



House of Commons
Home Affairs Committee

UK Border Agency: Follow-up on Asylum Cases and E-Borders Programme

Twelfth Report of Session 2009–10

*Report, together with formal minutes, oral and
written evidence*

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The Home Affairs Committee

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

Current membership

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Mr James Clappison MP (*Conservative, Hertsmere*)
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Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/homeaffairscom. A list of Reports of the Committee since Session 2005–06 is at the back of this volume.

Committee staff

The current staff of the Committee are Elizabeth Flood (Clerk), Eliot Barrass (Second Clerk), Elisabeth Bates (Committee Specialist), Sarah Petit (Committee Specialist), Darren Hackett (Senior Committee Assistant), Sheryl Dinsdale (Committee Assistant) and Jessica Bridges-Palmer (Select Committee Media Officer).

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Report

1. In December 2009, we published two reports on aspects of the work of the UK Border Agency (UKBA): the first concentrated on the UKBA's efforts to clear the historic backlog of asylum cases, and the second commented on the e-Borders programme.¹ In both, we expressed serious concerns about the programmes, noting our continuing worry that the backlog would not be cleared as quickly as would be desirable and our reservations about the legality and practicality of and timetable for aspects of the e-Borders programme.

2. We have subsequently received the Government's responses to these reports: we published the response to the first report in February² and we append the response to the second to this Report.³ We have also received a quarterly update on asylum cases and other issues from Lin Homer, Chief Executive of UKBA;⁴ we have been given updates by most of those who gave evidence to our e-Borders inquiry together with a copy of a letter from the European Commission about that programme;⁵ and the Independent Chief Inspector of UKBA has published the findings from his first major inspection of the asylum system.⁶ We have taken further oral evidence from both UKBA and the Independent Chief Inspector of the UKBA, on 3 March 2010.

3. Normally, we would have published the Government's response on e-Borders, the transcript of the oral evidence from UKBA and the written evidence without comment, not least as we have no time to launch any further inquiries owing to the imminence of the general election. However, we were struck by the fact that, despite the assurances given by the Government in their responses to our original reports, the subsequent evidence we have received reinforces and, in some areas, increases the concerns we felt at the end of last year. None of these issues will be resolved within the next few months, and all will have a serious impact on thousands of people. We believe it appropriate that we should briefly draw them to the attention of our successor Committee in the next Parliament, and we urge our successors to seek an update on them as early as possible.

1 Respectively. *The work of the UK Border Agency*, Second Report of Session 2009–10, HC 105-I and *The E-Borders Programme*, Third Report of Session 2009–10, HC 170 (hereafter Second Report and Third Report respectively)

2 *The work of the UK Border Agency: Government response to the Committee's Second Report of Session 2009–10*, Third Special Report of Session 2009–10, HC 370 (hereafter Government response)

3 Ev 18

4 Ev 21

5 Ev 30–Ev 43

6 *Asylum: Getting the Balance Right? A Thematic Inspection: July–November 2009* (hereafter Chief Inspector's report)

Dealing with the backlog of historic asylum cases

4. Since February 2007 we have been receiving regular updates from UKBA about its efforts to deal with a backlog of between 400,000 and 450,000 unresolved asylum cases, some dating back more than a decade, which became known as the Legacy Casework Programme. On several occasions we have raised with Ms Homer our fear that the cases were being considered too slowly to meet the deadline of concluding them all by the summer of 2011. Both in her oral evidence to us last year and in the Government's response to our report, we were told that the UKBA was confident it could meet the deadline.⁷ However, the Independent Chief Inspector has more recently reported his assessment that the cases were not being cleared fast enough to achieve the deadline, and that either UKBA would have to apply more resources to the problem or it would have to change the way in which cases were reviewed and decisions made if the deadline were to be met. The Chief Inspector therefore recommended the adoption of an action plan to speed up the system and to make it clear what would happen to any cases left unresolved in July 2011.⁸

5. Moreover, and despite the fact that we were given the impression that this was not happening,⁹ the Independent Chief Inspector found that, in effect, a new backlog was accruing because the UKBA was unable to achieve the targets for resolving new asylum cases within six months.¹⁰ He attributed this, at least in part, to the fact that unrealistic targets had been set because managers had not adequately consulted the staff processing the applications before setting them.¹¹ Lin Homer argued that there was no backlog amongst new asylum cases as 'backlog' meant cases set to one side and not being worked on.¹² By 'backlog' we mean that cases are not being concluded as quickly as new cases are coming in, so there is a constantly increasing tally of live cases.

6. The Chief Inspector of UKBA has confirmed our fears that the historic caseload of asylum applications will not be cleared by the deadline and that a new backlog of cases is growing up. We look forward to the UKBA presenting our successors with clear, realistic proposals for dealing with both these problems, even if that means an acknowledgement that current targets cannot be met.

7. We were disturbed by media reports that a former temporary employee of UKBA's Cardiff office had made allegations of inappropriate and offensive behaviour by her erstwhile colleagues in that office. On 2 March 2010 we took oral evidence from that employee, Ms Louise Perrett, who repeated the allegations to us.¹³ Ms Homer assured us that the allegations were already being investigated by the UKBA's Professional Standards

7 Second report, paras 2–10; Government response, reply to Recommendation 1.

8 Qq 56–59

9 See, for example, Lin Homer's oral evidence to the Committee on 8 July 2009, Qq 54–58, published in Second report, Volume II

10 Chief Inspector's report, paras 1.1–1.26

11 See, for example, paras 1.17–1.18

12 Oral evidence taken on 8 July 2009, Q 58

13 Qq 1ff

Unit, and that, if the Unit found them to be true, it would be a priority for the UKBA to take whatever formal disciplinary action or training that was necessary.¹⁴

8. We also asked Ms Homer about a reported hunger strike at the Yarl’s Wood Immigration Removal Centre. Ms Homer reassured us that the demonstrators, while refusing to take meals in the canteen, were eating food acquired from the shop and the vending machine, and had access to medical care at all times.¹⁵

E-Borders programme

9. The e-Borders programme is a system to gather information electronically on all travellers entering or leaving the UK, whether by air, sea or rail. We reported in December that there were serious practical difficulties—some technical, others logistical—with the programme as then envisaged, and we raised the concern that the requirement for all passengers, including EU citizens, not just to prove their right to travel by production of a passport or ID card but also to provide UKBA with information from the machine-readable zone within their passport might be contrary to one of the three fundamental freedoms of the European Union Treaty, freedom of movement of people.¹⁶

10. A few hours before our Report was published, UKBA sent us a copy of a letter to them from the European Commission saying that the programme would be compatible with EU law provided that the guarantees given to the Commission by UKBA on the following issues were met “in their entirety and in a legally binding manner” and “in the everyday operation of the e-Borders scheme”:

- Passengers who are EU citizens or their family members will not be refused entry/exit or incur sanctions in any way on the basis that their passenger data is unavailable to the UK authorities for whatever reason;
- Carriers will not incur sanctions if they are unable to transmit data through no fault on their part;
- Carriers will be instructed by the UK authorities not to deny boarding to travellers, regardless of their nationality, who do not communicate API data¹⁷ to the operator, and that the provision of API data to operators is neither compulsory nor is made a condition of purchase and sale of the ticket;
- UK authorities will make available to persons travelling to/from the UK the information required by Article 10 of Directive 95/46/EC [on the protection of personal data] and will also assist the carriers to communicate this information to travellers;
- A single contact point will be established by UK authorities to allow data subjects to exercise their data protection rights;

14 Q 84

15 Q 156

16 Third Report, paras 13–48

17 API or Additional Passenger Information data, also known as TDI or Travel Document Information, are the data held in the machine readable zone of a passport or identity document.

- Appropriate safeguards will be applied to transfers of data to third countries, in line with what is requested by the UK data protection authority.¹⁸

The letter went on to emphasise that it would be for the data protection authority in the country in which the data processing occurred to decide whether it was appropriate for the carriers to collect such data: in other words, carriers could not collect such data from passengers bound for the UK unless the local data protection authorities had confirmed this was compatible with national law.

11. We note that the European Commission's opinion seems to have stayed unchanged despite the renewed security concerns arising from the so-called 'Christmas Day bomber': the European Commission wrote in almost identical terms to the Director-General of the Chamber of Shipping on 1 February 2010.¹⁹

12. We asked the carriers who had given evidence to us in July and October last year to inform us about progress in dealing with both the practical problems we had identified and the question of compatibility with the EU Treaty.²⁰ We were told that negotiations over the practical difficulties faced by the maritime sector had yet to result in clear agreed solutions, though some progress had been made; and the sector was puzzled by the fact that UKBA had in effect told it that no changes had to be made to the programme in the light of the European Commission's letter on legality. As far as the airlines were concerned, although many of the technical problems had been resolved, that sector was worried by two developments: the Prime Minister's Statement that the e-Borders scheme would enable the UK authorities to obtain full details on everyone on a flight 24 hours in advance of departure²¹ (currently it is possible to provide this only a few minutes before take-off); and the concern that the sector was operating contrary to EU law by requiring EU citizens to provide API on intra-EU travel, contrary to the European Commission's letter.

13. The Government's response to our Report on e-Borders acknowledged that a significant number of practical issues remained to be settled, including the questions of whether airlines would be required to provide per passenger or batch messaging; how e-Borders would operate in the context of juxtaposed border controls for Eurostar and the Dover-Calais route; how data on ferry passengers in general could be collected; the particular problem of avoiding long delays while collecting data from coach passengers; the difficulty of dealing with the fact that passengers on Eurostar and other cross-Channel trains may disembark at intermediate stations; and it accepted that further urgent work needed to be done with both the European Commission (on the interpretation of its letter of 17 December) and other EU Member States (on compatibility of the programme with their national data protection legislation).²²

18 Ev 30

19 Ev 41

20 See Ev 34–Ev 43

21 Prime Minister's Statement to the House of Commons on Security and Counter-Terrorism, HC Deb 20 January 2010, cols 303–305

22 Ev 18, paras 5, 14, 17, 20, 27 and 28

14. We asked Lin Homer and Brodie Clark of UKBA about the Commission's letter and the continuing difficulties highlighted by the carriers.²³ They assured us that negotiations were proceeding smoothly with all parties and solutions were being found to the problems. In particular, they referred to a meeting to be held with the European Commission "in a couple of weeks' time".²⁴ **Given the slow progress so far in discussions with the maritime and rail sectors, and the number of practical problems (some technical, others to do with a physical inability to send data) experienced by the aviation industry even during and after roll-out, we remain sceptical about whether UKBA will be able to solve the remaining problems swiftly. We note that there is still, in Mr Clark's words, the need for "a conversation with the Commission" to clarify what is required in order to make the programme compatible with freedom of movement;**²⁵ and, despite the continuing negotiations, UKBA was unable to inform us of any specific progress on the national data protection issues with individual Member States. We remain of the view that the current timetable will be impossible to achieve, and it is still not clear whether all or some intra-EU travel will have to be omitted from the programme, either on freedom of movement or on national data protection grounds.

15. We note that UKBA has recently provided the Chamber of Shipping with the information we had previously asked it to supply about the UK's discussions with the European Commission. This is helpful, but we consider it would be still more helpful to involve the carriers in the imminent meeting between UKBA and the European Commission so that they have a much clearer idea of what the Commission believes EU law actually requires in practical terms.

16. We note the Government's strongly-held view that the e-Borders project is vital to the security of the UK's borders, in terms of combating illegal immigration, serious crime and terrorism. This being so, the fact that so many major difficulties with the programme remain to be resolved causes us serious concern. We recommend our successors to keep a close watching brief on this programme.

23 Qq 136–155

24 Qq 149 and 152

25 Q 153

Conclusions and recommendations

1. Normally, we would have published the Government's response on e-Borders, the transcript of the oral evidence from UKBA and the written evidence without comment, not least as we have no time to launch any further inquiries owing to the imminence of the general election. However, we were struck by the fact that, despite the assurances given by the Government in their responses to our original reports, the subsequent evidence we have received reinforces and, in some areas, increases the concerns we felt at the end of last year. None of these issues will be resolved within the next few months, and all will have a serious impact on thousands of people. We believe it appropriate that we should briefly draw them to the attention of our successor Committee in the next Parliament, and we urge our successors to seek an update on them as early as possible. (Paragraph 3)
2. The Chief Inspector of UKBA has confirmed our fears that the historic caseload of asylum applications will not be cleared by the deadline and that a new backlog of cases is growing up. We look forward to the UKBA presenting our successors with clear, realistic proposals for dealing with both these problems, even if that means an acknowledgement that current targets cannot be met. (Paragraph 6)
3. Given the slow progress so far in discussions with the maritime and rail sectors on the e-borders project, and the number of practical problems (some technical, others to do with a physical inability to send data) experienced by the aviation industry even during and after roll-out, we remain sceptical about whether UKBA will be able to solve the remaining problems swiftly. We note that there is still, in Mr Clark's words, the need for "a conversation with the Commission" to clarify what is required in order to make the programme compatible with freedom of movement; and, despite the continuing negotiations, UKBA was unable to inform us of any specific progress on the national data protection issues with individual Member States. We remain of the view that the current timetable will be impossible to achieve, and it is still not clear whether all or some intra-EU travel will have to be omitted from the programme, either on freedom of movement or on national data protection grounds. (Paragraph 14)
4. We note that UKBA has recently provided the Chamber of Shipping with the information we had previously asked it to supply about the UK's discussions with the European Commission. This is helpful, but we consider it would be still more helpful to involve the carriers in the imminent meeting between UKBA and the European Commission so that they have a much clearer idea of what the Commission believes EU law actually requires in practical terms. (Paragraph 15)
5. We note the Government's strongly-held view that the e-Borders project is vital to the security of the UK's borders, in terms of combating illegal immigration, serious crime and terrorism. This being so, the fact that so many major difficulties with the programme remain to be resolved causes us serious concern. We recommend our successors to keep a close watching brief on this programme. (Paragraph 16)

Formal Minutes

Tuesday 23 March 2010

Members present:

Rt Hon Keith Vaz, in the Chair

Mrs Ann Cryer
Mrs Janet Dean
David TC Davies
Gwyn Prosser

Bob Russell
Martin Salter
Mr David Winnick

Draft Report (*UK Border Agency: Follow-up on Asylum Cases and E-Borders Programme*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 16 read and agreed to.

Resolved, That the Report be the Twelfth Report of the Committee to the House.

Ordered, That the Chair 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.

[The Committee Adjourned

Witnesses

Tuesday 2 March 2010

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6	Correspondence from the UKBA to members of maritime and air working groups (MCCWG/ACCWG)	Ev 32
7	Correspondence from the UKBA to the Data Protection Authorities, 23 December 2009	Ev 32
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List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2009–10

First Report	The Detention of Children in the Immigration System	HC 73 (Cm 7795)
Second Report	The work of the UK Border Agency	HC 105 (HC 370)
Third Report	The E-Borders Programme	HC 170
Fourth Report	Work of the Committee in 2008–09	HC 265
Fifth Report	Police Service Strength	HC 50 (HC 511)
Sixth Report	The Home Office's Response to Terrorist Attacks	HC 117 (Cm 7788)
Seventh Report	The Cocaine Trade	HC 74
Eighth Report	The National DNA Database	HC 222
Ninth Report	Counter-Terrorism Measures in British Airports	HC 311
Tenth Report	The Government's Approach to Crime Prevention	HC 242-I
Eleventh Report	The work of the Independent Police Complaints Commission	HC 366

Session 2008–09

First Report	Monitoring of the UK Border Agency	HC 77 (HC 381)
Second Report	The Police and the Media	HC 75
Third Report	The Work of the Committee 2007–08	HC 76
Fourth Report	Policing Process of Home Office Leaks Inquiry	HC 157 (HC 1026)
Fifth Report	Borders, Immigration and Citizenship Bill [HL]	HC 425
Sixth Report	Human Trafficking	HC 23-I
Seventh Report	Knife Crime	HC 217
Eighth Report	Policing of the G20 Protests	HC 418 (HC 201)
Ninth Report	Project CONTEST: The Government's Counter-Terrorism Strategy	HC 212
Tenth Report	The cost of policing football matches	HC 676 (HC 339)
Eleventh Report	Bogus Colleges	HC 595 (Cm 7766)
Twelfth Report	Macpherson Report—Ten Years On	HC 427
Thirteenth Report	Managing Migration: Points-Based System	HC 217 (Cm 7767)
Fourteenth Report	The work of the Serious Organised Crime Agency	HC 730

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First Report	The Government’s Counter-Terrorism Proposals	HC 43
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Third Report	Security Industry Authority	HC 144
Fourth Report	Work of the Committee in 2007	HC 226
Fifth Report	A Surveillance Society?	HC 58 (HC 1124)
Sixth Report	Domestic Violence, Forced Marriage and “Honour”-Based Violence	HC 263 (HC 1165)
Seventh Report	Policing in the 21 st Century	HC 364
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First Report	Work of the Committee in 2005–06	HC 296
Second Report	Young Black People and the Criminal Justice System	HC 181 (Cm 7217)
Third Report	Justice and Home Affairs Issues at European Union Level	HC 76 (HC 1021)
Fourth Report	Police Funding	HC 553 (HC 1092)

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
Third Report	Draft Sentencing Guidelines— <i>Overarching Principles: Domestic Violence and Breach of a Protective Order</i>	HC 1231
Fourth Report	Terrorism Detention Powers	HC 910 (Cm 6906)
Fifth Report	Immigration Control	HC 947 (Cm 6910)
Sixth Report	Draft Sentencing Guideline: Sexual Offences Act 2003	HC 1582

Oral evidence

Taken before the Home Affairs Committee on Tuesday 2 March 2010

Members present

Keith Vaz, in the Chair

Mr James Clappison
Mrs Ann Cryer
David TC Davies
Mrs Janet Dean

Gwyn Prosser
Bob Russell
Mr David Winnick

Witness: Ms Louise Perrett, gave evidence.

Q1 Chairman: Could I welcome our witness, Louise Perrett. Could I also refer everyone present to the Register of Members' Interests where the interests of Members are noted. My wife is an immigration solicitor; I am a non-practising barrister. Ms Perrett, thank you very much for coming to give evidence to us on the work of the UKBA. You probably are not aware that from time to time we have the pleasure of taking evidence from the Chief Executive of the UKIB, and also BA, and also recently, since his appointment, the Independent Inspector of the UKBA, so that is part of that overall framework that we have called you to give evidence on. You were quoted in the *Guardian* newspaper and other media as making some very serious allegations about what was happening in Cardiff. Could you briefly tell us the background of what you were doing in the Cardiff office? What was your job? How long were you working there?

Ms Perrett: I was employed as a casual case owner on a temporary work basis in the summer of 2009 in between university courses. I was employed for three and a half months, and I was a decision-maker as a case owner. That is it.

Q2 Chairman: What was the nature of your concerns about what colleagues were saying and doing at that Cardiff office that led to what you have done? We are most grateful to you for coming here today to give evidence to this Committee.

Ms Perrett: When I arrived there was some misunderstanding within the office, they did not realise that I and several other casual members of staff were going to turn up that day, we were allocated our posts, it was split between HEO, case owners, and the rest were executive officer, I am not sure what their title was. Then we were allocated asylum teams to sit in and shadow for two weeks until our training started. I was allocated to Asylum Team 3, and there were pleasantries and introductions to the staff. I introduced myself, and I was asking about the job, the pros, the cons, things like that, and I asked about the claimants and their thoughts, and I was told, "If it was up to me I would take them all outside and shoot them". I told her that I did not agree that she should be saying things like that in the office and it was horrendous. I quickly explained my background and career history, which

has always been in the equalities field, working for the Welsh Assembly and the voluntary sector in Wales. Then she went on to tell me that I would quickly discover that nobody in the office was very PC, in fact everybody was the exact opposite, and that I would not win any friends or favours by spouting any of that rubbish. That was my first 10 minutes. That was an indication of what was to come. Throughout the next few days I was trying to explain that I was worried about doing this post, I did not realise what the job entailed, I was not told by the recruitment agency what the job was until a few days before taking up the post, and I did not think I had the skills to make decisions on asylum seeker claims, I did not think I had the interviewing skills. I was reassured that after training it was enjoyable and easy, and I was still saying I did not think I could do it, I did not think I could question women and children claiming to be victims of torture or rape. Then a line manager gave me some tips, he was saying that all the case owners had tips and they would all support me, it is fine, it is easy, you will enjoy it, and he was giving me some tips on how he conducts interviews. One of his examples was that when he had young men or children claiming to be former child soldiers from Africa he would make them lie on the floor and demonstrate to him how they would shoot somebody from the bush. I could not quite understand his rationale but he was trying to say if they do not do it immediately, if there is hesitation, then you will discover that they are lying. I did not agree with him, obviously.

Q3 Chairman: Yes. You also made comments, reported in the *Guardian*, that people behaved in other offensive manners. Can you give us any other examples of the offensiveness? Was it a majority or a minority of members of staff?

Ms Perrett: It was generic throughout the office. If somebody was not making the statements or saying things horrendously they were just allowing it to happen. That goes from the team leaders to the Grade 7 to the other case owners. It is constant, so much so that as an equalities person working for 10 years I just did not know where to begin and how to address any of it. I would raise my concerns with team leaders or my trainer or the other case owners but I was always dismissed and laughed off.

2 March 2010 Ms Louise Perrett

Q4 Bob Russell: Ms Perrett, four weeks have elapsed since the *Guardian* article. Was the *Guardian* article a fair and balanced report, from your perspective?

Ms Perrett: Yes, it got my main points across. Because of word constraints it did not get across the culture of the organisation, which is my main concern, of why these things can happen and do happen.

Q5 Bob Russell: Have there been any consequences in the past four weeks to that article?

Ms Perrett: I have only had positive feedback so far.

Q6 Bob Russell: You partly answered the Chairman's question of how your colleagues approach their work. I wonder if I could just press that, because I think it is important to know how widespread it was. Are we talking of three or four people? A dozen? Everybody?

Ms Perrett: Well, a dozen that I spoke to, I did not like very many people there, I must admit, I did not agree with the things they were saying so I tried to avoid them. When I explained to the presenting officers, which is the legal department, where a lady was from and that a case owner was trying desperately to find a way to remove this family back to the DRC, when he asked me where the lady was from and I told him the Congo, he sang, "Umbongo, umbongo, they kill them in the Congo"—and that is the presenting officer. In Asylum Team 1 or 2, they were separate, they had a grant monkey in their team. I was not part of that team.

Q7 Bob Russell: In the newspaper article it is referred to as a "stuffed gorilla".

