reservation from the UN Convention on the Rights of the Child, but it should include the immigration authorities in the duty under the Children Act 2004 to safeguard and promote the welfare of children. (Paragraph 290)

Spouses

64. In view of the serious difficulties caused to some applicants by the requirement to return home to apply for permission as a spouse, we recommend that where the Foreign Office advises against all travel to a particular country, applications for leave as a spouse or unmarried partner from nationals of that country who are already living in the UK be decided in the UK with an interview. (Paragraph 300)

65. The Asylum and Immigration Tribunal should make more use of its power to hold appeals in private, and if need be its rules should be amended to make it clear that forced marriage cases might be appropriate for this procedure. (Paragraph 308)

66. Forced marriage cases are now handled more sensitively than before, but better arrangements should be made for refusing spouses’ visas or settlement applications on the basis of confidential information from a reluctant sponsor. The Government should consider further steps which might protect young British people from forced marriages, including interviewing all visa applicants for marriages which have been arranged at short notice. The Government might also consider encouraging visa applications for arranged marriages to be submitted before the British spouse leaves the UK. (Paragraph 311)

67. The Government should explore the feasibility of recovering the costs of providing support and safe accommodation for those victims of domestic violence who are subject to a public funds restriction. (Paragraph 314)

68. The IND should re-examine its policy of not providing information to “third parties”, with a view to providing information to sponsors (or their representatives) about the immigration status of people they have sponsored. This could provide welcome reassurance to those in fear of domestic violence. Once embarkation controls are in place, the IND will have much better information on whether or not a person has left the country. (Paragraph 315)

69. The Government is right to take measures against sham or bogus marriages. The Bogus Marriage Task Force should be reconvened urgently to produce proposals which are non-discriminatory. Meanwhile all marriage applications should be assessed by specialist teams of caseworkers. (Paragraph 326)
Appeals

70. The lack of mutual confidence between front-line staff and Immigration Judges is very worrying. As a first step, each side must learn more about the other. We particularly encourage Immigration Judges to visit entry clearance posts, and recommend that all ECOs and IND caseworkers visit the AIT as part of their initial training. (Paragraph 335)

71. If these results of the National Audit Office analysis of reasons why entry clearance decisions are overturned on appeal are repeated throughout the entry clearance operation, they suggest that thousands of immigration refusals being allowed on appeal might be better dealt with at an earlier (and cheaper) stage in the process. (Paragraph 336)

72. In over half of entry clearance appeals, the outcome appears to be not so much a judgment on the original decision as a completely new decision reached on the basis of different evidence. (Paragraph 338)

73. Introducing a “minded to refuse” stage into the application process both overseas and in the UK might dramatically reduce the number of non-asylum appeals going to the AIT, by allowing applicants to present further evidence to the original decision-maker rather than to an Immigration Judge. (Paragraph 341)

74. In a further one fifth of entry clearance appeals, it appears that the judge substituted his or her interpretation of the facts for that of the ECO. This can be a particular problem in the case of forgeries. We share the view that staff in posts are in a better position than the AIT to make judgments on forged documents, particularly if supported by specialist teams and appropriate equipment. (Paragraph 343)

75. If the decisions of ECOs and IND caseworkers are to withstand appeal, their refusal notices must show clearly and fully the reasons for the decision and the evidence on which the decision is based. This requires good training, involving lawyers to emphasise the legal standards required, and also good management. Managers must be more active in reviewing refusal decisions so that those which are not sufficiently substantiated can be either strengthened or conceded before any appeal. Managers should also look closely at the reasons why any refusal is overturned by the AIT and discuss each refusal with the caseworker to see what lessons can be learnt and disseminated more generally. (Paragraph 346)

76. We believe that the introduction of a “minded to refuse” stage, coupled with more robust internal reviews of refusals, should largely eliminate any real justification for the introduction of new evidence at (or just before) appeal in the great majority of cases. This would improve confidence in the appeals service throughout the immigration system. (Paragraph 347)

77. We recommend that the Home Office and the Department for Constitutional Affairs work with the AIT to develop a pilot exercise in the near future to assess the potential benefits of holding entry clearance appeals in major source countries abroad. (Paragraph 348)
78. The AIT should introduce Case Management Reviews in non-asylum appeals as a matter of priority. These should help to prevent delays and adjournments in court and may even result in weak cases being dropped. (Paragraph 350)

79. The absence of electronic systems for notification of appeals and for subsequent communication about appeals undermines the efficiency of the appeals system. The requirement to send huge bundles of papers, which may play little or no part in the subsequent hearing, is a drain on staff time and resources. The implementation of electronic communications systems must be given a high priority. (Paragraph 353)

80. We support the AIT review report’s conclusions on the amount and relevance of evidence and also call for an urgent review of whether there is any need for original papers to be available to the AIT. It may be suggested that this is necessary in cases where forgery has been alleged. However we have seen no evidence that the AIT has access to the necessary expertise to verify documents in entry clearance appeal cases. (Paragraph 355)

