Work of the UK Border Agency (August–December 2011)

Twenty-first Report of Session 2010–12

Report, together with formal minutes, oral and written evidence

Ordered by the House of Commons to be printed 27 March 2012
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.

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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.

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# Contents

## Report

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>3</td>
</tr>
<tr>
<td>Staff remuneration</td>
<td>3</td>
</tr>
<tr>
<td>Foreign National Prisoners</td>
<td>4</td>
</tr>
<tr>
<td>Referrals from the prison service</td>
<td>5</td>
</tr>
<tr>
<td>Foreign National Prisoners who finished serving their sentence in 2010–11</td>
<td>6</td>
</tr>
<tr>
<td>Foreign National Prisoners living in the Community</td>
<td>9</td>
</tr>
<tr>
<td>The Asylum and Migration Backlogs</td>
<td>10</td>
</tr>
<tr>
<td>Live cases</td>
<td>12</td>
</tr>
<tr>
<td>Controlled Archive</td>
<td>13</td>
</tr>
<tr>
<td>Asylum</td>
<td>15</td>
</tr>
<tr>
<td>Border Security</td>
<td>16</td>
</tr>
<tr>
<td>The “Lille loophole”</td>
<td>16</td>
</tr>
<tr>
<td>The ‘gentlemen’s agreement’ between Britain and France</td>
<td>18</td>
</tr>
<tr>
<td>Immigration tribunals</td>
<td>20</td>
</tr>
<tr>
<td>E-Borders</td>
<td>23</td>
</tr>
<tr>
<td>e-Gates</td>
<td>25</td>
</tr>
<tr>
<td>IRIS</td>
<td>25</td>
</tr>
<tr>
<td>Student visas and Tier 4 sponsors</td>
<td>26</td>
</tr>
<tr>
<td>Multiple visa applications</td>
<td>29</td>
</tr>
<tr>
<td>Administration of the “Agency”</td>
<td>29</td>
</tr>
<tr>
<td>Location of Senior Staff</td>
<td>29</td>
</tr>
<tr>
<td>Financial administration</td>
<td>30</td>
</tr>
<tr>
<td>Member’s correspondence</td>
<td>30</td>
</tr>
<tr>
<td>Provision of information to this Committee</td>
<td>31</td>
</tr>
</tbody>
</table>

Conclusions and recommendations                                          33

Formal Minutes                                                            38

Witnesses                                                                39

List of printed written evidence                                          39

List of Reports from the Committee during the current Parliament         40
**Introduction**

1. Since 2006, the Home Affairs Committee has undertaken to examine the UK Border “Agency” on a much more frequent basis than would usually be the case because of the deep concerns about the performance of this organisation which is in fact an integral part of the Home Office and not a separately constituted and managed agency. Since last year, we have received regular updates from the UK Border “Agency” on the issues it faces every four months, including the deportation of Foreign National Prisoners and the backlog in asylum cases. This report covers the period based on the latest letter received in December 2011, and oral evidence given by Mr Rob Whiteman, Chief Executive of the UK Border “Agency”, and further correspondence as a result of that evidence session. The Committee is, therefore, able to monitor performance of the “Agency” on a number of key indicators and scrutinise the effectiveness of its work.

**Staff remuneration**

2. The 2010–11 budget for the UK Border “Agency” was £1.705 billion (£1,704,999,000). During that period, the “Agency” employed 23,426 full-time equivalent staff, either directly or indirectly. The Committee has long been concerned that the levels of salary and bonus paid to senior staff are commensurate with their job description and performance. The current remuneration of the senior management is as follows.

Figure 1: Current remuneration of senior management at the UK Border “Agency”

<table>
<thead>
<tr>
<th>UKBA senior management team</th>
<th>Salary £'000</th>
<th>Bonus (in 2010–11) £'000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rob Whiteman Chief Executive</td>
<td>175 - 180</td>
<td>N/A</td>
</tr>
<tr>
<td>Jonathan Sedgwick Director International Group</td>
<td>105-110</td>
<td>5-10</td>
</tr>
<tr>
<td>Matthew Coats Director Border Force</td>
<td>145-150</td>
<td>5-10</td>
</tr>
<tr>
<td>Jeremy Oppenheim Director Immigration Group</td>
<td>100-105</td>
<td>N/A</td>
</tr>
<tr>
<td>Justin Holliday Director Resource Management Group</td>
<td>130-135</td>
<td>5-10</td>
</tr>
<tr>
<td>Joe Dugdale Director HR &amp; Organisational Development</td>
<td>130-135</td>
<td>5-10</td>
</tr>
<tr>
<td>David Wood Director Enforcement &amp; Crime Group</td>
<td>100-105</td>
<td>5-10</td>
</tr>
<tr>
<td>Emma Churchill Director Strategy and Intelligence</td>
<td>80-85</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Source: Home Office report and accounts 2010–11

3. Since the last report the organisation has been re-structured into fewer directorates. In addition, the relaxation of border checks in summer 2011 has led to the “Agency” being split and the border force functions returned to the Home Office. The Committee held an inquiry into the relaxation of border controls and our report was published 19 January 2012.

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1 Pg 32 Home Office report and accounts 2010–11
2 Pg 12 UKBA report and accounts 2010-11
3 The table shows Matthew Coats as the temporary head of the UK Border Force (following the departure of Brodie Clark in 2011). He received the bonus in 2010-11 in his previous role as head of Immigration group.
2012. Those who are no longer heads of directorates include: Brodie Clark, Martin Peach, Barbara Woodward, Robert Yeldham and Philip Duffy. Those who have taken over directorates are: Jeremy Oppenheim and Emma Churchill. The Committee reiterates that, in these times of austerity, no bonuses should be paid to the senior management team at the “Agency”.

**Foreign National Prisoners**

In 2006, it emerged that 1,013 Foreign National Prisoners who had served their sentences were released back into the community without being considered for deportation. Fifty-seven are still to be located, as the breakdown below shows.

*Figure 2: Breakdown of cases of Foreign National Prisoners released back into the community in 2006*

Source: Ev 13

The “Agency” assumes that many of them will have left the country voluntarily, but there is no way of confirming this. The table below shows that 14 former Foreign National Prisoners were deported in the past year compared with 23 in the previous year.

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4 Home Affairs Committee, Seventeenth Report of Session 2010-12, UK Border Controls, HC 1647

5 As in our previous Reports, we use the term, “foreign national prisoner” to include those who have been released from prison after serving their sentence.

6 Home Affairs Committee, Fourth Report of Session 2010-12, The work of the UK Border Agency, HC 587, Q41

7 The graph and table both relate to the cohort of 1,013 foreign national prisoners identified in 2006:

- The graph shows the current status of that cohort and represents the November 2011 figures in the right-hand column of the table.
- The figures in the table for those deported or removed are snapshots of the cumulative total who had been deported by the month in question, so the figure in each column includes the figure from the previous column.
- The 14 deportations in the past year is the difference between the 383 who had been deported by October 2010 and the 397 who had been deported by November 2011.
- The 23 deportations in the previous year is the difference between the 360 who had been deported by September 2009 and the 383 who had been deported by October 2010.
Committee requests an explanation for the drop in deportations on the previous year to be included in the response to this report.

Figure 3: Numerical breakdown of cases of Foreign National Prisoners released back into the community in 2006

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Going through deportation process</td>
<td>135</td>
<td>121</td>
<td>110</td>
<td>98</td>
</tr>
<tr>
<td>Serving a custodial sentence</td>
<td>25</td>
<td>22</td>
<td>23</td>
<td>20</td>
</tr>
<tr>
<td>Duplicate</td>
<td>0</td>
<td>0</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>Deported, or removed</td>
<td>360</td>
<td>383</td>
<td>389</td>
<td>397</td>
</tr>
<tr>
<td>Not located</td>
<td>85</td>
<td>70</td>
<td>64</td>
<td>57</td>
</tr>
<tr>
<td>Concluded but not removed</td>
<td>408</td>
<td>417</td>
<td>419</td>
<td>433</td>
</tr>
<tr>
<td>Total</td>
<td>1,013</td>
<td>1,013</td>
<td>1,013</td>
<td>1,013</td>
</tr>
</tbody>
</table>

Source: Data compiled from previous reports

5. In 2006 the then Home Secretary announced that 1,013 Foreign National Prisoners had been released without being considered for deportation. Only 397 of the 1,013 have been removed—fifty seven of those prisoners are still in the country and ninety eight are still going through the deportation process. Six years is far too long for this situation to be resolved and these cases should have been concluded long ago. The mistakes made which allowed the release of these prisoners should not be allowed to re-occur in any part of the UK Border “Agency”. The UK Borders Act 2007 introduced automatic deportation for non-EEA prisoners serving twelve months or more.9

Referrals from the prison service

6. The UK Borders Act 2007 introduced an ‘automatic deportation’ provision whereby the Secretary of State is required to make any non-EEA foreign national prisoner who has received a sentence of 12 months or more, or any custodial sentence for specified serious crimes, subject to a deportation order (with certain exceptions). All Foreign National Prisoners who appear to meet the criteria for deportation should be referred by the prison service to the UK Border “Agency” within 5 days of sentencing. The “Agency” receives approximately 500 of these referrals each month.10 In the first three quarters of 2011, 3,490 Foreign National Prisoners came to the end of their custodial sentence, as the table below shows.

Figure 4: Breakdown of Foreign National Prisoners coming to the end of their custodial sentences by financial quarter from January-September 2011

<table>
<thead>
<tr>
<th>Time period</th>
<th>Q1 (January-March 2011)</th>
<th>Q2 (April-June 2011)</th>
<th>Q3 (July-September 2011)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Foreign National Prisoners released</td>
<td>1,260</td>
<td>1,080</td>
<td>1,150</td>
<td>3,490</td>
</tr>
</tbody>
</table>

Source: Ev 15

7. In September 2010, the Home Secretary reported to us that 28 Foreign National Prisoners had been released from prison during that year before being referred to the UK Border Agency. This is an extremely slow process and it is clear that the Home Office must find a solution to this problem.
Border “Agency”.11 The “Agency” is in contact with 25 of them and the other three are, according to the Home Office “currently being traced”.12 The Home Secretary has implemented a number of procedures to further improve the process, including the “Agency” working with partners in the Police, the National Offender Management Service and the Ministry of Justice in order to facilitate the identification of Foreign National Prisoners eligible for deportation.13 Over the period January to September 2011, there were eight of these cases, one of which was released straight from court. Where there is a failure in reporting referrals, the National Offender Management Service investigates the case.14 It is not clear to us what happens as a result of any such investigation. In the next report, the Committee will require a report directly from the National Offender Management Service, giving a breakdown of cases that have been investigated, what their findings have been and what action has followed as a result.

8. The Committee welcomes the reduction in the number of prisoners who were released without being referred to the UK Border “Agency” and the Committee will continue to monitor the figures to make sure that this decline is maintained. The Committee notes that further processes are being implemented to ensure that all Foreign National Prisoners eligible for deportation are considered and repeat our basic view that no Foreign National Prisoner should be released without deportation being fully considered.

**Foreign National Prisoners who finished serving their sentence in 2010–11**

9. In the financial year 2010–11, some 5,010 Foreign National Prisoners finished serving their sentences. The table below shows a breakdown of this cohort.

<table>
<thead>
<tr>
<th>Cohort of cases finished 2010/11</th>
<th>July 2011</th>
<th>November 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Removed</td>
<td>3,248</td>
<td>3,320</td>
</tr>
<tr>
<td>Allowed to remain</td>
<td>471</td>
<td>520</td>
</tr>
<tr>
<td>Did not meet deportation criteria</td>
<td>0</td>
<td>110</td>
</tr>
<tr>
<td>Deportation being pursued</td>
<td>1,300</td>
<td>1,060</td>
</tr>
<tr>
<td>Total</td>
<td>5,012</td>
<td>5,010</td>
</tr>
</tbody>
</table>

Source: Table compiled from Ev 13 and HC 1497–II, Ev 411

The “Agency” has sought to justified the fact that the 21% of prisoners have yet to be deported by stating that there are obstacles to deportation in 1,060 cases. The chart below sets out the “Agency’s” assessment of the obstacles to the deportation of those 1,060 which the “Agency” is currently attempting to deport.

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11 Home Affairs Committee, Sixteenth Report of Session 2010-12, *Policing large scale disorder*, HC 1456, Q231
12 The Work of the UK Border Agency (April-July), Government response, December 2011 (Cm 8253), pg 3
13 The Work of the UK Border Agency (April-July), Government response, December 2011 (Cm 8253), pg 3
14 Ev 15
15 Sentence served was less than 12 months (or 24 months in EEA cases unless the conviction was for an offence involving drugs, violent or sexual crimes) and the person did not otherwise meet the criteria for deportation
In our previous report, The Committee criticised the fact that the “Agency” classified 27% of cases where deportation was being pursued as having an ‘unknown’ obstacle to deportation. These figures differ from those published in our previous report, since the “Agency” accepted our earlier recommendation to stop classifying cases as “unknown”. The Committee welcomes the fact that this recommendation was accepted but the category shown in the chart are opaque and the Committee require a proper breakdown and explanation with the equivalent chart in the next report.

10. When questioned about the 520 Foreign National Prisoners classified as ‘allowed to remain’, Mr Whiteman was unclear about the rights these individuals had. Specifically he was asked whether these individuals, who would be eligible to remain in the country, could apply for settlement and citizenship despite being considered for deportation after committing a serious offence. Indeed, he appeared to confuse the terminology, taking it to mean those who had been released pending deportation:

Q65 Mr Clappison: I am more concerned about the significant number—520—who had served their sentences, been considered for deportation but had been allowed to remain in the country. Can I take it that those are prisoners who had a sentence of 12 months or more and who had otherwise met the deportation criteria?

Rob Whiteman: They have met the deportation criteria, Mr Clappison. UKBA’s position is that we believe people should remain in detention until the removal takes place. As the Minister made clear yesterday in an urgent question, in 90% of cases where people are not detained pending removal, it is because of the decision of the courts. Our position remains that we think people should remain in detention until the removal takes place.16

16 Q65
Mr Whiteman later clarified that the 520 would have been exempt from deportation for one of a number of reasons—because the deportation criteria have not been met; or because the courts; the UK Border “Agency” have decided that deportation would be a breach of the UK’s international obligations under the European Convention on Human Rights or the Refugee Convention or because the person is British, or otherwise exempt from deportation. This appears to indicate that some prisoners have been wrongly classified as Foreign National Prisoners but the Committee requests a clearer explanation from the “Agency” in the response to this report. In the next report the Committee requires the “Agency” to break the figures down under each of these headings and to provide an explanation. For example, it is not enough for the “Agency” to tell us that they have decided that deportation would be a breach of the UK’s international obligations under the European Convention on Human Rights or the Refugee Convention. They need to tell us which of the two was in danger of being breached, and indicate the article or articles referred to. The Committee needs to be satisfied that a proper interpretation of the law is being made by the “Agency”.

11. There appeared to be further confusion about the 110 Foreign National Prisoners who ‘did not meet deportation criteria’. As can be seen from the table in paragraph 9, this was not a category which the “Agency” has previously recorded. When asked whether this category applied to prisoners who had served less than 12 months (the statutory minimum in order to be automatically considered for deportation), Mr Whiteman was unable to confirm this and agreed to write to us with the details. In later correspondence, he said that

These were cases where the sentence served was less than 12 months (or 24 months in EEA cases unless the conviction was for an offence involving drugs, violent or sexual crimes) and the person did not otherwise meet the criteria for deportation. In follow-up evidence, Mr Whiteman clarified that where an individual does not meet the deportation criteria, they may still be subject to enforcement action. If the offender does not have a legal right to remain in the UK, the case is referred to the Local Immigration Team so that removal under administrative powers can be considered. In the next report the Committee will require a breakdown of what has happened following a referral to the Local Immigration Team. The Committee needs to know how these cases were dealt with subsequent to referral and what outcomes were achieved.

12. The Committee has long suggested that the terminology and figures used by the UK Border “Agency” can be, at best, described as confusing and at worst, misleading. It would seem that, on this occasion, even their Chief Executive had difficulty in following the data provided to the Committee. The work of the “Agency” and any discussion on immigration will necessarily involve the use of statistics. It is vital that, when providing, figures, especially to a Committee of the House, that the information is consistent, clear and accurate. The Committee expects this to be the case in future. It is difficult to see how senior management and ministers can be confident that they know what is going on if the “Agency” cannot be precise in the information it provides to this committee.
As The Committee has pointed out on a number of occasions, the “Agency” is an integral part of the Home Office and is not a separate “Agency” with separate systems of accountability. This is therefore a matter for the Permanent Secretary, and as well as receiving reports from the head of the “Agency”. The Committee will expect to hear from the Permanent Secretary how she intends to clean up the use of statistics within the Department.

**Foreign National Prisoners living in the Community**

13. As of 28 November 2011 there were 3,940 Foreign National Prisoners living in the community. This is an increase of 165 from the figure of 3,775 recorded in May 2011. During 2010, in an average month, 105 Foreign National Offenders were released from immigration detention while being considered for deportation. Approximately, 90% of these were released by the courts; with the remaining 10% being released by the UK Border “Agency”. A breakdown of the time since release from prison is shown below. Overall, Foreign National Prisoners are currently being released into the community at a rate of around 600 a year, down from a total of 1,260 in 2010.

<table>
<thead>
<tr>
<th>Time since release from prison</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>6 months or less</td>
<td>270</td>
</tr>
<tr>
<td>6-12 months</td>
<td>350</td>
</tr>
<tr>
<td>Total released within the previous year</td>
<td>620</td>
</tr>
<tr>
<td>12-24 months</td>
<td>650</td>
</tr>
<tr>
<td>Total released within the previous two years</td>
<td>1,270</td>
</tr>
<tr>
<td>More than 24 months</td>
<td>2,670</td>
</tr>
<tr>
<td>Total</td>
<td>3,940</td>
</tr>
</tbody>
</table>

Source: Ev 12

14. When asked what action was being done to deport individuals released more than two years ago, Mr Whiteman, identified two main problems. Some prisoners gave a false identity, which makes it difficult to establish their country of origin. Some people, although their country of origin is known, do not have travel documents which would allow them to be re-admitted and may not co-operate in applying for them.