Ms Perrett: It was just a toy but it was known in the office as a "grant monkey".

Q8 Bob Russell: Was everybody in the office involved in the grant monkey award?

Ms Perrett: No, that was in just one team. The office is in an L-shape separated by a stairway, and it is Asylum Team 1, I think.

Q9 Bob Russell: Would the people in ultimate charge be aware there was this stuffed monkey there?

Ms Perrett: Yes. The team leader obviously, and the team leader sits with the case owners.

Q10 Bob Russell: In summary are you saying the ethos of the whole office, every single employee, was of a nature that caused you serious concern, or was it just a few domineering people?

Ms Perrett: There are good people there, do not get me wrong.

Q11 Bob Russell: That is what I am trying to get at.

Ms Perrett: Those people act in a professional, courteous, caring manner. I do not want to tar everybody with the same brush. But the fact is the culture of the office does not permit those individuals to speak up and say "No, this is wrong".

Q12 Chairman: What you are saying, leaving the issue of the monkey aside, is that those who grant asylum applications were in some way ridiculed, is that the issue?

Ms Perrett: Yes. Initially, when I first started in the office I thought it was a positive thing. I thought to have the grant monkey on your desk was a celebration that you had helped somebody that day and to have the grant monkey was to be celebrated, but I quickly discovered no, it was not, it was ridicule, and that you had "let one through", in a sense; you had not done your job properly. I am sorry, what was the question again?

Q13 Chairman: It was that people were ridiculed when they granted applications.

Ms Perrett: Yes.

Q14 Mrs Dean: Could you just remind us how long you worked there?

Ms Perrett: I was employed for three and a half months.

Q15 Mrs Dean: You completed the three and a half months?

Ms Perrett: Yes. It was a rolling contract through Hays Specialist Recruitment. I was there for only three and a half months.

Q16 Mrs Dean: You said how one of the members of staff there described how he interviewed people. Did you witness how people interviewed claimants?

Ms Perrett: I did shadow people. I did not shadow that individual because he was a team leader and they tend only to interview the most difficult cases that need the most experience, so I did not witness him personally interviewing, but he was giving me tips as my line manager on how to conduct an interview.

Q17 Mrs Dean: How did you find the interviews that you did witness?

Ms Perrett: I witnessed one that was absolutely fantastic and she should be commended for her professionalism, it was brilliant, but they tended to be the more mature members of the staff who were not influenced so much by the culture of the office. They did not really care if they fitted in or not. The younger members of staff were very gung ho, very aggressive and rude from the moment you met an asylum seeker in the waiting room.

Q18 Mrs Dean: You witnessed that rudeness?

Ms Perrett: Yes.

Q19 Mrs Dean: It was not just something you heard talked about, as wrong as that could be? You witnessed it?

Ms Perrett: In the two weeks when we were shadowing that meant we were following individual case owners throughout the whole day.

Q20 Mrs Dean: What sort of rudeness did you come across in those interviews?

2 March 2010 Ms Louise Perrett

Ms Perrett: Just general hostility, not so much in the things they would say but their demeanour, abruptness, general intimidation that I thought as a government official was totally unnecessary, and we would not expect to be treated that way.

Q21 Mr Clappison: Did you report your concerns to anybody?

Ms Perrett: I continuously raised my concerns within the office to line managers in front of the group director, which is a Grade 7 level but, like I said, I was always laughed off as a woolly liberal.

Q22 Mr Clappison: When you say you “raised” your concerns, what did you say specifically? Can you remember?

Ms Perrett: That this was outrageous, that you cannot act like that in the office. You would walk in and people would be standing up screaming, swearing. I have worked in the Welsh Assembly so that is the only other Civil Service kind of scenario that I can compare it with.

Q23 Mr Clappison: What was your job in the Welsh Assembly?

Ms Perrett: Initially I was team support back in 2000. I worked my way up to be the equality and diversity co-ordinator for the Culture Directorate and then I was a researcher in 2008 for the public sector.

Q24 Mr Clappison: Going back to your training and the way you approached it, were you trained that this was a factual exercise, gathering evidence to see if somebody was telling the truth or not? Whether they met the criteria for asylum?

Ms Perrett: Yes. The trainer did a very good job in the five weeks that you have of training, in the limited space. She did her best to bring us up to speed in a proper manner.

Q25 Mr Clappison: Did you find that your background in equalities and diversity was helpful in this or not?

Ms Perrett: Yes, I could challenge and give an alternative. Again, from my two weeks I had already established myself as a bit of a pain really and a bit of a liberal.

Q26 Mr Clappison: The job you had was not to be a liberal or to be offensive or anything else; it was to evaluate the facts and see whether somebody met the criteria?

Ms Perrett: The Home Office set training itself I have no issue with. Obviously the length of time that you are given, five weeks to make a decision on somebody’s asylum claim, but the contents, no, that is not my issue whatsoever. My issue is with the culture of the organisation and how the officials conduct themselves and how that affects the asylum seekers claiming asylum. It is not the training.

Q27 David Davies: Ms Perrett, what percentage roughly of the staff that you were with were not white? Were there black and Asian staff there as well?

Ms Perrett: A few.

Q28 David Davies: So the black and Asian staff, white staff, were all taking part in these jokes, were they?

Ms Perrett: Well, no. The one black employee that I had more dealings with was a Muslim, and when he heard staff members saying things that were factually incorrect about Islam and the Muslim beliefs and culture he would try and give the correct view from his point of view.

Q29 David Davies: But what about the grant monkey that gets passed around the desks?

Ms Perrett: He was in a different team. I never saw that gentleman in Asylum Team 1.

David Davies: You will recognise this document as the monthly cohort snap shot from UKBA.

Chairman: What does that mean?

Q30 David Davies: This is a breakdown of how many asylum seekers have been allocated to each region of the UK, how many have been granted asylum by staff like Ms Perrett. It contains various other topics as well but the interesting point for me is this. At the top you have the number of people who are granted asylum immediately by case workers like yourself. I have the figures from Cardiff and Wales, Scotland, Northern Ireland, and the North East and Cardiff were granting far more claims than anyone else. Were you aware of that at the time?

Ms Perrett: No.

Q31 David Davies: 30% were granted immediately in Cardiff as opposed to 24% in Scotland and Northern Ireland, and just 20% in the North East.

Ms Perrett: I do not know the dates of those.

Q32 David Davies: June 2009? Another whistleblower came out from the same office as you a few weeks later.

Ms Perrett: Really?

Q33 David Davies: And suggested that, notwithstanding what you have said, in Cardiff there is a real problem that so many cases have been granted without anyone looking at them, and that is why the figures are so much higher in Cardiff than elsewhere.

Ms Perrett: Look, my issue is—

Q34 David Davies: —more with the behaviour?

Ms Perrett: The behaviour. I am not interested in how we are trained or the figures, I do not know if they are correct or incorrect, but the problem is how an organisation deals with its members of staff and acts on a professional basis and how we interact with people who are the most vulnerable people in our society, and how they meet with officials of the government, and what I saw was absolutely horrific and should never be accepted, or ignored.

Q35 Mrs Cryer: Ms Perrett, what made you eventually decide to approach the *Guardian*, or did they approach you?

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Ms Perrett: I was approached by the media. I have not courted any media myself.

Q36 Mrs Cryer: How did they know about you?

Ms Perrett: I am a student at Bristol University studying social policy, and we have a mentoring scheme. When I was new there my mentor lived with a girl who was part of the STAR group, Student Action for Asylum Seekers and Refugees, and they invited me to give a brief talk about my experiences in the Home Office in the summer. They are an industrious group and I was expecting there to be about 15 to 20 students, but they invited people from the voluntary sector in Bristol and about 100 people turned up that night.

Q37 Mrs Cryer: You talked about your concerns to this group?

Ms Perrett: Yes.

Q38 Mrs Cryer: And that story percolated through to the *Guardian* and they approached you?

Ms Perrett: Yes.

Q39 Mrs Cryer: Have any other newspapers or media outlets approached you since then?

Ms Perrett: Not since then. Before the *Guardian* was the BBC World Service. They were the first people to contact me.

Q40 Mrs Cryer: Do you feel you have achieved anything by going public?

Ms Perrett: I am aware through contacts that the grant monkey no longer exists and that to me is an achievement, that is no longer in the office and, again, if that is all I achieve, that is great.

Mrs Cryer: Thank you.

Chairman: Ms Perrett, thank you for giving evidence. It is obviously very difficult to come before a Select Committee and it has been difficult for you to do what you have done, but we are extremely grateful to you for sharing your information with us. If there are other matters that we need to raise with you we will write to you. Thank you for coming in. We are most grateful.

Witness: **Mr John Vine**, Independent Chief Inspector, UK Border Agency, gave evidence

Q41 Chairman: Thank you for coming to give evidence to us. When you first came to see us Members of the Committee were concerned about the existence of your post and were worried about the benchmarks set by the Government. Can I begin by thanking you for the work that has been done so far? You have gone out of your way to keep this Select Committee informed with reports and letters and have done your best to make sure that you have kept the word "independent" before the words Chief Inspector. There remains concern about your workload because, of course, you combine two previous posts, the entry clearance tsar, if you like, and the new post of inspecting the UKBA, so thank you very much for doing that. We are most grateful to you for coming here to give evidence to us today. Your annual report is an excellent report, I think there are 17 photographs of you in it. Are you running for Parliament?

Mr Vine: Not at the moment, Chair, no. There were very few members of my Inspectorate right at the start so I thought it was important to ensure that people knew who I was, knew that we were independent in the Inspectorate, and that we were quite distinct from the UK Border Agency itself.

Q42 Chairman: Was this prepared internally or did you go to a public relations organisation?

Mr Vine: It was produced professionally by the Central Office of Information, but we produced it internally.

Q43 Chairman: As far as the public are concerned, because obviously you cannot give everybody a copy of this very glossy publication, is there a summary

that can go to organisations about your work, or have you sent this out more widely to people so they understand what your role is?

Mr Vine: We sent this proactively to all the major stakeholders in the asylum and immigration field. We have also published it on our website and made sure the website has an independent web address now as well, whereas it started off with the Home Office web address. We have done our best to circulate it and it is quite unique as an annual report because it includes the findings last year. This is a one-off annual report; the next one will have more opinion about the state of the Border Agency drawn from the series of inspections we have done. This includes recommendations from pilot inspections and others which I think most people who read it found very informative.

Q44 Chairman: You are aware of the recent report into the UKBA, and of the damning criticisms of the UKBA by the Parliamentary Ombudsman. Does that match your concerns in the reports that you have published recently about these matters?

Mr Vine: The Parliamentary Ombudsman has conducted a recent inspection into complaints and she deals obviously with individual complaints from the Border Agency and other government departments. I liaised with the Parliamentary Ombudsman because I am also in the process of producing inspection reports on customer handling and complaints, and in her foreword she mentions our report. From her report she is identifying some shortcomings in mainly the process of handling administrative issues in relation to complaints. My inspection report is going to look in depth at a number of cases and try and drill down into

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complaints handling generally, both professional standards complaints, complaints that are sometimes overseen by the IPCC, Independent Police Complaints Commission, and also the handling of ordinary complaints. Some of the things that she is finding in her reports we are taking very much into account in our own scrutiny and that will be published in due course.

Q45 Mrs Dean: Following on from that, according to the Ombudsman many of the UKBA's problems are politically driven being caused by sudden changes in priorities and switching of resources. If you came to the same conclusion as that, would you be able to speak out boldly to ministers, and would you expect them to respond positively?

Mr Vine: I am trying in all my work to look at the performance of the Border Agency within the policy parameters it has been given. My job as an independent inspector is not to comment on public policy; policy on immigration is a matter for Parliament, and I am trying to look very closely at how the Border Agency is performing within those parameters. In the inspections that I have published so far, the ones contained in the annual report and the one that has recently received a lot of publicity on asylum, I am trying to get as close to commenting frankly, openly and transparently about what are the facts based on the evidence that I am finding, and I am trying to put that as frankly and openly into the public domain as I can. Where I am finding areas for improvement and evidence to support that, that is going in my reports. Equally, where I find good practice and people within the Border Agency working effectively, I am trying to ensure that is highlighted in the report as well, so there is a difficult balance to be achieved. I am hoping that by taking a very evidence-based approach I can make sure that I maintain that balance.

Q46 Mrs Dean: Do you comment to ministers on the effect that policies might have had, or are having?

Mr Vine: I am sure we will come to the Asylum Report but if I can draw on that as an example, where I am talking about targets being unachievable, there I am talking about what I find at the moment in time of inspection and making a judgment based on my experience about whether that sort of thing is possible. I am not commenting on immigration policy per se, but I am making a judgment based on what I am finding about whether the Border Agency is efficient and effective. Efficiency and effectiveness is really at the heart of my role, looking at whether this organisation is efficient and effective, where it can be improved, and it is in all our interests to make sure we have a very effective UK Border Agency in securing Britain's borders.

Q47 David Davies: Mr Vine, you are shortly going to be looking at Cardiff, I understand.

Mr Vine: We have been looking at Cardiff. We are in the process of writing the report.

Q48 David Davies: You will be aware of the whistleblower from Cardiff who has suggested there is a cover-up going on over the figures? It was reported in the *Western Mail* recently.

Mr Vine: Yes. I listened to the evidence this morning, as well.

Q49 David Davies: You will know what this is and this suggests that Cardiff are granting a huge number of cases immediately and only a handful of people are being removed—3%, 2%, 2%, very small. Out of over 100 people in one case only three were removed, and that is typical for the different areas of UKBA. Is this your experience, that only one or two out of every 100 people are removed?

Mr Vine: As part of the asylum scrutiny we have looked at files from across the UK Border Agency including that region and all the other regions as well. We found in the report, and I report upon it in here, that the mix of cases varies enormously depending on the region that you are looking at. For example, the Wales region may get a mix of cases where it is very difficult to remove failed asylum seekers; in other regions they may have more of a mix of cases where case workers find it easier to identify cases where removal is more possible.

Q50 David Davies: The highest figure I can find is 4%. Do you know of anywhere where more than 4% of asylum seekers in each cohort are being deported?

Mr Vine: We have looked extensively at the figures and at the way the Border Agency are handling asylum. In the report what I am reporting on is that we find that, generally speaking, the case workers that the Border Agency has dealing with these cases, on the basis of what we have witnessed, are dealing with them effectively and within the rules.

Q51 David Davies: So that 4% is the highest we can expect?

Mr Vine: If that is what the figures say at the moment, that will be the case.

Q52 David Davies: Do you think we should have access to these figures? It is amazing that they had to be leaked. Would you agree—and this is not an aggressive question, forgive me if it sounds that way—that Members of the Home Affairs Select Committee should have access to the monthly cohort snapshot so we can see what is going on?

Mr Vine: What I am trying to do is put as much information into the public domain as possible.

Q53 Chairman: Mr Vine, Mr Davies asked a specific question. Do you think that that information should be left to a whistleblower to be given to Members of Parliament? Do you not think that that kind of information, which is important information, ought to be included in the letter that is sent to us by the Head of the Immigration Department? It is statistics, is it not?

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Mr Vine: If you would find, as a Committee, that information to be helpful in giving you an overview of the position in relation to asylum—

Q54 Chairman: You are the Chief Inspector, do you think this kind of information ought to be made available?

Mr Vine: If you would find it helpful, then I would say make that request. You have to look beneath the bare statistics and the reasons behind the statistics as well, and that is what we have tried to do here.

Q55 David Davies: At the moment I do not get statistics unless somebody decides to leak them to me, and I am looking at them and below them and what I find is absolutely horrifying, that about a third of all people who claim asylum are given it straight away by officials like Ms Perrett—and I am sure she did a very good job but others obviously did not—and even though the rest of them should not be here only a handful, maybe 1 or 2%, are deported, and I find that absolutely horrifying.

Mr Vine: You would have to make that request to the Chief Executive, but if you would find that helpful as a Committee I do not have any problem personally in relation to that.

Q56 Mr Winnick: Mr Vine, we are constantly being told by the Chief Executive and others that the backlog of cases is being cleared, but you are far from optimistic about that happening, are you not?

Mr Vine: You are talking about the legacy case work, I presume?

Q57 Mr Winnick: Indeed.

Mr Vine: At the time we inspected this particular issue, we found that four and a half thousand cases a month were being concluded on the basis of an estimated 450,000 cases at the start of this whole process, and about 200,000 left. The Border Agency needs to be clearing far more per month than we found in our inspection report. That is why I recommended that the Border Agency should produce an action plan and present milestones to show how they are going to clear this backlog by the declared date of July 2011. In addition I made recommendation that it is likely that at the end of the legacy cases there are still going to be some that are outstanding, and there needs to be a very clear view and an action plan about how those continue to be taken forward, so I am far from confident and I express that very frankly in the report.

Q58 Mr Winnick: We will have the Chief Executive in front of us very shortly but all Members of Parliament, myself included of course, received replies along predictable lines telling us in effect that they cannot resolve the particular case we have been writing about but all will be resolved by next year, so presumably we should not put too much faith in that. Now, you say that targets are set by top management without consultation with those doing the actual work. That is a rather serious accusation, is it not?

Mr Vine: From my experience I have always found it useful to ask people on the front line, and I usually find that people on the front line tend to have a lot of opinions about how the job they are doing can be done more effectively. I have found a dearth of evidence of that happening and I would like to encourage the Border Agency to do that more, and that is why I made that recommendation in the report.

Q59 Mr Winnick: One would expect that to happen in any organisation, that you could find out from the people doing the job how they are going about it and then make an assessment accordingly. You reached a conclusion that this is not being done in the organisation and obviously we will question the Chief Executive accordingly but, by and large, in your assessment, Mr Vine, we should remain pretty pessimistic about a backlog being cleared by next year?

Mr Vine: What I am saying is that at the time of the inspection we did not find the rates to be as high as they should be in order to clear against that figure. Clearly, if more resources or different working methods are put in place that might change the position. What we did find on the positive side is that the leadership of the Case Resolution Directorate, as it is now called, was very good. We found people very clearly focused on the targets to achieve resolution of the legacy casework backlog, and I do say in the report, to give some credit to the Border Agency, that the underlying performance in relation to being driven by some of these targets is better than it has been, so there is some hope but I can only base my recommendations on what I find at that moment in time, and I am drawing, I suppose, your attention to that fact. I make the recommendation very clearly about an action plan. That would benefit everybody.

Q60 Mr Clappison: You are telling us about the backlog of asylum cases. Originally you mentioned a figure of 400,000?

Mr Vine: That is correct.

Q61 Mr Clappison: Which all came to light in 2006?

Mr Vine: Yes.

Q62 Mr Clappison: Since then about 235,000 have been resolved through clearing up what is the reason for the backlog?

Mr Vine: That is right.

Q63 Mr Clappison: That was the backlog in 2006. Are you concerned that a new backlog has been building up since then of other asylum cases since 2006?

Mr Vine: Yes, I am. At the time of the inspection we found that there were 29,474 cases that had been created around the new asylum model. The new asylum model was brought in in March 2007 as a

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new approach in handling asylum where a dedicated case worker related to each individual asylum case. The idea was to provide a rapport between the asylum seeker and the case worker but it was also designed as a system to speed up the removal of people who had no right to asylum, and it was also going to be a more cost effective and efficient method. What I am concerned about now is that some of the targets, for example, the 90% of asylum cases to be achieved within six months, are driving behaviour which means that many of these new asylum model cases are being put to one side in order to concentrate on the cohort of cases that enables the Border Agency to achieve its target in the milestone month.

Q64 Mr Clappison: Is that not exactly what happens to produce the original backlog of 400,000? That we have cases put to one side, filed away for years, which then come back to light?

Mr Vine: I do not go back that many years.

Q65 Mr Clappison: Some of us do.

Mr Vine: Some of you do, but what concerns me is this is now a figure of around 30,000 cases. This is a mixture of cases where some cases have a general legal barrier to the return of the failed asylum seeker, but some of the cases are ones where no initial decision on asylum has been made within the six month period. That is regrettable, and what I would not want to see is this new cohort of cases growing beyond what we found in the inspection. It is almost a case of behaviour to achieve some unachievable targets creating perverse behaviour in another important area and having a knock-on effect. I make a recommendation in my report to say that the Border Agency should address this 30,000 group of cases with some urgency and ensure that it does not get any bigger than it is at the moment.

Q66 Mr Clappison: These 30,000 have to be decided on normal legal principles, whereas the legacy cases are being dealt with on special criteria, are they not?

Mr Vine: We looked at the criteria against which legacy case work was being concluded, and we found it was being concluded in accordance with those criteria.

Q67 Mr Clappison: But those are not the criteria which normally apply to asylum work. It depends on how long somebody has been here, and not whether they have a meritorious case or fleeing persecution.

Mr Vine: But these 30,000 cases are the new asylum model, and this is a new and good system which has been commended by the National Audit Office when they looked at asylum at the beginning of last year, and it is a system which should be supported and which will bode well for the future. Having a queue of cases, however, relating to that particular model is concerning.

Q68 Mr Clappison: We have been told about another backlog of non asylum cases which has come to light and is being dealt with by the UK Border Agency. Are you familiar with that?

Mr Vine: Is this the 40,000?

Q69 Mr Clappison: Exactly. We have not got details of them but they are longstanding, non asylum cases which have not been dealt with. Are you familiar with those?

Mr Vine: I am familiar with the figure but we have not looked at that issue as an Inspectorate. At the moment obviously my focus has been on asylum and I am concerned about the cases that we are reporting on in this particular document.

Q70 Chairman: Apart from asylum there is the issue of settlement cases and the general operation of the UK Border Agency. Every one of the Members sitting around this Committee will have written to Ms Homer on casework issues. Is there a mechanism by which you can look at the concerns of Members of Parliament over the way in which casework is being handled by the UKBA? We tend to get a standard letter saying "Come back in 2011" which quite irritates Members of Parliament and upsets constituents who come back every few months saying, "But it is the same letter you gave me a few months ago".

Mr Vine: I understand that entirely, Chair. I held a surgery here in Portcullis House as part of the asylum scrutiny which I invited MPs to attend. We had 12 either MPs or their researchers represented at that meeting where I heard at first hand the views of MPs. As part of our scrutiny on complaints handling, which is being written up at the moment, I questioned all MPs. We had 120 responses from MPs to that particular scrutiny and their findings are going to be incorporated in the write-up of that report.

Q71 Chairman: Did anyone praise the work of the UKBA?