81. We were disappointed to find that the AIT does not provide the simple one-tier system that the Government set out to establish. For the reasons cited in this report, we do not have confidence that the AIT as it currently operates could satisfactorily fulfil that role. But the aim of a genuinely single-stage appeal system which effectively reviews first-instance decisions in one hearing and which is able to take into account human rights considerations must remain the right one. We urge the Government to keep the possibility of such a system under constant review. (Paragraph 361)

82. The Government must ensure that Home Office Presenting Officers (HOPOS) attend every appeal that the IND or UKvisas wishes to defend. (Paragraph 364)

83. We are concerned that the Committee was given a misleading impression of the quality of representation in these sensitive cases of great public concern. (Paragraph 366)

84. It is hard to see how HOPOS can provide a robust defence if they have neither a full understanding of immigration and asylum law and practice nor practical advocacy skills, and might not stay in the job for long enough to build up these attributes. If the Government is serious about defending appeals, the quality and skills of HOPOS must be improved. They should be required to meet at least the same standards as appellants’ representatives. (Paragraph 367)

85. We believe that it is essential that the work of HOPOS is organised so that they have enough time to prepare for appeals and can discuss cases with the ECO or IND caseworker wherever the basis of a decision may be unclear or clearly open to challenge. (Paragraph 371)

86. HOPOS should also be given the power to concede cases which they consider unwinnable. This would be another way in which court time could be saved. (Paragraph 373)

87. To increase mutual understanding, we recommend that the current programme of HOPO attachments to posts overseas is extended to allow every HOPO to see at first
hand how both ECOs and IND caseworkers work and to share their own knowledge and experience. (Paragraph 375)

88. We were not in a position to determine the degree to which the quality of representation in immigration appeals has improved since regulation was introduced, but we suggest that one of the ways the Office of the Immigration Services Commissioner could do this is through spot checks on how representatives are performing in the AIT. (Paragraph 377)

89. Legal aid changes have not resulted in fewer appeals, and any savings may be offset by the disadvantages of having unrepresented appellants. The Government must investigate other ways of discouraging unmeritorious appeals whilst encouraging those with merit. (Paragraph 380)

90. Wherever possible, cases must not be listed for hearing until the bundle of documents has arrived. To provide a disincentive for delay, posts should be required to pay the costs resulting from avoidable delay. There would still need to be an absolute time limit in all cases, beyond which cases would have to be listed, with the Home Office presenting the case as best it can. (Paragraph 384)

91. Although the main causes of the current backlog of immigration appeals were the change in the way appeals are lodged and the underestimate of the number of appeals still waiting to come into the system, the resulting problems indicate that the appeals system is quite unable to cope with a surge in demand. This is exacerbated by lack of communication which allows problems to develop in one area which then have an unfortunate effect elsewhere. (Paragraph 390)

92. We recommend that a permanent group comprising representatives from the AIT, Immigration Judges, HOPOS, appellants’ representatives and officials from UKvisas, the IND and the Department for Constitutional Affairs should be established to oversee the operation of the appeals system as a whole, to allow problems to be aired as soon as they develop and to assess solutions in terms of their impact across the system. (Paragraph 392)

93. There is a danger that removing appeal rights will result in dissatisfied applicants seeking judicial review instead. To reduce the likelihood of this, the Government must be in a position to show that initial decisions are high quality and that there is an effective avenue of internal review, before further appeal rights are removed. (Paragraph 397)

94. There is little doubt that those who are involved with the appeals process are working hard and diligently, often under trying circumstances. But in this chapter we have examined the evidential basis of decisions taken in the AIT, the quality of Home Office representation and the clear lack of mutual confidence between decision-makers in the IND and UKvisas and the AIT. Taken together we do not feel that the appeals process as it currently operates provides a sound basis for this vital part of the immigration system. (Paragraph 398)
Enforcing the controls

95. At present the lack of removals is felt to undermine the efforts made by thousands of people to ensure that the right people are allowed to enter or stay in the UK. (Paragraph 402)

96. Unless we make the heroic assumption that all those who are refused but not removed do leave the country of their own volition, it is clear that the current rate of removal is not even keeping up with the increase in the number of those not entitled to remain in the UK. (Paragraph 407)

97. The integrity of the entire immigration system depends on the effective enforcement of the Immigration Rules. Current enforcement efforts are clearly inadequate. The resources made available for enforcement activities should be determined by the scale of enforcement required, rather than the other way around. (Paragraph 411)

98. We regard the inability to identify and track individuals who are in breach of the Immigration Rules as a major weakness in the system. (Paragraph 413)

99. It is difficult to reconcile the removal of vulnerable individuals or those with strong links in the UK with the principle of harm reduction set out by the IND. Whilst continuing action to remove people already living in the UK illegally will of course be necessary—not least to remove those who have entered the UK by clandestine routes—the first priority should be to align the removal system with the decision-making system. (Paragraph 420)