In their response to our last report, the “Agency” state that

We are working on policy solutions to increase FNO removals, including tackling non compliant individuals by making greater use of prosecution powers against FNOs who do not cooperate with the deportation process or breach bail conditions. We are also working hard to reach agreements with other Governments to open up routes of return of their nationals and to streamline documentation processes.

The Committee considers this work to be vital in removing those who ought not to remain in this country. Prior to our next report, the Committee expects to see an assessment of the timescale and the numbers involved in each category referred to in this paragraph.

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20 The Work of the UK Border Agency (April-July), Government response, December 2011 (Cm 8253), pg 3
21 Ev 8
22 The Work of the UK Border Agency (April-July), Government response, December 2011 (Cm 8253), pg 3
15. The Committee is deeply concerned that there are 2,670 Foreign National Prisoners living in the community and still awaiting deportation after two years. The Committee recognises that some of this is due to circumstances beyond the “Agency’s” control, such as the domestic political situations in some prisoners’ countries of origin. However, more could be done to address the problems of false identity and lack of documentation. The Committee recommends that the “Agency” should, as a matter of routine, begin working to establish the identities of Foreign National Prisoners, and ensure that they have the necessary travel documentation, as soon as they are sentenced. The next time the Committee scrutinises the “Agency”, we intend to ask how many Foreign National Prisoners were referred to the “Agency” at the point of sentencing.

The Asylum and Migration Backlogs

16. The asylum backlog was first announced by then-Home secretary, John Reid in a statement to the House on 19 July 2006 and was due to be resolved by the summer of 2011. Mr Reid originally told the House that the number of cases that needed to be resolved was between 400,000 – 450,000 cases. Under the legacy programme, the Case Resolution Directorate in fact reviewed 500,500 cases, and the Committee were told by Jonathan Sedgwick that by 12 September 2011, all cases which were in the backlog had received an initial decision. However, 18,000 cases were yet to be fully resolved and were transferred to a new unit, the Case Assurance and Audit Unit (CAAU). A further 98,000 cases where the applicant could not be located were transferred to the ‘controlled archive’. The latest outcomes of the concluded cases are shown in the table below.

Figure 8: Outcomes of concluded cases from the asylum backlog

<table>
<thead>
<tr>
<th></th>
<th>November 2010</th>
<th>March 2011</th>
<th>September 2011</th>
<th>November 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allowed to remain</td>
<td>139,000 (42%)</td>
<td>161,000 (40%)</td>
<td>172,000 (36%)</td>
<td>176,500 (36%)</td>
</tr>
<tr>
<td>Removed</td>
<td>35,000 (11%)</td>
<td>38,000 (9%)</td>
<td>37,500 (8%)</td>
<td>38,200 (8%)</td>
</tr>
<tr>
<td>Other (duplicates, errors or controlled archive)</td>
<td>160,500 (48%)</td>
<td>205,500 (51%)</td>
<td>268,000 (56%)</td>
<td>270,500 (56%)</td>
</tr>
<tr>
<td>Total concluded</td>
<td>334,500</td>
<td>403,500</td>
<td>479,000</td>
<td>485,200</td>
</tr>
</tbody>
</table>

Source: Data compiled from HC 587, HC 929, HC 1497 and Ev 11

23 HC Deb 19 July 2006 Col. 324
25 HC (2010–12) 1497, Pg 9
Concluded cases in the Asylum backlog

Figure 9: Graph showing the outcome of concluded cases in the asylum backlog

17. In October 2009, the UK Border “Agency” announced that it had also found a backlog of 40,000 immigration cases. These were concluded at the same time as the legacy backlog with the majority being transferred to the controlled archive. The table below shows the cases which have not yet been fully concluded as a result of these backlogs.

Figure 10: Live Cases

<table>
<thead>
<tr>
<th></th>
<th>November 2010</th>
<th>March 2011</th>
<th>September 2011</th>
<th>November 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of ‘live’ cases</td>
<td>166,000</td>
<td>97,000</td>
<td>18,000</td>
<td>17,000</td>
</tr>
</tbody>
</table>

Source: Data compiled from HC 587, HC 929, HC 1497 and Ev 15

Figure 11: Controlled Archive

<table>
<thead>
<tr>
<th></th>
<th>November 2010</th>
<th>March 2011</th>
<th>September 2011</th>
<th>November 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Asylum legacy cases placed in the controlled archive</td>
<td>18,000</td>
<td>40,500</td>
<td>98,000</td>
<td>93,000</td>
</tr>
<tr>
<td>Number of migration cases in the controlled archive</td>
<td>0</td>
<td>0</td>
<td>26,000</td>
<td>26,000</td>
</tr>
<tr>
<td>Total</td>
<td>18,000</td>
<td>40,500</td>
<td>124,000</td>
<td>119,000</td>
</tr>
</tbody>
</table>

Source: Data compiled from HC 587, HC 929, HC 1497 and Ev 15
18. As of November 2011, of the 18,000 cases transferred to the new unit, 7,700 (43%) had been concluded, leaving 10,300 (57%) awaiting resolution. The graph below shows a breakdown of the outcome of the decisions of the concluded cases.

**Live cases**

Source: House of Commons Library

Source: Ev 11
19. However, in correspondence relating to the reporting period August–November 2011, the “Agency” confirmed that it had identified a further 1,500 cases which ought to be transferred to the Case Assurance and Audit Unit. This would increase the total of the legacy backlog to 502,000—some distance from the maximum of 450,000 that John Reid spoke of. The Committee was also informed that there are currently 17,000 live cases which are being worked on by the Unit. The Committee has been provided with no information which indicates as to where approximately 5,000 of these cases have come from although during the evidence session on 20 December, Mr Whiteman referred to the live cases as “old Asylum and Immigration cases”. The Committee can therefore conclude that the live cases being examined by the Case Assurance and Audit Unit include some from the 2009 migration backlog. In the next report the Committee expects clarity on this point and better information on progress and projections.

20. In the Committee’s previous report the Committee questioned the setting up of the Case Assurance and Audit Unit, and whether the transfer was simply a name change and a bureaucratic method of concealing the fact that the “Agency” was unable to meet the July 2011 deadline. The Government’s response, however, explaining the unit is to be based in Liverpool (where one of the Case Resolution units was based) and will ‘use experienced staff from the legacy programme to continue [its] work’ does not fully address these concerns.

21. Figures provided to the Committee are unclear. The Government response indicates the Case Assurance and Audit Unit is dealing with 17,000 live cases despite having concluded 7,700 of the 18,000 referred to in the “Agency’s” update to the Committee in September 2011. Parliament was originally told that the backlog was a maximum of 450,000 in 2006 yet the numbers given to this Committee suggest that it has now reached 502,000. The “Agency” is providing inconsistent information. The Committee suggests that if the categories within the data differ from those previously supplied to the Committee, an explanation be given in order to avoid any confusion. The “Agency” must rid itself of its bunker mentality and focus on ensuring that Parliament and the public understands its work. Confusion over figures only risks suspicion that the “Agency” is attempting to mislead Parliament and the public over its performance and effectiveness. The only way the Home Office can allay and remove these fears is to clean up and clarify all the figures that are used in these reports.

**Controlled Archive**

22. During the resolution of the asylum and migration backlogs, a number of cases were transferred to a “controlled archive” of cases in which, despite its best endeavours, the UK Border “Agency” has been unable to trace the applicant. The cases are checked against watch-lists for a period of six months before they are considered to have been ‘concluded’.

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27 The figure of 502,000 is the sum of the 500,500 referred to in paragraph 16 and the 1,500 referred to in this paragraph.

28 Q52

29 Q55

30 The Work of the UK Border Agency (April-July), Government response, December 2011 (Cm 8253), p 5
The table below shows how the total number of asylum cases placed in the controlled archive has changed over the past year.

Figure 14: Total number of asylum cases in the controlled archive from November 2010 to November 2011

<table>
<thead>
<tr>
<th>November 2010</th>
<th>March 2011</th>
<th>September 2011</th>
<th>November 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Asylum legacy cases in the controlled archive</td>
<td>18,000</td>
<td>40,500</td>
<td>98,000</td>
</tr>
</tbody>
</table>

Source: Data compiled from HC 587, HC 929, HC 1497 and Ev 15

23. Between August and November 2011, initially 6,000 cases were removed from the controlled archive. Of these, approximately 900 were concluded and 5,100 were removed as a result of “data cleansing” which according to the “Agency” is the assessment of files as being “incorrect or duplicate entries”. However, in light of the creation of the Case Assurance and Audit Unit, a further 1,300 cases were then moved to the controlled archive. In evidence to us, Mr Whiteman said that he intended to bring this figure down to 50,000 by the end of the next financial year (March 2013).

24. As well as those 93,000 asylum cases, there were 26,000 migration cases which have been allocated to the archive. None of those cases have been resolved since our last report and Mr Whiteman has acknowledged that the fact that the cases were so old made it difficult to resolve them although he stated that the “Agency” were “looking at the arrangements for the team covering that, and the Committee will set targets in order to bring it down.” In the Government’s response to our last report, the Committee was informed that the “Agency” has implemented a number of procedures in order to deal with cases assigned to the controlled archive. These are:

- Reassessing files every 6 months, including working closely with the Department for Work and Pensions, HM Revenue and Customs and other public sector and external bodies, comparing information held on databases on a regular basis.
- Deploying 126 full-time staff to the Case Assurance and Audit Unit to work on the live cases and review files in the controlled archive.
- Reactivating cases when new intelligence is received which might assist in the tracing of applicants.

25. At present there is a total of 119,000 asylum and migration cases in the controlled archive. At the current rate of resolution (5,000 cases resolved in two months) the UKBA will take 47.6 months, or almost four years, to empty the controlled archive.

26. In correspondence the “Agency” has continually referred to two controlled archives, one for asylum cases and another for immigration cases. Yet they appear to have merged live asylum and immigration cases from the two backlogs in to one ‘live cases’

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31 Ev 11
32 Q49
33 Q41
34 Work of the UK Border Agency (April-July), Government response, December 2011 (Cm 8253), pg 7
35 Q54
category. This has lead to confusion during oral evidence provided by Mr Whiteman. Regardless of how the information is separated out, the “Agency” has an archive of 119,000 lost applicants and 17,000 live cases. This is an unacceptably high figure and the “Agency” should continue to aim for a swift reduction of the cases related to both the asylum and migration backlogs. The Committee welcome Mr Whiteman’s commitment to reducing significantly the number of asylum cases in the controlled archive by March 2013. However, at the current rate of resolution it would take almost four years to empty the controlled archive of asylum and migration cases. The Committee has asked the “Agency” to provide us with a sample of examples of typical cases held in the controlled archive so that the Committee can better understand the process.

Asylum

27. In his evidence to the Committee, Mr Whiteman explained that 59% of initial asylum decisions were being taken within 30 days and that 59% of cases were concluded (i.e. asylum granted or the applicant removed) within 12 months. However, when the Committee inquired as to how long the remaining 41% of asylum decisions took, we were told that 23% were taken within 90 days. There was no further explanation as to how long the remaining 18% of cases waited for a decision but it seems clear that some must have taken well over 90 days, and the Committee can require an explanation and more precise information in the next report.

28. The Committee also questioned Mr Whiteman about two recent reports, Unsafe Return and Out of the Silence, which described the experiences of failed asylum seekers from the Congo and Sri Lanka, respectively. The reports suggested that having been returned to their country of origin due to it being considered to be safe, the returnees were subject to torture. Mr Whiteman conceded that

It is an area where, because of the concerns that have been raised, we clearly do need to look at the conditions of what happens when we make returns. We think that the returns are happening in a proper and humane way. We will, of course, review that in the light of new information.

The Independent Chief Inspector of the UKBA has also highlighted concerns about the ‘country of origin’ information used by the “Agency”. In his Annual Report 2010–11 he said

In last year’s inspection of asylum, I signalled the need to inspect how country information was used by staff to decide asylum applications. There was positive evidence that decision-makers used the reports produced by the “Agency’s” Country of Origin Information Service to make decisions. However, my sampling revealed

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36 Q59
37 Ev 27
38 Justice First ‘Unsafe return’ December 2011
40 Q61
that country information had been used selectively or otherwise inappropriately in a number of cases. Also, I found that information in the “Agency’s” policy documents did not accurately reflect the full country situation and that the number of documents containing such information needed to be rationalised.\(^\text{41}\)

29. In the period 2010–11, the “Agency” won 67% of appeals against asylum decisions, which was higher than the average rate across all migration appeals (44%). However, over a quarter (27%) of asylum appeals were lost. In 2008, the Centre for Social Justice published a report showing that Canada lost only 1% of its asylum appeals.\(^\text{42}\)

30. Trust in our asylum system is vital, both for the taxpayer and for those seeking a safe haven. Country of origin information is a key tool for those making asylum decisions yet the Independent Chief Inspector has found flaws in the system which must be addressed as a matter of urgency. The Committee welcome that the “Agency” is successful in 67% of asylum appeals, a figure higher than 44% which is the average appeal win rate—this shows that the “Agency” making the correct decision in the majority of asylum cases. However, the “Agency” must get the decision right first time in a far greater percentage of cases. A failure rate of 33% indicates a considerable waste in administrative assets, the time of the tribunal and a burden on applicants who have been given a wrong decision, so there is financial cost and human cost, both of which need to be cut to the minimum.

**Border Security**

**The “Lille loophole”**

31. The Schengen Agreement allows for the free movement of travellers within most European countries, with external border controls for travellers moving in and out of the area, but no internal border controls between Schengen Member States.\(^\text{43}\) The UK is not part of the Schengen Area.\(^\text{44}\) The Schengen Agreement has a specific impact on Eurostar train services from Brussels to London via Lille—since it prohibits passport checks being carried out on passengers travelling from Belgium to France. A passenger boarding a train in Brussels with a ticket to Lille does not therefore have their passport checked and, by staying on the train as it leaves Lille, they would be able to enter the UK. An invalid ticket might be identified by the ticket inspector on the train, but there is at least the possibility that they might be able to enter the UK illicitly.\(^\text{45}\)

32. Border officials tried to close the loophole by carrying out checks on the trains and passengers who did not possess the correct ticket or documentation were put off at Lille.

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\(^{41}\) Independent Chief Inspector of the UK Border Agency, Annual report 2010-11, pg 12

\(^{42}\) www.centreforsocialjustice.org.uk/client/images/FINAL%20Asylum%20Matters%20_Web_.pdf (pg 3)

\(^{43}\) Article 2 of the Convention implementing the Schengen Agreement actively prohibits border controls between Member States, except for a limited period, where public policy or national security so require, and after consultation with other Member States (Official Journal L 239 , 22/09/2000 P. 0019 – 0062).

\(^{44}\) Bulgaria, Cyprus, the Republic of Ireland and Romania are also outside the Schengen area. Norway, Iceland and Switzerland are in the Schengen Area, although they are not members of the EU.

When giving evidence to us on 8 December, Jonathan Sedgwick, International Group Director at the UK Border “Agency”, did not agree that the fault in the system could be labelled a ‘loophole’ stating:

Q433 Chair: I want to start, however, with something that is in the public domain. I am sure that you were aware that I would ask you about this. It is the so-called Lille loophole, which relates to an investigation that the BBC published this morning, which shows that a person can travel from Brussels to Lille and, if they do not leave the train, go on to the United Kingdom and not have their passport checked at all. Do you recognise this scenario?

Jonathan Sedgwick: Thank you for giving me notice of the fact that you would want to raise this issue. I would not call it a loophole, actually. Clearly, we operate under constraints in Belgium; as for persons who intend to travel within the Schengen area, clearly there are limitations on what activity we can conduct in relation to those people, but it is simply not the case that you can travel from Brussels through Lille to the UK without any checks at all. We have a range of operational measures in place. We carefully monitor all trains that stop in Lille. We have arrangements in place to remove passengers from the train at Lille. I think that, over the course of this year to date, up to around 140 people have been removed in that way. 46

33. Mr Sedgwick indicated plans were being finalised with Eurostar and the Belgian authorities to strengthen arrangements. Mr Whiteman, in his evidence to us on 20 December, accepted the flaw in the system was a 'loophole' and clarified:

We are looking at the operations that take place at the station, what happens on the train itself, what happens during the rest of the operation of the journey to the UK and what we do at St Pancras. We are looking at operational fixes for all those areas. The strategic issue, of course, is that while that loophole is a concern, we must look at this within the framework of a negotiated treaty. 47

The Committee is puzzled as to why Mr Sedgwick could not bring himself to call this a 'loophole'. The Committee welcomes Mr Whiteman’s acceptance of the term and hopes that this is indicative of a new, more communicative attitude at the “Agency”. Mr Whiteman also confirmed that at St Pancras in the last year “Agency” staff had stopped 160 people who only had tickets to Lille which, compared with the figure of 140 removals which the Committee was given by Mr Sedgewick, suggests that an attempt to enter the UK in this way is at least as likely to succeed as it is to fail. 48

34. In a letter sent to the Committee on 22 February 2012, Mr Whiteman announced that Eurostar had ceased selling tickets from Brussels to Lille to all bar season ticket holders. He added that

Border Control officers will closely monitor the new arrangement while ensuring that adequate resources continue to be deployed to secure the border. Additionally,
we will continue to review the efficacy of the new arrangement and discuss with Eurostar and any other additional measures that might be necessary.  

35. When Mr Whiteman was asked what had happened with those who were caught attempting to enter the country via the Lille loophole, the Committee was told that the publication of such information had “the potential to jeopardise border security.” The Committee considers it unlikely that potential asylum claimants would read our reports in order to discover how to circumvent border security. The law is clear that anyone who arrives on British soil can claim asylum. It is hoped that Ministers at least have been given access to the figures that the Committee has been denied. Our recent inquiry into the relaxation of border checks demonstrated the importance Ministers being made fully aware of the challenges faced by the “Agency”. The Committee asks Ministers to provide this information to the committee without delay and for the “Agency” to report on progress in the next report.

36. The issue of the ’Lille loophole’ had apparently been acknowledged the “Agency” for some time, but the “Agency” did not see fit to disclose this information in its reports to this committee until a BBC investigation brought it to public attention. Within three months of the programme being aired, and following the matter being raised by this Committee with both Jonathan Sedgwick and Mr Whiteman, a temporary solution appeared to have been brokered but the Committee are unaware of whether this has been delivered in practice. At best, this situation underlines the importance of the regular scrutiny of the “Agency”. At worst, it indicates that the “Agency” is failing to address problems that have been highlighted internally until they are forced to confront them.