Mr Vine: The figures are being analysed at the moment, Chair, so it would be wrong of me to disclose any of the findings of the report before it is published, but obviously we will look at the findings very carefully.

Q72 Chairman: Thank you.

Mr Vine: I am making attempts to try and address that issue, and we make a recommendation in the Asylum Report to the Border Agency asking them to redouble their efforts to keep people informed. We also identify on the same issue that with case workers who take over, say, some of these 30,000 cases in the new asylum model, the asylum seeker is not made aware of the change of case worker, so we are urging the Border Agency to do more to identify to the asylum seekers and their representatives who is dealing with their case, in both the legacy casework and new asylum cases.

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Q73 Mrs Dean: Is there any evidence of a backlog of cases developing in any other area of the UK Border Agency's business other than asylum?

Mr Vine: I will only be able to discover that once I inspect other parts of the business. I have no evidence to suggest that at the moment.

Q74 Mrs Cryer: Your first annual report, which takes account of 15 months to September 2009, shows that UKBA have accepted the great majority of your recommendations so far. You started off with the more straightforward recommendations. As you get on to more complex recommendations, do you think the UKBA are likely to accept those as well? I have no idea what those are going to be.

Mr Vine: I hope so. There is no point me making recommendations unless some action is going to be taken and things change. I intend to write to the Chief Executive of the Border Agency formally at the beginning of April to ask what has happened to the recommendations I have made from all the reports published thus far. I am going to ask her to tell me what has changed in terms of the working practice of the Border Agency in respect of the areas that I have inspected, and then I will have to decide whether I have to re-inspect certain parts of the Border Agency's work and what other action I am prepared to take. I have a range of things in mind to follow up. I have been very encouraged by the co-operation with the Border Agency at a senior level. There has been good co-operation on the ground. The vast majority, if not all, of the recommendations I have made have been accepted, so the next stage is to make sure things have changed.

Q75 Chairman: Your inspection plan, Mr Vine, which you are going to be publishing very shortly will presumably look at the work you have planned for yourself over the next period, 2010/2011. You will have noted the tiny raised eyebrows of Members of this Committee that you chose to go to Rome for your first inspection and, following that, Singapore. Wonderful destinations but we wonder whether they are hotspots. We are much more keen on your visits to places like Islamabad and the important work you are doing here. This is a huge job, as we said in our report when you were appointed, and that is why we said to the Government that more resources needed to be given to you, and we worried about the entry clearance post being merged with yours. This is a very, very wide area. Are you satisfied that you have the resources to cope with this very huge area of work?

Mr Vine: Yes, I have, Chair. There was a little bit of a misunderstanding about Rome. At the same time we started the international work we were also

beavering away in places like Croydon, and that resulted in the reports that are contained in the annual report. The domestic work has always been the major part of the Inspectorate's work and that started at the same time. We have continued with the international work as well. It will be done slightly differently from the way the Independent Monitor did it, but in the same way she did it differently from her predecessor. There were five roles, not two, merged into this new Inspectorate, and I am very keen to ensure that we continue the good work of all those monitoring bodies through various strands of work now coming through as reports, so you can now see the evidence of what we are doing. This last week I have had a team in Islamabad because I have started scrutinising the visa issue around Islamabad and Abu Dhabi. We have currently started looking at the North West of England enforcement and the removal of children of families, so lots of issues that have been of interest to this Committee before. Some of the issues that have been raised here before on the overseas side around administrative review and the grant of visas are all issues that are now being contained in inspection reports overseas. Kuala Lumpur, for example, has recently been published and Chennai is to be published in the next week or so. At the moment, therefore, I am satisfied that we can manage all the responsibilities. It is a broad remit but if I feel that I do not have the resources, Chair, then I shall say so.

Q76 Chairman: At the end of the day, what concerns Members of this House and this Committee are the people who come to us who have been waiting for years for a decision from the UKBA, and all they want is a yes or a no.

Mr Vine: I understand.

Q77 Chairman: To keep it going for years and years and not reply to letters and then say "No" at the end is bound to cause trouble. It is obviously up to you to decide what you want to do, but one of the key features of the reports of this Committee over the last 20 years has been to look at the administration of the Immigration Department, now the UKBA. I know you have a very broad canvas to work from but this is an issue that really does concern us on a day-to-day basis.

Mr Vine: I am speaking to a lot of people, they are telling me a great deal, and I am prioritising my work with MPs very much in mind.

Q78 Chairman: We are very grateful for the work you have done, and you have made some very good progress over the last few months. Thank you for coming.

Mr Vine: Thank you.

Witnesses: Ms Lin Homer, Chief Executive, and Mr Brodie Clark, Head of the Border Force, UK Border Agency, gave evidence.

Q79 Chairman: Thank for giving evidence to us, and thank you for your very helpful letter. You have taken on board our suggestion for it to be more pie charts and more graphs which make it easier to look at progress. Mr Clark, on behalf of the Committee may I congratulate you on being awarded a CBE by Her Majesty the Queen. That is well deserved for all the work that you have done over the years for the UK Border Agency and IoB. Have you had a chance to collect it yet?

Mr Clark: Not yet. I am looking forward to the day.

Q80 Chairman: Keep us informed. Ms Homer, before we get on to the evidence today, is the UKBA involved in any way in the current investigation which was announced by the Prime Minister into the fake passport issue in Dubai?

Ms Homer: Not directly, Chairman. Obviously if there is any aid we can give in terms of understanding the use of forged passports we can make experts available, but it does not involve any of our processes directly.

Q81 Chairman: Do you know who it does involve, if the UKBA is not involved and you have the expertise? Who is looking at this issue?

Ms Homer: Others have the expertise. I do not have a full list of the organisations but obviously it relates to the use of British passports and those are issued by IPS, so that is what I mean by it not being our procedure.

Q82 Chairman: But does IPS not come under you?

Ms Homer: No. Under James Hall.

Q83 Chairman: You are not aware of who is conducting this investigation?

Ms Homer: I am sure I have read a document that tells me that, Chairman, but I do not have it at the forefront of my mind.

Q84 Chairman: We will write to the Prime Minister and ask him. You have heard the evidence from Louise Perrett and we do not want to concentrate for the whole session on what she said but obviously it concerns us and those involved in this field. Mr Davies has, quite rightly, brought before you and this Committee information about the number of asylum applications that were granted. Ms Perrett in her evidence said she is not concerned with granting or not granting but with the issue of the culture that exists, which obviously worries us because we have to write to the UKBA on a daily basis. Does what she said worry you, whether what she said is right or wrong? Does it concern you this is the culture that may exist in some parts of your organisation?

Ms Homer: I take very seriously any allegation that we have culture in any part of our organisation that would be disrespectful or racially prejudiced, and when these serious allegations came to my notice via the media I took the approach that I should investigate. That investigation is underway and you have an assurance from me that, as with all investigations in an area like this, if it generates a

need for formal action or for cultural training picking up some of the themes of Louise—I was listening to her evidence this morning—we would see that as a very serious priority for the Agency.

Q85 Chairman: Moving on to immigration cases—Mr Davies may well raise this again when he comes to ask about Cardiff—which have been a feature of all your evidence sessions—and this is probably the last evidence session before the General Election so you may see some of us here afterwards, you may not, I do not know whether that is a good thing or not for you—we did produce a report asking you to fast track these cases and complete the outstanding cases by this October rather than 2011 and you said “No”. Why?

Ms Homer: I did not think I said “No”, Chairman—

Q86 Chairman: So they are going to be completed by October 2011?

Ms Homer: No. I took a message from yourself and directly from the Home Secretary that there would be support for us trying to move faster on the Case Resolution Directorate cases and we have implemented a new procedure, we have recruited 350 additional staff, and we have in a sense re-engineered the front end of this process to see whether it is possible to move faster. I resisted creating a new date rather than the June 2011 date because it is not really an exact science, so you have my assurance that we continue to be as motivated as you to finish the CRD cases as quickly as we can, and I continue to be completely confident that that will be by summer 2011, if not sooner.

Q87 Chairman: You cannot meet our deadline?

Ms Homer: I did not think it was sensible to replace one date with another. We absolutely support your and the Home Secretary’s encouragement to try and finish faster if we can.

Q88 Mr Clappison: Can I ask you how you are getting on with 40,000 cases which you told us about last time you gave evidence to us? Can you throw any more light on what is happening?

Ms Homer: I told you fairly clearly, I hope, last time that what we have here is a situation not of cases that we think have not been decided but of cases similar to much of the CRD backlog where what I would call complete finishing-off of the case, including sometimes simply administrative finishing-off, is not evident on the front of the file in all cases, so what we decided we would do with these non asylum cases is treat them exactly the same as CRD—

Q89 Mr Clappison: It was the Case Resolution Directorate which was dealing with the backlog of asylum cases?

Ms Homer: Yes, but our view is that the processes we set in place primed them to be in a good place to review these cases. What I tried to explain last time that we do not expect to find 40,000 cases that have had no decision. We expect to find, as we have within the overall cohort of cases, a number where

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everything may well have been concluded but the records are not well kept, or there is a duplicate file, or matters of that order. What we have done with the 40,000, as we do with all of the cases still in the Case Resolution Directorate, is we have checked for harm cases and active cases and are applying the same priorities as we do to the other cases. I expect them to be concluded within the same timescale.

Q90 Mr Clappison: Where you have found real cases of people involved, and these are all non asylum cases we are talking about, have any grants of indefinite leave to remain been made for people?

Ms Homer: Only a small number of those cases have been worked so far. In the main they are lower priority cases. We have already heard the Chairman and others talk about the need to try and continue to apply prioritisation to people who have waited a long time.

Q91 Mr Clappison: How many have been dealt with and how many resulted in the grant of indefinite leave to remain?

Ms Homer: Only a matter of a few hundred of these cases have been dealt with so far. The broad level of grant and removal for CRD cases remains as I have reported to you all the way through.

Q92 Mr Clappison: You have told us some of these have been granted leave to remain. Can you tell us how many or, if you do not know, can you write to the Committee with the information?

Ms Homer: I do not have the figures in front of me, but they are small numbers and there is no difference in the overall approach to these cases. You mentioned earlier in talking to John Vine special criteria, that is not the case. All of the cases are dealt with under the immigration rules. There are no special rules for the older case.

Q93 Mr Clappison: Would the cases of people who have been granted leave to remain include people who have been dealt with in the past and refused leave to remain?

Ms Homer: They will not, in the main, tend to be cases like that. I tried to give you some examples last time but they might, for instance, be a student who applied for another period of study who was refused but there is not evidence on the file as to whether we received further information from them subsequently.

Q94 Mr Clappison: Does it include people who have overstayed?

Ms Homer: There may be some overstayers, but as the Chairman knows we have a category of application around overstayers which we have been dealing with and that is largely now completed.

Q95 Mr Clappison: Will you write to us and give us the figures for this breakdown?

Ms Homer: I am happy to do that.

Q96 Mrs Dean: Can I turn to the backlog of asylum cases? I understand that whilst 22,500 cases were completed between July and October, only 15,500 have been completed in the last three months. What is reason for that?

Ms Homer: There are two reasons. One I have already mentioned, that we have re-engineered really the front end of the process. We have brought in a range of staff to do the administrative work to try and allow the decision makers to focus on a ready, provided file but it is in the nature of re-organisation that in a sense it slows you down before it speeds you up. The 350 extra staff are now in place, they are preparing the files for the decision makers. We are now providing the decision makers with 3,000 prepared cases a week, so we believe we will start to see an uplift very quickly. The second reason links back to earlier discussions with your Committee. As you say, Chairman, we have talked a lot about these topics, and in the middle of last year and earlier in the year NAO also advised us that we had to consider not only the speed with which we concluded cases but the cost to the taxpayer and harm cases, and so the Case Resolution Directorate focused in the last half of last year, particularly, on cases still being supported by the public purse. Those tend to be more complex. They have slowed our rate down for a while, but we think for good reason.

Q97 Mrs Dean: Has the transfer of experienced staff to live casework affected your ability to carry out as many cases of the backlog?

Ms Homer: No, we certainly have not moved any people from CRD into NAM. We did find—and it has been a challenge for us and remains a challenge—that obviously the Case Resolution Directorate know that the work they are doing is heading towards completion, and we did find ourselves losing a number of staff to promotion and things like that. We have got those numbers back up quite close to their standard level for the last three years now, and, indeed, as I say, we have added 350 temporary people who have been employed via an Agency to give us this extra 350 for this last push really to completion.

Q98 Mr Winnick: Leaving aside the substance which I and other colleagues are questioning you about today, when we write letters and receive the usual predictable reply—we could almost write them ourselves: “To be resolved by 2011” et cetera—I notice that not only do you not sign the letter—and no-one expects you to write it—but, increasingly, it is the most sort of junior official you could find who signs letters from Members of Parliament, whereas ministers sign, as you probably know. What percentage of these letters from Members of Parliament do you yourself see?

Ms Homer: I sign between 25 and 50 MPs' letters a day.

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Q99 Mr Winnick: From Members of Parliament.

Ms Homer: Yes, absolutely. You are right, those do not include all of the ones addressed to me, although I do do a proportion of the ones addressed to me because I think it is very important that I see the content of those letters. I also speak directly to MPs on cases where I perceive the correspondence to generate an issue that I need to understand better. I do try within, as you say, the confines of time limitations to take a very direct interest.

Q100 Mr Winnick: You feel some responsibility to make sure that those who sign the letters to us, even though the letters are predictable, as I have already mentioned and the rest of it, should be signed by someone pretty senior in the hierarchy?

Ms Homer: Absolutely. You can ask Brodie the question later, but my board would, I think, endorse the fact that this is a topic I discuss with them directly very regularly. I review the quality and timeliness statistics of all the units on a monthly basis, but we do get 60,000 letters a year from MPs. I am not complaining about that; it is part of the historic lack of confidence in us. If those were signed only by me and the board members, there would not be much time to do anything else, so we have to take a judgment about the level. We do, however, really try to put emphasis on quality.

Q101 Mr Winnick: I have complained once or twice—and I am not going to go into that—about the manner in which the letter was written, not the signature but the content. Coming to the substance of the matter, as I have already said, the replies are always along the same lines, about 2011, but today the Independent Chief Inspector has given us a somewhat different picture. He says the targets are unrealistic and, moreover, there is not enough realistic assessment with the operational staff. What would be your response to that?

Ms Homer: I think the Chief Inspector's encouragement to involve frontline staff in our business is absolutely right. Again, we do try to do that. For a big organisation like ours to have the view of an independent inspector and, in a sense, to be reminded of good practice is always good. I do think our frontline staff have a huge impact on the business and I think it is right to say that they should. I think the Chief Inspector made two different comments. On the asylum model, he did use the word "unachievable" around our final target. My own view on that is that the new asylum model remains a world-beating model. I do not think anybody else in the world is even setting themselves a conclusion target. It has been clear to us throughout that we keep having to change our system to be able to deliver these targets. For instance, we have just made a major change in the Tribunal Service. In relation to the legacy, the CRD backlog, he made a comment which I think Members of the Committee have also picked up, that we have to lift our rate back up to conclude, but I hope in my earlier answers I have explained why I am confident that we can do that. We take all of his

comments very seriously. Part of the benefit to us in having an independent inspector is that it helps our improvement progress.

Q102 Mr Winnick: To follow-up on other questions if we can get a yes or no answer if possible: these 40,000 cases which have been referred to on endless occasions, the backlog, are they going to be cleared sometime during the course of next year?

Ms Homer: They will be cleared by June 2011 with the remainder of the backlog.

Q103 Mr Winnick: You are committed to that.

Ms Homer: Very.

Mr Winnick: Thank you very much.

Q104 Chairman: On the question of correspondence, which was raised by Mr Winnick, he is not alone in his criticism of the way in which you handle correspondence. This is a letter from your previous boss. I think he appointed you when he was Immigration Minister. "I have received a letter from somebody called Merritt Shaw for Visa Customer Services dated 19 January". This is in relationship to a visa application by Mr Aslam, sponsored by one of the councillors in Birmingham. "I was disappointed to receive a letter from a junior official. I ask that you look at this case personally. One of the reasons for refusing the visa was that the Entry Clearance Officer was not satisfied with the credibility of the sponsor. Given that you [Lin Homer] know the sponsor personally, who was on your appointment panel at Birmingham City Council, I feel that you might have been able to add something to the balance of probabilities test that the Entry Clearance Manager was conducting. I would be grateful if you would look at this again and give me a proper reply". That is a pretty serious criticism, from not just a Member of Parliament but the person who was the Immigration Minister, about the way in which you personally are handling these matters. Given what Mr Winnick has said and the fact that you say you sign 50 letters a day, I personally have not received a letter signed by you and I do a lot of casework.

Ms Homer: That is not true, Chairman.

Q105 Chairman: I have a little squiggle on the top of you name. That is not necessarily signed by you.

Ms Homer: Yes, it is. It absolutely is, Chairman.

Q106 Chairman: The point that Mr Winnick is making and the point that Liam Byrne is making—and he of course is a Member of the Cabinet, but he was the Immigration Minister—is that this is not about law, it is about administration. The Committee have said this to you on a number of occasions: it is customer service; it is dealing with correspondence; it is making sure that people get replies; it is the courtesy of not saying the same thing that people said the time before. This is not rocket science, is it? It is the ability to deal with Members of Parliament. If you get 60,000 letters basically complaining about or being dissatisfied with the

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service from Members of Parliament on behalf of their constituents, does that not show you that something is wrong with the system?

Ms Homer: Chairman, when you get something that says “Lin Homer”, even if it is a squiggle, it is my signature, and I have read it and it is my signature. I apologise if you do not like my signature.

Q107 Chairman: I will send them to you.

Ms Homer: A number of you will get letters signed by me, and if it appears to be my name it is my name. Second, of course I want to be in a situation where there are less concerns about delay. I have to say that I do not believe that in all cases the best way of progressing cases is through an MP’s letter. We struggle under a system where sometimes we may have as many as five representatives writing to us on a given case. We may have a lawyer, we may have a friend or representative, we increasingly have a Member of either the Scottish Parliament or the Welsh Assembly as well as a Westminster MP, and we may have the individual themselves. I do not believe that is a system common to most areas.

Q108 Chairman: I agree.

Ms Homer: And we are trying to raise quality.

Q109 Chairman: To try and help you, because you have not been an elected official, I understand: the reason why people come to us is because the system is failing them. I, like other Members of this Committee, regard this as the last resort. It is only because you do not reply to solicitors or people that they come to us. I would never write a letter and Members would never write a letter to try to circumvent the system, something I make very clear, but the reason why you get the letters is because the system is not working. When you have a letter giving withering criticism from the man who was supposed to be responsible for immigration for three years, complaining that it is not good enough that a junior Customer Services official should write back to an MP—precisely the point Mr Winnick was making—when a letter is written to you from a Member of Parliament which asks you to look at it personally. What Liam Byrne is saying is basically that nobody bothered to read the letter and they just got a standard reply.

Ms Homer: Chairman, I believe that the habit of writing via MPs was established during the period when the Agency’s performance was poor. Therefore, it is our own history that has generated this. I accept the responsibility for that. I do believe there are many more cases now where a case owner is identifying themselves to an individual applicant, where correspondence is being undertaken with the representative. Where, if I can put it that way, the belief is that by involving an MP as well it will produce additional help, that is something that we have to challenge as we go forwards. I do not think I can reply to all letters written to me. I do reply to a proportion. I would have to say, in fairness to Liam Byrne, that he wrote me withering letters when he

was the Immigration Minister as well. I think it is the right of all of you to write as constituency MPs, regardless of your position.

Q110 Mr Winnick: Would you be willing, Ms Homer, to look again, following this meeting, at replies to Members of Parliament, including the amount of time. Yesterday I put down four questions asking when I will receive a reply. I wait four weeks. I do not see any reason, there is never any acknowledgement. My office does not even know if the letters are being received. Presumably, if they are, then the hotline can be phoned by my secretary. I give it four weeks. I do not raise it on the floor of the House. I am quite capable of doing so, but I do not because I put down a written question and usually it does provide the answer—although the reply is along predictable lines. Could you look at all those issues, if the Chairman is willing, and write to us in the next week?

Ms Homer: I am very happy to do that. I am very committed to improving the quality and the timeliness of our replies. We hold workshops regularly with MPs.

Q111 Mr Winnick: Perhaps who signs the letters could be looked at as well.

Ms Homer: I will give you the detail of broadly the proportion of grade and numbers.

Mr Winnick: Thank you.

Chairman: That is very helpful. Perhaps you would reply by midday on 12 March, in a week’s time. No-one is asking you to look at every letter personally. You have directors who received over one-third of a million pounds in bonuses. Maybe you could ask one of them to reply.

Q112 Mr Clappison: To be very clear about this, of course MPs should get proper responses to their letters. MPs are rightly concerned to see that their constituents’ cases are administered within the rules in a prompt and efficient manner.

Ms Homer: Yes.

Q113 Mr Clappison: You will guard against creating any culture in which cases on their merits are dealt with with greater favouritism because somebody has gone along to their MP rather than where somebody has not gone along to their MP.

Ms Homer: Of course. That is one of the challenges for us, and why applicants being kept out of needing to inform MPs would be where we ought to aspire to be.

Q114 David Davies: Ms Homer, could you have a look at this snapshot.

Ms Homer: I think I recognise it.

Q115 David Davies: If you do recognise it, you have no reason to think that has been made up then?

Ms Homer: No. I am sure it is a representation of the kind of MI we use.

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Q116 David Davies: Can you tell me why the removal figures are so low? Month after month in all the different areas I have looked at, it is 1%, 2%, 3%. The highest I can find is 4%. Is this normal?

Ms Homer: The overall removal performance that we achieve in relation to asylum is about 50% of cases.

Q117 David Davies: 50%?

Ms Homer: Yes, about 50% of cases. The asylum statistics that were published, I think on 25 February, will give you the full detail of that.

Q118 David Davies: Is that 50% of everyone who comes in? One of the things that this whistleblower has said is that all sorts of people get removed.

Ms Homer: That is absolutely 50% of asylum applications. The figure for overall removals is nearly four times that.

Q119 David Davies: Four times 50%?

Ms Homer: No, four times the number of asylum removals. If you look at the asylum statistics—and I know many of you do in great detail—there is a breakdown of the types of removals overall into port refusals; what we would call “overstayer” removals; and asylum removals. It is very clear.

Q120 David Davies: Help me out here. These figures are in black and white. They say 4% of removals, 6% in one case, 3%, 1% and 0%. How does that square with your 50%?