100. We welcome the commitment of the Home Office to act on our predecessors’ recommendation that all asylum seekers should receive decisions on their applications or appeals in person. We believe that this approach should be progressively extended, as swiftly as possible, to all immigration decisions, so that failed applicants can be told about the possibility of appeal if available, how to organise their departure and any support available for this, and the consequences of breaching immigration control including the fact that this can be held against them in any subsequent application. (Paragraph 426)

101. It seems entirely sensible that the caseworker making a decision should be able to issue enforcement notices. This would be a natural outcome if cases were allocated to caseworkers who ‘owned’ them all the way through the system. (Paragraph 427)

102. Continued contact with failed immigration applicants must be improved, whether through their being required to report regularly to a reporting centre or police station, or through electronic monitoring. Reporting or monitoring conditions should however be imposed only for a limited time until the case is concluded by granting leave to remain or by the person leaving the country voluntarily or being removed. (Paragraph 431)

103. The Government must confirm that readmission agreements are being used to facilitate non-asylum as well as asylum removals. (Paragraph 435)

104. Anyone who has had to be forcibly removed from the UK because they did not comply with a notice to leave the country, not just those who have been deported,
should be banned from returning to the UK for a set period. The ban could be automatic, or there could be a presumption in favour of a ban or even simply the option of imposing one. The length of this ban or presumption should reflect the degree of abuse. A ban or the possibility of one would act as a disincentive to breach the Immigration Rules, would encourage voluntary departure on receipt of a notice to leave the UK because that would not result in a ban, and might help to address the “revolving door” phenomenon whereby people who have already been removed once or more return and are then removed again. (Paragraph 437)

105. The immigration system already rewards people with a good immigration history, by for instance offering them a fast-track visa application process. The Government should also make people aware of the consequences of illegal immigration, not only through better information for unsuccessful applicants but also through widespread advertisements, including in workplaces, colleges, benefits offices and hospitals. (Paragraph 439)

106. Voluntary returns schemes for those who have not sought asylum should be prominently referred to in refusal letters, with details of whom to contact for further information. (Paragraph 440)

107. Under the system we envisage, failed applicants who promised to leave the UK voluntarily should continue to be allowed to do so, and their departure from the UK monitored. To do so efficiently will require the re-establishment of embarkation controls. (Paragraph 441)

108. We understand that the introduction of e-Borders will effectively mean the reintroduction of embarkation controls. We welcome this development and urge its swift and effective completion. However, the Government must also have a clear strategy for acting on the information collected. Firstly, it must be used in subsequent applications: even scanning the passport so that the database shows the person had left and on time would be immensely valuable to anyone deciding a subsequent application. Secondly, it must be used to identify those who entered the country legitimately but have overstayed their visa without attempting to regularise their position. (Paragraph 448)

109. All information about possible overstayers, whether from database alerts, tip-offs from members of the public or information provided by police, registrars, tax authorities, local authorities, employers or colleges must be followed up with investigation and, if necessary, enforcement action. Data on following up this information must be gathered to measure the IND’s effectiveness. (Paragraph 452)

110. The employment of illegal workers should be one of the main targets for action against illegal migrants who are already living illegally in the UK. (Paragraph 453)

111. Tackling tax and national insurance evasion should become a central feature of the drive against the employment of illegal labour, and the tax authorities must make much greater efforts to tackle these in the informal economy. Enforcement work on tax and national insurance should take place in conjunction with all the other legal measures available to tackle abuse in the informal labour market. As well as ensuring
that employers complied with their legal obligations, it would reduce the financial advantages of employing illegal workers. (Paragraph 455)

112. We welcome the proposed “right to work” condition for people applying for National Insurance numbers (NINos). We recommend that the Government also consider withdrawing NINos from people who no longer have the right to work in the UK. (Paragraph 467)

113. There should be a single database which clearly shows a person’s immigration status and right to work and claim benefits. We note that the Government’s National Identity Register is intended to fulfil this function. Employment and access to services could be made conditional on a satisfactory check against such a database. (Paragraph 470)

114. Having considered the arguments for and against, we do not consider that an amnesty would be appropriate or helpful in the current situation. (Paragraph 479)

Customer service

115. We acknowledge the conflicting pressures on the IND and UKvisas, but emphasise that the need to maintain the integrity of the immigration system must be balanced against the need to ensure a high-quality service to the millions of people whom we wish to be able to travel easily to the UK. (Paragraph 481)

116. The calculation of visa fees and in-country fees should be aligned at least in terms of what costs are taken into account and the impact assessment which accompanies them. If the levels of fees are to remain so different, the Government must be able to provide a clear and valid justification. (Paragraph 491)

117. There is an unacceptable level of delay in the IND’s immigration casework, which leads to tens of thousands of complaints every year to both the IND itself and Members of Parliament. The IND must address this problem at its source by investing in initial decision-making and instilling a culture which does not allow cases to disappear into ‘black holes’. (Paragraph 494)