37. If the “Agency” is encountering difficulties which threaten the border security of the UK, such as the Lille loophole, these difficulties should be resolved as a matter of urgency. If the “Agency” is unable to resolve these difficulties quickly, Parliament must be informed. It is unacceptable that this issue of the Lille loophole only appeared to be resolved after a public discussion and scrutiny from this Committee. The Committee has not been told how many of the 160 people who were stopped at St Pancras last year have claimed asylum in the UK. Until this problem has been permanently resolved, the Committee considers it vital that both Ministers and Parliament be regularly updated on the situation. The Committee expects the “Agency” to provide us with full and detailed information in the next and subsequent reports, and for the Permanent Secretary to ensure that this happens in terms of reports to both Ministers and Parliament.

The ‘gentlemen’s agreement’ between Britain and France

38. A recent report by the Children’s Commissioner which examined the treatment of unaccompanied children who arrive in Dover pointed to the existence of a “gentlemen’s
agreement” between the UK and France which can result in the deportation of unaccompanied minors. In particular, the ‘Agreement’ states:

Once a passenger has been refused admission to the state of destination or when he is discovered, not having presented himself to the frontier controls for admission, the authorities responsible for frontier controls in the state of embarkation may not refuse to take him back. The passenger must be sent back to that state of embarkation within a period of 24 hours of his departure from it.

39. The same report revealed that unaccompanied children arriving in Dover were being returned to France within 24 hours if they did not immediately apply for asylum. In November 2011, when it was drawn to his attention by the Children’s Commissioner, Mr Whiteman, ended the practice of deporting unaccompanied minors as it conflicted with the “Agency’s” duty under the UN Convention on the Rights of the Child to safeguard children and promote their welfare. Adults are still eligible for deportation under this Agreement.

40. The report highlights the disadvantages children face under current processing arrangements at Dover, including children being interviewed when they are not fit to participate and not having access to legal representation or face-to-face interpretation (telephone interpreters were used) for those interviews, which the UK Border “Agency” then relied on when processing asylum decisions. The report also found that the time between placing a child into detention and releasing them into care was of too long a duration. Correspondence annexed to the report indicates that a similar bi-lateral agreement between the UK and Belgium may also exist. The Committee expects this to be clarified fully by the “Agency” in the next report to this Committee.

41. The extent to which the senior management of the UK Border “Agency” was aware of the ‘Gentlemen’s Agreement’ is also questionable—according to the Children’s Commissioner, both Mr Whiteman and the “Agency” Director for London and the South East claimed ignorance of the practice. If this is the case then it would indicate a lack of communication, a theme which was prevalent in our last report on the “Agency”. When Mr Whiteman came before the Committee, he cited what he considered to be the issues at the heart of the “Agency”.

52 P58, ‘Landing in Dover’ The Children’s Commissioner, 17 January 2012
53 Pg 69, ibid
54 Pg 31-32, ibid
55 Pg 34, ibid
56 Pg 43, ibid
57 Pg 47, ibid
58 Pg 42, Landing in Dover’ The Children’s Commissioner, 17 January 2012
59 Pg 7, Landing in Dover’ The Children’s Commissioner, 17 January 2012
60 Ev 31
61 Home Affairs Committee, Seventeenth Report of Session 2010-12, UK Border Controls, HC 1647
The two big cultural challenges for the next year or so are creating a compliance culture whereby we know that we have proper assurance systems to ensure that the systems, the rules, the procedures and the practices that we put in place are being followed. ... The second issue is the detachment between senior management and staff. Morale is low, and I have really to make sure that senior managers have the competence and the capability not only to be good in terms of management functions such as budgeting and performance management but to be much more closely aligned with staff.62

The Committee hopes that Mr Whiteman’s attempts to improve the working practices of the “Agency” will resolve the issue of senior managers being unaware of potentially damaging practices.

42. The Committee expects the UK Border “Agency” to comply with the request by the Children’s Commissioner for further information on the ‘gentleman’s agreement’. The Committee also expects the “Agency” to publish full information about this and about any similar bilateral agreements.

43. Again, a lack of communication about working practices has resulted in a situation which is detrimental to the reputation of the “Agency” and, by extension, the Home Office. The Committee have previously recommended that the Chief Inspector of the UKBA carry out a thematic review of the internal communication of the “Agency”—the Committee reiterates the need for such work to take place.

Immigration tribunals

44. In the Committee's last report on the work of the UK Border “Agency” the Committee expressed concern at the high number of successful asylum and migration appeals.63 In May 2011 there were changes to the appeals system intended to restrict the types of further evidence which can be presented at appeal. Section 19 of the UK Borders Act 2007 came into force on 23 May 2011 and “restricts the evidence an appellant can rely on at such an appeal to that which is submitted to and considered by the UK Border “Agency” in support of an application.”64 The Committee had been informed that changes to the appeals system intended to restrict the type of further evidence which can be presented at appeal, would greatly improve the “Agency’s” success rate at appeals.65 This is contradicted by the figures given to the Committee by the UK Border “Agency” which show that whilst there was a 2% decrease in appeals allowed (from 41% for 2010-11 to 39%), there was no change for the number of appeals dismissed which remained at 44%. A breakdown of the figures for 2010–11 was published in our previous report. The results for the first quarter of 2011–12, produced by the Ministry of Justice are detailed below:

62 Q2
63 HC (2010-12) 1497-I, pg 16
64 HC Deb, 19 May 2011, Col. 33WS
65 HC(2010-12) 1497-II, Q8
Figure 15: Outcome of immigration tribunal appeals in the first quarter of 2011-12

<table>
<thead>
<tr>
<th>Type of Appeal</th>
<th>Allowed (the “Agency” lost)</th>
<th>Dismissed (the “Agency” won)</th>
<th>Withdrawn</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>% of total</td>
<td>No.</td>
</tr>
<tr>
<td>Asylum</td>
<td>1,000</td>
<td>26</td>
<td>2,500</td>
</tr>
<tr>
<td>Managed Migration</td>
<td>4,800</td>
<td>50</td>
<td>3,900</td>
</tr>
<tr>
<td>Entry Clearance</td>
<td>3,300</td>
<td>38</td>
<td>3,100</td>
</tr>
<tr>
<td>Family Visit Visa</td>
<td>3,800</td>
<td>34</td>
<td>5,100</td>
</tr>
<tr>
<td>Deport and others</td>
<td>63</td>
<td>23</td>
<td>180</td>
</tr>
<tr>
<td>First Tier Tribunal (Immigration and Asylum Chamber)</td>
<td>13,000</td>
<td>39</td>
<td>14,800</td>
</tr>
</tbody>
</table>

Source: MoJ figures

45. The “Agency” is still losing almost half of the appeals brought against it, despite its previous assertions that a change in the rules regarding evidence would lead to an improvement. It indicates that the “Agency” is not obeying the law or sticking to its own rules, this is unacceptable and systems must be put in place to improve the “Agency’s” appeal figures.

46. The Committee first published a recommendation regarding representation rates at appeals in June last year. The Committee suggested that it was;

   unacceptable for applicants to arrive at a tribunal having waited years for a decision only to find the Home Office is not represented. We believe this undermines the credibility of the appeals system. If the “Agency” does not intend to defend its decision it should inform the other party in order to save court time and taxpayers’ money, and to ensure there is a fair, proper and compassionate process.  

During the period May–June last year, the “Agency” was represented at 83% of hearings. This appears to have been the average rate for almost a year.  

Figure 16: UKBA representation rates at hearing April 2011-June 2011

<table>
<thead>
<tr>
<th>Month</th>
<th>UKBA representation rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 2011</td>
<td>81%</td>
</tr>
<tr>
<td>May 2011</td>
<td>82%</td>
</tr>
<tr>
<td>June 2011</td>
<td>85%</td>
</tr>
</tbody>
</table>

Source: Ev 31

The introduction of restrictions on the admissibility of new evidence at appeals has failed to deliver the big improvement in the “Agency’s” success rate that Mr Sedgwick predicted in September 2011. However, there appears to be a consistent correlation between the “Agency’s” representation rate and its success at appeals, suggesting that a big improvement might occur if the “Agency” were to increase its representation rate. In correspondence, the Committee were informed that the Appeals Improvement plan would contain performance indicators with representation rates expected to be at 90% and the

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66 Home Affairs Committee, Ninth Report of Session 2010-12, The work of the UK Border Agency (November 2010- March 2011), HC 929, Pg 15

67 The “Agency” has previously provided information which put the rate of representation at 84% between August 2010 and January 2011 (HC (2010-12) 929, Ev 20)
provision of evidentiary documents to the Court by the due date at 90%. That is better than nothing, but it is a level of performance that would be regarded as unacceptable in a magistrates court and other formal or informal settings. Unless there is a genuine emergency, arising from certain illness or a serious accident on the day of the case—in other words serious events that could not be anticipated attendance should be 100%, a failure should be regarded as unacceptable, and each failure should be a matter of concern for senior management.

47. In his 2010–11 annual report, the Independent Chief Inspector of the UK Border “Agency” observed:

The inspection of the “Agency’s” representation at First-tier appeals in Glasgow found that information on attendance at appeals was inconsistent, with 45% attendance recorded by the locally-based team, but 95% recorded centrally for the same team.69

The discrepancy between these two figures is most worrying. At best, it indicates a problem with the recording system—at worst, a deliberate manipulation of the figures. This must be reviewed and rectified.

48. The Chief Inspector of the UK Border “Agency” recently found a difference of 50% between the locally-held and centrally-held data on the “Agency’s” representation rate at appeals in Glasgow. The reason for the discrepancy between locally and centrally-recorded figures must be investigated and the Committee requests a full explanation for the difference when the “Agency” next gives evidence.

49. The Independent Chief Inspector also highlighted the importance of a ‘right first time’ approach in his 2010–11 report. He suggested that error-rates were too high and that an emphasis placed on achieving numerical targets over the quality of decision making results in extra work for the “Agency” through the high levels of appeals.70 This appears to have been accepted by the “Agency” who, in the Government’s response to the Committee’s last report, said

We are aiming to reduce the number of appeals in the system which will enable us to be represented at a greater number of appeals. This will be achieved by embedding a ‘right first time approach’ and ensuring that all of our decisions have been thoroughly considered in accordance with guidance.71

50. In the Government’s Response, the Committee were also informed of the creation of a new Appeals Training Team, launched in June 2011, with the task of improving the behaviour and values of staff representing the “Agency” at appeals. In evidence to the Committee, Mr Whiteman, emphasised the need for greater cooperation between the UK Border “Agency” and the judiciary to improve the rules and procedures at appeals.

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68 Ev 28
69 Independent Chief Inspector of the UK Border Agency, Annual report 2010-11, p 11
70 Ibid, p. 6
71 Work of the UK Border Agency (April-July), Government response, December 2011 (Cm 8253), pg 10
51. During the first quarter of 2011 the UK Border “Agency” has informed us that its representation rate was, on average, 83%. The aspiration to improve this figure to 90% is only a first step towards correcting the system and the Committee is disappointed that in the first quarter of 2011–12 there has been negligible improvement in the percentage of cases dismissed and allowed. It is crucial the “Agency’s” success rates at appeals to increase in the next quarter.

E-Borders

52. The e-Borders programme provides for the electronic collection and analysis by carriers of information on all passengers entering or leaving the UK. The intention was to start first with the airline industry, which was already collecting some of the information required under the programme electronically, and gradually extend it to the maritime and rail sectors whose booking systems were completely different, and also to areas like private aircraft and all leisure shipping.

53. Our predecessor committee discovered a significant number of practical problems in implementing the e-Borders programme. These included:

- Newly developed IT systems designed especially for the programme not meeting industry standards and practices;
- The UK Border “Agency” giving inconsistent information on when and how data should be transmitted by carriers, whether per passenger or in batches, resulting in some airlines developing systems to meet one requirement, only to have the “Agency” change its instructions;
- The UK Border “Agency” originally said that for chartered flights, where it was known that the same group of passengers who had left the UK together would be returning together, the data from the outbound flight could be used for the inbound one. The “Agency” then changed its advice, stating airlines had to send the data anew from overseas airports, without making it clear how this was supposed to be fulfilled in the absence of a computer connection;
- A number of EU Member States and the European Commission questioning whether it was legal to capture the data that the programme required.72

54. In their most recent update letter to us, the UK Border “Agency” states that at present e-Borders covers 95% of non-EU aviation and is intended to cover 100% (non-EU) by April 2012.73 In 2010, 62% of flights to UK airports originated from within the EU74 and the “Agency” is currently liaising with officials in Europe “to achieve the Government’s commitment to collect data on intra-EU flights while complying with the UK’s obligations

72 Home Affairs Committee, Third Report of Session 2009-10, The E-Borders Programme, HC 170, Pg 9-10
73 Ev 16
74 Ev 29
as a member of the EU.” The “Agency” expects e-Borders to cover 95% of all aviation traffic by the end of 2013.

55. There is confusion as to how e-Borders will apply to the maritime sector and railways. At present ferry and port operators do not collect the mandatory passenger information that the e-Borders programme requires, since they deal primarily with vehicles rather than individual passengers. There are currently no facilities for registering the required information from individual passports online before the passengers start their journey. In addition, a significant number of ferries conduct their business on a ‘turn-up-and-go’ basis. The UK Border “Agency” has informed us that they expect e-Borders to cover both maritime and rail traffic by December 2014.

56. Many of the difficulties highlighted in relation to the maritime sector apply to railways. However, the fact that the Channel Tunnel and the services through it are simply part of a Europe-wide rail network poses additional problems, which are likely to multiply with the whole of the European rail network opening to competition from January 2012: Deutsche Bahn has already proposed to run services through the Channel Tunnel from 2015. Indeed, in the December update letter, Mr Whiteman stated that

At present there is an outstanding legal issue relating to the ability of rail operators to collect data on their passengers. Specialist legal advice has been obtained to enable the Programme to progress in this area. The rail carriers are all impacted by the Freedom of Movement decision of the EU Commission and by the Data Protection issues common to all EU based carriers.

57. As of July 2011, the e-Borders system was collecting details of about 55% of passengers and crew on airlines, with no coverage of ferries or trains. The original target, to collect 95% of passenger and crew details by December 2010 was missed, as were all other previously timetabled deadlines. It is difficult to see how the scheme can be applied to all rail and sea passengers by the dates detailed above, given that air passengers are still not yet fully covered. The Committee believes the assumption that the maritime and rail sectors will implement the system in under two years is overly optimistic. On the other hand, it is difficult to see the point of all these systems—and the costs and bureaucracy involved—if they are not comprehensive. The Committee certainly needs clarity both on the policy of the Home Office in this regard and on the practicalities of achieving a clear and comprehensive system, as well as on the performance of the “Agency”.

58. The Committee has been informed that all non-EU aviation will be covered by the e-Borders scheme in time for the 2012 Olympics. The system currently covers 95% of non-EU aviation and the “Agency” hopes that it will cover 100% by April 2012. Given

75 Ev 16
76 Ev 16
77 Ev 16-17
79 Ev 17
80 HC (2010-12) 1497-II, Ev 19
the vast security implications of the Olympics, the Committee will be closely monitoring progress in this area to ensure the “Agency” meets its aims.

**e-Gates**

59. One of the methods the UK Border “Agency” uses to reduce queuing times is e-Gates which read biometric chips in passports. Since 2006, a chip has been inserted into British passports, which carries biometric and biographical details about the holder and is presented into a “reader” at an airport. The information is verified by a facial recognition camera and if the information is correct the gates open. It is overseen by a UK Border “Agency” official but there are no physical checks of the passport itself. Currently, there are 63 e-Gates, at Heathrow, Gatwick, Stansted, Luton, Birmingham, East Midlands, Cardiff, Bristol and Manchester airports. At present, UK Border “Agency” staff are responsible for the operation and monitoring of all gates but once machines are fully introduced, staff will not be allocated to oversee the work of the machines.

60. It has been alleged that some of the machines, including iris scanners, are malfunctioning\(^{81}\) and that “Agency” staff have actively discouraged people from using e-Gates.\(^{82}\) Members of the Committee have seen for themselves the closure of this facility and confusion of staff about how to manage and direct the flow of travellers, with staff only able to advise that ‘it’s not working’. When the Committee asked Mr Whiteman why staff were discouraging people from using e-gates, he stated:

> Staff should not feel threatened by e-gates. E-gates and automation will allow us to carry out a more efficient border check in order that our staff can focus on the higher risk cases in which we want secondary checks to take place. ... We need to explain to staff the reasons why we think automation is a good idea, and win them over, to help people feel that it is part of making the “Agency” more efficient.\(^{83}\)

61. The “Agency” needs to provide convincing evidence, for its own staff as well as the general public, that the e-Gates system is no less reliable than passport checks carried out by a person.

**IRIS**

62. IRIS—the iris recognition immigration system, a fore-runner of e-Gates, was launched in 2006. Frequent travellers were able to register at enrolment centres at airports where a picture of their iris was taken and uploaded to a government database. When the traveller next arrived at immigration, they entered the iris scanner which took a picture of their iris and checked it against the database. IRIS had been criticised by travellers for taking longer than going through passport control. Between 2006 and April 2011, IRIS cost the Home Office £9.1 million. A June 2010 job advert for an immigration officer (staff who are based at ports of entry to examine documents and interview people to establish their eligibility for entry to the UK) puts the starting salary at £21,000–£22,000\(^{84}\). This means that roughly

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81 Home Affairs Committee, Fourth Report of Session 2010-12, *The work of the UK Border Agency*, HC 587, Q34-35
82 HC Deb, 7 November 2011 col.60
83 Ev 8-9
84 [www.prospects.ac.uk/immigration_officer_salary.htm](http://www.prospects.ac.uk/immigration_officer_salary.htm)
60 immigration officers could have been employed for the six years with the money that IRIS cost.

63. In February 2012, it was reported that the support contract for IRIS would not be renewed and that iris scanners at Manchester and Birmingham would no longer be available. The scanners at Heathrow terminals 1, 3, 4 and 5 and those at Gatwick North would remain in use during the 2012 Olympics but would be disabled after. In October 2011, Lord Henley described IRIS as a “valuable test bed for the next generation of automation.”