Ms Homer: Simply that the target we are setting ourselves is that we want to try to achieve conclusions within six months. We are still struggling—I am very happy to share that with you—to achieve removals within six months. The figures you are looking at are the removals achieved within six months of the application being made. We go on to achieve a much higher proportion of removals.

Q121 David Davies: If we look at the 12 month figures, then we get a much higher removal rate.

Ms Homer: If you look at 12 months, in 2009 you get a removal level of 11,000 against an intake of 24,000, so about 50%.

Q122 David Davies: How many countries are on the general legal barrier list?

Ms Homer: A reducing number, because we reassess this regularly. We have just recently taken Afghanistan off.

Q123 David Davies: Perhaps you would not have a copy yet, but would it be possible to get that list of general legal barrier countries?

Ms Homer: It does change.

Q124 David Davies: Would you be able to write to the Committee with the most recent list?

Ms Homer: Yes.

Q125 David Davies: You are saying 50%—I sort of understand why, I have no reason to doubt you whatsoever—and yet I have figures here, which you say appear to be correct, showing 2%, 3%, 4% being removed. Would you be happy, first, for us to see this monthly cohort snapshot rather than rely on leaks from whistleblowers?

Ms Homer: We publish an enormous amount of information, all of which now is published through ONS. You will again, as Committee Members, be aware that we come slightly between a rock and a hard place as to when we give you information directly rather than share published information with you. I have to say there is a limitation to the degree to which ONS will accept all of our management information as capable of being published.

Q126 David Davies: I would be quite happy to accept it, even though ONS do not want it. Would you be able to send it to me as a Member of the Committee?

Ms Homer: I am very happy to talk to ONS about whether we could establish a greater range of data in their published figures. I think it is probably safer for us in the way the Government is trying to work. The difficulty for me is that if I use that information in a way that seems positive and it is not published stats, we get criticised for that. All the information which I have just given you, on removals, on intake, on FNPs, is all effectively quality assured by ONS.

Q127 David Davies: Since I obviously do not understand why what appears to be 4% actually is 50% of people being removed, would you be happy for me to spend an hour, not with you, Ms Homer, but with somebody at a level who understands this. I do not need red carpets. I will quite happily talk to anyone at any level.

Ms Homer: We would be very happy to do a workshop for the Committee as a whole. As I say, if I could just repeat, the simple question is removals within six months versus removals overall.

Q128 David Davies: Right. We do get people coming into our constituency surgeries asking us to take up cases for them. In some instances my concern has been that this person standing before me deserves a fair shout, but basically I happen to agree with the Agency that they should not be in this country and should be removed, but I will write a letter setting out their reasons why not. Presumably you would not, just because I am a Member of Parliament, grant them any additional rights just because they have come to me. You would treat them in exactly the same way that you treat anyone else.

Ms Homer: Absolutely. We are very clear that if an MP's letter suggests to us a piece of information that may be different from that we have on file, or a level of worry—the Chairman has just written to me about potentially some vulnerable asylum seekers who seem to be destitute—we will always seek to make sure that we are complying with our procedures to look after people I have to say it has

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always been the principle that a letter from you does not change the rules on which we determine the cases.

David Davies: Good.

Q129 Mr Clappison: Presumably that rate of removals does not include the 450,000 that we were talking about, the resolution of the case backlog? The 50% figure does not apply to that, does it?

Ms Homer: The 50% figure is year-on-year. Each year you are sending some people home and they may have come in before, so of course some of them will, but that is the point of a lag, is it not? Anyone we remove who claimed in 2009, if we remove them in 2010 will appear in the 2010 figures.

Q130 Mr Clappison: You gave us some figures in your written evidence on the last occasion you came before the Committee for the 450,000, for the old asylum cases, in which you said that, of the 220,000 inclusions, 14% were removals, 52% were other conclusions (such as erroneous or duplicate records), while 34% were grants.

Ms Homer: Yes.

Q131 Mr Clappison: The 50% figure does not apply to that, does it?

Ms Homer: It is 50% overall of intake.

Q132 Mr Clappison: I am talking about the old asylum cases.

Ms Homer: I know you are.

Q133 Mr Clappison: You told us that 34% were granted, 52% were erroneous or duplicate records and so are out of the picture altogether, and so there were only 14% removals. I am going on the figures which you gave us the last time.

Ms Homer: Yes. You have two different ways of measuring performance. One is cohort, and you can track the individual claimant over a length of time. We try to do that with the NAM cases, but you will sometimes wait a long time before you conclude a cohort. At the six-month point you may only have removed 3% or 4%; if you look at the 12 months, it would be higher, and so on. The difficulty with that is you cannot aggregate those statistics, so the other way that we measure performance, which if you like is cutting it a different way, is each year we say how many people have come in and each year we say how many people we have removed. You can link those statistics back together, but it is slicing a cake one way or the other way.

Q134 Mr Clappison: I am linking the statistics to the cases that were being dealt with and saying, "This happened in this case". Of the 220,000 cases that were concluded, 14% resulted in removals, 34% resulted in grants, and 54% were mistakes. 14% of 220,000, which is about 30,000 I think, resulted in removals.

Ms Homer: Yes.

Q135 Mr Clappison: How many of the 40,000 cases which you told us about—these are the non asylum cases, this is another backlog we have started looking at, as we have said—have resulted in removals as you have gone through those cases?

Ms Homer: Chairman, I think I said earlier that I would write to James Clappison with the details of the 40,000. I am clear that only a small number of those cases have been dealt with yet, and therefore I am not expecting there to be many decisions on those cases, but I had already agreed to write.

Q136 Gwyn Prosser: Ms Homer, I want to turn to the issue of e-Borders. We have had lots of differences over this; that is differences between you and the Committee and differences between you and the ports authorities and the airlines. As a general point, one of the differences we had was the EU's interpretation of international law. We understand that since the last time we met you promised that individuals will not be denied access or egress from a country on the basis of not having provided former notice of their identity, et cetera.

Ms Homer: I think you are referring to the conversations we had with Europe about the travel of Europeans under the Freedom of Movement. We have ongoing discussion with our European colleagues on this matter, and, indeed, we have a workshop in the next few weeks where we are discussing the practical interaction we have with Europeans before we let them into the country. It is complex because we are not members of Schengen, and so, in a sense, we are trying to understand how the kind of questions we ask people at Calais or Coquelles can be asked of people boarding an aircraft anywhere in Europe, and how we can continue, as we have a right to do, to ask the basic questions about people's right to travel through an electronic system rather than face-to-face. I think our European colleagues have absolutely accepted our right to make sure that even Europeans have a right to travel. Indeed, we would not be doing what we are in France were that not the case. The next stage is a very practical workshop to say, "What does that mean practically, when it comes to data?" It is clear we are legally entitled to ask for and receive all of the data which is on the passport and all of the data which the carrier has.

Q137 Gwyn Prosser: Does one of the practical changes mean changing legislation and amending the Immigration Act?

Ms Homer: No.

Q138 Gwyn Prosser: The Government are saying it does not?

Ms Homer: And so are the European Commission.

Q139 Gwyn Prosser: Can you tell us what further discussions have taken place with the national authorities in Germany, France and Belgium about the scheme? Have other Member States responded to Julie Gillis's letter of 23 December?

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Ms Homer: There has been quite a lot of ongoing work. There has been some detailed discussion with a number of states, France, Germany, Ireland. I am sure Mr Clark could fill in a bit of detail if you would like. The Home Secretary has written to all his counterparts in Europe. My deputy attended a European Commission meeting last week and had nine bilaterals whilst he was there. There is a lot of very good work going on and we feel we are making very good progress. We think there is a lot of shared interest in finding some resolutions to these challenges which ensure that legitimate passengers can move about smoothly but protection can also be at the forefront of our minds.

Q140 Gwyn Prosser: One of the difficulties the Committee has, and indeed the industry and ports have, is that all these meetings and all of this discourse and all of the correspondence that takes place, between you and the European Union, for instance, they are not privy to. When we met you in July, we had the understanding, so the minutes show, that you would provide this information directly to the industry. They are telling us it has not been provided. What is happening?

Mr Clark: Certainly back in May we provided information very broadly about—

Q141 Gwyn Prosser: Very broadly?

Mr Clark: In terms of the arguments we were putting forward to the Commission in respect of the two Directives in question and the challenge that has been made against those Directives. Following that, on 23 December, we received a request for further information. We are currently bringing that information together. It is a Freedom of Information request. We will process that. We are having conversations with the Commission about some of the release of that information. We will make that available to the industry and to those who have an interest in the progress of the issues with Europe. After the letter of 17 December from the Commission, we also put out some very comprehensive notes and explanations around that, together with a copy of the letter to the industry, and again to those with an interest.

Q142 Gwyn Prosser: Mr Clark, if the Committee went back to the industry today, would they express their satisfaction that they had received the information they think they were promised?

Mr Clark: I am not sure what they would say, but I can confirm that we provided those pieces of information on those occasions to help the industry to be clear about our position in respect of moving forward with the Commission.

Ms Homer: At the last meeting, when we talked about e-Borders, you asked me to go personally to Dover, which I did. Indeed, in the last newsletter from BAR-UK they report back on a meeting they had directly with the Home Secretary as well. I am sure there will be more conversation they will want to have, but I think we are trying to honour the commitment we gave you for having wider regular conversations with them.

Q143 Gwyn Prosser: We will come back to the important issue of ferry ports and the Port of Dover in a moment. On the issues around the airline industry, they are talking to us about the difficulty of providing the information and processing data less than 30 minutes before departure. They are saying that at the moment their systems are geared up for that data coming forward 24 hours before, and they are not confident at all of being able to meet your deadlines here.

Mr Clark: We remain in discussion with airlines and the maritime industry and the rail industry in terms of how the data is provided. We have made it very clear that there needs to be a window between 30 minutes and 24 hours that we are seeking to capture that data from the carriers. It is quite a broad window and we want to progress with them to find ways through that. Certainly our feedback from the air industry has been hugely positive. I have statements from Virgin, British Airways, and easyJet reflecting on the very good state of the relationship and the discussions and the healthy and positive way they are progressing.

Q144 Gwyn Prosser: I do not think you would get such encouraging letters from the ports industry, the shipping industry, and certainly not from the Port of Dover. One of the problems we have is that we met you last July and we listened to your evidence and your appraisal of progress, immediately after that the industry came forward and described a completely different picture. Since then we have met individually the port operators in Dover. We talked to Mr Clark over in our visit to Calais, and again those two pictures were completely different. Here we are today, eight months or so later, and there is a yawning gulf between what UKBA are telling us and what the ports are coming back to us with. What is happening there?

Ms Homer: I would like to pick up on the Port of Dover. I think there are real and understandable concerns amongst the maritime industry that there are changes needed in their procedures and they are worried about implementing them. I have to say I do not think the gulf is as wide as you describe. Certainly I spent a full day myself in Dover. I did not go over to Calais or Coquelles, I spent the whole time in discussion not only with the Port of Dover but with their two main carriers, and the conversation was positive. The issues they raised, whilst being important, were certainly not portrayed to me as in their view irresolvable. Julie Gillis accompanied me on that day. There is a real ability for us to go forward and to work together on this but we do understand, and it was our experience with air carriers, that the anticipation, in a sense, before you move into the system has anxieties associated with it and I think it is important that we work through those.

Q145 Gwyn Prosser: They are not anxieties for themselves; they are concerns for the travelling public and their industry. They do not believe that they are in a position, so close to their own update, to be able to install e-Borders.

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Ms Homer: Yes.

Q146 Gwyn Prosser: On the issue of talking to the Port of Dover, the Port of Dover have told me that even at their meeting between the Maritime Carriers group and UKBA on 21 January, there was a feeling of a complete lack of trust between the two parties. One of the specific issues they have raised is another promise of documentation. They were promised across this Committee room that the specific legal advice—never mind a broad appraisal of this and a description of that, but the specific legal advice that you received over the issue of international carriers, et cetera—would be provided to the Port of Dover and the industry. They have not received that.

Ms Homer: Chairman, it might be useful if whoever made that comment to you was prepared to share it with me, because we would be very keen to work with them and understand their concerns.

Q147 Gwyn Prosser: So you have provided that legal advice?

Ms Homer: We think we have provided a great deal of advice. If there are other elements of information people think are missing, if they can be clear about those we would be very happy to look into it.

Q148 Gwyn Prosser: If the industry write to you directly and list the information they say they are missing which is causing them problems, then you will respond to that?

Ms Homer: Of course.

Q149 Gwyn Prosser: Are you still confident that e-Borders will be rolled out in the major ports this year? I do not just mean the provision of IT; I mean the changes of configuration, the changes of port layout which will be necessary to accommodate it.

Mr Clark: Our commitment was by the end of this year to achieve 95% of passengers in and out of the UK being through the e-Borders programme. That is a very challenging target and commitment. We are still determined to believe we can get to that position. I think some of the biggest risks are around the next phases of discussion with the EU and taking that forward. Some are technical issues and some are working with our partners as they deliver their part of the deal in terms of e-Borders. I was very surprised to hear you in your last report define the relationship as at stalemate. I do not think that is really where we believe it is. There have been very constructive conversations between that meeting and this meeting, and there is to be a follow-up meeting later on, in about two weeks' time, with the maritime community to take further stock about the introduction and roll-out of e-Borders in that environment.

Q150 Gwyn Prosser: They are saying to me, Mr Clark, "UKBA still just don't get it."

Mr Clark: I think as long as we make the comparisons that we have been in this exchange between air and maritime, then that will not help. We are seeking, with the Maritime Group exclusively, a

solution that will work with them, for us, and for the UK, in terms of safety and security within the country. The e-Borders programme has been a huge success in terms of the outcomes it has delivered. Since May this year we have had 2,000 arrests as a consequence of e-Borders, amongst them 10 murderers and about 30 serious sex offenders. In terms of the delivery and the performance of what is there, it has been hugely successful.

Q151 Gwyn Prosser: We all support e-Borders. We want it done correctly in the ports.

Ms Homer: Yes.

Q152 Mrs Cryer: Julie Gillis suggests that EU passengers who do not provide advance information could or possibly will be held up on transit through the ports. Has the European Commission been told that this is the intention?

Ms Homer: Mrs Cryer, this is really a part of what we are trying to look at with the practical workshop we have agreed to have with the Commission in a couple of weeks' time. We feel it would be useful to work out with everybody involved what practically people have to do and go through. The point, I suppose, I would want to make is that maritime, rail and air all have rules that are designed to prevent a last minute boarding of a plane in circumstances where everybody's requirements are not satisfied. We are confident that if we work through those we can find ways of ensuring that we are not putting burdens on people that would be inappropriate to the balance of safety that we need. As we all know, you cannot turn up to a ferry or an aircraft five minutes before it takes off and seek to get on. There are requirements and regulations that go to safety and the rules of ports.

Q153 Mrs Cryer: How would this work with the juxtaposed border controls, where passengers have already been cleared to enter the UK, before embarking on ferries or trains?

Mr Clark: In terms of the Commission's note and the issues around freedom of movement, we do have the conversation still to happen with the Commission on clarification around what is required of us by way of ensuring that we allow freedom of movement but we can also do what we can possibly do to collect the information necessary. Those discussions have still to happen. I think some of the outcomes of those will help us better to shape the activity that we are going to deliver on the ground. Aside from the work with the Commission, we are also doing work with the Maritime Group and juxtaposed controls. These are the operations we have in Calais and in other parts of Northern France and Belgium. We are again looking at the model and how we would operate that. We have not got the answers to that at this stage. We would quite like to be informed with the more recent discussions that we are going to have with the Commission.

2 March 2010 Ms Lin Homer and Mr Brodie Clark

Q154 Mrs Cryer: To go a little bit further along that path, what leads you to believe that it would be only in exceptional cases that EU citizens—and this would include presumably UK citizens—will refuse to provide carriers with their data?

Ms Homer: Because the general practice of the travelling public is already to provide a great deal of information in advance. Most of the carriers and ports systems effectively require you to upload that information to print your own boarding ticket or to make your own bookings. We are really not seeking anything more from passengers than they are handing over already to easyJet or, in my case, Dover, to P&O. I am a regular user of the ferry. You give them your booking order, they have an automatic number plate recognition system, you draw up to a window and the person at the window says, “Hello, Mrs Homer”. It is the practice. It is the common practice. It is what allows most of us to facilitate our quick movement through, and therefore we are all keen to do it, rather than stand in queues once we get to airports. That has been everybody’s experience.

Mr Clark: In terms of our progress to date, we have managed 150 million people through the border with the pilot arrangements for e-Borders and then when we started going live earlier this year, and out of those number only but a handful have raised a question, a challenge or an objection about providing data which would be onward transferred into HMG. The other thing is that internationally it is increasingly common that advanced passenger information will be collected. There are about 25 other countries around the world at the moment collecting advanced passenger information. This is not an unusual thing. It is increasingly judged as a very important part of security arrangements and criminality arrangements on moving from one country to another.

Q155 Mrs Dean: If e-Borders is not an “authority to carry scheme”, in what sense can it be used to keep terrorists and other serious criminals out of the UK?

Ms Homer: There is capacity for e-Borders to be an authority to carry scheme. We had always indicated that that was likely to be an element of the project towards the later end of it. We are building something quite complex. In a sense, we had always committed to building it step-by-step. The provision for it to be an authority to carry is in primary legislation and it is there. It is the case that it is not the only way to generate a no-fly scheme. There are aspects to an authority to carry system that would help you operate a no-fly, but there are other ways,

as America has illustrated, in doing so differently. There are wider options but there is definitely the capacity for e-Borders to be an ATC scheme.

Q156 Chairman: Finally, can I ask about Yarl’s Wood. You have obviously seen the allegations that have been made by people in Yarl’s Wood and we have noted the response of Serco which says that the allegations are unfounded. What is your current assessment of the situation?

Ms Homer: My assessment of the situation is that we have had a largely passive demonstration at Yarl’s Wood for a number of days and weeks now from women who do not want to be removed from the country. A number of those, 27 at the moment, are not taking meals in the canteen, but we have clear evidence that they are taking sustenance from both the vending machines and the shop, and all of them continue to have access to medical care at all times. Indeed, I was, I have to say, pleased to see the *Guardian* today publish a correction and clarification about the assertion they made on 22 February that a member of this group of women was suffering renal failure. They published quite a full and proper clarification today to say that was an allegation made by a doctor on the basis of “if someone was doing this and this and that” and they have subsequently been told that the woman is in good health and that allegation was incorrect. We are keeping a very careful eye on this. It is completely understandable that many of the people we remove do not want to go, but I am absolutely confident that this incident was handled with care, was watched by police and independent monitors, and that the decision to make a passive demonstration, which is something the women have taken, is not putting any of them in jeopardy with regard to their health and welfare.

Q157 Chairman: Thank you. Ms Homer, this is probably the last immigration session that the Committee will be doing before the General Election. The job of the Committee, of course, is to prod and to poke.

Ms Homer: Of course.

Chairman: And to make sure you are properly scrutinised. We want to thank you for the courtesy with which you have dealt with this Committee and for your updates, which have improved greatly over the last couple of years. Also, whenever we have asked you to give evidence, you have been very willing to do so, and we are very grateful for that. I would like to thank you, and of course Mr Clark, for coming here today. Thank you very much.

Written evidence

Memorandum submitted by the Home Office

I am responding to the Home Affairs Committee report issued on 18 December 2009 which investigated the implementation of the e-Borders Programme. For ease of reference, it might be helpful if I respond to the conclusions and recommendations in the order they were presented in the report as follows:

AIRLINES

The HAC report states: We are delighted that the airlines' lack of confidence in the e-Borders programme appears to be diminishing as a result of a more positive engagement by UKBA. Without attributing this change entirely to our intervention, we note that the airlines had been raising their concerns with UKBA for at least a year before our inquiry and we cannot but conclude that the subsequent swift response of UKBA was a result of political interest in this technical area.

1. The UK Border Agency has always listened to feedback from carriers and is committed to minimising any burden from the implementation of e-Borders. Since the inception of the e-Borders pilot, project Semaphore, we have worked closely with carriers to understand their needs and pressures and to develop a mutually acceptable solution.

2. We accept that aviation operators became frustrated by some early technical challenges, which delayed and caused compression in the rollout, affecting their planning and resource deployment over a period of several months.

3. The reported improvements in confidence in part reflect significant engagement in carriers' understanding of the requirements and experiences in certification and implementation. These have been driven by ongoing consultation and engagement, as well as by hard work to improve processes within the programme.

4. The Aviation Carrier Connectivity Working Group continues to meet on a monthly basis and has been effective and of benefit to the programme. As a result of this, a number of issues have been addressed eg:

- We decided not to compel carriers to go live during their peak operational period.
- Carriers requested that the rollout be by country for equitability reasons. We accepted this change.
- The programme has provided a number of additional technical interface options in line with the industry's requests.
- We developed transitional arrangements for carriers who, for a variety of reasons, have had problems providing the data. These transitional arrangements have had an adverse impact on e-Borders operations but were offered in order to minimise the burden on carriers.

5. There have been accusations that the UK Border Agency has reversed its decisions around data transmission (per passenger/batch messaging), and required carriers to rework their solutions. The agencies' preference is for real time individual messaging for all passengers. This is the best solution to meeting the agencies' business requirements and minimises the risk to carriers of operational impact from late interventions by agencies on outbound flights from the UK. However, in response to carrier representations we have shown flexibility around data timings, allowing batched messaging as well as per passenger messaging.

GOVERNANCE

The HAC report states: The very senior people, formally in charge of e-Borders do not have day-to-day responsibility for managing the programme, and we understand that turnover amongst those who work more or less full-time on the project has been frequent. We suspect that this instability may have played a significant part in the breakdown of communications between UKBA and the carriers. It may also have led to the perception that UKBA had been "captured" by its chosen provider and lost sight of what was reasonable and practicable.

We hope that there will be greater continuity among the senior officials responsible for day-to-day management of the programme in future.

6. There is a suggestion that instability, leading to a breakdown of communication with carriers, has been caused by a high turnover amongst the UK Border Agency team. This is not an accurate reflection of the position.

7. Following her involvement as an agency representative during the procurement, Julie Gillis has been the full time e-Borders Programme Director throughout the implementation phase since March 2007. Brodie Clark as the Senior Responsible Owner has also had full oversight of the Programme since its inception.

8. Turnover of staff has been relatively low since award of the e-Borders contract in November 2007. On any programme of this size, there will be some staff turnover as specific roles come to an end, or as staff move on.