118. We do not believe it to be appropriate that Members of Parliament have become an integral part of the immigration system upon which even representatives rely to make progress with a case. UKvisas, the IND and the AIT must improve their systems for handling inquiries and complaints so that applicants and representatives do not need to short-circuit the system by going through their MPs. (Paragraph 498)

119. The frustration caused to applicants by being unable to find out the progress on their applications leads to large numbers of complaints, and is unacceptable. The Government should carry out a review of the information given to applicants and their representatives on the progress of their cases, with a view to providing as much information as possible, even to telephone callers. A system which would let all applicants track the progress of their case online would enormously reduce the number of enquiries and complaints. (Paragraph 505)
120. Whilst we welcome the extension of the IND Complaints Audit Committee’s role to cover the huge number of “operational complaints”, we call for the Government to implement a single immigration complaints system, covering both the IND and UK visas, with a variety of channels of complaint and a variety of methods for dealing with those complaints, ranging from informal resolution to intensive investigation. We particularly emphasise the need for the organisation and individuals within it to learn from substantiated complaints. (Paragraph 515)

Deportation of foreign national prisoners

121. We endorse the Government’s moves to reduce the foreign national prisoner population at source through tackling drug trafficking in partnership with other countries. Given the difficulties with repatriation of prisoners, the early removals scheme should be given priority and re-documentation efforts redoubled. (Paragraph 521)

122. Although a criminal court can recommend deportation when it is sentencing a foreign national, the decision to deport always rests with the Home Office regardless of whether or not there is a court recommendation. We do not see the benefit of court recommendations for deportation, and recommend that they should be abolished. All deportations should be considered by the Home Office solely on the grounds of whether deportation is conducive to the public good. (Paragraph 532)

123. We support the proposal to create a presumption in favour of deportation of foreign nationals who are serious criminals. In practice there will be those for whom deportation is inappropriate, for example those whose offences may only just cross the threshold of seriousness but who have lived otherwise law-abiding lives in this country for a long time and who have an established family in the United Kingdom. But the principle should be established that in all such cases the offender should have to make their case as to why they should not be deported. (Paragraph 535)

Lessons to be learnt

124. We are very glad to see that the IND is being reviewed in its wider Home Office context, and emphasise the need for the review to take into account the recommendations of this report. (Paragraph 538)

125. We believe that the failures of management seen in the IND’s handling of foreign national prisoners, when senior management failed to make it clear upon whom and at what level the responsibility lay for identifying and acting upon problems as they arose, highlight a problem that may exist in many parts of the organisation. The failure of the enforcement and removal operation to meet the needs of an effective immigration system, the failure to develop a complaints system capable of improving the quality of customer service and the absence of effective feedback mechanisms from AIT decisions to ECOs are all examples of hard work being undermined by a failure to take responsibility for the performance of the system as a whole. (Paragraph 541)
126. The biggest single management challenge for the immigration authorities is to create clear lines of responsibility and accountability and to establish a culture at each level where staff are required to feel a responsibility for the overall performance of the system as well as for their own tasks. Without such a profound cultural change, individual targets or performance measures are unlikely to produce the required results. (Paragraph 543)

127. Fragmentation and lack of communication is a systemic problem not just within the IND but within the entire immigration system which ought, ideally, to work as a whole. It is not only computer databases which should be encouraged to talk to each other but people, at all levels in all the immigration authorities. (Paragraph 548)

128. The various challenges of working across Government provide one incentive for having a Cabinet Committee which can take overall responsibilities for the whole of the Government’s efforts to run an effective immigration system. The evidence received in our inquiry on the need for migrant labour, and the economic benefits and drawbacks as well as the social advantages and stresses of migration, also highlighted the disadvantages accruing from the absence of any place within Government with overall responsibility for weighing up these factors—which are sometimes in tension with each other—and for determining the overall migration strategy for the UK. It is generally believed that the Home Office exercises this function but in our view it is not in a position do so effectively. We therefore recommend that a Cabinet Committee with representatives from all relevant Departments should be established with overall responsibility for all aspects of immigration policy. (Paragraph 561)

129. There is a serious problem with the way immigration statistics are compiled, presented and used to evaluate and improve performance. The Government must conduct or commission a thorough investigation, based on the ongoing work of the review of immigration statistics, to determine which statistics are needed to produce a meaningful picture of the effectiveness of the immigration system as a whole. The IND’s statistics must be not only up-to-date and accurate but also capable of providing information about whether targets are being met and about how people move from one stage of immigration control to another. (Paragraph 570)

130. We have seen four different ways in which targets have had unintended impacts on other parts of the immigration system: (1) major political targets on asylum meant other work may have been sidelined or even deliberately manipulated; (2) targets were set for only one part of a system without consideration of the effect elsewhere; (3) targets on speed had a negative impact on quality; and (4) targets were being met without having any impact on the underlying objective. (Paragraph 572)

131. There is no doubt that the achievement of successive asylum targets has been a notable success of the IND, and the criticism we make in this report should not detract from that. It is difficult to avoid the conclusion, however, that the existence of and single-minded focus on the asylum target contributed to an environment in which the foreign prisoner problem was not recognised early enough. (Paragraph 579)
132. The setting of individual targets must take into account their likely effect on the performance of the organisation as a whole. (Paragraph 584)