64. £9 million has been spent on an iris recognition system which has lasted only six years and its sole value appears to have been that it provided data for the e-Gates. This money could have been better spent on border staff—at least 60 immigration officers could have been employed with the money spent on IRIS. The Committee recommends that, in order to avoid another costly investment in equipment which will not last, the “Agency” publish the data it has collected on the e-Gates trials which it is currently running. The Committee would also like the “Agency” to inform the Committee as to what it intends to do with the data collected by the IRIS programme and whether the retinal scans will be destroyed following the mothballing of the scanners at Heathrow and Gatwick.

### Student visas and Tier 4 sponsors

65. UCAS recently published their analysis of the applications to higher-education institutions as of the ‘equal consideration’ deadline of 15 January. Their figures demonstrated a 13% increase in non-EU citizens applying to British Universities.

![Table](https://example.com/table.png)

<table>
<thead>
<tr>
<th>By domicile</th>
<th>2011</th>
<th>2012</th>
<th>Diff (+/-)</th>
<th>Diff (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>UK</td>
<td>506,388</td>
<td>462,507</td>
<td>-43,881</td>
<td>-8.7%</td>
</tr>
<tr>
<td>Other EU</td>
<td>40,790</td>
<td>36,205</td>
<td>-4,585</td>
<td>-11.2%</td>
</tr>
<tr>
<td>Non EU</td>
<td>36,368</td>
<td>41,361</td>
<td>4,993</td>
<td>13.7%</td>
</tr>
<tr>
<td>Total</td>
<td>583,546</td>
<td>540,073</td>
<td>-43,473</td>
<td>-7.4%</td>
</tr>
</tbody>
</table>

Source: www.ucas.com/about_us/media_enquiries/media_releases/2012/20120130

Recent data released by the Home Office indicate that the number of student visas last year fell by 4% between September 2010 and September 2011, but, as the chart below shows, students are still the largest category of visa holders.

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85 HL Deb 3 October 2011 Col. WA120

86 Although 15 January is the “equal consideration” deadline, UCAS will still send applications to universities and colleges up until 30 June, with those received later going into Clearing. Last year a further 116,000 people applied through UCAS between 15 January and the end of the cycle.
66. Between 1 August and 30 November, the UK Border “Agency” visited 486 Tier 4 sponsors. Of these, 307 had their licenses revoked, including 233 sponsors whose licences were revoked as they had not applied for 'Highly Trusted Sponsor' status. During the same period, the number of sponsors that had their registration transferred is broken down as follows:

<table>
<thead>
<tr>
<th>Tier 4 rating</th>
<th>No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>From highly-trusted to standard register</td>
<td>34</td>
</tr>
<tr>
<td>From standard register to highly-trusted</td>
<td>94</td>
</tr>
<tr>
<td>From A rating to B rating (figure only valid for period 1 August to 5 September)(^{67})</td>
<td>5</td>
</tr>
<tr>
<td>From B rating to A rating</td>
<td>62</td>
</tr>
</tbody>
</table>

Source: Ev 18

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67. Following the evidence session the Committee asked for follow up information on inspections carried out on Tier 4 sponsors. The Committee was originally informed that the “Agency” would not release the information to the questions below because the figures would be derived from management information that, while fit for internal management decision making, is not normally considered suitable for formal dissemination\(^{68}\)

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\(^{67}\) The ability for a Tier 4 sponsor to be given a B rating ceased on 5 September 2011. Since that date it is now only possible for a Tier 4 sponsor to be awarded a status of Highly Trusted Sponsor, A rating or legacy.
The questions the Committee asked were

- What is the total number of checks carried out on Tier 4 sponsors in the past 3 months?
- What is the total number of inspections carried out on Tier 4 colleges in the past 3 months?
- What is the total number of Tier 4 sponsors found to be breaking the terms of their licence and how many had their licences revoked as a result?
- What is the total number of Tier 4 colleges found to be bogus and how many have been closed as a result?
- What is the total number of (a) unannounced (b) announced inspections carried out on Tier 4 colleges, broken down by month, within the last year?
- What is the total number of students affected by the closure of Tier 4 colleges in the past year?

On 22 February 2012, after several discussions with Mr Whiteman, the Committee received answers to these questions. The Committee examines this matter further below in paragraphs 79 to 81.

68. In 2011, approximately 900 inspections were carried out on Tier 4 sponsors—half of which were unannounced. In the same period, 88 sponsors were found to be breaking the terms of their licence and had their licences revoked for non-compliance. The 88 institutions had issued 26,500 confirmation of acceptance letters, which allow the recipient to apply for a visa, in 2011 alone. This figure equates to just over 10% of the net migration figure (to June 2011) which was 250,000.

91 According to the “Agency”: some may not have taken up the offer of a place, some may have had their visa application refused, and many will have completed their course, left the UK, switched to another institution or varied their leave to remain in the UK.

92 www.newstatesman.com/uk-politics/2011/10/immigration-british-work

93 HC Deb 12 Dec 2011 col.516
70. It is unacceptable that the “Agency” refuses to recognise a term which is widely recognised within both Government and Parliament. Bogus colleges are harmful to our society—they destroy trust in our immigration system, they facilitate entry to those who have dishonourable motives and they damage the UK’s reputation for high quality education. The Committee recommends that the UK Border “Agency” make all inspections visits to Tier 4 sponsors unannounced.

Multiple visa applications

71. The Committee asked the UK Border “Agency” to analyse what percentage of applications were received from the same applicants two, three or more times, between 1 August 2011 to 31 September 2011. The figures are shown below:

<table>
<thead>
<tr>
<th>Applicants</th>
<th>% Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>First</td>
<td>323,000</td>
</tr>
<tr>
<td>Second</td>
<td>84,551</td>
</tr>
<tr>
<td>Three or more</td>
<td>36,290</td>
</tr>
<tr>
<td>Total</td>
<td>443,841</td>
</tr>
</tbody>
</table>

Source: Ev 18

72. Extrapolating the figures from August and September 2011, it appears that approximately 700,000 visa applications a year are from people who have applied previously. The Committee recommends that the “Agency” inform us as to whether an applicant could have legitimate reasons for applying for three or more visas and assesses the implications of imposing a limit on the number of times an individual can apply for a visa, within a set period. As the Committee has said previously, the best way of dealing with bogus students, reluctant spouses and sham marriages is to reintroduce face to face interviews with entry clearance officers as a matter of urgency. A major part of our next evidence session will focus on the entry clearance operation.

Administration of the “Agency”

Location of Senior Staff

73. The Committee welcomes the decision by Mr Whiteman that he and his 70 most senior managers spend a day a fortnight visiting front-line staff and customers. One of the issues faced by the “Agency” is its lack of internal communication. This can only be improved by the ability of front-line staff to discuss any concerns with their senior managers, a concern the Committee raised in its recent report on the relaxation of border checks. The Committee also welcomes Mr Whiteman’s decision to work regularly in offices such as Sheffield, Manchester and Croydon rather than being solely based at the Home Office’s Marsham Street building. The Committee has sought to clarify the relationship between staff of the “Agency” and the senior staff of the Home Office, of which the “Agency” is an integral part. It is disappointing that the Committee has received little such clarification.

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94 Q89
95 Home Affairs Committee, Seventeenth Report of Session 2010-12, UK Border Controls, HC 1647, pg 15
96 Q91-92
and we look to both the head of the “Agency” and the Permanent Secretary to satisfy us that they now have a clear and transparent system in place. It is clearly not just a matter of internal communications within the “Agency” but within the Home Office as a whole, without which the Committee cannot be satisfied that Ministers are being properly served, and provided with all the information they need to fulfil their role properly.

Financial administration

74. In its last report on the UK Border “Agency” the Committee highlighted the financial mismanagement at the “Agency”, focusing on the overpayments to staff and Asylum seekers and the low priority of collection of civil penalties. In his annual report, the Independent Chief Inspector also examined the approach towards the collection of civil penalties and found that

    The Civil Penalties Compliance Team inspection identified a passive approach towards imposing civil penalties and collecting those imposed. Worse, financial information was misleading, lacked transparency and misrepresented the true position regarding civil penalty collection success: the value of civil penalties collected was only a fraction of the amount imposed.97

In the Government’s response to our previous report, the “Agency” confirmed that it was taking steps to improve its debt management processes in order to improve its record on debt collection. The “Agency” also disclosed that during November and December the National Audit Office was auditing “the “Agency’s” financial management processes and, with central Home Office Finance, we [the “Agency”] are conducting a review of the risk of financial loss that could arise from our debt management processes. These reviews are ongoing, but we [the “Agency"] look forward to their conclusion and we will implement their recommendations as soon as practicable.”98

75. The Committee welcomes the reviews being undertaken by the NAO and central Home Office Finance into the “Agency’s” financial and debt management processes. The Committee expects to receive a copy of both reviews and hope that the changes will be apparent in the annual report and accounts that the “Agency” produces for 2011–12.

Member’s correspondence

76. In our previous report the Committee published a list of account managers of each region for Members to use to obtain information about constituent cases. The UK Border “Agency” is the recipient of a large volume of enquiries from MPs, indeed the Committee believes it to be amongst the largest in Whitehall. The Committee now asks for details of contact between the MP account managers and Members. Between August and September, MP Account Managers dealt with 3,044 inquiries from MP’s offices. They also dealt with 441 enquiries referred by the MPs enquiry line. Taking these two figures together, in a two month period, MPs contacted the “Agency” 3,485 times, which is the equivalent of each Member contacting the “Agency” 5 times in 2 months.

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97 Independent Chief Inspector of the UK Border Agency, Annual report 2010-11, Pg 11
98 Work of the UK Border Agency (April-July), Government response, December 2011 (Cm 8253), pg 2
77. Over a three year period, the “Agency” has seen a reduction in the number of written enquiries received from Members, as the table below demonstrates.

Figure 21: Number of written enquiries from Members to the UK Border “Agency”

<table>
<thead>
<tr>
<th>Year</th>
<th>2009</th>
<th>2010</th>
<th>2011 (estimated)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>66,320</td>
<td>57,651</td>
<td>50,000</td>
</tr>
</tbody>
</table>

Source: Work of the UK Border Agency (April-July), Government response, December 2011 (Cm 8253), pg 15

The Committee believes that as the work of the “Agency” improves, so too will its correspondence rate. In future, the Committee will use the number of enquiries by MPs as a measure of the success of the “Agency”. We expect that, as the asylum backlog is almost resolved, the correspondence rate will fall even further. However, this relies on the correct information being given to Members. When Mr Sedgwick came before us on 13 September 2011, he assured us that “all the cases, every single case [in the asylum backlog] has had a decision.” When the Committee disputed this, using examples for our own constituencies, he suggested that we write to him with any outstanding cases. When the Committee wrote to Members, asking whether any had cases in the asylum backlog which had not had a decision, we received hundreds of replies.

78. The Committee welcomes the reduction in the number of letters sent by MPs and peers. The Committee would like to see this reduce further still. The Committee will be conducting a survey to discover how satisfied Members are with the service they are receiving and ask what more can be done to improve it further. The Committee will share the data we gather with the House and the UK Border “Agency”.

Provision of information to this Committee

79. When Mr Whiteman first appeared before this Committee on 15 November 2011, he told us that

Rob Whiteman: I think this Committee has an important role in holding me to account and also in my being transparent about the good things and the bad things that happen ... I very much want to work on the basis of trust with this Committee.

It is therefore deeply disappointing that on two occasions since our last report, the Committee has been denied access to information. The “Agency” refused to provide us with the outcome of cases of people who arrived at St Pancras via the ‘Lille loophole’. The “Agency” also refused to provide us with data regarding inspections of Tier 4 sponsors on the basis that it was ‘not fit for wider dissemination’. The latter was an unacceptably vague excuse and the Committee invited Mr Whiteman to come before us to explain his refusal to disclose this information to us. The Committee also wrote to Sir Michael Scholar, head of the UK statistics authority, who confirmed that the Authority did not

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99 Home Affairs Committee, Fifteenth Report of Session 2010-12, The work of the UK Border Agency (April-July 2011), HC 1497, Q21
100 HC (2010-12) 1497, Q23
101 Home Affairs Committee, Seventeenth Report of Session 2010-12, UK Border Controls, HC 1647, Q287-288
advise the Home Office that it should not send your Committee, or otherwise issue, management information about Tier 4 colleges unless it had been quality checked. Our advice is normally restricted to data that are already recognised as official statistics, or which we think should in future be treated as such.102

The Committee welcomes the fact that Mr Whiteman changed his mind and provided the data to this Committee.

80. The Independent Chief Inspector of the UKBA, Mr John Vine, has highlighted the poor data management of UKBA on several occasions, most recently in his report ‘An investigation into border security checks’. If internal management data is so poor that it does not provide an accurate description of the situation then the “Agency” needs to improve its data collection, not deny access to the Committee.

81. Once again, the UK Border “Agency” were initially obstructive when asked to provide essential information to us, this is unacceptable. Given the criticisms the Committee has made previously about the “Agency”’s refusal to provide information to this Committee and the undertakings by Mr Whiteman to work with us, it is also highly disappointing. The Committee takes our scrutiny of the UK Border “Agency” very seriously and will not be deterred by the “Agency”’s attempt to circumvent our requests for information. It is in the public interest that this “Agency”, charged with implementing the Government’s immigration policy, is held to account by Parliament. When Mr Whiteman first appeared before us, he pledged to be to be transparent and work with us on the basis of trust. We welcome those pledges and look forward to them being fulfilled.
Conclusions and recommendations

1. The Committee welcomes the reduction in the number of prisoners who were released without being referred to the UK Border “Agency” and the Committee will continue to monitor the figures to make sure that this decline is maintained. The Committee notes that further processes are being implemented to ensure that all Foreign National Prisoners eligible for deportation are considered and repeat our basic view that no Foreign National Prisoner should be released without deportation being fully considered. (Paragraph 8)

2. The Committee has long suggested that the terminology and figures used by the UK Border “Agency” can be, at best, described as confusing and at worst, misleading. It would seem that, on this occasion, even their Chief Executive had difficulty in following the data provided to the Committee. The work of the “Agency” and any discussion on immigration will necessarily involve the use of statistics. It is vital that, when providing, figures, especially to a Committee of the House, that the information is consistent, clear and accurate. The Committee expects this to be the case in future. It is difficult to see how senior management and ministers can be confident that they know what is going on if the “Agency” cannot be precise in the information it provides to this committee. As The Committee has pointed out on a number of occasions, the “Agency” is an integral part of the Home Office and is not a separate “Agency” with separate systems of accountability. This is therefore a matter for the Permanent Secretary, and as well as receiving reports from the head of the “Agency”. The Committee will expect to hear from the Permanent Secretary how she intends to clean up the use of statistics within the Department. (Paragraph 12)

3. The Committee is deeply concerned that there are 2,670 Foreign National Prisoners living in the community and still awaiting deportation after two years. The Committee recognises that some of this is due to circumstances beyond the “Agency’s” control, such as the domestic political situations in some prisoners’ countries of origin. However, more could be done to address the problems of false identity and lack of documentation. The Committee recommends that the “Agency” should, as a matter of routine, begin working to establish the identities of Foreign National Prisoners, and ensure that they have the necessary travel documentation, as soon as they are sentenced. The next time the Committee scrutinises the “Agency”, we intend to ask how many Foreign National Prisoners were referred to the “Agency” at the point of sentencing. (Paragraph 15)

4. Figures provided to the Committee are unclear. The Government response indicates the Case Assurance and Audit Unit is dealing with 17,000 live cases despite having concluded 7,700 of the 18,000 referred to in the “Agency’s” update to the Committee in September 2011. Parliament was originally told that the backlog was a maximum of 450,000 in 2006 yet the numbers given to this Committee suggest that it has now reached 502,000. The “Agency” is providing inconsistent information. The Committee suggests that if the categories within the data differ from those previously supplied to the Committee, an explanation be given in order to avoid any confusion. The “Agency” must rid itself of its bunker mentality and focus on ensuring that
Parliament and the public understands its work. Confusion over figures only risks suspicion that the “Agency” is attempting to mislead Parliament and the public over its performance and effectiveness. The only way the Home Office can allay and remove these fears is to clean up and clarify all the figures that are used in these reports. (Paragraph 21)

5. In correspondence the “Agency” has continually referred to two controlled archives, one for asylum cases and another for immigration cases. Yet they appear to have merged live asylum and immigration cases from the two backlogs in to one ‘live cases’ category. This has lead to confusion during oral evidence provided by Mr Whiteman. Regardless of how the information is separated out, the “Agency” has an archive of 119,000 lost applicants and 17,000 live cases. This is an unacceptably high figure and the “Agency” should continue to aim for a swift reduction of the cases related to both the asylum and migration backlogs. The Committee welcome Mr Whiteman’s commitment to reducing significantly the number of asylum cases in the controlled archive by March 2013. However, at the current rate of resolution it would take almost four years to empty the controlled archive of asylum and migration cases. The Committee has asked the “Agency” to provide us with a sample of examples of typical cases held in the controlled archive so that the Committee can better understand the process. (Paragraph 26)

6. Trust in our asylum system is vital, both for the taxpayer and for those seeking a safe haven. Country of origin information is a key tool for those making asylum decisions yet the Independent Chief Inspector has found flaws in the system which must be addressed as a matter of urgency. The Committee welcome that the “Agency” is successful in 67% of asylum appeals, a figure higher than 44% which is the average appeal win rate—this shows that the “Agency” making the correct decision in the majority of asylum cases. However, the “Agency” must get the decision right first time in a far greater percentage of cases. A failure rate of 33% indicates a considerable waste in administrative assets, the time of the tribunal and a burden on applicants who have been given a wrong decision, so there is financial cost and human cost, both of which need to be cut to the minimum. (Paragraph 30)

7. If the “Agency” is encountering difficulties which threaten the border security of the UK, such as the Lille loophole, these difficulties should be resolved as a matter of urgency. If the “Agency” is unable to resolve these difficulties quickly, Parliament must be informed. It is unacceptable that this issue of the Lille loophole only appeared to be resolved after a public discussion and scrutiny from this Committee. The Committee has not been told how many of the 160 people who were stopped at St Pancras last year have claimed asylum in the UK. Until this problem has been permanently resolved, the Committee considers it vital that both Ministers and Parliament be regularly updated on the situation. The Committee expects the “Agency” to provide us with full and detailed information in the next and subsequent reports, and for the Permanent Secretary to ensure that this happens in terms of reports to both Ministers and Parliament. (Paragraph 37)