9. Following strengthening of the Authority team in early/mid 2008, there has been high continuity amongst the majority of senior staff, with good continuity amongst the resources within their teams. It should also be noted that there are a number of staff who have been with the programme since before the Semaphore project was initiated.

10. Furthermore, as focus has moved from aviation to maritime, a civil servant with an extensive background in engagement with carriers has been brought into the programme to lead the Carriers Team; supported by an individual with expertise in the maritime industry.

JUXTAPOSED CONTROLS

The HAC report states: We do not understand why it is thought necessary for the ferry operators to send to UKBA the same information from every passenger's passport as UKBA's own officials have done minutes beforehand. If the argument is that, having passed passport control, a vehicle or individual might be found not to have a valid ticket and be turned back or held for a later ferry, then surely in these—presumably fairly infrequent cases—the UK border control official could be informed by the operator that a particular vehicle or passenger was not going to be carried on that ferry. Ferry operators anyway have to send a manifest of their passengers on each sailing, for health and safety reasons. This could be used as the checklist against which the information from the swiped passports is compared—in much the same way as for airlines, which are unable to produce a final list of their passengers until boarding is completed and the plane is ready to depart.

11. Legislation requires carriers to provide data prior to departure, which would include data transmission at check in.

12. The UK Border Agency recognised that the systems of some ferry operators are not able to collect all of the data required by e Borders. It is for this reason that we have worked with the industry to fully understand their individual operations and develop bespoke solutions and continue to engage via the port/operators forums. We have established meetings with maritime operators in order to progress and refine the solutions and to enable speedy and trouble free implementation whilst at the same time determining a practical method of meeting e-Borders programme requirements. All ferry operators are participating in these events.

13. We recognise that for maritime safety purposes, carriers are required to collate a list of all passengers on board each sailing and we are looking to build on this data. You may wish to note that the amount of data currently collected by carriers can vary widely, for example, one carrier at Dover already collects passport data from all of its customers as a matter of commercial policy.

14. Following comment from the EU Commission, we are reviewing the position on how e-Borders will operate at juxtaposed ports.

MARITIME SECTOR

The HAC report states: Anything that significantly slows down transit through the Port of Dover will result in congestion in the port that will overflow into the town, and, in severe cases, onto the approach roads such as the M2.

It is difficult to see how customers could be motivated to provide information in advance when, for each passenger, inputting data electronically is more of a chore than waiting for a passport to be swiped, and there is no easy way of fast-tracking those who have complied through the port. The alternative—that ferry companies would no longer operate turn-up-and-go—is something that UKBA itself has stated that it does not want to see.

There appears to be complete stalemate between the maritime sector and UKBA. We do not understand why UKBA cannot accommodate some of the practical suggestions made by the ferry and port operators, such as transmitting data from the juxtaposed UK border control in Calais rather than the ferry check-in desk, or putting a requirement to collect passenger data onto coach companies rather than the ferry operators. The problem of the configuration of the Port of Dover also requires co-operation rather than confrontation, and we urge the involvement of the Department of Transport in practical discussions, given the potential for serious consequences elsewhere on the road network. If the only solution in Dover is the rebuilding of facilities, UKBA must recognise that its present timetable for implementation of the programme is not feasible.

15. We do not agree that there is stalemate. We are working constantly with the carriers to achieve a solution that best fits both the requirements of e-Borders and the needs of the ports and the carriers.

16. The UK Border Agency meets with the maritime industry regularly and a working group has been established that aims to meet every two months as a minimum and in addition holds regular meetings with the Passenger Shipping Association and the Chamber of Shipping. Meetings with organisations such as the RYA (Royal Yachting Association) continue to be held on a regular basis to ensure an effective and workable solution for operators of leisure craft and working boats.

17. We recognise that the maritime sector is very different from aviation. The UK Border Agency has developed, in partnership with the ferry operators, a vehicle centric solution more appropriate to their business model and their mode of operation. This vehicle centric model offers opportunity to optimise vehicle flows through the ports.

18. We are also consulting the Confederation of Passenger Transport to better understand the unique challenges associated with these traffic flows.

19. In order to try and make use of existing maritime carriers investments, the programme has recently outlined its intention to review the use of existing data provision arrangements with the UK Border Agency, namely the Freight Targeting System (FTS). This approach could provide an initial, limited, provision to e-Borders, with the potential for carriers to further develop their systems to supply a full set of data in the future. It also serves as a further example of the programme adapting to the suggestions made by ferry and port operators.

20. In acknowledgement of the challenges posed by the coach industry, we are exploring a number of innovative technical approaches such as the use of hand held scanners to clear coaches through controls at Calais. Initial results indicate this may offer a considerable time-saving.

RAILWAYS

The HAC report states: It is obvious that the e-Borders programme will have to be adapted to meet the needs of the railway sector, which is part of a much more integrated transport network, with many more embarkation points, than airlines and ferries. It is also clear that UKBA has only just started to consider the difficulties posed by national data protection regulations and national laws to protect citizens against the spread of state powers beyond a tightly defined cadre of officials. UKBA cannot impose one-size-fits-all requirements on such different sectors as planes, ferries and railways. It would be more productive if, instead of trying to do so, they adapted their requirements more closely to how each sector actually operates. In the case of railways, the unique problem is that of intermediate stops.

It is not at all clear to us what is supposed to happen in relation to e-Borders if, for example, a passenger boards a train at Brussels but decides to disembark in France instead of travelling through the Channel Tunnel—or, indeed, to stay on the train instead of disembarking in France.

21. We refute absolutely that the needs of rail were not considered. The e-Borders solution has always included coverage of all passenger and crew movements to and from the UK for all modes of transport.

22. The UK Border Agency has developed good relationships with rail carriers and ports. For example, we have been working closely with Eurotunnel for a number of years and have developed a delivery framework document that is specific to their traffic operation. Despite earlier progress in developing a solution for Eurostar, recent progress has been hampered pending clarification around EU free movement and Data Protection issues.

23. You raised the issue of passengers travelling on UK-bound trains from Brussels who disembark in France. This is a result of the juxtaposed control being set up in Brussels, and is about the principle of the UK Border Agency only being able to control passengers whose stated destination is the UK.

24. Passengers travelling from Brussels to Lille are covered by the second paragraph of Article 6 of the Administrative Arrangement of 1 October 2004, (the Tripartite Agreement), which states that “passengers whose destination is stated to be intra-Schengen may only undergo controls by the authorities of a Schengen member state in the circumstances in and according to the procedures of the Schengen Agreement”. We cannot gather data on passengers who intend to disembark in Lille. Discussions are needed to establish how we identify that a passenger has chosen to disembark at Lille.

25. However, we are able to capture data on passengers who intend to travel to the UK and who are ticketed for this journey. We have no power to prevent people travelling except in exceptional circumstances. Where a train leaves Paris for the UK we would not wish to collect data from those passengers who we believe intend to disembark at Calais.

E-BORDERS AND THE EU

The HAC report states: We conclude that it is only in exceptional cases, based exclusively on the conduct of the individual concerned rather than as part of a blanket requirement, that an EU Member State can impose any requirement other than simple production of a valid identity document to restrict the entry into or exit from that Member State of an EU citizen. The e-Borders programme is therefore, as far as we can ascertain, likely to be illegal under the EU Treaty.

Despite constant reassurances to the contrary, we have seen no proof that UKBA's predecessors held serious discussions with the European Commission about the e-Borders programme. More recent and frequent efforts by a variety of carriers to clarify these legal issues with UKBA have met with no success. We suspect that UKBA has only recently started to take these issues seriously, possibly as a result of setbacks such as the forced postponement of the programme in relation to air routes to Germany because of national legislation. This is not good enough. UKBA is imposing expensive requirements on the private sector in the name of urgent public good apparently without having confirmed that the requirements are lawful. UKBA must urgently seek an authoritative opinion from the European Commission on this issue, and must make it a priority to discuss all data protection problems with the relevant national bodies.

UKBA must report the results of these discussions to us by, at the latest, the end of February. In the meantime, any proposals to extend 'go live' to further intra-EU routes must be put on hold.

26. We have been working very closely with the Commission over a number of years and continue to do so. As soon as the Chamber of Shipping complaint was received, we engaged with them closely to put forward our case including meeting senior officials several times.

27. The basis of the complaint was that e-Borders was in breach of the EU Directives on Free Movement and Data Protection. The Commission's letter of 17 December confirmed that this was not the case. However, some aspects of the letter are open to interpretation and we are working urgently with the Commission to address these.

28. The complaint alleged that transfer of data from other Member States to the UK was in breach of the Data Protection Directive. The Commission's letter agreed with our assessment that the transfer of data in this manner can be lawful within the terms of the Data Protection Directive. We are working closely with member state DPAs to ensure that they accept this interpretation and understand that equivalent data protection safeguards apply in the UK. We have asked them to confirm that such a transfer would not breach EU law and communicate this to carriers based in their jurisdictions.

The HAC has laid great emphasis on the need for co-operative working between carriers and UKBA. I would like to take this opportunity to stress that UKBA is committed to constructive engagement with all our stakeholders, and fully recognises the carrier industry as a critical stakeholder in the e-Borders programme.

I hope my response will provide you and members of the HAC with reassurance that the e-Borders Programme is being implemented successfully and on a fully legal basis, and that engagement is taking place with all appropriate sectors of industry as required.

February 2010

Memorandum submitted by the UKBA

I am writing to update the Committee on our progress with deporting foreign criminals and our conclusion of the caseload of historic asylum cases (legacy cases) in the three months since my previous letter of 19 October 2009.

As with my previous letters, the information provided here is subject to revisions for the same reasons I have set out to the Committee before regarding data quality.

INTRODUCTION

The UK Border Agency continues to build on our achievements of the last few years -bringing together customs and immigration functions; integrating our people, skills and processes; and using new systems and technologies to better protect our border and national interests. To secure our border, we have screened over 148 million passenger movements in and out of the UK, resulting in over 5,100 arrests for crimes including murder, rape and assault and significant counter terrorist interventions. In 2009, we searched over one million freight vehicles to check for illegal immigrants, seized illegal drugs worth over £237 million, and stopped over 27,000 dangerous weapons, including firearms, stun guns and knives, reaching the streets. To make it harder for illegal immigrants to enter the UK, 100% of visas have been fingerprint based since December 2007 and we have enrolled over 5 million sets of fingerprints detecting thousands of false identities. We have also issued over 130,000 ID cards to foreign nationals and our Immigration Crime Teams prosecuted almost 3,000 immigration offenders, people traffickers and fraudsters between April 2008 and October 2009. I am convinced that—whilst there is more we can do—we are continuing to move in the right direction.

 FOREIGN NATIONAL PRISONERS (FNPs)
Progress with removal of FNPs

1. Our published figures show that between 1 January and 30 September 2009 we removed or deported 3,890 foreign national prisoners from the United Kingdom¹. These included 35 individuals found guilty of murder, attempted murder or causing death, over 230 offenders convicted of a sex-related offence and over 1,000 drug offenders². Of the drug offenders removed, almost 500 were convicted of the production or supply of drugs, over 200 convicted of possession with intent to supply, and around 300 were convicted of the importation of drugs. Figures for those removed or deported in the period from October to December 2009, along with updated figures for the first three quarters of 2009 and the overall removal figure for 2009, will be published on 25 February 2010 and we are confident they will show year on year progress.

2. In around a quarter of the 3,890 cases removed during the first three quarters of 2009 the individual was removed under the automatic deportation provisions within the UK Borders Act 2007.

Early Removal and Facilitated Returns Schemes

3. All foreign nationals subject to removal will be considered by the National Offender Management Service under the Early Removal Scheme (ERS) which allows for early removal up to a maximum of 270 days prior to the halfway point of the sentence. Under ERS, approximately 25% of all foreign national prisoners are deported prior to the end of their sentence and our new rules prevent re-entry for at least ten years, generating a significant prison place saving. The Ministry of Justice estimate that, as a result of this scheme, approximately 400 prison places in any given month are no longer taken by foreign nationals. Not having to accommodate an additional 400 prisoners in any given month represents a saving in the long term in excess of £1.2 million a month (approx £14.4 million over the course of a year) to the National Offender Manager Service of additional expenditure that it would otherwise be required to find.

4. The UK Border Agency actively promotes to non EEA foreign national prisoners the benefits of returning home before the end of their sentence under the Facilitated Returns Scheme (FRS). I have previously informed the Committee that the scheme, introduced in October 2006, is administered on behalf of the agency by the International Organisation for Migration which provides a package of reintegration assistance upon an individual's return to their home country.

5. The current package which commenced on 12 October 2009 includes a £500 cash payment made up of a £46 discharge grant provided to all prisoners, with the remainder provided through a pre-paid cash card for use in the individual's home country. Those who volunteer to go home at the end of their sentence could receive a reintegration assistance package of up to £3,000 when they are returned, while those who apply to continue their sentence in their home country, or who are removed during their Early Removal Scheme period, could receive a package of up to £5,000. The grant and reintegration package is paid in kind (excluding the cash element), and can be used to set up a business, or help with education or to secure housing in the home country. The scheme continues to deliver significant numbers of removals of foreign national prisoners from the UK—it accounted for 25% of total FNP removals in 2007 and 30% in 2008 and the first three quarters of 2009.

6. Every person who leaves the country under FRS results in a potential to provide significant financial and resource savings to the public purse. These schemes are therefore good value for money. Expenditure by the Agency on the scheme from inception in October 2006 to March 2009 was approximately £4.3 million. The estimated total running cost of FRS in 2009–10 is expected to be approximately £6.3 million (inclusive of EU funding of around £2.2 million). When compared with the approximate £14.4 million yearly saving to the Ministry of Justice in the long term, through not having to fund additional bed space, and given that approximately 60% of this saving relates to individuals who leave before the end of their sentence using FRS, there is a net gain accrued by the government in the region of £4.5 million. In addition, there is a saving to the UK Border Agency in terms of caseworking costs, and potential transfer to and detention in an Immigration Removal Centre if deportation does not take place before the end of an individual's sentence. Further, detention beyond sentence under immigration powers presents the risk of a foreign national prisoner being released into the community on bail by the independent Asylum and Immigration Tribunal.

FNPs released without consideration for deportation

8. I am providing the Committee with a further update on the progress we are making in deporting the 1,013 foreign prisoners who had been found to have been released without consideration for deportation action. These figures are accurate as at 4 January 2010.

¹ January—March 1330; April—June 1230; July—September 1330. Source: Control of Immigration: Quarterly Statistical Summary, United Kingdom, Third Quarter 2009.

² The figures relating to offence types are based on internal management information and should therefore be treated as provisional and subject to change.

<i>No of cases concluded</i>	<i>Cases still going through the deportation process</i>	<i>Number of individuals serving a custodial sentence</i>	<i>Not located</i>	<i>Total</i>
<i>Of whom x have been deported or removed</i>				
782	125	25	81	1,013
371 have been deported or removed				

9. We continue to make steady progress with these cases despite their age and complexity and we have located a further four individuals and removed a further 11 cases since the last letter dated 19 October 2009. This included a “more serious” offender, who had received eight convictions for 15 offences, including robbery, fraud, drugs and firearm offences, who was deported on 9 October 2009. We have also removed a second “more serious” criminal who had been given a seven year custodial sentence for conspiracy to kidnap, and who had absconded while on parole in 2006. He was traced by one of our dedicated pilot teams last August, and the individual was successfully removed under the FRS scheme on 2 December 2009.

10. I have set out in the tables below a detailed update on these cases, broken down by seriousness of offence:

	<i>Cases concluded</i>	<i>(Of which removals/deportations)</i>	<i>Cases going through deportation process</i>	<i>Nos still serving custodial sentence</i>	<i>Not located</i>	<i>Total</i>
Most serious	39	(27)	1	2	1	43
More serious	117	(56)	17	6	5	145
Other	618	(288)	107	17	75	817
Duplicates	8					8
Total	782	(371)	125	25	81	1,013

11. The breakdown of the 411 concluded cases that did not result in removal or deportation is as follows:

	<i>Most serious</i>	<i>More serious</i>	<i>Other</i>	<i>Duplicates</i>	<i>Total</i>
Appeal allowed	2	23	64		89
British citizen	2	21	57		80
Irish citizen		2	8		10
Exempt	4	2	16		22
Deportation criteria not met	2	8	106		116
Other reasons	2	5	79		86
Duplicates					8
Total	12	61	330	8	411

Processes for referring FNPs to the UK Border Agency

12. The Agency now receives around 850 referrals a month, of which about half meet our criteria for deportation, and deported about 15,000 FNPs over the last three years.

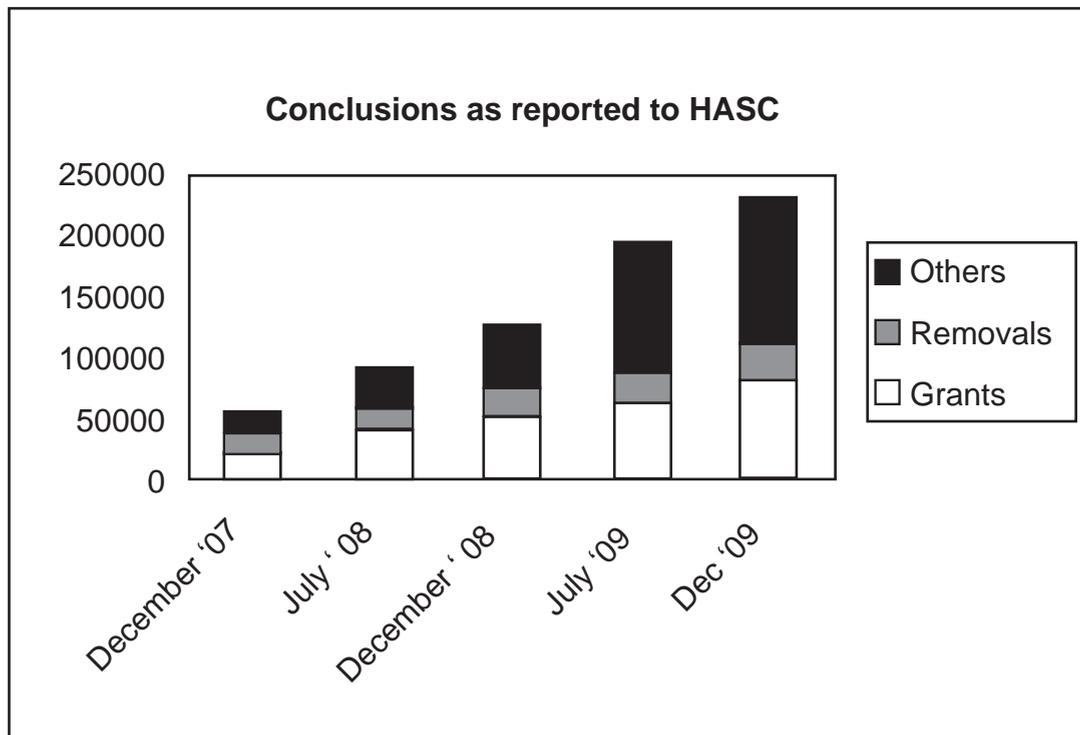
13. In a caseload of this size there remains some challenges in referral and consideration for deportation, particularly, as I have reported to you before, around short-term and remand prisoners (now compounded by a judgment in May 2009 which found that we cannot continue to detain). Our much improved processes with the courts and the three Prison Services and our new notification and recording system mean that we can better grip and identify these cases and take subsequent action.

14. This new system has identified five cases in the more/most serious category when referral did not take place as it should and consideration for deportation was picked up and pursued retrospectively. We are in contact with all of these cases.

³ Please note that the figures quoted are not provided under National Statistics protocols and have been derived from local management information. They are therefore provisional and subject to change.

RESOLUTION OF OLDER CASES

15. The UK Border Agency is continuing to clear the backlog of older asylum cases with more than 235,000 cases concluded to the end of December 2009⁴. Of the 235,000 conclusions, 13% were removals, 52% were “other” conclusions such as erroneous/duplicate records, and 35% were grants. You will see that these proportions have remained fairly consistent throughout the life of the programme.

*Performance Update*

16. As I mentioned in my letter of 19 October 2009, the Case Resolution Directorate (CRD) have streamlined their operating model and taken on a number of additional administrative staff, following the then Home Secretary's policy for us to seek to conclude the legacy caseload prior to the stated deadline of summer 2011. Over the last three months we have set up the revised system, and ensured the continuing quality of our casework through a significant amount of training. Whereas in December we concluded on average around 1,100 cases a week, we are currently putting around 3000 cases a week into the Case Resolution Directorate and this will continue to rise. There is inevitably a gap between putting these cases into the pipeline and concluding them, as it takes time to make contact with applicants and do the appropriate checks in order to consider each case on its merits. I am confident that this level of activity will enable us to conclude the cohort of cases by summer 2011 or earlier.

17. Over the last three months we have continued to focus on more complex priority cases and have now concluded around 53,000 supported cases. These cases account for approximately 30% of all conclusions in the last three months, demonstrating our continuing commitment to reduce public spending. In the last update I informed you that CRD had concluded 59,500 supported cases. This number included an additional category of removals with a support history prior to March 2007. We have now revised the way we report on supported cases, so that only cases on support in the life of the programme are counted within the category. The correct figure for supported conclusions at the end of September 2009 was therefore 49,000.

18. We continue to work closely with local government to minimise the impact of our work on applicants and communities. This includes joint planning to ensure that we minimise the impact that the conclusion of older asylum cases could have on local services, and the reimbursement package for costs incurred integrating CRD's supported cases following a grant of leave. Local authorities have not yet made full claims for transitional costs for 2009–10; I will provide further information on this issue in my next update.

Section 4 Payment Card

19. The UK Border Agency continues to ensure that those eligible for support receive the assistance they require and those seeking to abuse the system are effectively identified and dealt with.

⁴ Please note that the figures quoted are not provided under National Statistics protocols and have been derived from local management information. They are therefore provisional and subject to change.

20. In November 2009, the UK Border Agency launched the Section 4⁵ payment card, to replace the paper voucher system previously used. This new system will enable us to reduce fraud and eliminate the stigmatising effect of vouchers on applicants. The payment card also enables service users to access a wider range of retail outlets from large supermarkets to smaller local stores. This system has been rolled out successfully in Scotland, Northern Ireland, Wales, across London and the south-east, the south-west and the north-west of England. The card will be rolled out to the remaining areas of England by the middle of February.