133. As we have emphasised throughout the report, targets which focus only on speed must be balanced with those which emphasise quality. (Paragraph 587)

134. Written instructions, targets and performance indicators are certainly important but they must be very carefully set and monitored so that they deal with real issues of concern over immigration and do not have negative impacts on other parts of the system. (Paragraph 589)

135. Caseworkers rely heavily on guidance throughout the immigration system, and yet there is such a mass of documents in so many different series that it is very difficult for them to find the correct, up-to-date and most authoritative information. All immigration guidance must be consistent and coherent across the various relevant authorities, and each section must always have a clear owner at a senior level who has approved it and checked it with owners of other sections. (Paragraph 593)

136. Given the stream of reports and recommendations relating to immigration which appear every year, a clear method for keeping track of the Government’s progress in responding to each of them is essential. Annual checklists should be published showing what progress has been made across Government on recommendations from independent monitors, audit committees, the National Audit Office, Select Committees and other official reports. (Paragraph 598)

137. We recommend that the Government establish an Independent Immigration Inspectorate with oversight of every stage of immigration control: overseas, at the border, in-country, enforcement (including detention) and appeals. It should be looking for high-quality decisions, active management, clear lines of responsibility and of reporting, easy communication within and across authorities, meaningful statistics, effective and non-distorting targets, excellent customer service and promotion of good race relations. The Inspectorate must be independent, properly resourced and with the authority to make recommendations to which the Government has to respond. (Paragraph 603)

Conclusions

138. In our report we have identified a number of structural and operational failures, ranging from the local to the systemic, in the Government’s overall response to the challenges posed by the worldwide phenomenon of increased migration, both legal and illegal. In our view it is a failure of successive Governments that these flaws have been allowed to persist, and their continued existence has exacerbated the problems the Government now faces. But we have also identified measures which the Government should take to address these failures. If the Government adopts these suggestions and builds on some undoubted areas of good practice and innovations—and uses properly the skills and experience of dedicated staff throughout the existing immigration system—many of the problems may be overcome. (Paragraph 604)

139. There is little doubt that the great majority of those who are in employed in the immigration system are working hard and diligently, often under trying
circumstances. But the biggest single management challenge for the IND is to create clear lines of responsibility and accountability and to establish a culture at each level where staff are required to feel a responsibility for the overall performance of the system as well as for their own tasks in it. Without such a profound cultural change, individual measures are unlikely to produce the required results. (Paragraph 605)

140. There is little doubt that the great majority of those who are in employed in the immigration system are working hard and diligently, often under trying circumstances. But the biggest single management challenge for the immigration authorities is to create clear lines of responsibility and accountability and to establish a culture at each level where staff are required to feel a responsibility for the overall performance of the system as well as for their own tasks in it. Without such a profound cultural change, individual measures are unlikely to produce the required results. (Paragraph 605)
Annex: Recent official reports on immigration and asylum

Home Affairs Select Committee: Session 2003-04 First Report “Asylum and Immigration (Treatment of Claimants, etc.) Bill”, HC 109

Home Affairs Select Committee: Session 2003-04 Second Report “Asylum Applications”, HC 218

Home Affairs Select Committee: Session 2002-03 Fourth Report “Asylum Removals”, HC 654-I

Home Affairs Select Committee: Session 2000-01 First Report “Border Controls”, HC 163-I

Constitutional Affairs Select Committee: Session 2004-05 Seventh Report “The operation of the Special Immigration Appeals Commission (SIAC) and the use of Special Advocates”, HC 323-I


Constitutional Affairs Select Committee: Session 2002-03 Fourth Report “Immigration and Asylum: the Government’s proposed changes to publicly funded immigration and asylum work”, HC 1171-I

International Development Select Committee: Session 2003-04 Sixth Report “Migration and Development: How to make migration work for poverty reduction”, HC 79-I

Public Accounts Select Committee: Session 2005-06 Thirty-fourth Report “Returning failed asylum applicants”, HC 620

Public Accounts Select Committee: Session 2004-05 Fourth Report “Improving the speed and quality of asylum decisions”, HC 238

Joint Committee on Human Rights: Session 2003-04 Fifth Report “Asylum and Immigration (Treatment of Claimants, etc.) Bill”, HL 35/HC 304


Independent Monitor’s Reports on Entry Clearance 1998 to 2004

Independent Race Monitor for Immigration: Annual Reports 2002-03 to 2004-05


HM Chief Inspector of Prisons: “Report on a full announced inspection of Colnbrook Immigration Removal Centre (12-16 September 2005)”

HM Chief Inspector of Prisons: “Report on the unannounced inspection of five STHFs at Queen's Building and Heathrow Terminals 1-4 (10-13 October 2005)”