8. The Committee expects the UK Border “Agency” to comply with the request by the Children’s Commissioner for further information on the ‘gentleman’s agreement’. 
The Committee also expects the “Agency” to publish full information about this and about any similar bilateral agreements. (Paragraph 42)

9. Again, a lack of communication about working practices has resulted in a situation which is detrimental to the reputation of the “Agency” and, by extension, the Home Office. The Committee have previously recommended that the Chief Inspector of the UKBA carry out a thematic review of the internal communication of the “Agency”—the Committee reiterates the need for such work to take place. (Paragraph 43)

10. The “Agency” is still losing almost half of the appeals brought against it, despite its previous assertions that a change in the rules regarding evidence would lead to an improvement. It indicates that the “Agency” is not obeying the law or sticking to its own rules, this is unacceptable and systems must be put in place to improve the “Agency’s” appeal figures. (Paragraph 45)

11. The Chief Inspector of the UK Border “Agency” recently found a difference of 50% between the locally-held and centrally-held data on the “Agency’s” representation rate at appeals in Glasgow. The reason for the discrepancy between locally and centrally-recorded figures must be investigated and the Committee requests a full explanation for the difference when the “Agency” next gives evidence. (Paragraph 48)

12. During the first quarter of 2011 the UK Border “Agency” has informed us that its representation rate was, on average, 83%. The aspiration to improve this figure to 90% is only a first step towards correcting the system and the Committee is disappointed that in the first quarter of 2011–12 there has been negligible improvement in the percentage of cases dismissed and allowed. It is crucial the “Agency’s” success rates at appeals to increase in the next quarter. (Paragraph 51)

13. It is difficult to see how the scheme can be applied to all rail and sea passengers by the dates detailed above, given that air passengers are still not yet fully covered. The Committee believes the assumption that the maritime and rail sectors will implement the system in under two years is overly optimistic. On the other hand, it is difficult to see the point of all these systems—and the costs and bureaucracy involved—if they are not comprehensive. The Committee certainly needs clarity both on the policy of the Home Office in this regard and on the practicalities of achieving a clear and comprehensive system, as well as on the performance of the “Agency”. (Paragraph 57)

14. The Committee has been informed that all non-EU aviation will be covered by the e-Borders scheme in time for the 2012 Olympics. The system currently covers 95% of non-EU aviation and the “Agency” hopes that it will cover 100% by April 2012. Given the vast security implications of the Olympics, the Committee will be closely monitoring progress in this area to ensure the “Agency” meets its aims. (Paragraph 58)

15. The “Agency” needs to provide convincing evidence, for its own staff as well as the general public, that the e-Gates system is no less reliable than passport checks carried out by a person. (Paragraph 61)
16. £9 million has been spent on an iris recognition system which has lasted only six years and its sole value appears to have been that it provided data for the e-Gates. This money could have been better spent on border staff—at least 60 immigration officers could have been employed with the money spent on IRIS. The Committee recommends that, in order to avoid another costly investment in equipment which will not last, the “Agency” publish the data it has collected on the e-Gates trials which it is currently running. The Committee would also like the “Agency” to inform the Committee as to what it intends to do with the data collected by the IRIS programme and whether the retinal scans will be destroyed following the mothballing of the scanners at Heathrow and Gatwick. (Paragraph 64)

17. It is unacceptable that the “Agency” refuses to recognise a term which is widely recognised within both Government and Parliament. Bogus colleges are harmful to our society—they destroy trust in our immigration system, they facilitate entry to those who have dishonourable motives and they damage the UK’s reputation for high quality education. The Committee recommends that the UK Border “Agency” make all inspections visits to Tier 4 sponsors unannounced. (Paragraph 70)

18. Extrapolating the figures from August and September 2011, it appears that approximately 700,000 visa applications a year are from people who have applied previously. The Committee recommends that the “Agency” inform us as to whether an applicant could have legitimate reasons for applying for three or more visas and assesses the implications of imposing a limit on the number of times an individual can apply for a visa, within a set period. As the Committee has said previously, the best way of dealing with bogus students, reluctant spouses and sham marriages is to reintroduce face to face interviews with entry clearance officers as a matter of urgency. A major part of our next evidence session will focus on the entry clearance operation. (Paragraph 72)

19. The Committee welcomes the reviews being undertaken by the NAO and central Home Office Finance into the “Agency’s” financial and debt management processes. The Committee expects to receive a copy of both reviews and hope that the changes will be apparent in the annual report and accounts that the “Agency” produces for 2011–12. (Paragraph 75)

20. The Committee welcomes the reduction in the number of letters sent by MPs and peers. The Committee would like to see this reduce further still. The Committee will be conducting a survey to discover how satisfied Members are with the service they are receiving and ask what more can be done to improve it further. The Committee will share the data we gather with the House and the UK Border “Agency”. (Paragraph 78)

21. Once again, the UK Border “Agency” were initially obstructive when asked to provide essential information to us, this is unacceptable. Given the criticisms the Committee has made previously about the “Agency’s” refusal to provide information to this Committee and the undertakings by Mr Whiteman to work with us, it is also highly disappointing. The Committee takes our scrutiny of the UK Border “Agency” very seriously and will not be deterred by the “Agency’s” attempt to circumvent our requests for information. It is in the public interest that this “Agency”, charged with
implementing the Government’s immigration policy, is held to account by Parliament. When Mr Whiteman first appeared before us, he pledged to be transparent and work with us on the basis of trust. We welcome those pledges and look forward to them being fulfilled. (Paragraph 81)
Formal Minutes

Tuesday 27 March 2012

Members present:

Keith Vaz, in the Chair

Nicola Blackwood
James Clappison
Michael Ellis
Lorraine Fullbrook

Alun Michael
Steve McCabe
Mark Reckless
Mr David Winnick

Draft Report (Work of the UK Border Agency (August-December 2011)), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 81 read and agreed to.

Annex agreed to.

Resolved, That the Report be the Twenty-first 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.

Written evidence was ordered to be reported to the House for placing in the Library and Parliamentary Archives.

[Adjourned till Tuesday 17 April at 10.40 a.m.]
Witnesses

Tuesday 20 December 2011

Rob Whiteman, Chief Executive, UK Border Agency

List of printed written evidence

1 UK Border Agency Ev 11; 27; 31
2 Children’s Commissioner for England Ev 30
3 Correspondence from the Chair to UK Border Agency Ev 33
4 Correspondence from the Chair to the UK Statistics Authority Ev 34
5 Correspondence from the UK Statistics Authority to the Chair Ev 35
# 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 2010–12

<table>
<thead>
<tr>
<th>Report</th>
<th>Title</th>
<th>HC</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Report</td>
<td>Immigration Cap</td>
<td>361</td>
</tr>
<tr>
<td>Second Report</td>
<td>Policing: Police and Crime Commissioners</td>
<td>511</td>
</tr>
<tr>
<td>Third Report</td>
<td>Firearms Control</td>
<td>447</td>
</tr>
<tr>
<td>Fourth Report</td>
<td>The work of the UK Border Agency</td>
<td>587</td>
</tr>
<tr>
<td>Fifth Report</td>
<td>Police use of Tasers</td>
<td>646</td>
</tr>
<tr>
<td>Sixth Report</td>
<td>Police Finances</td>
<td>695</td>
</tr>
<tr>
<td>Seventh Report</td>
<td>Student Visas</td>
<td>773</td>
</tr>
<tr>
<td>Eighth Report</td>
<td>Forced marriage</td>
<td>880</td>
</tr>
<tr>
<td>Ninth Report</td>
<td>The work of the UK Border Agency (November 2010-March 2011)</td>
<td>929</td>
</tr>
<tr>
<td>Tenth Report</td>
<td>Implications for the Justice and Home Affairs area of the accession of Turkey to the European Union</td>
<td>789</td>
</tr>
<tr>
<td>Eleventh Report</td>
<td>Student Visas – follow up</td>
<td>1445</td>
</tr>
<tr>
<td>Twelfth Report</td>
<td>Home Office – Work of the Permanent Secretary</td>
<td>928</td>
</tr>
<tr>
<td>Thirteenth Report</td>
<td>Unauthorised tapping into or hacking of mobile communications</td>
<td>907</td>
</tr>
<tr>
<td>Fourteenth Report</td>
<td>New Landscape of Policing</td>
<td>939</td>
</tr>
<tr>
<td>Fifteenth Report</td>
<td>The work of the UK Border Agency (April-July 2011)</td>
<td>1497</td>
</tr>
<tr>
<td>Sixteenth Report</td>
<td>Policing large scale disorder</td>
<td>1456</td>
</tr>
<tr>
<td>Seventeenth Report</td>
<td>UK Border Controls</td>
<td>1647</td>
</tr>
<tr>
<td>Eighteenth Report</td>
<td>Rules governing enforced removals from the UK</td>
<td>563</td>
</tr>
<tr>
<td>Nineteenth Report</td>
<td>Roots of violent radicalisation</td>
<td>1446</td>
</tr>
<tr>
<td>Twentieth Report</td>
<td>Extradition</td>
<td>644</td>
</tr>
</tbody>
</table>
Oral evidence

Taken before the Home Affairs Committee
on Tuesday 20 December 2011

Members present:

Keith Vaz (Chair)

Nicola Blackwood
Mr James Clappison
Michael Ellis
Dr Julian Huppert

Steve McCabe
Alun Michael
Mark Reckless
Mr David Winnick

Examination of Witness

Witness: Rob Whiteman, Chief Executive, UK Border Agency.

Q1 Chair: Mr Whiteman, good morning. I apologise for keeping you waiting. We are on the last day of the session and have selected three different topics so you will excuse the Committee switching gear to think about the UKBA, something that I think you do every moment of every day. How are you finding the job?

Rob Whiteman: I am thoroughly enjoying it, thank you, Chairman. I have had a lively first three months but am thoroughly enjoying it and looking forward now to the challenges of the future and improving the agency.

Q2 Chair: Indeed. Leaving the Brodie Clark issue aside, because this is our normal way of looking at the work of the UKBA, as you know, the Committee decided about a year ago that we would send a series of questions to the head of the UKBA, then take evidence and produce a report. It is our ambition, if things work out, that by the time this Parliament ends, instead of doing it three times a year we should be able to do it once a year. The Home Secretary is very keen, since your appointment, to have someone who is going to turn this agency around. I do not want you to talk about personalities at this moment of every day. How are you finding the job?

Rob Whiteman: Yes. The cause of concern is creating a compliance culture. The UKBA is a curate’s egg: it is good in parts. I come across people of enormous talent and commitment who are very dedicated to the duties that they are carrying out. On the other hand, the organisation has poor morale in places, and there is a detachment between senior management and front-line staff.

The two big cultural challenges for the next year or so are creating a compliance culture whereby we know that we have proper assurance systems to ensure that the systems, the rules, the procedures and the practices that we put in place are being followed. I am doing two things in that regard, which I will mention before I cover the second issue. First, we are creating a new strategy and intelligence directorate, where we will take the intelligence flows and the way that rules should operate from different parts of the agency and put that into a corporate role, to then work with each of the directors on the assurance that we want from their area.

Secondly, we are creating a new enforcement and criminality directorate, which will deal with the professional standards that we adhere to when we are visiting premises, and when we are dealing with the public and carrying out law enforcement duties. They are two important changes, which I think will yield good results in terms of better compliance and assurance. Over the years, we will have all seen cases where things have not happened in accordance with the procedures that we think should happen, and I want to put that to an end.

The second issue is the detachment between senior management and staff. Morale is low, and I have really to make sure that senior managers have the competence and the capability not only to be good in terms of management functions such as budgeting and performance management but to be much more closely aligned with staff. We are doing a lot of work, Chairman, such as carrying out a regional tour and taking senior managers with me, holding large staff meetings—I did a meeting in Sheffield last week for 800 staff—revamping our suggestions schemes and getting staff involved in quality circles. I hope work on those two big cultural issues of compliance and morale will see the agency become a much more dynamic organisation over the next couple of years.

Q3 Chair: Excellent. May I thank you for the clarity of your response to my letter to you? Predecessors of yours have tended to refer the Committee to websites and have not given us facts and figures. This is precisely the format we would like. It would have been nice if it could have been on time, but we are grateful for the format and the speed with which you dealt with these issues. I will now turn to some specific points before we look at the operation of the UKBA. I mentioned the Brodie Clark case. Is it correct that Graeme Kyle and Carole Upshall have now been cleared of any misconduct and have been reinstated?

Rob Whiteman: Yes.
Q4 Chair: Who cleared them?
Rob Whiteman: You will remember that David Wood, who is one of our directors, carried out a management investigation under our disciplinary procedures to see if they had a case to answer. The result of his investigation was a report to me saying that they did not have a case to answer. They were cleared of any charges and, therefore, we have brought them both back to work.

Q5 Chair: So David Wood’s report does not include an examination of the conduct of Brodie Clark—that is John Vine’s report?
Rob Whiteman: John Vine’s is an independent inquiry into the circumstances in which checks were being carried out and the interchange of information between Brodie and the organisation. These were two different reports. These were the specific management reports, one on Graeme Kyle and one on Carole Upshall, both of whom have been returned to work.

Chair: Mr Reckless has a question on this point.

Q6 Mark Reckless: Mr Clark provided us with a memo in which, after John Vine’s visit to Heathrow, he followed up and passed on the concerns expressed about the number of times checks had been lifted. Was that memo acted on? If not, why has Mr Kyle been cleared?
Rob Whiteman: Remembering that this was a management investigation, and therefore I had a duty to my employee that this was investigated under the disciplinary procedures, the outcome of the investigation was that Mr Kyle had not deliberately been part of suspending checks against ministerial authority, and that those issues rested with Mr Clark.

Mr Kyle was involved in the operations, but as you will remember, Mr Reckless, we discussed last time that the specific issue was that things happened expressly against Ministers’ instruction. In the opinion of the investigating officer, Dave Wood, both Carole Upshall and Graeme Kyle were acting within what they believed to be agreed operational frameworks.

Q7 Chair: Thank you. Let us move on to a number of other quick points. Jonathan Sedgwick talked to us a week ago about the Lille loophole, the ability to obtain a ticket in Brussels and travel all the way to London without having your documents looked at. Did that memo acted on? If not, why has Mr Kyle been cleared?
Rob Whiteman: Remembering that this was a management investigation, and therefore I had a duty to my employee that this was investigated under the disciplinary procedures, the outcome of the investigation was that Mr Kyle had not deliberately been part of suspending checks against ministerial authority, and that those issues rested with Mr Clark. Mr Kyle was involved in the operations, but as you will remember, Mr Reckless, we discussed last time that the specific issue was that things happened expressly against Ministers’ instruction. In the opinion of the investigating officer, Dave Wood, both Carole Upshall and Graeme Kyle were acting within what they believed to be agreed operational frameworks.

Q8 Chair: So is that still the case? Can you still get a ticket in Brussels and end up in London?
Rob Whiteman: The issue, Chairman, is that we want people to get off the train at Lille if they have only bought a ticket to go to Lille. You will know that we carry out checks at both St Pancras and Lille. Indeed, last year, at both stations, we found about 300 people who we removed from the train.

Q9 Chair: But how can we get them off the train in Lille without the co-operation of the French?
Rob Whiteman: That is what we are discussing at the moment with Eurostar and our Belgian and French counterparts. It will be a mixture of several issues. If you don’t mind, Chairman—obviously, it is up to you—I would rather not go into the detail of the negotiations that are taking place with Eurostar.

Q10 Chair: We don’t want the detail. We just want to know—
Rob Whiteman: I am happy to confirm that we are looking at the operations that take place at the station, what happens on the train itself, what happens during the rest of the operation of the journey to the UK and what we do at St Pancras. We are looking at operational fixes for all those areas. The strategic issue, of course, is that while that loophole is a concern, we must look at this within the framework of a negotiated treaty. Juxtaposed controls have been an enormous—

Q11 Chair: Which treaty are you talking about?
Rob Whiteman: These are the treaties that set up juxtaposed controls: the treaty of Dover, I think.
Chair: Mr Clappison has come hotfoot from the European Scrutiny Committee, so he knows all about these treaties.

Q12 Mr Clappison: We were told last week by your colleague that on a proportion of the trains coming from Brussels and stopping at Lille, tickets are checked at St Pancras. Have you picked up people in the course of those ticket checks who had overstayed and who should have got off at Lille?
Rob Whiteman: Yes. I don’t know if you heard me, Mr Clappison, but I was saying that checks that we have carried out at St Pancras have resulted in 160 people over the last year being stopped at St Pancras because of the Lille issue.

Q13 Mr Clappison: But as we heard last week, not every train’s passengers are checked at St Pancras in that way. Therefore, we can assume that that was a proportion of people who are getting through.
Rob Whiteman: We think that the checks that have been carried out, and the fact that we have been stopping people at both Lille and St Pancras, act as a deterrent, so people can see that we are taking action. I absolutely accept that we want to do more, and as I was saying to the Committee, Mr Clappison, we are in detailed negotiations with Eurostar and with the Belgian and French authorities.

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1 The witnesses later clarified that, the Treaty which established the principle of Juxtaposed controls was the Treaty of Canterbury (Article 4) in 1986. Since then there have been numerous further agreements and protocols to establish juxtaposed controls for various cross Channel routes including Eurostar.
Q14 Mr Clappison: Two questions arise from that: are the people who you pick up then returned to Belgium or France?
Rob Whiteman: Yes.

Q15 Mr Clappison: What is to prevent them from trying to do it again?
Rob Whiteman: Hopefully, the fact that they have been stopped creates the message that we are policing and making checks. We are in detailed discussions now with Eurostar, and I hope that next time I appear before the Committee, we will have been able to put extra operational things in place. I know that it is frustrating that this loophole has been around for a number of—

Q16 Chair: Do you accept that it is a loophole? We had to drag the word “loophole” out of Mr Sedgwick.
Rob Whiteman: You have not dragged it out of me. Juxtaposed controls have been of enormous benefit to the UK. You will remember that asylum numbers are the lowest since 1989. We have to negotiate these fixes with Eurostar and with the Belgian and French authorities, but we are trying to do that very urgently.

Q17 Mr Clappison: I appreciate that you are doing your best on this; I completely appreciate that, but we have to investigate how serious the potential breach could be. The advantage of juxtaposed controls is that they stop people before they get to this country and, as I think you implied, are able to claim asylum. Even those who have overstayed from Lille who are stopped at St Pancras, would be in a position to claim asylum. Have any of those 120 in fact done so?
Rob Whiteman: Not to my knowledge, Mr Clappison, but I will gladly check on that when I am back in the office and I will update you in my next report.