Outstanding migration cases

21. In my last letter and in my evidence session of 4 November we discussed the group of older, non-asylum cases where we have dealt with the application, but where we have no formal record that the individual has left the country. The nature of these cases, where discrepancies exist between the paper records and our computer systems, mean that each case needs to be individually reviewed to establish its status and whether any further action is required. CRD are using the expertise they have developed in making such progress with the older asylum cohort, to effectively review, archive or action these cases. As I stated in my last letter, other areas of the business are also reviewing their files to ensure any cases of this type are treated consistently. All of these files will be reviewed, archived or actioned by summer 2011.

February 2010

Annex A

CLEARING THE BACKLOG OF OLDER CASES—PROGRESS TO DATE

Table 1.1

CONCLUSIONS⁶ BY MAIN APPLICANT AND DEPENDANTS

	<i>Total number concluded</i>	<i>Of which, main applicants</i>	<i>Of which, dependants</i>
Removals ⁷	31,500(13%)	29,000	2,500
Grants ⁸	83,000 (35%)	47,500	35,500
Others ⁹	121,500(52%)	105,500*	16,000**
Total	235,500	182,000	54,000

NB Rounded to nearest 500. Figures may not sum due to rounding.

* Includes 6,545 controlled archive⁹ cases older than six months and 8,000 concluded cases in live locations also counted in this category.

**Includes 1,041 controlled archive cases older than six months.

Table 1.2

CONCLUSIONS ON SUPPORTED¹⁰ CASES

Main	22,450
Dependants	30,499
Total	52,949 ¹¹

Rounded to nearest 50

⁵ Section 4 support is the form of support available to failed asylum seekers who are destitute and are unable to leave the UK voluntarily or otherwise due to circumstances beyond their control.

⁶ Case conclusions: cases are taken to a logical conclusion, including removal, grant of a period of stay within the UK and closure of the cases through updating of Case Information Database (CID) records where actions hadn't previously been recorded.

⁷ Removals: deportations, extraditions, enforced removals and voluntary departures, assisted and unassisted—commissioned by Case Resolution Directorate. Count of people.

⁸ Grants: cases granted some form of leave, be it limited or indefinite commissioned by Case Resolution Directorate. Count of Case ID.

⁹ Others: In these cases Case Resolution Directorate has determined that an action has occurred that led to a grant of some form of leave, or removal that wasn't recorded on the Case Information Data base. This also includes duplicate cases that have been deleted from Case Information Database. In all circumstances Case Resolution Directorates actions have been to update CID with the appropriate information. Count of Case ID, count of Person ID.

¹⁰ Cases that were on support between 05/03/07 and 31/12/09.

¹¹ In the last update I informed you that CRD had concluded 59,500 supported cases. This number included an additional category of removals with a support history prior to March 2007. We have now revised the way we report on supported cases, so that only cases on support in the life of the programme are counted within the category. The correct figure for supported conclusions at the end of September 2009 was therefore 49,000.

REMOVALS

Table 2.1
REMOVALS, BY NATIONALITY (TOP 10 COUNTRIES)

<i>Nationality</i>	<i>Total</i>
Turkey	2,850
Afghanistan	2,550
Iraq	2,450
China	1,850
Pakistan	1,750
India	1,600
Kosovo	1,500
Iran (Islamic Republic of)	1,450
Nigeria	1,250
Sri Lanka	1,200

Rounded to nearest 50, count of People

CONCLUSIONS FOR ANOTHER REASON

Table 3.1
CONCLUSIONS FOR ANOTHER REASON

<i>Type</i>	<i>Total number concluded</i>	<i>Of which, main applicants</i>	<i>Of which, dependants</i>
Duplicates	4,500	2,500	2,000
Errors	92,500	83,000	9,500
EU Nationals	9,000	5,500	3,500

NB Rounded to nearest 500. Figures may not sum due to rounding

LEAVE TO REMAIN IN THE UK

Table 4.1
GRANTS, BY NATIONALITY (TOP 10 COUNTRIES)

<i>Nationality</i>	<i>Total</i>
Zimbabwe	7,000
Pakistan	6,450
Somalia	5,250
Sri Lanka	4,450
Iraq	4,400
Afghanistan	4,000
Iran (Islamic Republic of)	4,000
China	3,550
Congo Democratic Republic	3,500
Turkey	3,400

Rounded to nearest 50, count of Case ID

Supplementary memorandum submitted by UKBA

I am writing to follow up a number of issues raised by your Committee at Brodie Clark's and my evidence session on 2 March. You asked for a response by Friday 12 March.

CONCLUSIONS FROM THE 40,000 NON-ASYLUM CASES

The Committee asked for information on the number of conclusions arising from the 40,000 non-asylum cases I had reported to the Committee last year. I thought it would be helpful again to provide some of the additional background information about these cases.

You will remember that this is not a new backlog and is not comparable to the asylum legacy caseload. The 40,000 non-asylum cases are archive files rather than individuals. They are mainly pre-2003 cases, going back as far as 1981, where we have dealt with an application but where we have no formal record that the individual has left the country. We believe that many of these individuals will either have gone home, have been removed following enforcement activity or have been granted leave through a different route.

The nature of these cases, where discrepancies exist between the paper records and our computer systems, mean that each case needs to be individually reviewed to establish its status and whether any further action is required. There are a variety of cases that do not have an asylum or charged application element and have also not been in contact with the UK Border Agency within the last 18 months. The vast majority of these cases will be resolved through data cleansing as the case has no outstanding applications, but our systems do not show the applicant has left the country.

The Case Resolution Directorate (CRD) will use the expertise they have developed in making progress with the older asylum cohort to review and archive these cases.

Other areas of the business are also reviewing their files to ensure any cases of this type that are live in the business are treated consistently.

We are committed to dealing with harm cases as a priority and as such we have sampled 800 of the files against the Police National Computer (PNC), the results of which were all negative. The focus for CRD remains on resolving the backlog of asylum cases. In the mean time, CRD is being assisted by a team in the North West Region and those cases that meet CRD's "exceptional criteria" are being prioritised for action. Once full resourcing is in place, CRD will systematically work through the cases. All of these files will be reviewed and archived by summer 2011 in line with the legacy caseload.

CRD has currently concluded just over 200 cases as at 4 March 2010, which had fitted into the "exceptional circumstances" criteria. This figure is from local management information records which are subject to change and are not national statistics. The vast majority of cases in the non-asylum archive require no further action and sampling has supported this, however teams are currently working on demand-led cases within the non-asylum archive (eg cases raised by judicial review or MPs cases). These cases are more likely to require a decision prior to conclusion and in the cases concluded so far these have been positive decisions. It is not yet possible to determine how many of the overall total would be "exceptional cases" needing a decision but we expect it to be a very small proportion.

MPs' CORRESPONDENCE

The Committee also asked for information about the quality and timeliness of MPs' correspondence, and the different levels of signatory. The figures I have provided are from 2008 as the 2009 figures have not yet been published although we expect them to show increased intake.

In 2008 the Agency received a total of 54,375 letters from MPs, of which 16,546 were Ministerial letters, 35,359 were letters requiring official replies and 2,470 were emails. Letters are signed off either by a Minister, myself as Chief Executive, or an official in the business. Many of these representations were regarding the legacy cases now being dealt with

Of those letters requiring sign off by a UK Border Agency official, 2,109 were signed off by me or the Deputy Chief Executive and 33,250 letters were allocated to the relevant business areas for signing. My Deputy and I also signed 6,904 replies to Ministerial letters.

Processes for the handling of correspondence vary around the Agency due to differing correspondence volumes and varying functions of individual business areas. In most cases letters are drafted by Executive Officers, although in some cases this can be undertaken by Administrative Officers or Higher Executive Officers, with quality assurance normally carried out by the manager of the drafter. Each group also has a Correspondence Performance Co-ordinator with responsibility for oversight of the correspondence process in their area.

A similar variation also occurs for the signing off of replies. In some areas, all letters are signed by Senior Civil Servants. In other areas, especially those with the case ownership model, letters are routinely signed by Senior Executive Officers, however a percentage of letters are signed off at Senior Civil Service level.

As correspondence has increased year on year the Agency has reviewed many of its processes. This has included introducing alternative communication routes such as MP Account Managers, the MPs' Enquiry Line and the on-line Correspondence Tracker. We will continue to promote the use of these channels and look for better ways to engage with MPs.

Ministers, the Permanent Secretary and I continue to make clear that good quality and timely correspondence are a priority.

THE GENERAL LEGAL BARRIER LIST

The Committee requested further information about those countries which feature on the General Legal Barrier (GLB) list. I thought it would also be helpful to explain how the list evolves.

As you know the case conclusion measure follows a month's cohort of asylum claims (principal applicants only) through a 182 day period.¹²

¹² Details on case conclusions can be found on page 18, PSA Delivery Agreement 3: http://www.hm-treasury.gov.uk/d/pbrcsr07_psa3.pdf

Within each cohort there are cases which the Agency is not able to conclude in this way. The Agency details the number of cases that are excluded from the cohort and the reason why in our quarterly published statistics (most recently on 25 February 2010).

One of the reasons that a case can be excluded from the cohort is because there is a General Legal Barrier (GLB) which prevents enforced removal to that country at that particular time. To ensure that these cases are monitored and that actions are taken to remove the barrier as soon as possible, a GLB list was formed. This list is owned and monitored by a senior led Board which meets every six weeks. The recommendations from the Board are then put to Ministers who make the final decision.

I would like to reassure you that the UK Border Agency maintains responsibility for the active management of these cases while the barriers to enforced return remain—not least because we accept the need to arrange for enforced returns once the barrier is removed.

As of 5 March 2010, the GLB list included ***.

I would ask that you do not share the countries that are on the list since widespread knowledge of the countries on the list at any one time could increase the risk of “nationality swapping” which we periodically encounter. Voluntary returns are of course still possible to all the countries listed, for example, between January 2008 and February 2010, 324 people returned voluntarily to ***.

REMOVAL STATISTICS

As required by the National Statistics protocols, we are committed to keeping under review the content of our statistical publications to ensure they maintain and enhance their usefulness and relevance to the general public and other users of our statistics.

To satisfy these requirements we have a programme of work which focuses on improving the quality of management information derived from UK Border Agency administrative systems, which is suitable for meeting these demands.

Where we are content that data quality is satisfactory, we aim to incorporate this into our regular and comprehensive statistical reports on the Control of Immigration. These reports form part of the co-ordinated release package of migration related statistics produced by ONS and other Government departments. A number of new tables have been included, with recent examples being tables on children in detention and entry clearance visas issued.

As I said at the evidence session, I would be very happy to invite Committee members to a workshop to explain how the UK Border Agency records asylum case conclusions and removals and I would be happy to answer any questions members may have on process or methodology.

Finally, Chairman, at the Committee session you also raised an individual case which has since been discussed with the relevant constituency MP.

March 2010

Memorandum submitted by the Independent Chief Inspector of the UK Border Agency

Thank you for your letter dated 29 January acknowledging receipt of my Inspection report on the visa section in Kuala Lumpur.

I'm very pleased to be able to provide you with some background on the Kuala Lumpur inspection, and to detail some of the key findings.

This post had not been visited by the previous Independent Monitor for Entry Clearance and I particularly wanted to look at a post with a high number of Tier 4 student applications, in part in response to concerns raised by the UK university sector. I was also interested to start looking at the hub and spoke model which I intend to be a feature of my future inspection reports.

Kuala Lumpur was the first international inspection to look at the full range of services provided by an overseas visa post, including many of which have been of ongoing concern to the Home Affairs Committee. I closely examined grants of entry clearance to assess whether they had been issued correctly, and in accordance with Immigration rules, and also inspected the administration of the points-based system (particularly Tier 4). I also looked at whether the agency was meeting its own 28 day target for completing administrative reviews and was disappointed to find that this was not the case.

I am delighted that UKBA has accepted my recommendations and I look forward to seeing how it implements these in Kuala Lumpur and elsewhere throughout the international Agency posts.

Experience gained and lessons learnt from inspecting Kuala Lumpur have been vital in helping us take forward the inspection programme, including our recent comprehensive inspection programme in respect of Chennai and Colombo. Chennai ranks third in the top ten largest overseas UKBA posts for the overall number of visa applications. This report will be published in late March.

In your letter you also mentioned that you thought it was important for the Inspectorate to visit Pakistan. I'm pleased to be able to tell you that work is

already well underway on an inspection of the visa process in Pakistan. Off-site file sampling of 350 cases commenced on the 1 February. As part of a wider comprehensive inspection of the United Arab Emirates hub (in Abu Dhabi), a team of my inspectors will be closely examining the Pakistan spoke, with special emphasis on the arrangements in place in Islamabad. My inspectors fly to Islamabad in two week's time to examine operations there, and will be in Abu Dhabi from the week commencing 15 March. They will be considering issues including Tier 4 visas, settlement visas, administrative reviews, MP's correspondence, entry refusals and denunciations.

This inspection will also consider the performance of UK Hub and will examine whether policy and guidance is being applied efficiently and effectively within the visa section.

In addition, the inspection will make a detailed assessment of the Risk and Liaison Overseas Network (RALON), as a key aim of this unit is to protect the United Kingdom from those who pose a threat and help facilitate the movement of legitimate travellers.

The HAC session on 2 March will be too early to discuss the inspection but it is anticipated that we will be in a position to publish the inspection report in late May. I would be very pleased to discuss my findings with the Committee at that time.

February 2010

Memorandum submitted by the Runnymede Trust

SUMMARY

The claims made recently by former UKBA case worker Louise Perrett have highlighted the dismal treatment of refugees and asylum seekers by the British state.

Runnymede is very concerned about the lack of transparency and accountability in the UK's immigration system. Perrett's claims are shocking, not only due to the human rights violations and disregard for the dignity of refugees and asylum seekers, but also because they reveal a culture of openly expressed racism. This reflects a broader political consensus that immigration policies need not verify their equality credentials. As a consequence, overt racism has found a safe haven within UKBA, which is simply unacceptable.

There is an urgent need to find ways to introduce transparency to UKBA. It is deficient enough that immigration is in important ways exempt from the Race Relations (Amendment) Act 2000, but the termination of the role of Independent Race Monitor means that there are virtually no structures in place to make UKBA accountable.

IMMIGRATION AND RACE EQUALITY¹³

Runnymede has for some time now been concerned that migration discourses have successfully been disconnected from principles of race equality. Hypersensitivity and political correctness, so the argument goes, have cast anyone talking about migration as bigots, thereby stifling mature discussion. However, as is often the case with calls for an "honest" and "democratic" debate on race related issues, this particular formulation of the immigration debate is a thinly veiled attempt to legitimise the use of ugly and xenophobic language by politicians and the press. Unfortunately, however, influential figures of all hues of the political spectrum have accepted this contention, which has consequently been allowed to win the argument.

Looking back on the latter half of the 20th century, it is clear that past immigration policies have had a pivotal role in shaping the ethnic inequalities of the early 21st century. Contrary to what some politicians and commentators maintain, racism and anti-immigrant sentiments have historically been closely linked. Although talking about immigration is not racist in itself, immigration policies can—and often do—have a clear racial bias. It is therefore reasonable to expect that immigration policies drafted today may be a significant factor in shaping the future of multi-ethnic Britain. Given that recent changes in immigration policy—which the government has lauded as the "biggest shake-up of the UK's border security and immigration system for 45 years"—have gone hand-in-hand with a return to assimilationist language in political rhetoric, there is great urgency in examining these policies closely and critically to assess their potential impact on race equality.

¹³ This section draws on Kjartan Sveinsson's report *Making a Contribution: New Migrants and Belonging in Multi-Ethnic Britain*. Available under: <http://www.runnymedetrust.org/uploads/publications/pdfs/MakingAContribution-2010.pdf>

 IMMIGRATION AND ACCOUNTABILITY¹⁴

UKBA and immigration officers are able to discriminate in important ways. As nationality is an important basis for immigration control, immigration functions have been partially exempt from the Race Relations (Amendment) Act 2000, specifically section 19D which allows immigration officers, acting in accordance with a relevant authorisation, to discriminate on the basis of ethnic or national origin. Although the authorisations have to be issued by a minister and be backed by statistical evidence to justify them, we are concerned about the lack of transparency.

It is clear that there is overlap between ethnicity, nationality, and colour or race. It is difficult to distinguish between ethnicity and nationality unless factors such as colour and physical appearance are used. Thus, the authorisations are subjective and open to abuse.

Labelling people from certain nationalities or ethnic groups as “greater risk” can become a self-fulfilling prophesy. Where certain groups come under closer scrutiny and are more thoroughly examined, their circumstances are more likely to be doubted, and this may result in higher standards being applied. This, in turn, can lead to unlawful stereotyping where assumptions are made based on nationality and other characteristics. The same applies to decisions in asylum casework, where caseworkers often apply their own assumptions about what would be “reasonable” to decide whether an applicant’s story is credible. These decisions can be influenced by stereotyped views of certain nationals who are predominant in making asylum claims.

We are concerned that the lack of accountability and transparency, outlined above, has allowed a culture of prejudice and stereotyping to develop. This includes ethnic profiling at the UK’s ports and borders. The UK Border Agency refutes the suggestion that it engages in ethnic profiling. Recent work by the Northern Ireland Human Rights Commission contradicts that claim:

Comments from immigration officers certainly indicated that certain presumptions were made about nationality. One immigration officer confirmed that every Nigerian passport was checked for forgery. Another stated that he knew he would be routinely lied to and although there was nothing he could do about it “. . . I can let them know that I’m not a mug”.¹⁵

CONCLUSION

It is clear to us that immigration policies need to be reconnected to and informed by principles of race equality. The exemption of immigration from the Race Relations (Amendment) Act 2000 has allowed the UKBA to develop into a safe haven for prejudice and openly expressed racism, and should be abolished. At minimum, the Immigration Race Monitor should be reinstated.

Furthermore, data collection and monitoring need to be more robust in order to improve transparency and accountability within UKBA. Better monitoring of the pattern of decisions at different ports of entry into the UK would show disparities between ports. Data from monitoring decisions can also be a tool to support training of new officials, and in developing existing officials, to improve skills in assessing credibility. Managers should use such monitoring data within ports and airports to expose different patterns and stimulate improved quality assurance. Guidance tools to define assessment criteria using examples from recent scenarios would help to improve consistency in decision making.¹⁶

February 2010

Correspondence from the European Commission to the UKBA, 17 December 2009

I am writing to you in connection with the UK e-Borders scheme that has been discussed by the European Commission and the UK Border Agency over the last months. This issue has given rise to extensive correspondence whereby your department has provided the European Commission with clarifications, commitments and assurances on the way in which implementation of the e-Borders scheme will be undertaken. I refer in particular to all the correspondence related to EU Pilot case 348/09/JLSE, the UKBA’s letters of 12 June 2009, 24 August 2009, 20 November 2009 and UKBA’s e-mails of 30 June 2009, 25 October 2009 and 5, 6, 10 and 20 November 2009.

¹⁴ This section draws on Mary Coussey’s chapter in *Ethnic Profiling: The Use of “Race” in UK Law Enforcement* (Runnymede Trust, 2010). Available under: <http://www.runnymedetrust.org/events-conferences/econferences/ethnic-profiling-in-uk-law-enforcement/the-report/profiling-and-immigration/profiling-and-immigration-2.html>

¹⁵ See Nazia Latif’s chapter in *Ethnic Profiling: The Use of “Race” in UK Law Enforcement* (Runnymede Trust, 2010). Available under: <http://www.runnymedetrust.org/events-conferences/econferences/ethnic-profiling-in-uk-law-enforcement/the-report/profiling-and-immigration/racial-profiling-and-immigration-1.html>

¹⁶ See Mary Coussey’s chapter in *Ethnic Profiling: The Use of “Race” in UK Law Enforcement* (Runnymede Trust, 2010). Available under: <http://www.runnymedetrust.org/events-conferences/econferences/ethnic-profiling-in-uk-law-enforcement/the-report/profiling-and-immigration/profiling-and-immigration-2.html>

In light of the clarifications, commitments and assurances given in the abovementioned correspondence, it appears that, on the basis of the facts as described by your authority, the UK e-borders scheme would not be in breach either of Directive 1995/46/EC on the protection of personal data or of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

I understand that the UKBA intends to collect only API (TPI) data at this stage, and has committed not to collect PNR (OPI) data for intra-EU travel as long as no EU PNR legislation has been adopted. Therefore the assessment only concerns the collection of API data. The legality of any PNR data collection within the UK e-Borders scheme for intra-EU travel has therefore not been assessed.

Furthermore, I understand that the UK authorities are committed to ensuring that the relevant clarifications, commitments and assurances given in order to align the e-Borders system with the EU legal framework on free movement of persons and data protection are met in their entirety and in a legally binding manner. In addition, regulations, internal rules of conduct, and all other public documents and websites must also ensure that the above clarifications, commitments and assurances are respected in the everyday operation of the e-Borders scheme.

More particularly, I refer to the following commitments and assurances:

- passengers who are EU citizens or their family members will not be refused entry/exit or incur sanctions in any way on the basis that their passenger data is unavailable to the UK authorities for whatever reason;
- carriers will not incur sanctions if they are unable to transmit data through no fault on their part;
- carriers will be instructed by the UK authorities not to deny boarding to travellers, regardless of their nationality, who do not communicate API data to the operator, and that the provision of API data to operators is neither compulsory nor is made a condition of purchase and sale of the ticket;
- UK authorities will make available to persons travelling to/from the UK the information required by Article 10 of Directive 95/46/EC and will also assist the carriers to communicate this information to travellers;
- a single contact point will be established by UK authorities to allow data subjects to exercise their data protection rights; and
- appropriate safeguards will be applied to transfers of data to third countries, in line with what is requested by the UK data protection authority.

In addition, a reduction of the 10 year retention period of TPI (API) data would be highly recommended so as to not differ excessively from the retention period currently provided for in Directive 2004/82/EC.

As regards the legal basis allowing the collection by the carrier of personal data in the Member State of departure, it seems to me that, pursuant to Article 4 (1) of Directive 1995/46/EC, such a legal basis must be found in the legislation of the Member States in which the processing takes place. This implies that where the processing is carried out by an establishment of the carrier on the territory of a Member State, the law of that Member State shall apply to this processing. Taking into account the specific safeguards implemented by the UK authorities, Articles 7 (e) and (f) of Directive 1995/46/EC could be used by those Member States to make the data collection referred to above lawful. It is necessary that the Member State in which the processing takes place expressly acknowledges that the “public interest” pursued by the third party requiring the data is shared by that Member State. A Member State might consider such a public interest on the basis of, for example, cooperation in the fight against illegal immigration or customs offences, or assisting another Member State in carrying out its law enforcement policy. As regards the precise form of such recognition, an opinion of the relevant national data protection supervisory authority or a governmental decision would seem to satisfy the requirements of Article 7 (e) of the Directive.