HM Chief Inspector of Prisons: “Report on the unannounced inspections of four non-residential holding facilities: Birmingham-Glasgow (February-April 2005)”


## List of abbreviations

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AIT</td>
<td>Asylum and Immigration Tribunal</td>
</tr>
<tr>
<td>ALO</td>
<td>Airline Liaison Officer (helps airlines with documentation checks)</td>
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<tr>
<td>CAC</td>
<td>IND Complaints Audit Committee</td>
</tr>
<tr>
<td>CIO</td>
<td>Chief Immigration Officer (at ports and airports)</td>
</tr>
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<td>DfES</td>
<td>Department for Education and Skills</td>
</tr>
<tr>
<td>EEA</td>
<td>European Economic Area (the EU member states plus Norway, Iceland and Liechtenstein, with a linked agreement for Switzerland)</td>
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<tr>
<td>ECO</td>
<td>Entry Clearance Officer (decides visa applications)</td>
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<tr>
<td>ECM</td>
<td>Entry Clearance Manager (manages ECOs)</td>
</tr>
<tr>
<td>HOPO</td>
<td>Home Office Presenting Officer (represents the Government in immigration and asylum appeals)</td>
</tr>
<tr>
<td>IND</td>
<td>Immigration and Nationality Directorate (part of the Home Office)</td>
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<td>INDIS</td>
<td>Immigration and Nationality Directorate Intelligence Service</td>
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<td>INEB</td>
<td>Immigration and Nationality Enquiry Bureau (IND’s enquiry call centre)</td>
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<tr>
<td>IO</td>
<td>Immigration Officer (at a port or airport)</td>
</tr>
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<td>NINo</td>
<td>National Insurance Number</td>
</tr>
<tr>
<td>OISC</td>
<td>Office of the Immigration Services Commissioner (regulates immigration advisers)</td>
</tr>
<tr>
<td>PEO</td>
<td>IND’s Public Enquiry Office</td>
</tr>
</tbody>
</table>
Formal minutes

Thursday 13 July 2006

Members present:
Mr John Denham, in the Chair
Mr Richard Benyon
Mrs Ann Cryer
Mrs Janet Dean
Gwyn Prosser
Bob Russell
Martin Salter
Mr Gary Streeter
Mr David Winnick

Draft Report (Immigration Control), proposed by the Chairman, brought up and read.

Ordered, That the Chairman’s draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 605 read and agreed to.

Summary agreed to.

Annex agreed to.

Resolved, That the Report be the Fifth Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134 (Select committees (reports)).

Ordered, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.

[Adjourned till Tuesday 25 July at Ten o’clock.]
Witnesses

Tuesday 13 December 2005

Ms Mary Coussey, Independent Race Monitor, Ms Fiona Lindsley, Independent Monitor for Entry Clearance Refusals, and Dr Ann Barker, Immigration and Nationality Directorate Complaints Audit Committee

Tuesday 10 January 2006

Professor Nigel Harris, RSA Migration Commission, and Dr Khalid Koser, Global Commission on International Migration
Sir Andrew Green KCMG, Migration Watch UK, and Dr Dhananjayan Sriskandarajah, Institute for Public Policy Research

Tuesday 17 January 2006

Mr Keith Best and Mr Colin Yeo, Immigration Advisory Service, and Mr Chris Randall and Mr Matthew Davies, Immigration Law Practitioners’ Association

Tuesday 24 January 2006

Mr Justice Hodge CBE, Asylum and Immigration Tribunal, and Mr Justice Collins, Royal Courts of Justice
Mrs Suzanne McCarthy and Mr Stephen Seymour, Office of the Immigration Services Commissioner

Tuesday 7 March 2006

Ms Mandie Campbell, UKvisas, and Mr Tom Dowdall, Mr Chris Hudson, and Mr Dave Wilson, Immigration and Nationality Directorate

Tuesday 28 March 2006

Ms Sarah Harland, Zimbabwe Association, Dr JoAnn McGregor, University of Reading, and Mr Crispent Kulinji
Ms Christine Lee, Christine Lee & Co., Mr Robert Lee and Ms Xiao Hong

Mr Bobby Chan, Central London Law Centre

Tuesday 9 May 2006

Mr Dominic Scott, UKCOSA, and Dr Karen Wilson

Ms Louise Massamba, Mr André Massamba and Ms Judy Ahmadi, Brides Without Borders
Mr Mark Rimmer, London Borough of Brent, Mr Derek Beoku-Betts, Joint Council for the Welfare of Immigrants, and Ms Pragna Patel, Southall Black Sisters
Dr John Simmonds, British Association for Adoption and Fostering, Ms Debbie Ariyo, Africans Unite Against Child Abuse, and Mr Nathan Glew and Ms Oyewo Ekelemu, Southwark Social Services
Tuesday 16 May 2006

Mr Mark Boleat, Association of Labour Providers, and Mr Chris Kaufman, Transport and General Workers’ Union
Mr Jonathan Portes, Department for Work and Pensions, and Mr James Quinault, Immigration and Nationality Directorate
Mr Dave Roberts, Immigration and Nationality Directorate