Q18 Mark Reckless: On Mr Clappison’s point, this is a key issue, because as he said, once they get to St Pancras, they can claim asylum and even when they are apprehended, they do not necessarily go back. You said earlier though that they are returned to France or Belgium.
Rob Whiteman: We do make returns, and all our efforts through the negotiation are about what extra provisions we now put in place in Brussels and Lille and on the train to avoid the problem that Mr Clappison raised. We have the fallback of making checks at St Pancras, but, of course, we want to operate our border in Belgium and France, and they are the negotiations taking place at the moment to try to strengthen our arrangements.

Q19 Mark Reckless: It would be very helpful if you could give us a breakdown of what happens to those apprehended at St Pancras. On the Lille loophole, it has been reported as an issue with Brussels trains. What happens with checking that people on Paris trains who are meant to be getting off in Lille do so? Is it the same issue as Brussels or is there something better that we can learn from?
Rob Whiteman: For the Paris trains, people have been through our controls. The issue here is that under Schengen, people are not checked between Belgium and France, or that they stay on the train, even though they have a ticket for Lille. It is an issue of going over the Belgian-French border, because they are both Schengen countries.

Q20 Mark Reckless: But the French are happy for Paris-to-Lille people to go through our checks?
Rob Whiteman: Yes.
Chair: To summarise Lille, the Committee remains very unhappy about the situation. We are glad that the negotiations are taking place. We look forward to hearing in your next report that there has been a real tightening up, because we are very concerned about these people coming in through this loophole. We thank you for your clarity on that.

Before I turn to the controlled archive, may I ask about Eamus Cork Solutions, the new body that is taking over our borders? It is a £7.1 million deal to replace UKBA staff who search for illegal immigrants, smugglers and terror suspects at two checkpoints in Dunkirk. There are newspaper reports that those guards have been found sleeping on duty and allowing immigrants to escape detention centres.

Are you aware of that, and if so, is something being done, not just to wake up the guards, but to tell the company that it simply cannot take £7.1 million of public money and not do its job?
Rob Whiteman: I am aware of the allegation and we are investigating it. In the first instance, people go through the UKBA checks and our staff have the opportunity to check vehicles. The vehicles that our own staff—UKBA—determine not to check, we can then pass on to ECS to carry out other technical checks in order to look for clandestines. I am aware of the allegations and we will investigate them in full.

Q21 Chair: But do you know of any other country that allows a private, overseas company to look after its borders in this way?
Rob Whiteman: The decisions about the border, in the first instance—

Q22 Chair: This may have happened before you arrived, so I am not holding you responsible. It seems rather odd.
Rob Whiteman: People are going through the UKBA checks and our staff are checking the vehicles in the first instance. They then go through ECS checks, which we consider to be a value for money way of operating those checks.2 However, Chairman, I will gladly look, and am looking, at the allegations that have been made, and will update the Committee in the future.

Q23 Chair: Excellent, and you can give us an assurance that the contract for Calais will not be

2 The witness later clarified that, under the ECS (Eamus Cork Solutions) contract ECS provide both freight searching and detention & escorting services at Dunkirk and Calais in the British control zones. UKBA undertake a primary check where we have the opportunity to check vehicles. Following this there is a secondary line where further searches can be undertaken by UKBA, ECS and Wagtail (the dog searching contractor) to further search for those attempting to enter the UK illegally.
issued to ECS until you are satisfied they are doing a proper job.

**Rob Whiteman:** I am not sure when the contract was let, Chair, but I will look at those issues.

**Q24 Chair:** Thank you. Let us turn to the controlled archive. The Committee was very concerned, and has been for a number of years, about the number of cases in the controlled archive. We were given the figure of 124,000 people—about the size of Cambridge—the last time your predecessor was here. Is it going up or down?

**Rob Whiteman:** It is going down. As at the moment, the controlled archive stands at 93,000 cases. My view on this is that there are three elements to it. What we want to do is put in extra checks and effort and capability. Going into next year, going into 12/13, I want that to be the last year that we start the year with the archive in place. I would like to close it by March 2013.

**Q25 Chair:** So what has happened to the 31,000 people? We were told 124,000. 93,000 are currently in there. What has become of the 31,000?

**Rob Whiteman:** The 124,000 is two figures put together, aren’t they Chair?

**Chair:** Yes, they are.

**Rob Whiteman:** It is the 98,000 asylum cases, with the 26,000 other immigration cases. If I can put the 26,000 other immigration cases to one side for a second—

**Q26 Chair:** Okay, so of the 98,000, let’s be specific.

**Rob Whiteman:** Of the 98,000, that now stands at 93,000.

**Q27 Chair:** What has happened to the 5,000 people?

**Rob Whiteman:** There is a mixture of two things there. Data matching has taken place, because, remember, these are cases, not people. In working through the archive, one finds that there are matches to other cases which have been included.

**Q28 Chair:** I accept that. Can you give us specific figures? Of the 5,000, what percentage have been granted the right to stay, what percentage have been described as data cleansing, and what percentage have been sent out of the country? We must know, after the 5,000.

**Rob Whiteman:** The majority of those cases, Chair, have been through data-checking matches.

**Chair:** Of the 5,000.

**Rob Whiteman:** The figures are—sorry, I am just looking here.

**Q29 Chair:** Is this your question 1? 7,700 cases have been concluded. Of these, 4,500 have been granted, 700 have been removed and 2,500 have been data cleansed, whatever that means.

**Rob Whiteman:** Sorry, Chairman, I think that refers to the live archive. No, I am very sorry, you are right.3

**Q30 Chair:** This is the answer to question 1?

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3 The witness later clarified that, 7,700 cases which have been concluded refer to the live archive.

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**Rob Whiteman:** Yes.

**Q31 Chair:** So, it is actually not 5,000; it is 7,700 cases. Of those 7,700 cases, more than half have been granted the right to stay, and only 700 out of 7,700 have been removed. Is that right?

**Rob Whiteman:** No, the 7,000 we are referring to is the live archive going from 23,000 to 17,000, and of those cases, you then have the figures on 4,500 grants and 700 removal.

**Q32 Chair:** So people can follow what we are saying, and so we don’t sound as if we are on “Countdown”, the Cambridge figure, as we can call it, the 124,000, consists of 98,000. We cannot find these people—

**Rob Whiteman:** That figure is going down because of 5,100 that are the result of data cleansing, and 900 conclusions where, through checking those cases, we have been able to conclude them.

**Q33 Chair:** So the 98,000 has gone down to 93,000.

**Rob Whiteman:** Yes.

**Q34 Chair:** And of those 5,000, 4,100 of them were actually data cleansed. What exactly does data cleansed mean, just so we are clear?

**Michael Ellis:** It sounds horrible.

**Chair:** Mr Ellis is getting worried.

**Rob Whiteman:** It is 5,100 that were data cleansed, because the figure goes down to 92,000.

**Q35 Chair:** It’s 92,000 now?

**Rob Whiteman:** And then another 1,000 cases—work in progress—have been added to it. So it is: 98,000 to 92,000 to 93,000.

**Q36 Chair:** Right.

**Rob Whiteman:** Of the cases that were concluded, 900 are concluded and 5,100 are data cleansing—that essentially, Chairman, is where we have found that the cases matched with other cases which have been concluded.

**Q37 Chair:** So double counting?

**Rob Whiteman:** Yes.

**Q38 Chair:** Okay. So 5,100 were there in error, basically, because they had been double-counted, but 900 have been concluded?

**Rob Whiteman:** Yes.

**Q39 Chair:** Of part B—maybe we can call it north Cambridge?—the 26,000 cases, what is that now? The live archive?

**Rob Whiteman:** The live archive remains at 26,000.

**Q40 Chair:** So it has not changed?

**Rob Whiteman:** There are two things that I would like to brief the Committee on. First, the 93,000—

**Q41 Chair:** Tell us about the 26,000. Why has that not changed in three months?

**Rob Whiteman:** The 26,000 are relatively old cases. They have a long profile, and it has not moved at the
moment. Therefore, we are looking at the arrangements for the team covering that, and we will set targets in order to bring it down.

Q42 Chair: So it is not a live archive; it is a dead archive, because it does not move?
Rob Whiteman: I hope I can demonstrate today that it is the live archive—

Q43 Chair: The 98,000?
Rob Whiteman: The 98,000. In my three months here, I think we have made real progress in understanding that archive. I think that we will now make real progress up over the next year and a bit to bring it—

Q44 Chair: On the north Cambridge?
Rob Whiteman: No, this is south Cambridge. I think I would like to close the larger archive by the end of the next financial year. There are three types of case in there. There are cases where people are no longer in the country. In the future, we will carry out embarkation checks and know that.

In the absence of embarkation checks in the period when these cases happened, how do we prove that they are no longer here? There are cases where we will make a trace, and there are cases where we will make a data match. From the thorough investigations that I have had on these issues, I think that we will bring down the archive by at least 30,000 to 40,000 cases.

Q45 Chair: In 12 months?
Rob Whiteman: Up to the end of the next financial year. At that stage, when it is below 50,000, we should have set, during the year—I will gladly discuss this with the Committee—the criteria by which we can be certain that those people have left the country, because we will have seen how many times we carried out the checks and how long it is since we have had—

Q46 Chair: I understand.
Rob Whiteman: And then close the archive at the end of next year.

Q47 Chair: So within 12 months of today’s date, by next Christmas, you will have closed the larger part of the archive—part one, the 98,000? And you are confident that you can do this, because you have found that the vast majority of the cases you have cleared in the past few months, since you have been there, actually do not exist—they are double-counted?
Rob Whiteman: We have found data matching issues. We have also found some cases where we have then made a trace. You have been briefed in the past, Chairman, that at the time the legacy was concluded and these cases were put into the archive, there was no contact. Of course, every review period, we go and check the databases again and find that, in that period, a trace has been made. It will be a mixture of data matching and finding traces. Then the live cohort will get bigger, because they will become live cases again, but I believe that we will bring the archive down to below 50,000.

Q48 Chair: But of your live archive of 26,000, your final figure today is what? What is it now, because I think people are confused? Of the second part, the smaller part—the live archive of 26,000—what is that figure today?
Rob Whiteman: There are three things that we are talking about. There is the 93,000. I believe we will get that down to—

Q49 Chair: Zero.
Rob Whiteman: We will get it to below 50,000—

Q50 Chair: And by the end of this financial year?
Rob Whiteman: In order to be certain that they have left the country. There is then the figure of 26,000, which are older immigration cases.

Q51 Chair: Yes. As of today, what is that figure?
Rob Whiteman: That is 26,000.

Q52 Chair: It remains the same?
Rob Whiteman: And that is older immigration cases.

Q53 Chair: So what do the three things add up to: 93,000, 26,000 and what? [Interrupted.] Dr Huppert will do this; he is a mathematician—136,000. So at the end of the day, it is actually bigger than it was three months ago?
Rob Whiteman: I think I have confused you, Chairman. I am sorry.

Q54 Chair: Yes, you certainly have—and I don’t think it is just me, Mr Whiteman.
Rob Whiteman: Okay, I’ll try again. The 93,000 plus 26,000 is the relevant figure for how you got to 124,000, so that figure is now 119,000.

Q55 Chair: So it has gone down.
Rob Whiteman: It has gone down. The other figure is not the archive—these are old asylum and old immigration cases. Then there is the live archive, which was 23,000 cases. These are cases where we still had checks on people, and that is now down to 17,000, as of today. So there are three things that you have looked at in the past.

Q56 Chair: This is the case assurance and audit unit. Rob Whiteman: That’s right. Those live cases that were 23,000 now stand at 17,000.
Chair: Excellent. That is very clear. We will move on swiftly to Dr Huppert, with apologies to Cambridge—we won’t use that name any more.

Q57 Dr Huppert: We could use sections of Leicester if you prefer, Chair. I am still somewhat concerned about this. Your substantive predecessor promised us repeatedly that the whole backlog would be resolved by the summer of 2011. Mr Sedgwick, who was acting in the role before that, told us that the cases were all concluded. I have to say that that doesn’t fit with my experience;
I still have people coming who are still waiting to hear back.
We have been through the figures and, rather than question you about them further, I will just say that I am still very sceptical that this number will come down. Particularly, I realise that UKBA has now got rid of the target of six months to conclude cases, but do you accept that fewer than two thirds of new cases are being concluded within six months, and hence there are 1,400 cases that have taken more than six months to do, which will just continue to build up the backlog? Rob Whiteman: I will take the issues in turn. I think that we will bring down the controlled archive in the way I have said. That won’t happen by the summer of 2011. I think that the work involved is clearly more than was estimated at the time. When the legacy was concluded, the cases were put into the archive. Now that they are being worked through in a systematic way against a number of databases, the amount of work involved means, I think, that it will take until the end of 2012—13—in other words March 2013—before we can be certain that the cases that remain in it have left the country. In terms of new asylum claims, there is some good news on asylum in that we are actioning a large proportion of cases—at the moment 56% of cases in the last quarter—within 12 months. We are getting faster at concluding them, and so a bigger number will be concluded within 12 months this year than the previous year.

Q58 Dr Huppert: So just over half are concluded within 12 months, which strikes me as quite a slow pace. But can I ask about people who are returned? You are presumably aware of the “Unsafe Return” report about Congolese returnees and the “Out of the Silence” report on Sri Lankan returnees. Are you aware of those reports? Rob Whiteman: Yes.

Q59 Dr Huppert: They describe some fairly horrific torture cases of people who have been returned. How do the Government try to confirm that returnees arrive safely, and what kind of proactive monitoring is there to try to avoid our sending people back straight into torture? Rob Whiteman: In terms of the figures, just to be clear, there are of course two things we look at: the time to take the decision and the time to conclude the case. At the moment we are making 59% of decisions within 30 days, but in terms of concluding the case, that is that the removal or the grant has taken place, at the present quarter we are operating on 56% of those happening within 12 months. Both of those are progress in terms of decisions and conclusions happening more quickly.
In terms of returns, we monitor very closely the conditions in the countries that we will return to. Of course, before people are returned, as well as our own work with the people we wish to remove, they are very often the subject of significant legal challenge and appeals. But we make every effort to ensure that our returns happen humanely and properly.

Q60 Dr Huppert: You wrote to Freedom from Torture saying that all returnees are given the telephone number of the British high commission in Colombo and that it would be inappropriate to monitor individual cases. Is that right or do you think we have some duty to try to prevent these people who we send back from being tortured? Rob Whiteman: The whole casework is making an assessment on whether article 3 is being met in terms of people’s right not to be tortured. I would argue that the whole casework is doing that. When we make a decision to return it is because in our judgment and, in most cases, through the appeals process, we have come to the view that article 3 is not being breached by the return taking place.

Q61 Dr Huppert: But given that it is evidenced that a number of people have gone back to Sri Lanka and have been tortured within a month of their return, are you arguing that your case management is not working because, clearly, if people are being tortured when they get back, you are failing to take that into account properly? Rob Whiteman: It is an area where, because of the concerns that have been raised, we clearly do need to look at the conditions of what happens when we make returns. We think that the returns are happening in a proper and humane way. We will, of course, review that in the light of new information. Chair: Let us move on to foreign national prisoners. James Clappison.

Q62 Mr Clappison: The vexed subject of foreign national prisoners. Can I ask you about what has been happening to foreign prisoners who have finished serving their sentences and who have then been subject to the provisions of the UK Borders Act 2007 and automatic deportation? The latest figures as of this month show that of the 5,012 foreign national prisoners who finished serving their sentences in the financial year 2010–11, 110 did not meet the deportation criteria. Do I take it from that that they are people who had been serving sentences of less than 12 months or did not otherwise meet the criteria? Rob Whiteman: I am sorry, Mr Clappison; I will just refer to my letter. I am sorry. Could you—

Q63 Mr Clappison: It is dealing with the foreign prisoners who were released in the financial year 2010–11 and what actually happened to them, which is the subject of some interest. There were just over 5,000 such prisoners. According to the latest figures, 3,320 have been removed. Of those who have not been removed, it said that 110 did not meet the deportation criteria. I am asking you whether it is the case—you tell me if I am wrong about this as I am surmising—that they did not meet the criteria under the UK Borders Act 2007, which requires the deportation of any prisoner who had received a sentence of 12 months or more. Had these 110 prisoners received sentences of less than 12 months or not? Rob Whiteman: It does not say so in the letter. I believe that that is the case, yes, but I do not have that information to hand. I am sorry.
Q64 Chair: Will you write to us with that information?
Rob Whiteman: Yes, gladly.

Q65 Mr Clappison: I am more concerned about the significant number—520—who had served their sentences, been considered for deportation but had been allowed to remain in the country. Can I take it that those are prisoners who had a sentence of 12 months or more and who had otherwise met the deportation criteria?
Rob Whiteman: They have met the deportation criteria, Mr Clappison. UKBA's position is that we believe people should remain in detention until the removal takes place. As the Minister made clear yesterday in an urgent question, in 90% of cases where people are not detained pending removal, it is because of the decision of the courts. Our position remains that we think people should remain in detention until the removal takes place.4

Q66 Mr Clappison: The question itself that the Minister received yesterday was rather a confused one, which came out during the course of the exchanges. It was a very confused and ill-thought-out question. But, putting that to one side, the question that I am asking you is about those 5,000 prisoners who had finished serving their sentences and who had not been deported. Can we take it that a decision has been made in those 520 cases to allow them to stay in the country? Would that be a decision taken by the courts?
Rob Whiteman: It would be, yes. In just 10% of cases, we will accept that the person can be in the community pending deportation if it is not immediate. These will be low-risk cases. In 90% of cases—and, by the time you get to more serious cases, in 100% of cases—it is a decision of the court.

Q67 Mr Clappison: I am not asking you what happens to them while they are waiting for a decision—for example, whether they are allowed to stay in the community or are subject to immigration rules.
We are told that these are people who have been allowed to stay in the country. They have been given the right to stay in the country; it is not just that they are waiting and that there is a positive decision that they can stay. They have met the deportation criteria because of a decision of the courts.6

Rob Whiteman: Yes. They are not being given leave to remain at the moment, but we are not able to remove them.5

Q68 Mr Clappison: You are not able to remove them. I am surmising that that is something that might come about later on. If they are not removed and are allowed to remain, they start clocking up the time that is required to apply for citizenship.
Rob Whiteman: Our inability to remove them will be because of a decision of the courts.6

Q69 Mr Clappison: That is exactly what I want to find out.
Rob Whiteman: UKBA policy is that we believe that people should be detained until the removal can take place.