Similar reasoning can apply to Article 7 (f) of the Directive. Again, the legitimate interests pursued by the third party to whom the data are disclosed can include the interests of a public authority of another Member State, subject to the condition that this interest is officially acknowledged by the authorities of the Member State in which the processing takes place as referred to above. Such an acknowledgement of the balance of interest cannot be made by carriers or other private entities.

As regards the collection of personal data by Eurostar and ferries, the Member States in which data are collected will have to assess the proportionality of the processing taking into account the existing bilateral agreements with France and Belgium.

Finally, I understand that pursuant to the UK Data Protection Act 1998, UK data protection legislation is applicable in its entirety to the UK e-Borders scheme, and the UK data protection authority, the Information Commissioner's Office (ICO), is competent to monitor and enforce compliance with UK legal provisions adopted to implement Directive 1995/46/EC.

**Correspondence from the UKBA to members of Maritime and Air Working Groups (MCCWG/ACCWG),
23 December 2009**

Further to my letter of 18 December in which I updated you of the European Commission's decision that e-Borders does not breach Community law on Freedom of Movement or Data Protection. I also acknowledge receipt of a number of emails and letters that some of you have sent in on the back of my last letter.

Since receiving the Commission's decision our priority has been on ensuring that the European Data Protection Authorities (DPA's) understand the implication of that decision to enable them to reassure their national carriers that compliance with e-Borders has a proper legal basis in EU law. I am sharing with you both the EU response by way of a letter dated 17 December from Jonathan Faull to our Deputy Chief Executive Jonathan Sedgwick¹⁷ and my correspondence to the DPA's of today.¹⁸

I am aware that a number of you may already be in receipt of the EU response. The reason for not releasing a copy of it to you sooner is because I wanted to put it into context with my correspondence with the DPA's which explains how the terms of the EU decision will apply to e-Borders processes. With the Christmas break upon us neither I nor my staff will be able to take up any further individual points until our return in the New Year. I am hoping that we can use the next meetings of the ACCWG/MCCWG in January to progress our discussions and to continue to work in partnership to achieve full compliance with e-Borders requirements.

Correspondence from the UKBA to the Data Protection Authorities, 23 December 2009

I am writing to share with you the European Commission's recent decision on the compatibility of the UK's e-Borders Programme with European Directives on Data Protection and Free Movement of Persons. This letter should be read in conjunction with the Commission's letter of 17 December.¹⁹

I am delighted that the Commission have reached the conclusion that the e-Borders Programme does not breach EU Directives on Data Protection and Free Movement of Persons. You will see that the Commission's letter is a detailed one that covers a lot of ground. We therefore thought that it would be helpful to set out our view of what this means for e-Borders and what it means for you as a national data protection authority.

The principal complaint on Data Protection grounds against e-borders was that there was no legal basis in EU law for travel document information (TDI) which is collected and held by a passenger carrier established in another Member State to be transferred to the UK under the e-Borders Programme. We have always strongly refuted this, arguing that existing law—specifically the Data Protection Directive—already provides the necessary legal framework to allow for this flow of data.

The Commission's letter makes clear that for the transfer of data to the UK authorities, a legal basis must be found in the legislation of the Member State in which the processing takes place. For carriers departing the UK, the processing will take place in the UK, and so the Data Protection Act 1998 will be the applicable legislation. Those carriers will be under a legal obligation under UK law, in terms of article 7(c) of the Data Protection Directive, to transfer the data.

By contrast, where a carrier's service departs from another Member State to the UK, and where data is collected and held in that Member State, the data protection law of that Member State should provide the necessary legal base. The Commission's opinion is that article 7(e) and (f) of the Data Protection Directive can be relied on as the legal base for the transmission of such data to the UK. As set out in the Commission's letter, co-operation in the fight against illegal immigration or customs offences, or assisting another Member State in carrying out its law enforcement policy can constitute a public interest for the purposes of article 7(e). The interests of a public authority of another Member State can also constitute a legitimate interest for the purposes of article 7(f). Article 7(e) and (f) should be reflected in the national law of each Member State transposing the Data Protection Directive, and such transposition should be consistent with the Commission's opinion about the scope of article 7(e) and (f).

¹⁷ See correspondence from the European Commission to the UKBA, December 2009, Ev 30.

¹⁸ See correspondence from the UKBA to the Data Protection Authorities, December 2009, Ev 32.

¹⁹ See correspondence from the European Commission to the UKBA, December 2009, Ev 30.

The Commission's letter also makes clear that the Member State in which the processing takes place must acknowledge the public interest or the legitimate interest for the purposes of article 7(e) and (f). We are pleased to note the Commission's view that such acknowledgement can take the form of an opinion of a national data protection authority or a governmental decision.

I enclose a paper summarising the legal analysis provided by the UK to the Commission on the compatibility of the collection of data by e-borders with the Data Protection Directive.²⁰

You will see, on page two of the Commission letter, that we have given a number of assurances to the Commission, although we have always been clear that e-Borders must not breach the fundamental rights of EU citizens and their family members to travel freely across the EU. We are satisfied that we can give effect to these assurances without changing UK law, and we have made this clear to the Commission. UK law already gives full effect to EU rights of free movement and data protection. It is also sufficiently flexible to enable us to comply with the assurances in full. Our comments in response to the assurances are as follows:

- Passengers who are EU citizens or their family members will not be refused entry/exit or incur sanctions in any way on the basis that their passenger data is unavailable to the UK authorities for whatever reason.

E-borders enables the quicker transit of passengers, including EU citizens and their family members, through the UK border because their arrival will already have been notified to the UK authorities in advance. By implication, this means that EU citizens and their family members who do not wish carriers to provide their TDI in advance to the UK will not be able to take advantage of this enhanced border control process. They will therefore be dealt with according to the normal border controls applying to EU citizens and their family members. For such persons, admission will only be refused in accordance with Directive 2004/38/EC and the rights set out in Chapter VI of the Directive will be respected. This Directive has been transposed into UK law by the Immigration (European Economic Area) Regulations 2006.

- Carriers will not incur sanctions if they are unable to transmit data through no fault on their part.

Sanctions are aimed at carriers who do not cooperate with e-borders and carriers who have in place systems to collect data will not need to fear prosecution where they are prevented from supplying data in an individual case due to no fault on their part. Further, in all cases there is a statutory defence available to a carrier of having a reasonable excuse for failing to comply with a request to provide data (which is set out in section 27(b)(iv) of the Immigration Act 1971 as amended in respect of a request made by an immigration officer and section 34(1) of the Immigration, Nationality and Asylum Act 2006 in respect of a request made by a police officer).

We will work with carriers to ensure they are able to deal with the exceptional cases where EU citizens and their family members do not wish a carrier to provide their data to e-borders.

- Carriers will be instructed by the UK authorities not to deny boarding to travellers, regardless of their nationality, who do not communicate API data to the operator, and that the provision of API data to operators is neither compulsory nor is made a condition of purchase and sale of the ticket.

e-Borders operates compatibly with the rights given by EU law to EU citizens and their family members. It is not an authority to carry scheme, and it is not used to instruct carriers to deny boarding to EU citizens and their family members who do not wish their TDI to be provided by the carrier to the UK in advance.

Conditions of carriage remain a matter for the carrier. The Commission's letter does not affect a carrier's ability to collect data under its conditions of carriage and in compliance with international and European obligations arising from transport instruments such as the Convention on International Civil Aviation 1944 (as amended) and Council Directive 98/41/EC of 18 June 1998 on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community.

- UK authorities will make available to persons travelling to/from the UK the information required by Article 10 of Directive 95/46/EC and will also assist the carriers to communicate this information to travellers.

We will ensure that these provisions are communicated at ports and on the UKBA website and assist the carriers in communicating them to travellers.

- A single contact point will be established by UK authorities to allow data subjects to exercise their data protection rights.

A single point of contact for subject access requests has been established for e-Borders. This is managed by the UK Border Agency (UKBA) Data Protection Unit on behalf of all the agencies involved in the e-Borders Programme. A link from the front page of the e-Borders section of the UKBA website:

(<http://www.ukba.homeoffice.gov.uk/managingborders/technology/eborders/>) directs data subjects to the details of how to apply for their data, and such an application is made in the first instance to UKBA. The revised e-borders code of practice on the management of information collected from carriers will reflect the updated arrangements for subject access requests.

²⁰ Not provided to the Committee.

- Appropriate safeguards will be applied to transfers of data to third countries, in line with what is requested by the UK data protection authority.

UKBA consults the UK Data Protection Authority, the Information Commissioner's Office (ICO), when developing international data sharing arrangements. We would put in place a range of appropriate safeguards for the rights and freedoms of data subjects, in particular ensuring compliance with each of the data protection principles and other legal requirements. All data transfers would have to comply with the UK's Data Protection Act 1998.

e-Borders is a matter of great importance to the UK Government and I should be grateful for your consideration of the issues raised in this letter. The UK has always maintained that the e-borders scheme is compatible with EU law. Pending resolution of the complaint to the Commission, we have not pursued sanctions against carriers operating into and out of the UK. We are pleased that the Commission have confirmed that e-borders can operate compatibly with EU Directives on Free Movement and Data Protection. We therefore look forward to full compliance with UK law by carriers when they are requested to provide the relevant information.

Should you be asked to give an opinion as to whether there is a legal base for the transmission to the UK of data relating to flights departing from your Member State and which is collected and held by a carrier established within your jurisdiction, we strongly believe that you will be able to conclude that such a basis exists, in line with the Commission's views about the provisions of the Data Protection Directive.

Memorandum submitted by bmi

I am just about to write to the Ministry of the Interior for Spain regarding the disparity that has now arisen between their API programme and e-Borders.

The Spanish have implemented a mandatory API programme for ALL passengers travelling on flights arriving into Spain from Non-SCHENGEN countries, regardless of whether the country is an EU Member State.

Amongst other things the European Commission have declared in their recent response to the UK authorities²¹ that the provision of API (TDI) data must not be made a condition of purchase or sale of a ticket and that EU citizens and their family members must be offered the opportunity to decline the provision of data to the carrier. Furthermore, there must be no sanctions imposed of any kind on either the carrier or the individual for failing to provide or transmit the data. The UK had already given the EC assurances of this nature. Such assurances and conditions place carriers in an impossible position.

The final words of the Prime Minister's statement, therefore, are very misleading:

“And today my Right Honourable Friend the Home Secretary is meeting with his European counterparts to push for swift agreement at EU level on the ability to collect and process data on passenger records, including on travel within the EU, and to enforce the European Commission's recent approval of the transmission of advanced passenger information to our e-Borders system by carriers based in other member states.”

The “opt-out” position leaves rather a large gaping hole in the programme.

In addition, the UK Government have given the European Commission, and subsequently the National Data Protection Agencies of each EU Member State, an assurance that the e-Borders programme is NOT an “Authority to Carry” (ATC) scheme, in which advance “clearance” for travel to the UK would be required. The EC have already murmured that such a scheme would not be compatible with EC Directive 2004/38/EC (Right of free movement).

Numerous references to ATC can be found, specifically in section 124 of the Nationality, Immigration & Asylum Act 2002²² and Section 2b of the Final Regulatory Impact Assessment on e-Borders²³ and the e-Borders Memorandum published on 22 September 2009²⁴, as well as others. It is astonishing that a change in direction with respect to ATC has now surfaced, considering that for the past few years the e-Borders programme have been informing the industry that their preferred method of data transmission is on a “passenger-by-passenger” basis, an arrangement which would be mandatorily enforced in due course, and which would “also position carriers well for supporting any Authority to Carry scheme which may be introduced in the future”.

In the absence of a full ATC scheme, it begs the question about how watch-list checking will be undertaken.

Manual checking/intervention rather than an electronic response to carriers would not be practical, or indeed feasible.

²¹ See correspondence from the European Commission to the UKBA, December 2009, Ev 30.

²² Section 124 of the Nationality, Immigration & Asylum Act 2002, p 77.

²³ Section 2b of the Final Regulatory Impact Assessment on e-Borders, p 28.

²⁴ See Appendix.

The Prime Minister's further statement "As a result of the £1.2 billion investment we are making in the e-Borders system, we will by the end of this year be able to check all passengers travelling from other countries to all major airports and ports in the UK, whether they are in transit or whether the UK is their final destination, by checking against the Watchlist 24 hours prior to travel and taking appropriate action" is also very unclear.

In many cases API (TDI) data will not be available, nor transmitted 24 hours prior to arrival. If this statement refers to the "OPI" (Other Passenger Information) component of the e-Borders data acquisition requirements, there will be circumstances where API data may be recorded within reservations records (for some carriers), although the EC have been given an assurance by the e-Borders programme that OPI data would not be pursued from carriers for intra-EU services until an EU-wide PNR framework has been established. This could be quite some time away.

Of course we are bewildered as to why the Prime Minister's statement is at such odds with the very clear message from the European Commission, which for some reasons does not appear to have found its way to Ministers or No 10.

January 2010

APPENDIX

Memorandum to All Engaged Carriers

FURTHER CLARIFICATION—PER PASSENGER MESSAGING

Introduction

A memorandum on per passenger messaging was issued to Carriers engaged with the e-Borders Programme on 22 May 2009. In response to Carrier enquiries, this memorandum updates and provides further clarification of the requirements and intentions of the UK Border Agency (UKBA) in this area. In the interests of clarity, the note incorporates and restates content from the original memorandum.

Transitional Arrangements Period

During 2009, to ease the burden of implementing e-Borders, the Programme has allowed Carriers to seek Transitional Arrangements. Such arrangements represent a concession against the Programme's full requirements and have been granted on a case by case basis. In each case, the granting of Transitional Arrangements has been conditional upon plans and commitment from the Carrier to meet the Programme's full requirements by an agreed date.

For some Carriers, the transition to full compliance is dependent upon the availability of an additional message format and/or transport mechanism. Specifically:

- (1) e-Borders PAXLST US Option—Some Carriers await an alternative version of the UN/EDIFACT PAXLST message format, closer to the format used for the US AQQ system. The PAXLST Interface Control Document has been updated to include this option and the interface is on track to be available before the end of this year.
- (2) MATIP Type B—Some Carriers await the ability to submit messages directly to e-Borders using MATIP Type B (BATAP protocol) as the transport mechanism. The Programme is committed to offering MATIP Type B from the end of November 2009.

MATIP Type A—Some Carriers have indicated a desire to submit messages directly to e-Borders using MATIP Type A as the transport mechanism. In most cases, the demand for MATIP Type A appears to reflect future support for real time per passenger messaging. In more limited cases, the demand may reflect existing implementations and infrastructure. The e-Borders programme had previously not offered MATIP Type A as a transport mechanism but following further consideration this will now be made available in early 2010. Carriers will be offered reasonable time to implement this mechanism before full compliance is sought on affected routes.

Full Requirements—Post Transitional Arrangements

By the agreed end date for any Transitional Arrangements, Carriers are expected to comply with the full e-Borders requirements. These are considered below.

Current legislation allows for batch or individual messaging but does not make per passenger messaging compulsory. The Agencies' preference is for real time individual messaging for all passengers. This is the best solution to meeting the Agencies' business requirements and minimises the risk to Carriers of operational impact from late interventions by Agencies on outbound flights from the UK. It also positions Carriers well for supporting any Authority To Carry scheme which may be introduced in the future (see *Future Requirements and Authority To Carry* below).

Carriers are also permitted to employ batched solutions. Where this approach is taken, all check in data that is available must be submitted no later than 30 minutes before scheduled departure.

It is accepted that some passengers may join a flight later than 30 minutes before scheduled departure, especially where Flight Close does not take place until much closer to departure time (or Push Back where a delay has been experienced). Where this applies, pre-departure data is also required for the late arriving passengers. It is the strong preference of the Agencies for Carriers to configure their systems so that details for the late passengers are sent in real time as soon as these become known. However, Carriers are also permitted to store up late arrivals and submit them in a single, second pre-departure data batch at flight close. Clearly, under either scenario, the later the data is submitted, the greater the risk of operational impact from late interventions by Agencies on outbound flights from the UK.

Historically, the programme has indicated that Carriers accepting passengers less than 30 minutes before scheduled departure must implement real time messaging for those passengers. This revised guidance relaxes that constraint following widespread requests from Carriers and careful consideration by the Agencies, much of this driven by the recent Transitional Arrangements process. Note that this concession does not change the Agencies' strong preference for real time messaging in these circumstances or in any way reduce the operational risks to Carriers who send passenger details late.

Finally, Carriers that check-in passengers prior to 24 hours before scheduled departure will still be required to submit information for these passengers no earlier than 24 hours before scheduled departure. Neither per passenger messaging nor batch messaging will be accepted prior to 24 hours before scheduled departure.

Future Requirements and Authority To Carry

The UKBA plans a voluntary proof of concept trial for an Authority To Carry (ATC) scheme with one or more Carriers and Ports later this year. This trial will inform the thinking and planning around any future ATC scheme which would only be used for immigration purposes (ie inbound travel to the UK) and would link in with the UK Visa process.

Whilst UKBA may wish to implement an automated ATC scheme in the future, there are no plans to do this until after the London 2012 Olympics. The details, timing and funding for such a scheme have not been confirmed and any proposals would be subject to consultation with Carriers and the public and require Parliamentary and European Commission approval before implementation.

The working assumption for automated ATC to date has been that it would operate in a similar fashion to the US AQQ system. Carriers would provide passenger details in real time as they become known and the e-Borders system would provide a response within seconds, indicating whether the passenger is permitted to travel. This model provides the maximum notice to Carriers and allows Carriers to accommodate ATC into their business processes, ensuring consistent enforcement of travel denials. On this basis, the programme has previously reported the Agencies' intent to move towards a compulsory passenger by passenger method of data transfer.

Recent consideration of ATC suggests that alternative models of operation may be acceptable. The industry is changing rapidly, with increasing emphasis on on-line check-in, often many hours before passengers present for baggage drop or boarding. Where a Carrier routinely closes flights significantly in advance of the scheduled departure time, it might be possible to support ATC while continuing to supply pre-departure passenger details in one or more batches (and later batches could include all previously submitted passengers). ATC responses would be provided for the passengers in each batch on a similar basis to individual messages, although response times might be slightly slower. Under this scenario, the onus would remain with the Carrier not to carry any passenger for which ATC is denied.

The Programme believes that real time per passenger messaging is the most suitable solution for an ATC environment, particularly for any Carrier who regularly accepts passengers near to the scheduled departure time. However, it is envisaged that a batched solution would also be acceptable, providing Carriers are able to support this procedurally and ensure that all ATC denials are consistently acted upon.

Conclusions

The Programme is committed to offering Carriers a controlled and manageable path from Transitional Arrangements to compliance with the full e-Borders requirements. Per passenger messaging and batched solutions are both acceptable on the basis set out by the programme.

Carriers will not be required to implement an automated ATC solution before 2013 at the earliest. If automated ATC is implemented after this date, the options open to Carriers may not require per passenger messaging. However, the programme believes that per passenger solutions will be the most satisfactory for Carriers in an automated ATC environment, particularly for Carriers who accept frequent late passengers.

It is recognised that Carriers and their systems suppliers will need adequate notice of ATC introduction together with input to the development and trialling of the scheme.

Memorandum submitted by Flybe

The e-Borders programme has received a set-back in respect of the letter sent by the EU Commission to UKBA on the 17 December 2009.²⁵

This states, amongst other things, that the passenger/crew member can withhold his travel document data if he is an EU citizen travelling within the EU. Furthermore, carriers are obliged to inform the individual of his rights with respect to data collection and cannot make this a condition of carriage.

The individual who declines to give his data in this manner should also not be penalised or have any sanctions imposed upon him because of his decision.

The result of this is that the UKBA cannot mandate for 100% collection of travel document data within the EU, unless a change of EU legislation takes place.

With respect to the Prime Minister's statement that travel information will be obtained 24 hours prior to travel, this again cannot apply to EU citizens travelling within the EU.

A further barrier to such a statement is that again, EU legislation does not allow for an Authority To Carry (ATC) scheme.

Therefore, any statements indicating that 100% of passengers will be screened prior to travel are inaccurate and misleading.

This is particularly frustrating for the air carriers as we have constantly been advised by e-Borders that system developments to accommodate API collection should be mindful of the introduction of ATC.

Therefore, more costly functionality has been developed when this may no longer be required.

The impact of the letter from the EU Commission is that operationally, carriers are now placed in a very difficult position with respect to data collection.

January 2010

Memorandum submitted by TUI Travel

Thank you for your further enquiry. TUI Travel has some problems with the recent letter from the EU Commission dated 17 December, particularly the conditions and assurances that the Home Office have given in relation to passengers travelling intra-EU that decline to give permission for their API data to be transmitted to e-Borders.

Our departure control airline systems are configured to ensure that 100% of passengers provide API on routes where API is mandated. This is to ensure that we meet the very high accuracy standards that are set by most countries, ie 100% of passenger's data. Thus we have no facility to enable a passenger to refuse to give data, whilst providing data on the remaining passengers. The Home Office agreed the concessions with the EU without any reference back to Air Carriers, they (e-Borders) were very surprised when we advised them they had agreed to an unworkable procedure. Additionally the EU commission letter²⁶ also states that where data is processed other than in that Member State, then the requirements must comply with both the UK DPA and the other member state DPA requirements. Our data is stored and "processed" in Germany thus we are unable to go live with our crew data or our upstream capture model whilst we get clearance from the German DPA. We are however continuing to provide API data from all non-manual airports.

We have met with e-Border officials who are looking at how they might move forwards, but in the meantime we are left with the option of meeting the e-Borders requirement to provide data on intra-EU routes (UK Law), in the hope that no passenger actually objects, or meet the letter of the EU requirements and not provide intra-EU passenger data (EU Law). Given the events of 25 December 2009, we have taken the view that the UK authorities are better served if we continue to provide data on intra-EU travel whilst we work through the options with e-Borders.

It would appear that airlines will have a duty to inform the passenger that provision of API data on intra EU routes is not mandatory, this we believe will need a change in UK legislation.

With regards to watch lists we are awaiting more information from our colleagues at Transec, but understand that e-borders may be the vehicle that such checks are made. Quite how this will fit with the intra EU travel will remain to be seen.

I have attached a copy of the correspondence that we received from e-Borders in relation to the intra-EU capture.

²⁵ See correspondence from the European Commission to the UKBA, December 2009, Ev 30.