Tuesday 23 May 2006

Rt Hon John Reid MP, Secretary of State for the Home Department, Sir David Normington KCB, Home Office, Ms Lin Homer, Immigration and Nationality Directorate, and Ms Helen Edwards CBE, National Offender Management Service

Tuesday 6 June 2006

Ms Lin Homer and Ms Mandie Campbell, Immigration and Nationality Directorate, and Mr Phil Wheatley, HM Prison Service

Monday 12 June 2006

Sir John Gieve KCB and Mr Stephen Boys Smith CB

Tuesday 13 June 2006

Mr Liam Byrne MP, Minister for Immigration, Citizenship and Nationality, Home Office, Ms Lin Homer, Immigration and Nationality Directorate, and Lord Triesman, Parliamentary Under-Secretary of State, and Ms Denise Holt, Foreign and Commonwealth Office
### List of written evidence

**Written Evidence published in Volume II (HC 775–II)**

<table>
<thead>
<tr>
<th>Page</th>
<th>Written Evidence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ev 1</td>
<td>Amnesty International UK</td>
</tr>
<tr>
<td>Ev 4</td>
<td>Association of Visitors to Immigration Detainees</td>
</tr>
<tr>
<td>Ev 6</td>
<td>Bail for Immigration Detainees</td>
</tr>
<tr>
<td>Ev 11</td>
<td>Dr Roger Ballard</td>
</tr>
<tr>
<td>Ev 13</td>
<td>bmi</td>
</tr>
<tr>
<td>Ev 15</td>
<td>Board of Airline Representatives in the UK</td>
</tr>
<tr>
<td>Ev 16</td>
<td>Brides Without Borders: Keep Couples Together</td>
</tr>
<tr>
<td>Ev 19</td>
<td>British Air Transport Association</td>
</tr>
<tr>
<td>Ev 21</td>
<td>British Airways</td>
</tr>
<tr>
<td>Ev 23</td>
<td>Children's Commissioner for England</td>
</tr>
<tr>
<td>Ev 26</td>
<td>Children's Society</td>
</tr>
<tr>
<td>Ev 28</td>
<td>Commission for Racial Equality</td>
</tr>
<tr>
<td>Ev 33</td>
<td>Pamela Cressy MBE</td>
</tr>
<tr>
<td>Ev 34</td>
<td>Devon and Cornwall Refugee Support Council</td>
</tr>
<tr>
<td>Ev 36</td>
<td>Gatwick Detainees Welfare Group</td>
</tr>
<tr>
<td>Ev 39</td>
<td>Immigration Advisory Service</td>
</tr>
<tr>
<td>Ev 43</td>
<td>Immigration and Nationality Directorate, Home Office</td>
</tr>
<tr>
<td>Ev 69</td>
<td>INLD Complaints Audit Committee</td>
</tr>
<tr>
<td>Ev 70</td>
<td>Independent Race Monitor</td>
</tr>
<tr>
<td>Ev 72</td>
<td>Immigration Law Practitioners’ Association</td>
</tr>
<tr>
<td>Ev 77</td>
<td>Institute for Public Policy Research</td>
</tr>
<tr>
<td>Ev 79</td>
<td>Islington Law Centre</td>
</tr>
<tr>
<td>Ev 82</td>
<td>Joint Council for the Welfare of Immigrants</td>
</tr>
<tr>
<td>Ev 86</td>
<td>JUSTICE</td>
</tr>
<tr>
<td>Ev 89</td>
<td>Law Centre NI</td>
</tr>
<tr>
<td>Ev 93</td>
<td>Luton Accommodation and Move On Project</td>
</tr>
<tr>
<td>Ev 93</td>
<td>Mayor of London</td>
</tr>
<tr>
<td>Ev 97</td>
<td>Migration Watch UK</td>
</tr>
<tr>
<td>Ev 99</td>
<td>Public and Commercial Services Union</td>
</tr>
<tr>
<td>Ev 101</td>
<td>Refugee Council and Oxfam</td>
</tr>
<tr>
<td>Ev 108</td>
<td>Refugee Support Group Devon</td>
</tr>
<tr>
<td>Ev 112</td>
<td>Save the Children</td>
</tr>
<tr>
<td>Ev 115</td>
<td>Scotland’s Commissioner for Children and Young People</td>
</tr>
<tr>
<td>Ev 119</td>
<td>Scottish Refugee Council</td>
</tr>
<tr>
<td>Ev 121</td>
<td>Settle Monthly Meeting of the Religious Society of Friends (Quakers)</td>
</tr>
<tr>
<td>Ev 124</td>
<td>Student Volunteering England and the National Union of Students</td>
</tr>
<tr>
<td>Ev 126</td>
<td>Tandem Communications and Research</td>
</tr>
<tr>
<td>Ev 127</td>
<td>UK Lesbian and Gay Immigration Group</td>
</tr>
<tr>
<td>Ev 129</td>
<td>United Nations High Commissioner for Refugees</td>
</tr>
<tr>
<td>Ev 132</td>
<td>Virgin Atlantic Airways</td>
</tr>
</tbody>
</table>
41  Kamal K Vohora  Ev 134
42  Volunteering England  Ev 135