Q70 Mr Clappison: Have you any breakdown of the reasons that resulted in their being allowed to remain in the country—the reasons behind the judicial decisions?
Rob Whiteman: The decisions are on two counts. One is the time that it will take to remove, allowing for the appeals process. People can go through appeals processes that can take some time, and therefore the courts decide to bail them because they think it would be unreasonable to hold people in detention for that length of time. The other comes around article 8 and human rights issues, where people would argue in court that they have a right to family life and judges agree with them. UKBA's position, as I said before, is that people should be held in detention until removal. However, those we refer to as the non-detained stock are decisions of the court, not us.

Q71 Mr Clappison: You have also given us a figure of 1,060 that you say are still outstanding, with deportation being pursued. I take it that the people you referred to in the first category actually fall within that. We have been told that there are 520 who have been allowed to remain in the country. I take it from that that there is a positive decision that they can stay in the country; it is not just that they are waiting and have been allowed to stay here while their appeal is being heard.
Rob Whiteman: No. We are not making a decision that those 520 can remain in the country at this stage.7

Q72 Mr Clappison: How many of those are article 8 cases?
Rob Whiteman: Article 8 in general for our appeals is about 60%, but I don’t have a figure for this particular cohort.

Chair: Thank you. I say to colleagues that the Minister for Policing and Criminal Justice is outside the door. We need to put brief questions to Mr Whiteman, and I am sure he will respond with brief answers.

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4 The witnesses later clarified that, the 520 are cases where deportation action has not been taken and the case is closed. This could be because the person is British, or otherwise exempt from deportation; or because the deportation criteria has not been met; or because the courts or UK Border Agency have decided that deportation would be a breach of the UK's international obligations under the European Convention of Human Rights or the Refugee Convention.

5 The witness later clarified that, the 520 are concluded cases. They are either already entitled to remain in the UK or have been granted some form of leave.

6 The witness later clarified that, some cases will be British citizens already. Applications for citizenship from those granted leave to remain will normally be refused if the applicant has been convicted of a criminal offence and the conviction has not yet become 'spent' in accordance with the provisions of the Rehabilitation of Offenders Act 1974.

7 The witness later clarified that, offered the following post scriptum: 520 are concluded cases. They are either already entitled to remain in the UK or have been granted some form of leave.
Rob Whiteman: I am sorry.
Chair: No. It is not your fault. We are tempting you. It is always fascinating to have you here. Michael Ellis.

Q73 Michael Ellis: Mr Whiteman, you have responded about the courts being responsible for the decisions as far as release is concerned. One area where I presume the courts will not have had an impact is that there are apparently more than 2,500 foreign national prisoners who are living in the community now, who were released during the period of the previous Government more than two years ago. What can UKBA do, and what is it doing, about deporting them?
Rob Whiteman: First, it will be due to decisions of the court that they are in the community, albeit for more than two years. As I said earlier, UKBA policy is that we believe people should be held in detention pending removal.

Q74 Michael Ellis: Can I just clarify? The UKBA policy is that they be held in detention. Does that mean that on every occasion the UKBA applies to the courts for the individual to be detained, and the courts then find against the UKBA?
Rob Whiteman: In 90% of cases where people are non-detained it is a decision of the court.

Q75 Michael Ellis: That does not quite answer my question about whether the UKBA applies to the court for them to be detained on every occasion.
Rob Whiteman: We apply for detention in the vast majority of cases. There is a small number—10% in terms of the outcome—where we do not apply.8

Q76 Michael Ellis: So the courts are responsible for them being in the community at the moment, as opposed to in detention. Nevertheless, what is the UKBA able to do about deporting them as they have now been released more than two years ago?
Rob Whiteman: The job here, which is one of our challenges, is that while we are getting quicker at deporting foreign national prisoners being deported—people going through the early release scheme is now 43% of people who are removed quickly—we have this cohort of people where decisions of the court are ongoing and/or we are not able to deport them. The strategy here is to create a pipeline in order for the removal to take place. You will have been briefed in the past that there are countries where it is more difficult to return to than others, such as Somalia etc. What we are doing is to work very hard on establishing that we can make returns to those countries—charter flight returns—in order to create a pipeline for those returns to happen.

Those older cases of two years we want to see come down, and we want to see removals taking place—

Q77 Michael Ellis: Is it your contention that most of the delay is therefore due to the originating country and the problems in securing authority to send the individual back?
Rob Whiteman: Primarily, there are two challenges. The first issue is that the person gives a false identity. We have cases in which people will claim to be of a particular nationality but have no documentation, and we have to carry out extensive investigative work in order to establish identity. A recent removal to Jamaica involved going over and questioning family, looking for aliases and finding false names, in order to establish who the person was. People very often give false identities. The second issue is then getting documentation from the country in order to make the return. On both those fronts, we need to improve our investigative capability. You know that we have the RALON network—

Q78 Chair: Perhaps you could write to us with all the things that you are doing.
Rob Whiteman: We need to improve our ability to work with those countries, both to investigate identity and then to get documents to return the person.
Chair: Thank you. If you could write to us with a note, that would be very helpful. David Winnick on immigration appeals.
Mr Winnick: I came in rather late in the day, so—

Q79 Chair: While you are gathering your thoughts, Mr Winnick, on the 18-month position that Minister Damian Green gave to the House yesterday, he said that the authorities would start considering removal 18 months into a sentence. My suggestion to him in the House yesterday was, why not start from the time custodial sentence begins—start earlier? Can you look at that?
Rob Whiteman: We will look at that, Chair. We are discussing with NOMS how we can work with both the police and NOMS to identify people as early as possible.
Chair: Thank you. Julian Huppert on e-gates.

Q80 Dr Huppert: There have been some reports that the UKBA staff are actively discouraging people from using e-gates at ports. Is that right?
Rob Whiteman: I am sorry, could you repeat the question?

Q81 Dr Huppert: It has been alleged in the House that the UKBA staff have been actively discouraging people from using e-gates at ports. Is that right?
Rob Whiteman: It is something that I have heard a lot and I think that it must be true in places. I visit a lot of ports with e-gates and I check that the arrangements are in place with the airport authorities and with our own staff. I think that there must be some truth to it because one hears it said so often and, indeed, when we carry out mystery shopping or read customer complaints. So it is an area that we are looking at.
Staff should not feel threatened by e-gates. E-gates and automation will allow us to carry out a more efficient border check in order that our staff can focus on the higher risk cases in which we want secondary checks to take place. If e-gates are seen as a threat, then it probably touches on the issue that we spoke about earlier, the culture and the gap between management and front-line staff.

We need to explain to staff the reasons why we think automation is a good idea, and win them over, to help people feel that it is part of making the agency more efficient. At the moment, I think there must be areas, Dr Huppert, where people think that automation will lead to further job loss. We need to allay those fears. Automation will play a part in helping us make our efficiency savings, but we also think that it should help staff in their work, and we have to win that argument with them.

Q82 Chair: Mr Whiteman, it is also said that your iris scanners do not seem to work at airports. I have returned on a number of occasions and found that people are being directed away from iris scanners. Is it your policy that these should be replaced, since they seem to be breaking down so often?

Rob Whiteman: The iris scanners are fairly old. My understanding is that we have decided to keep them on until the Olympics because we have people signed up through trusted travel schemes to use them. But we are now looking at how they should be replaced.

Q83 Chair: So it is your intention to replace the iris scanners?

Rob Whiteman: Yes, either with like-for-like kit or with something else.

Q84 Chair: Sorry, what does “like-for-like kit” mean?

Rob Whiteman: What I mean is, “Do we replace them with iris scanners, or do we have another means by which trusted travellers can get through quickly?”

Q85 Chair: And that debate is ongoing?

Rob Whiteman: Yes.

Q86 Mark Reckless: Mr Whiteman, the Committee has previously raised concerns about the relatively poor performance of the Home Office at immigration appeals. We are pleased to see that the proportion of cases where there is Home Office representation has increased, but we have previously been assured that the appeal record was going to improve because there were restrictions on bringing new evidence at appeal and various procedural changes had been made, which should assist the Home Office relative to the defence. We were disappointed to see that in Q1—or the first quarter—for 2011–12 there has not been any improvement and we are still seeing only a 44% dismissal rate. Could you give us any update on your expectations for progress there?

Rob Whiteman: We are committed to providing high-quality representation as far as possible. As you say, Mr Reckless, the representation rate is now much higher and we think that that will improve our quality. We have also implemented several new measures to enhance the quality of what we are doing; for example, the way that casework is presented to a court and the way that the bundles are made ready, in order that judges can have more confidence in what we are doing.

However, although we are seeing the representation rate increase, we are not seeing that leading to a higher rate of wins at the moment. That is why we think that it is not only a matter of hitting the representation rate but about the quality of what we do, so we are looking at how effective we are qualitatively, and where we are losing cases we are asking what the reasons are. Is it that we do not have evidence that we need? Is it about the way that evidence is bundled? Is it about the quality of the representation?

Q87 Mark Reckless: Previously, procedural issues were cited, in particular the ability of the defence just to come in with new evidence at the appeal stage. We were assured that, because that would now be restricted or in almost all cases—certainly in the vast majority of cases—stopped, that would assist the UKBA and the Home Office to win more of the cases. Why has that not happened so far?

Rob Whiteman: Stopping the defence from bringing in new evidence at appeal requires us to work with the judiciary, in order that higher standards are set. It may need some regulation change as well, in the way that the appeals process works. At the moment, we are not seeing that come through and it is an area of priority that I recognise we need to look at.

Q88 Mark Reckless: From your perspective, if the representative bodies of the immigration judges were amenable, would you like to work more closely with the judges and their bodies to understand these issues, and to seek to improve the quality of the representation that you provide?

Rob Whiteman: Yes. Obviously, we will look to improve the rules and the procedures, and so on, but essentially we also have to work with the judiciary and find out what their complaints are.

Chair: I am sorry, but we need to make enormous progress. You have a question on staff morale, Mr Reckless?

Q89 Mark Reckless: Yes. On that issue, there has previously been a relatively open flow of information between, say, dissatisfied junior front-line people at the UKBA and MPs and the press, when people have been dissatisfied at the UKBA or when they have felt that things have not been applied as they should have been. What steps have you been taking to try to encourage those dissatisfied junior members of staff to come to you with those issues rather than to go to MPs and the press?

Rob Whiteman: It is a really important area. Of course, people have the right to go to MPs, and so on, and I do not want to stop people exercising any other rights, but it is absolutely essential that we bridge this gap between front-line staff and senior managers. What I find is that people are really proud of their own job, of the work that they do and of the need for the role that they carry out, but there is a huge degree
of detachment, in terms of where the organisation is going and confidence in management. And yet I actually see quite a good few senior managers and I think that there is a lot of ability, so we are doing a number of things. The No. 1 thing is that the senior civil service—the 70 most senior managers of the organisation—will now spend a day a fortnight out visiting front-line staff and customers, and holding staff meetings, in order to talk about progress and to have better two-way communication. Also, in the new year we are introducing quality circles, so that when we are implementing changes, we will ask staff who are interested to become involved in making those changes happen. For example, we will ask, “How do we make our procedures better?”, because we want a sense of ownership, so that when change is happening people are involved in making that change effective. In my experience of what is often called in management jargon “the contract” between staff and management—the soft term, not the hard legal contract—if staff are told, “We’ll make sure you are involved as we implement change; we can’t do everything you’d like, but we will listen, and you will see management compromising to make that change effective”, it can do a huge amount for morale, and staff feel greater pride in the direction the organisation is taking.

Q90 Mark Reckless: Can you also give staff the assurance that if, say, in a particular area or with a particular line manager things were not working like that, and they referred something up to you, they would not thereafter have a comeback from their line management for having done that?

Rob Whiteman: Yes. Formally, of course, we have whistleblowing procedures. If people think their concern is so great that they make it known, it is dealt with anonymously.

Q91 Mark Reckless: But in terms of culture.

Rob Whiteman: In terms of culture, yes, people must be able to raise concerns. I receive quite a lot of e-mails from staff now that I am visiting many staff. In the new year, we are changing the arrangements so that I will not work all the time in Marsham Street. I want to work regularly in the places where we have most staff, such as Sheffield, Manchester—

Q92 Chair: And Croydon.

Rob Whiteman: Thank you, Chairman. I want not just to make visits there, but to work there for a day, and hold my meetings there. All that will, I believe, lead to greater two-way engagement between senior management and staff.

Q93 Chair: Until the Brodie Clark issue, some of us thought you were in Croydon. We did not realise you were in Marsham Street. At least we know now. We have no time to cover the entry clearance operation, and Mr Vine’s comments about face-to-face interviews. We will write to you about that if we may, but we will make it a priority for your next visit to the Committee. I thank you for giving evidence today, and wish you a happy and peaceful Christmas, with all quiet on the border.

Rob Whiteman: Thank you very much. I would like to clarify, in answer to Mr Clappison’s point, that the 520 people he referred to have been found to be exempt from deportation. I will put that in writing.

Chair: Excellent.
Written evidence

Correspondence submitted by the UK Border Agency

Thank you for your letter of 28 November in which you requested information ahead of my evidence session on 20 December. Please find my response to your questions below.

1. Asylum Cases

1.1 Of the 18,000 cases which had been assigned to the Case Assurance and Audit Unit following the closure of the Case Resolution Directorate, how many have been resolved? Please provide a breakdown of resolved cases by type of resolution

7,700 cases have been concluded to date. Of these 4,500 have been granted, 700 have been removed, and 2,500 others have been resolved through data cleansing, consisting of incorrect and duplicate entries.

1.2 How many asylum cases were resolved from August to November 2011 and how many were resolved within six months?

The figures for asylum case initial decisions, appeals and removals, on which resolutions are based, are published on a quarterly basis. The figures for Q3 of 2011 (July–September 2011) were published on 24 November. The figures for Q4 will not be published until 23 February 2012.

I understand that you have received a letter dated 9 December from the Home Office Chief Statistician and Head of Profession for Statistics, David Blunt, regarding the provision of statistics ahead of the proposed publication schedule. In this he stated that is not appropriate to provide management information in such circumstances as to do so could potentially breach the Code of Practice for Official Statistics. I will therefore only be able to provide the specified information for August and September 2011.

During August and September a total of 3,406 new asylum cases were concluded. Of these, 2,040 were concluded within six months of application.

AUGUST SEPTEMBER 2011 CASE CONCLUSIONS—TOTAL = 3,406

Concluded beyond 6 months, 1,366
Concluded within 6 months, 2040

Conclusions are achieved only by the following outcomes to a case:

— the Agency granting asylum or other forms of protection that grant permission to stay in the UK (Humanitarian Protection, Discretionary Leave) to the applicant;
— an Immigration Judge upholding an appeal to a contested case that leads to a grant of asylum or other forms of protection that grant permission to stay in the UK (Humanitarian Protection, Discretionary Leave) to the applicant;
— an applicant formally withdrawing an asylum application;
— the applicant leaving the UK voluntarily; and
— the Agency enforcing a return from the UK.

Conclusions from grants are achieved earliest in the process. Only small numbers of applicants volunteer to leave the UK. The management of failed asylum seekers who wish to stay in the UK but do not qualify under the asylum rules (or other immigration categories) are more complex to manage. There are often many barriers to overcome and legal steps for the Agency to manage to enforce a removal, as the impact of any enforcement action is subject to checks against the impact on an individual’s legal rights at a number of stages. It is also reliant on agreements with overseas Governments to return citizens who wish to stay in the UK.
The Government abolished the single asylum target it inherited to conclude asylum cases within 6 months as it provided no incentive to deal with cases once the target date was passed. Instead, a new performance framework was instigated, which is able to give a balanced picture of the overall health of the system. This new performance framework balances the drive for improvement across the key elements of the system—speed, cost and quality. We also aim to keep the overall Work in Progress caseload (WIP) steady. We publish data against the framework annually.

1.3 Of those who had their asylum claim refused from August to November 2011, how many
(a) have left the country voluntarily,
(b) have been deported, and
(c) remain in the country?

The statistics for asylum applicants who have left the country voluntarily, been deported and remain in the country, as a subset of applications or decisions within a certain period are published on an annual basis in August. The data for the period August–November 2011 will not be published until August 2012. In addition, the data you refer to relates to removals and voluntary departures at any point since August; data for removals and voluntary departures since September are yet to be published.

In view of the Chief Statistician’s letter, we cannot provide the data that you have requested.

2. Foreign National Prisoners

2.1 The Independent Chief Inspector of the UKBA’s thematic inspection of how the UK Border Agency manages foreign national prisoners (October 2011) states that, in May 2011, there were 3,775 foreign national prisoners in the community who had not been removed at the end of their custodial sentence (paragraph 5.17). We understand that this figure was provided by the Agency. Please could you explain how the figure was established?

The figure of 3,775, which was provided to the Chief Inspector for his thematic inspection, was established through internal business reports which extract data from our case working database (CID) and case owner diaries. The report counts all cases where foreign national offenders, are liable to deportation, have completed their custodial sentence, and are not currently detained under immigration powers or as a result of a further custodial sentence. The data provided to the Chief Inspector was retrieved in March 2011.

2.2 How many former foreign national prisoners were living in the community in November 2011? Of these, how many had been released
(a) within the previous six months;
(b) within the previous year;
(c) within the previous two years;
(d) more than two years ago; and
(e) more than five years ago?

As of 28 November 2011 there were 3,940 foreign national offenders who are subject to deportation action living in the community. Despite the best efforts of the UK Border Agency, deportation of foreign national offenders can be delayed in many ways, such as the use of judicial challenges or by the individuals’ failure to comply with the re-documentation process. A high proportion of foreign national offenders are detained under immigration powers after their release from prison, but our powers do not allow us to detain indefinitely. We can only detain where there is a realistic prospect of removal within a reasonable timescale.

In 2010, for an average month, approximately 105 foreign national offenders were released from immigration detention on restrictions while deportation was considered. Approximately 90% of these were released on bail by the courts; the remaining 10% were released by the UK Border Agency, having assessed the risk of harm posed to the public and the prospects of removal in a reasonable timescale.