²⁶ *Ibid.*

Turning now to equitability with other modes of transport; I now represent Island Cruises and Thomson Cruises, two cruise companies that are part of the TUI Travel UK portfolio, and thus attended the Maritime Working group of e-Borders last week. It is now evident that the Home office have done a complete 180 degree u-turn in relation to capture of data for ferries, and are now investigating the use of juxtaposed control points data capture, to meet the inbound requirements. Clearly they have taken note of paragraph 29 of the Select Committee report—The e-Borders Programme. Additionally they are considering how e-Borders can use outbound passenger data for the inbound trip. You will recall that during our evidence session last July we advised the committee that this option had been rejected by e-Borders for air travel charter carriers, where we have had to create our own “upstream capture” website that is able to capture data ahead of travel to transmit to e-Borders. It is therefore especially galling to now find this solution is being considered for ferry companies after we have spent hundreds of thousands of pounds developing a system because e-Borders stated categorically that this was not a possible option (see page 9 of the Select Committee report). Furthermore, given the EU position on intra-EU data transmission the discussion for ferries is now one of “provide us the data that you currently have” with the clear impression that ferry operators will NOT be required to provide TDI data, yet at the same time maintaining that both air and cruise operators must provide such data, within the limitations of a passenger declining to provide data.

In light of the above situation we will be carefully following developments with Ferry companies and ports to compare how other sectors are being disadvantaged.

Finally as we stated during our evidence to the committee the UK airlines are committed to working with the Home office and Government to secure the border, but this must be done in an equitable manner.

January 2010

Memorandum submitted by Virgin Atlantic Airways

Thank you for this opportunity to follow up. Firstly, I would like to say that last summer there was a marked improvement in outreach from the e-Borders Programme which may well be directly attributable to the recommendations of the Home Affairs Committee. This result is much appreciated by us.

From a Virgin Atlantic perspective, Phase One of the e-Borders rollout is now completed—this is the collection and transmission of Travel Document Information (passport data). This has been a costly exercise as previously explained, due to the very specific technical requirements and capabilities of Trusted Borders. However, the good news is that since September last year Virgin Atlantic has been supplying data to UKBA for all of our passengers and crew. This data is supplied much later than 24 hours before the flight though, so the recent discussions about info being received at this time are concerning. This would mean yet another change to our technical design and operational process and it would have been helpful to know this long term intention before work on the programme commenced.

As we do not fly intra-Europe the data privacy discussions have not been relevant to us. I think this situation is extremely complex for carriers who do fly within Europe and their operational and liability constraints must be taken into consideration.

The only other point I would like to make is with respect to competition.

The e-Borders team have worked hard to provide us with visible information on equitability of data provision on air routes. This has been invaluable in ensuring that compliance with the programme does not become a commercial issue for us. We fully accept the costs and operational impact of collecting passport data but it has been useful to see that our route competitors have not been allowed to delay without valid reason. The only remaining concern in this area is that sea and rail travellers still do not have to provide passport data for e-borders. It is now essential that this be resolved over the coming months so that the aviation sector is not unfairly penalised either by cost of data transmission or by passenger processing time.

January 2010

Memorandum submitted by the Board of Airline Representatives in the UK (BAR UK)

BAR UK, with many others in the airline sector, is engaged with e-Borders, primarily through the Air Carriers Connectivity Working Group (ACCWG). Separately, the non-air carriers have their own working groups.

Right now, it is perceived that e-Borders is like a coin standing upright, but at risk of toppling.

It is understood that the EU legality test has been passed but that, in practice, great big gaps in data provision could be revealed in respect of EU nationals making intra-EU journeys.

Furthermore, a similar situation may exist in respect of EU nationals making extra-EU journeys but changing planes within the EU. That national would seem to have the right to decline data being data being provided for the intra-EU sectors, and UKBA would have no right for the other sectors taking place between 3rd party states. A sample journey would be Sydney/Frankfurt/London where there is a change of aircraft and flight number at Frankfurt.

Reverting to the matter of intra-EU flights, UKBA has been briefed that airline systems are simply not able to provide passenger data according to individual passenger wishes. Systems are either required to have data for ALL passengers or alternatively for NONE at all.

Looking ahead, and this illustrates how the Home Office is now actively involved with aviation security regimes, is the development of watch lists and no-fly lists.

Having advised the EU that there was no intention of any Authority to Carry (ATC) scheme, the draft Immigration Bill certainly includes it on its own in Part 14, Para 278.

ATC was always advised to us that permission would be refused on Immigration grounds only, so would not currently work in the context of counter-terrorism.

Liaison with the DfT, who have responsibility for aviation security, is crucial. They have advised that the industry will be consulted in respect of the no-fly lists, and they will certainly need to be. There are many sensitive areas that need to be clarified and processes developed.

NEXT STEPS

The UKBA has indicated that it will work with carriers on these matters, and BAR UK looks forward to contributing fully in that dialogue.

IN CONCLUSION

Please consider this message as a current update only, and that there should be a lot of work in hand to which we will contribute.

In closing, and this possibly the most salient point of all, the EU probably has to revise its own data provision criteria if a fully-fledged e-Borders system is to be allowed to function successfully.

January 2010

Memorandum submitted by Dover Harbour Board

On the general political front, the PM's statement was clear and strong, albeit misguided. Even were the legal hurdles to be swept away overnight, it would not be possible for systems and procedures to be in place by the end of the year. As it is, my understanding is that the legal obstacles still exist. He also implicitly launched an Authority to Carry scheme, which would also certainly be illegal for EU citizens as we understand it.

The exchange with Gary Streeter of your committee was also of interest:

“Mr Gary Streeter (South-West Devon) (Con): On e-Borders, the Home Affairs Committee heard some impressive evidence quite recently that showed that introducing e-Borders in ferry ports attracted a number of fairly insurmountable practical and logistical problems. The Prime Minister now anticipates that the scheme will be in place by the end of the year. Has he overcome these practical problems—and if not, is there any point in closing the front door and leaving the back door open?”

The Prime Minister: My hon Friend the Minister for Borders and Immigration, who deals with these issues, says that coach operators are met regularly. We have dealt with the problems that they have raised as a result of the operation of the system, and these problems are perfectly capable of being worked out.”

I would not say that the “problems have been dealt with”, either generally for ferry traffics or, very specifically, for coach traffic. A coach workshop was held in Dover in November which merely stumbled over the same impractical ground we'd walked before.

The following extract from the Justice and Home Affairs (Post-Council Statement) released on Thursday does not suggest that any of the EU issues were resolved, merely that the UK had “identified” them:

“In the second session on counter-terrorism the presidency welcomed the US Secretary of Homeland Security Janet Napolitano to the informal Council. She gave a brief summary of the Detroit incident, stressed the importance of information exchange and in particular passenger name record data for collective security, and called for the work of the EU-US high level group on data protection to be formalised into a binding agreement. I said that the Detroit incident should serve as a wake-up call. Al-Qaeda's capacity to carry out unimaginable acts was now known and we had a responsibility to close identified security gaps speedily. I identified a number of areas for EU action, including: the need to collect advanced passenger information on intra-EU flights;

expedite an EU PNR agreement where we needed a clear legal framework that included intra-EU flights; proposals on allowing scanners as primary screening tools; targeted capacity-building to countries where there was an al-Qaeda threat and we should not forget the work currently being done to reduce radicalisation and recruitment. Other delegations also called for an EU PNR instrument, stressed the importance of work with third countries, and highlighted the need for research and analysis of information.”

At the Maritime Carriers’ Connectivity Working Group meeting on 21 January, the UKBA policy lead indicated that they thought the Commission had got it “wrong” in some places and they were going back and seek better clarification. Sadly, they have still not released the e-mail & correspondence exchange between UKBA and the Commission, referenced in the Commission’s letter. Sight of these would certainly assist in better understanding the detail of the Commission’s concerns and the corresponding reassurances purported to have been given by UKBA. Perhaps the Committee might like to ask for sight of these?

[At this meeting yours truly raised the whole subject of “trust” between the industry and the e-Borders project. Worthy of note is the fact that not only have the above documents not been released to us, it is still the case that we have not seen the legal advice which Lin Homer undertook to share with us when giving evidence to the Committee last July. The Committee may wish to pursue this as well, particularly in relation to what the advice actually said and when it was received.] Separately from all of this, the British Ports Association (of which we are a leading member) has received a visit from the team who will be “rolling out” the IT infrastructure to ports, over a two-year period they say, ie 2010–12. Regrettably, this is solely about “wiring up” the immigration officers’ equipment and is not concerned with possible changes to port layout to accommodate any eventual e-Borders solution.

However, it does highlight the disconnect between one part of the project and the wider e-Borders programme.

February 2010

Memorandum submitted by the Chamber of Shipping

We too were bemused by the statements about how e-Borders would be screening all passengers heading for major UK ports by the end of this year. As John Powell said in his email of 5 February, systems to achieve such universal screening simply could not have been in place within that timescale, even if the legal obstacles had been cleared, which they have not.

It is now clear that these statement and the supporting claims about how the attempted “underpants bombing” of the airliner bound for Detroit on Christmas day had created a new security climate in which e-Borders was now recognised as vital may be viewed in the same light as the UKBA’s earlier claims that the scheme was entirely compatible with all relevant EU and national laws.

Last week we received a formal reply from the European Commission dated 1 February to our letter of April 2008 which had sought their views on the compatibility of e-Borders with EU law.²⁷ The Commission’s letter is largely a restatement of their letter of 17 December to the UKBA.²⁸ It repeats the six provisos that must be satisfied in order for e-Borders to comply with EU law: the first two are cast slightly more narrowly, to exclude non-EU nationals from rights of free movement, but the number of same on ferry routes is minimal (typically around 1%) so their practical effect is unchanged. By its date, it confirms that the legal position that pertained prior to the Christmas day incident still pertains now, and so (more significantly) does the Commission’s view of the legal position. It concludes with the point that the changes to e-Borders must be made legally-binding.

That final point, clearly, is crucial. On 22 December, we asked Julie Gillis when the UKBA would be bringing forward amending clauses for the relevant Acts. We await an answer, just as we await copies of the UKBA’s three letters and six emails to the Commission (listed in the 17 Dec letter) which we requested at the same time. Julie Gillis did, however, make clear in a circular dated 23 December to the data protection authorities of other EU countries that UKBA was not planning to amend the law but, rather, to press on regardless with the e-Borders scheme.²⁹

We have, therefore, written again to the Commission, thanking them for their involvement to date and asking them not to close the case-file until such time as the UKBA has changed the law in order to make the changes to e-Borders legally-binding, as instructed. I attach a copy of our letter, dated 9 February, and its two enclosures (two letters from Julie Gillis, dated 18 and 23 December).^{30, 31, 32}

²⁷ See correspondence from the European Commission to the Chamber of Shipping, 1 February 2010, Ev 41.

²⁸ See correspondence from the European Commission to the UKBA, December 2009, Ev 30.

²⁹ See correspondence from the UKBA to the Data Protection Authorities, December 2009, Ev 32.

³⁰ See correspondence from the Chamber of Shipping to the European Commission, February 2010, Ev 42.

³¹ See correspondence from the UKBA to members MCCWG/ACCWG, December 2009, Ev 32.

³² See correspondence from the UKBA to the Data Protection Authorities, December 2009, Ev 32.

Our letter also alerts the Commission to the apparent inconsistency between what they have been told by UKBA about how it intends to operate on intra-EU travel and what UKBA has told us. Whether the UKBA's messages have in fact been inconsistent would be immediately evident if the UKBA were to disclose its three letters and six emails to the Commission, as those would show what it had actually said. The UKBA has said it is "looking at" releasing these but, after seven weeks, there is still no sign of them. It is difficult to understand the reason for this secrecy.

By co-incidence your email of 21 January³³ arrived while ferry operators were meeting with the UKBA's e-Borders team, for the first time since the publication of the Home Affairs Committee report and the receipt of the Commission's first letter. At that meeting, we told the UKBA unambiguously that the e-Borders scheme as presented up to now (compulsory provision of passport data by and for all passengers, enforced as a condition of carriage) was now dead in the context of ferry travel.

We did nonetheless offer to work the UKBA to help them make better use of the information that is available: the information that is generated in the normal course of operating a ferry service, which all ferry operators already provide. UKBA operational staff already have access to it and frequently affirm its usefulness, but the e-Borders team have repeatedly dismissed it in their fixation with obtaining passport data.

UKBA has accepted our offer, and discussions are due to begin on 25 February. UKBA seems to envisage this as a process for persuading ferry operators gradually to collect more data, but the real onus to change rests with UKBA itself. As an example: UKBA is already told the registration number of cars carried on ferries but the e-Borders system, rather than checking these against the police or DVLA databases to identify known targets, would (so I am told) simply use them as tags to denote carloads of passengers approaching the checkpoint.

This new line of discussion is sensible but, ultimately, will be profitable only if UKBA is prepared to move on from the original model of e-Borders to which it has hitherto been wedded. Its attempt to re-badge its scheme as a counter-terrorist measure (which it never was) rather than the border-crossing formality (which it is), in order to avoid EU law's prohibition on the latter does not augur well. We shall see.

Depressingly, the draft simplification Bill on Immigration, issued for consultation last November, suggests that the UKBA's old agenda is alive and well. Far from disapplying requirements for e-Borders on intra-EU routes, for example, the Bill would double the penalty for not providing such data from six months' imprisonment to twelve. It would also extend the carriers liability regime (under which carriers are fined for every passenger not carrying a passport) to EU nationals and would make the latter liable to full-blown "examination" on arrival in the UK. It is clear to us that these provisions would fall foul of EU law in the same way that e-Borders has done, and that the Home Office is intent on repeating the same mistake, albeit without the £1.2 billion investment in an IT system. We have made all these points in our response on the draft Bill—and I attach a copy of that too.³⁴

I apologise that this update is long as well as late. If there are particular questions which I have not answered, do please just ask.

And, if any other briefing would be helpful in preparation for the UKBA's reappearance before the Committee to respond to your report, I would be happy to provide that too.

February 2010

**Correspondence from the European Commission to the Chamber of Shipping,
1 February 2010**

I refer to your complaint concerning the compatibility of the UK Government's e-Borders scheme with EU law in the area of free movement of EU citizens and data protection.

In light of the clarifications, commitments and assurances provided by the UK authorities it appears that, on the basis of the facts they have described, the UK e-borders scheme would not be in breach either of Directive 1995/46/EC on the protection of personal data or of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

More particularly, I refer to the following commitments and assurances:

- passengers who are EU citizens or their family members will not be refused entry/exit or incur sanctions on the sole grounds that their passenger data are unavailable to the UK authorities for whatever reason;
- carriers will be instructed by the UK authorities not to deny boarding to EU citizens and their family members who do not communicate API data to the operator, and that the provision of API data to operators is neither compulsory nor a condition of purchase and sale of the ticket;
- carriers will not incur sanctions if they are unable to transmit data through no fault on their part;

³³ Not printed.

³⁴ Not printed.

- the UK authorities will make available to persons travelling to/from the UK the information required by Article 10 of Directive 95/46/EC and will assist the carriers to communicate this information to travellers;
- a single contact point will be established by the UK authorities to allow data subjects to exercise their data protection rights; and
- appropriate safeguards will be applied to transfers of data to third countries, in line with the requirements of the UK data protection authority.

As regards the legal basis for the collection by the carrier of personal data in the Member State of departure, we consider that, pursuant to Article 4(1) of Directive 1995/46/EC, it must be found in the law of the Member State(s) in which the processing takes place. This implies that where the processing is carried out by an establishment of the carrier in the territory of a Member State, the law of that Member State shall apply to this processing.

Taking into account the specific safeguards implemented by the UK authorities, Articles 7(e) and (f) of Directive 1995/46/EC may be used by those Member States to implement data collection referred to above. The Member State in which the processing takes place should expressly acknowledge that the “public interest” pursued by the third party requiring the data is shared by that Member State. A Member State might consider such a public interest to be, for example, cooperation in the fight against illegal immigration or customs offences, or assisting another Member State in carrying out its law enforcement policy.

Member States in which personal data are collected from ferries will have to assess the proportionality of the processing, taking into account the existing bilateral agreements between the United Kingdom and France and Belgium.

We understand that the UK authorities are committed to ensuring that the relevant commitments and assurances given in order to align the e-Borders scheme with the EU legal framework on free movement of persons and data protection are met in their entirety and in a legally binding manner.

Unless we receive new information within four weeks of the date of this letter that could cause us to change our opinion, we will close your complaint.

February 2010

**Correspondence from the Chamber of Shipping to the European Commission,
7 February 2010**

Thank you for your letter of 1 February under reference JLS/D2/MM/itD(2010)376 concerning the UK’s e-Borders scheme. I have also, courtesy of the UK Border Agency, seen a copy of your letter to Jonathan Sedgwick of 17 December 2009 under reference JLS/D-5/MDF/et(2009)D19374.

As you know from my original letter to you of 28 April 2008, the Chamber of Shipping has been concerned for some time that the e-Borders scheme appeared to infringe the rights of EU citizens to move freely from one Member State to another, by making travel to and from the UK by ferry conditional upon providing their passport data in advance.

As you may also know, those concerns have recently been echoed by the Home Affairs Committee of the House of Commons, which held an Inquiry into e-Borders last summer. Drawing on advice from the Speaker’s Counsel (the UK Parliamentary legal service) the Committee concluded, in its report dated 15 December 2009, that the e-Borders scheme was “likely to be illegal under the EU Treaty” in imposing a systematic formality additional to the presentation of a valid passport or an ID card at a border control checkpoint.

The Chamber of Shipping is therefore very grateful for the clear guidance in your letters on those aspects of e-Borders that require modification in order for the scheme not to breach EU law. The notion that ferry operators must not be liable to penalties for failing to transmit data that they do not possess is clearly very welcome. So, more fundamentally, is the stipulation that the provision of Advance Passenger Information data must not be made a condition of carriage nor of purchase of a ticket, and that there must be no sanction of any kind on passengers who do not provide it.

Your clarification in your letter of 17 December that the provision of API must not be imposed as a condition of travel on any passengers, regardless of their nationality, is particularly helpful. It makes clear that, in imposing a requirement for API to be provided by a person who is at the time in another Member State, e-Borders would offend against the provision in the chapeau to article 1 of the UK’s Protocol to the Treaty of Amsterdam that the UK may exercise controls “at its frontiers” only, as well as offending against the provision in sub-article (a) that the UK may impose no systematic formality on EU citizens beyond the production of a passport or ID card.

Shortly after seeing your December letter, the Chamber wrote to the UKBA asking to see the three letters and six emails mentioned in your first paragraph. We are keen to see the exact terms of the commitments they gave to you—not least because, on the basis of your summary, those commitments do not match statements made by the UKBA to us. For example, ferry operators were told unequivocally, in a document

dated 1 September 2009, that “the UK authorities require that TDI [ie passport data] must be provided for all passengers without exception”. This, clearly, is not consistent with the UKBA’s professed recognition that no such requirement may be imposed on EU citizens travelling to or from another Member State.

Similarly, in relation to penalties on carriers, the UKBA said in a letter of 2 October that a ferry operator would be “unlikely to be prosecuted” for failing to transmit API data that an EU passenger had not supplied. This formula makes clear that a ferry operator would remain liable to prosecution in such circumstances, and it is reasonable to infer from the UKBA’s failure to give a definitive undertaking that a ferry operator would not be prosecuted that it does indeed intend to prosecute on some occasions. It is of note that, on 12 November 2009, the UKBA published a draft legislative Bill that would double the penalty on carriers for not providing API, about EU passengers as well as others, from six months’ imprisonment to 12.

That draft Bill would also make EU citizens liable to “examination” on arrival in the UK (as non-EU citizens already are), and to detention pending completion of this process. This appears to conflict with settled case law, that no examination is permitted once an individual has presented his passport. Furthermore, the Bill would make carriers liable to a fine (again, as they already are for non-EU passengers) in respect of any EU citizen not carrying a passport or ID card. The purpose of this liability would be to oblige carriers to refuse to carry such individuals—a refusal which, as is clear from your colleague Ernesto Bianchi’s letter to me under reference JLS/D2/MM/sdD(2009)5805, would deny them their rights under Directive 2004/38.

Overall, the UKBA appears to be pursuing a strategy of applying border controls at the UK’s frontiers with other Member States that are equivalent in effect to those that operate at external borders and which, in practice, would frustrate the exercise by EU citizens of their right of free movement. The UKBA’s continued pursuit of this wider strategy, as is evident in its publication of the draft Bill while simultaneously negotiating with yourselves, must cast doubt on the sincerity of the contradictory assurances which it was giving in the context of those negotiations.

Indeed, on receipt of your letter of 17 December, the UKBA issued a circular to all ferry operators on 18 December stating that you had confirmed that its e-Borders scheme does not breach EU law. This circular referred only briefly and obliquely to the assurances that had been given to you, and concluded by demanding “immediate and full compliance” with the (unmodified) requirements of the e-Borders scheme. I attach a copy. This circular similarly casts doubt on the UKBA’s intention to honour the commitments and assurances that it has given to you.

Such concerns would, of course, be dispelled if, as stipulated in your letters, those commitments and assurances were made legally-binding. The Chamber of Shipping therefore responded to the circular on 22 December, asking the UKBA when it was planning to amend UK law accordingly. The UKBA has yet to reply but its answer was set out clearly in a circular letter dated 23 December 2009 to the data protection authorities of other Member States: that it does not intend to change UK law. I attach a copy, in which the critical sentence is highlighted.

This statement of intention gives cause for profound concern. UK law currently does not bind the UKBA in any way in relation to its implementation of its e-Borders scheme. The law creates broad powers that enable the UKBA to choose whether to act in accordance with the commitments and assurances it gave to you, but it does not bind the UKBA to do so; and the sole logical reason for wishing not to be bound by those commitments would be an intention to act in defiance of them.

In conclusion, let me place on record our appreciation for the clear guidance in your letters about the changes that are required to the e-Borders scheme in order to align it to the framework of EU law on free movement of persons and data protection. As you may have seen, your letter of 17 December was widely reported in the UK press (after copies were supplied to journalists by the UKBA), and the response from many members of the public makes plain their appreciation of your confirmation of their rights to travel freely between the UK and other Member States, unencumbered by border formalities other than the simple presentation of a passport or an ID card.

I would ask that in your continuing discussions with the UKBA, you hold it to the obligation to bind itself in law to meet in full the commitments it gave, and to change the relevant Immigration Acts accordingly in order to ensure that those rights are indeed upheld, and that you keep this file open until it has done so.

February 2010