Written Evidence published in Volume III (HC 775–III)

1  Africans Unite against Child Abuse  Ev 217
2  Professor Geoffrey Alderman  Ev 219
3  Association of Colleges  Ev 220: Ev 221
4  Bedfordshire Police  Ev 222
5  Brent Registrar  Ev 224
6  British Association for Adoption and Fostering  Ev 226
7  British Council  Ev 230
8  Cambridgeshire Constabulary  Ev 231
9  Mrs Ann Cryer MP  Ev 231
10  General Medical Council  Ev 238
11  Immigration Advisory Service  Ev 240
13  Immigration and Nationality Directorate, Home Office; UKvisas, Foreign and Commonwealth Office; and the Department for Constitutional Affairs  Ev 244
14  Joint Council for the Welfare of Immigrants  Ev 285
15  Office of the Immigration Services Commissioner  Ev 289
16  North London Chinese Association  Ev 294
17  Dr JoAnn McGregor  Ev 303
18  Merseyside Police  Ev 306
19  Northamptonshire Police  Ev 308
20  Northumbria Police  Ev 308
21  Wei Shen  Ev 309
22  South Yorkshire Police  Ev 315
23  Suffolk Police  Ev 316
24  UKCOSA  Ev 316
25  UKvisas  Ev 318: Ev 320
26  Universities UK  Ev 323
27  Zimbabwe Association  Ev 328: Ev 354
28  Chris Mullin MP  Ev 331: Ev 390
29  Association of British Language Schools  Ev 332
30  Southall Black Sisters  Ev 333
31  Brides Without Borders  Ev 346
32  Mrs Louise Massamba  Ev 352: Ev 353
33  Association of Labour Providers  Ev 370
34  Transport and General Workers Union  Ev 373
35  Asylum and Immigration Tribunal  Ev 386
36  Rt Hon John Reid MP, Secretary of State for the Home Department  Ev 387
37  Vini Sharma  Ev 388
38  Home Office  Ev 395
39  Liam Byrne MP, Minister of State for Immigration, Citizenship and Nationality  Ev 396
40  Rt Hon Charles Clarke MP                         Ev 399
41  Department for Work and Pensions               Ev 404
42  Lord Triesman of Tottenham, Parliamentary Under-Secretary of State, Commonwealth Office Ev 408
Reports from the Home Affairs Committee

The following reports have been produced by the Committee since the start of the 2001 Parliament. Government Responses to the Committee’s reports are published as Special Reports from the Committee or as Command Papers by the Government. The reference number of the Government’s response to each Report is printed in brackets after the HC printing number.

Session 2005–06

First Report  Draft Corporate Manslaughter Bill (First Joint Report with Work and Pensions Committee)  HC 540 (Cm 6755)
Second Report  Draft Sentencing Guideline: Robbery  HC 947
Fourth Report  Terrorism Detention Powers  HC 910
First Special Report  Memorandum from the Home Office: Progress in implementing accepted Committee recommendations 2001–05  HC 1007

The following reports were produced by the Committee in the previous Parliament

Session 2004–05

First Report  Rehabilitation of Prisoners  HC 193 (Cm 6486)
Second Report  Work of the Committee in 2004  HC 280
Third Report  Home Office Target-Setting 2004  HC 320 (Cm 6592)
Fourth Report  Police Reform  HC 370 (Cm 6600)
Fifth Report  Anti-Social Behaviour  HC 80 (Cm 6588)
Sixth Report  Terrorism and Community Relations  HC 165 (Cm 6593)

Session 2003–04

First Report  Asylum and Immigration (Treatment of Claimants, etc.) Bill  HC 109 (Cm 6132)
Second Report  Asylum Applications  HC 218 (Cm 6166)
Third Report  The Work of the Home Affairs Committee in 2003  HC 345
Fourth Report  Identity Cards  HC 130 (Cm 6359)
Fifth Report  Draft Sentencing Guidelines 1 and 2  HC 1207 (HC 371)

Session 2002–03

First Report  Extradition Bill  HC 138 (HC 475)
Second Report  Criminal Justice Bill  HC 83 (Cm 5787)
Third Report  The Work of the Home Affairs Committee in 2002  HC 336
Fourth Report  Asylum Removals  HC 654 (HC 1006)
Fifth Report  Sexual Offences Bill  HC 639 (Cm 5986)

Session 2001–02

First Report  The Anti-Terrorism, Crime and Security Bill 2001  HC 351
Second Report  Police Reform Bill  HC 612 (HC 1052)
Third Report  The Government’s Drugs Policy, Is it Working?  HC 318 (Cm 5573)
Fourth Report  The Conduct of Investigations into Past Cases of Abuse in Children’s Homes  HC 836 (Cm 5799)