The breakdown of these cases by time since release from prison is shown in the table below.1

<table>
<thead>
<tr>
<th>Time since release from prison</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>6 months or less</td>
<td>6-12 months</td>
</tr>
<tr>
<td></td>
<td>270</td>
<td>350</td>
</tr>
<tr>
<td>Total released within the previous year</td>
<td>620</td>
<td></td>
</tr>
<tr>
<td>12-24 months</td>
<td>650</td>
<td></td>
</tr>
<tr>
<td>Total released within the previous two years</td>
<td>1,270</td>
<td></td>
</tr>
<tr>
<td>More than 24 months</td>
<td>2,670</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>3,940</td>
<td></td>
</tr>
</tbody>
</table>

Due to the quality of historical data we are unable to provide an accurate figure for cases released more than five years ago.

1 All data provided is derived from internal management information which has not been externally validated and is subject to change. All figures have been rounded to the nearest ten.
2.3 Please update the information previously provided on the cohort of Foreign National Prisoners released during the financial year 2010–11. Please include a breakdown of those who have been removed, allowed to remain and outstanding cases. Please also break down the outstanding cases into the categories used on previous occasions (legal challenges and further criminal proceedings; casework issues; compliance, identity and documentation issues; other; and unknown issues).

You have asked for an update on the cohort of cases that became time served in 2010–11. Of 5,010 cases:

- 3,320 have been removed.
- 520 have been allowed to remain, either because the person was found to be exempt from deportation, or as a result of an allowed appeal, or because deportation was conceded on human rights or asylum grounds.
- 110 did not meet the deportation criteria.
- In 1,060 cases deportation is being pursued.

Barriers in the outstanding cases are shown in the table below. In our letter to the committee following Jonathan Sedgwick’s appearance in September we incorrectly recorded the barriers to removal in 350 cases as being “unknown” for data quality reasons. UK Border Agency case owners were in fact aware of the immigration status of the 350 individuals who had served their sentence, but the barriers to deportation had been entered on our management information database (casework information database, CID) under the category of “other” rather than specifying the barrier. We have now taken steps to rectify how case workers enter barriers on CID to ensure that our management information is up to date. There are, therefore, no cases listed in the table below where the barrier to removal is unknown.

<table>
<thead>
<tr>
<th>Primary barrier to removal</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal challenges and further criminal proceedings or parole refused</td>
<td>330</td>
</tr>
<tr>
<td>Casework barriers (including further representations, asylum claims, medical and children’s issues)</td>
<td>410</td>
</tr>
<tr>
<td>Compliance, identity and documentation issues</td>
<td>270</td>
</tr>
<tr>
<td>Other barriers (including country situation, multiple barriers)</td>
<td>50</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1,060</strong></td>
</tr>
</tbody>
</table>

2.4 Please could you update the Committee on the cohort of the 1,013 Foreign National Prisoners found to have been released without being considered for deportation in 2006, which you last provided to us on 1 November 2010. Please provide us with the following details: the number of cases concluded by a decision to deport or remove; the number actually deported or removed; the number of cases still going through the deportation process; the number of individuals serving a custodial sentence; and the number not yet located.

Please see below an update on the progress we are making in the cases of the 1,013 foreign offenders who, in 2006, were found to have been released without consideration for deportation.

We continue to make steady progress with these cases despite their age and complexity. We have removed a further eight cases since the last letter of March 2011 and seven cases that were previously at large have been traced. One individual who was previously in contact with UKBA has now absconded and action is being taken to locate him.

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All data provided is derived from internal management information which has not been externally validated and is subject to change. All figures are rounded to the nearest ten.
The outcomes broken down by seriousness of offence are illustrated in Figure 2. It shows that the most common outcome for the “most” serious cases is deportation (65%), and that a higher proportion of “most” serious cases have been concluded (93%) than the “more” serious (84%) and “other” cases (82%). Among the “more” serious cases and those in the “other” category, non-deportations remained higher than deportations.

Details of the 433 (excluding eight duplicates) concluded cases that did not result in removal or deportation is shown in Figure 3:

2.5 How many foreign national prisoners were released in each of Q1 to Q3 2011 and in how many of these cases did HM Prison Service discuss the case with the UKBA before the release took place?

The process for referral of cases from prisons to the UK Border Agency is that all foreign national offenders who appear to meet the criteria for deportation should be referred to the UK Border Agency within five days of sentence. The UK Border Agency receives around 500 of such referrals each week. We have made significant improvements to these referral processes but there are occasions where a foreign national is not referred. This can be the result of a nationality error (for example a person is incorrectly recorded as British) or a process failure in the prison.
In the first three quarters of 2011, 3,490 (rounded to the nearest 10) foreign national offenders came to the end of their custodial sentence.

<table>
<thead>
<tr>
<th>Time period</th>
<th>Number of FNO releases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quarter 1 of 2011 (January–March)</td>
<td>1,260</td>
</tr>
<tr>
<td>Quarter 2 of 2011 (April–June)</td>
<td>1,080</td>
</tr>
<tr>
<td>Quarter 3 of 2011 (July–September)</td>
<td>1,150</td>
</tr>
</tbody>
</table>

Over the same time period we are aware of seven cases where a foreign national offender was released from prison before being referred to the UK Border Agency. In all cases the National Offender Management Service has been notified of the failure and an investigation of the reasons is undertaken. One further case was released direct from court. All eight cases are in contact with the Agency and are now being considered for deportation.

3. **CONTROLLED ARCHIVE**

3.1 *How many cases are currently in the controlled archive?*

There are currently 92,000 cases in the Controlled Archive.

3.2 *How many cases have been added to and removed from the controlled archive from August to November 2011? Please provide a breakdown of the reasons why cases were removed (eg applicant traced, case identified as a duplicate)*

Between August and November 2011, the Controlled Archive was reduced by 6,000 cases. Of the 6,000 that were removed from the controlled archive between August and November almost 900 were conclusions and 5,100 were as result of data cleansing.

We have also conducted a detailed analysis of all the cases that could potentially fall into the remit of the CAAU and have, as a result of this, identified a further 1,300 cases which should be recorded as controlled archive and 1,500 cases which are live cases. This will result in a total of 93,000 cases in the controlled archive and a live case cohort of 17,000.

3.3 *Please breakdown the number of cases going into the archive, the number being reactivated, and the net in each quarter since the archive was opened?*

Please find below a graph showing the number of cases added to the archive since it was opened. The number of cases increased as the Agency reached the end of the overall programme. A large number of these were older cases which pre-dated our internal databases and were those where limited contact information was available, or, the applicant had already absconded, meaning they could not be fully concluded at that time. We continue to monitor them.

![Graph showing CRD/CAAU Controlled Archive 2008-2011](image)

We do not report on the inflow and outflow of case numbers but rather the net variance in the controlled archive numbers.

---

3 All data provided in section 3 is derived from internal management information which has not been externally validated and is subject to change.

4 Figures rounded to the nearest thousand.

5 Figures rounded to the nearest thousand.
3.4 Please describe any processes which must be followed before a case is put into the controlled archive

Before the UK Border Agency place cases in the Controlled Archive every attempt is made to contact the individual. Caseworkers follow written guidance outlining what actions need to be followed before a case can be placed in the Controlled Archive. As a minimum we check the Police National Computer and watchlists; cases could also be referred to intelligence units who have the ability to check up to 17 additional databases.

Following the closure of Case Resolution Directorate, the Case Assurance and Audit Unit (CAAU) is continuing to pursue cases placed in the Controlled Archive, checking the cases against watchlists and also the Police National Computer on a regular basis. If a contact is identified for an individual, the UK Border Agency will follow this up. Alternatively, if an applicant or their representatives make contact with the UK Border Agency they will update their records and conclude the case. New contact from Members of Parliament has also been extremely helpful in establishing contact with individuals.

4. Immigration Tribunals

4.1 In financial year 2010–11, how many cases were decided by the Agency, how many cases were appealed and how many appeals were allowed?

In 2010–11 the UK Border Agency decided 850,000 asylum and immigration applications. 109,700 of these were refused. In the same time period 2.6 million entry clearance applications were decided, 370,000 of these were refused.6

Information regarding the number of appeals lodged is published by Her Majesty’s Court and Tribunal Service and can be found at:


Table 1.1b on page 24 shows Immigration and Asylum Receipts by Quarter and Case Type. You will find this attached at Appendix A.

Table 1.2b on page p29 shows Immigration and Asylum Disposals by Quarter and Case Type. You will find this attached at Appendix B.

Table 1.2e on page 32 shows Immigration and Asylum Outcomes by Quarter and Case Type. You will find this attached at Appendix C.

4.2 At how many Immigration Tribunals was the Agency represented from August to November 2011?

This information is published by Her Majesty’s Courts and Tribunal’s Service.7 The data for 2011 has only been published up until the end of June. In view of the Chief Statistician’s letter, we cannot provide the data you with the data you have requested.

5. E-borders

5.1 Does the Agency still expect that all non-EU aviation will be covered by the E-borders scheme in time for the 2012 Olympics?

e-Borders is currently covering 95% of non-EU aviation and remains on track to cover 100% by April 2012.

5.2 When do you expect that E-borders will cover all of the following:

(a) all EU aviation;

We continue to liaise with key officials in Europe to achieve the Government’s commitment to collect data on intra-EU flights while complying with the UK’s obligations as a member of the EU. On current assumptions we expect e-Borders to be covering 95% of all aviation passengers by the end of 2013.

(b) non-canalised traffic;

The roll-out of non-canalised traffic is planned to commence from March 2012 and to be completed by December 2014.

(c) canalised maritime traffic;

The roll-out of canalised maritime traffic is planned to commence from March 2012 and is expected to be completed by December 2014.

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6 All data provided is derived from internal management information which has not been externally validated and is subject to change.

7 See Ev 31.
The roll-out of rail traffic is planned to commence from March 2012 and is expected to be completed by December 2014.

Rail traffic consists of two distinct types—the vehicle carrier and the passenger carriers. Progress is more advanced with the vehicle carrier and the capability to permit them to connect will be available from March 2012, with the commencement of live service following soon after. The technical solution for the passenger carriers has been set out. At present there is an outstanding legal issue relating to the ability of rail operators to collect data on their passengers. Specialist legal advice has been obtained to enable the Programme to progress in this area. The rail carriers are all impacted by the Freedom of Movement decision of the EU Commission and by the Data Protection issues common to all EU based carriers. Implementation is expected to commence in mid 2013 and be concluded by the end of 2014.

5.3 What current checks are made on passengers entering via the following modes of transport
(a) non-canalised traffic (general aviation and general maritime);

From January 2011 the UKBA implemented a new strategy to increase security in respect of general aviation; flights were classified as high medium or low risk and the strategy has the aim of meeting 100% of all high-risk flights through the use of better intelligence and increased compliance, the greater use of the warnings index and a standardised risk-assessment procedure. It provides for a consistent national system for dealing with general aviation and draws upon the resources of the police and other agencies to make sure that all high-risk flights are met.

The strategy makes use of the legal requirement for pilots to submit records of their passengers. Those are checked against the warnings index and a full, standardised risk assessment is carried out. The UK Border Agency then deploys officers to meet any flight for which police or other intelligence causes concern or on which there is a warnings index hit. Local UK Border Agency teams, field intelligence officers and the police then work to ensure a high level of compliance with these procedures, which are, for the first time, consistent across the country.

In General Maritime (GM) an intelligence led strategy is in place, encouraging engagement with GM users via a police-led intelligence gathering strategy. This is supplemented by existing UK Border Agency intelligence structures already in place, with UK Border Agency cutters deployed around the coastline to detect suspicious activity.

(b) canalised maritime traffic; and

All canalised maritime traffic is subject to full control by Border Force Officers stationed at either juxtaposed controls in Northern France or at the UK sea port of entry.

(c) rail?

Full juxtaposed controls operate at the rail terminals at Coquelles, Paris, Brussels, Lille and Calais Fréthun. Full checks are carried out on all passengers seeking to come to the UK from these departure points by UK Border Force Officers before the passengers are permitted to board the train.

5.4 How many e-gates are currently in operation and where are they?

We currently have 63 e-Gates in operation. They are located at Heathrow, Gatwick, Stansted, Luton, Birmingham, East Midlands, Cardiff, Bristol and Manchester.

The gates at Heathrow and Stansted are owned and maintained by the port operator BAA to meet UK Border Agency requirements. All other gates are provided by UK Border Agency through an existing supplier. All of the gates are operated and monitored by UK Border Agency staff.

6. MPs’ Correspondence
6.1 How many letters did each MP account manager receive from MPs’ offices over the period of August to November?

One of the reasons for introducing the MP Account Managers was to provide a faster response to MPs’ enquiries than we could to letters. Their focus has been on dealing with MPs through face to face, e-mail or telephone contact. We do not separately record the number of letters sent to each Account Manager from other letters received by the agency.

Between August and September the agency received 3,044 enquiries made direct to Account Managers by e-mail or telephone. 89.9% of these were answered within 10 working days. The Account Managers also handled a further 441 complex enquiries that were referred to them from the MPs’ Enquiry Line, responding to 88.4% within 10 working days. Figures for November are not yet available.
7. Tier 4 Sponsors

7.1 How many Tier 4 sponsors were visited from August to November 2011?

Between 1 August and 30 November 2011, the UK Border Agency visited 486 Tier 4 sponsors.

7.2 How many sponsors had their licences revoked from August to November 2011?

Between 1 August and 30 November 2011, 307 Tier 4 sponsors had their licences revoked. This includes 233 sponsors whose licenses were revoked as they had not applied for Highly Trusted Sponsorship by the deadline of 9 October 2011.

7.3 During the same period, how many sponsors had their registration transferred
(a) from the highly-trusted register to the standard register;

Between 1 August and 30 November 2011, 34 Tier 4 sponsors had their highly trusted sponsor (HTS) status removed.

(b) from the standard register to the highly-trusted register;

Between the 1 August and 30 November 2011, 94 Tier 4 sponsors were granted highly trusted status.

(c) from A rating to B rating on the standard register; and (d) from B rating to A rating on the standard register

The ability for a Tier 4 sponsor to be given a B rating ceased on 5 September 2011. Since that date it is now only possible for a Tier 4 sponsor to be awarded a status of Highly Trusted Sponsor, A rating or legacy. Between the 1 August and 5 September 2011, five Tier 4 sponsors were down-graded from an A rated to a B rated status.

(d) from B rating to A rating on the standard register

Between 1 August and 30 November 2011, 62 Tier 4 sponsors had their status revised from a B rating to an A rating.

8. Visa Numbers

8.1 How many visa applications received from August to November 2011 were
(a) the first;
(b) the second; and
(c) the third or subsequent application from the same individual?

Please see the table below which provides a breakdown of the number of visa applicants between 1 August 2011 and 31 September 2011. In view of the Chief Statistician’s letter, I am not able to provide information for October and November 2011.

Please note that it is not possible for the agency to provide figures for the number of applications. The data provided below is based on matching an applicant’s date of birth, passport number and nationality. Whilst this provides a good estimate, it is not a perfect answer, as an individual’s passport number and even nationality could potentially change between applications. If someone has changed passport or nationality in between applications they will not be picked up as a repeat application. However this will be a minority of people, as passports are usually issued for 10 years.

<table>
<thead>
<tr>
<th>Applicants</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>First</td>
<td>323,000</td>
</tr>
<tr>
<td>Second</td>
<td>84,551</td>
</tr>
<tr>
<td>Three or more</td>
<td>36,290</td>
</tr>
<tr>
<td>Total</td>
<td>443,841</td>
</tr>
</tbody>
</table>

Notes:
— Based on number of applicants (not applications).
— Based on all applicants from January 2004 to end of September (no data in CRS pre 2004).
— Based on the number of instances of applicants with the same combination of date of birth/passport number/nationality.
9. Front Office Services

9.1 What is the timetable for the tender of Front Office Service Concession Agreements and when do you expect to announce a supplier?

The phased rollout of biometric residence permit means increasing numbers of people from outside the EEA will be required to enrol biometrics. The agency has contracted with Post Office Ltd to provide customers with 100 locations around the UK at which they can do this. This builds on the success of the 17 pilot Post Office locations which have been operating for some time. The expanded number of Post Offices will be in place in spring 2012 and means the enrolment of applicants’ biometric details can take place quickly and conveniently.

10. Entry Clearance Officers (ECOs)

10.1 Please provide the Committee with a copy of the Agency’s new Restructuring, Redeployment and Redundancy policy. How many people are expected to take (a) voluntary and (b) involuntary redundancy and what is the total number of ECOs affected by this policy?

There is no UKBA Restructuring, Redeployment and Redundancy policy (RRR policy); it is a Home Office policy. You will find a copy of this at Appendix D.

At the end of the Spending Review period the UK Border Agency workforce will be in the order of 18,000. This amounts to a reduction of around 5,200 over the spending review period. We will do this by stopping all except the most necessary recruitment from outside the civil service, stopping the use of contractors and temporary staff and running a voluntary early release scheme. Our policy remains to avoid compulsory redundancies wherever possible and we will look to retrain and redeploy staff where we can. Improved productivity and using different resourcing models will allow for some reduction in ECOs by the end of the SR period. However, International Group is making savings in their unit costs through other methods, such as the hub and spoke model and automation of administration tasks.

The number of exit packages taken by staff in the agency in 2010–11 was 1,186 and we reduced by 1,900 during that period. The number of staff in post at 30 September 2011 was 21,642 Full Time Equivalents (FTE), leaving about 3,600 to leave the Agency by natural means and voluntary exits over the next three years. We are currently running a voluntary exit scheme.

Entry Clearance Officers (ECOs) that have the Home Office or UKBA as their home department would be affected by the Home Office RRR policy. The current number of ECOs is 398 FTE based on November 2011 figures; this depicts our winter staffing levels as we take on temporary staff to deal with the peak summer period. A number of FCO colleagues also work as ECOs for us overseas. The Home Office RRR policy will not apply to them. Improved productivity and using different resourcing models will allow for some reduction in ECOs by the end of the spending review period. However, International Group is making savings in their unit costs through other methods, such as the hub and spoke model and automation of administration tasks.

11. Contract to Supply Visa Application Services Overseas

11.1 When does the current contract to supply visa application services overseas expire? Please can you provide us with a timetable for the tender process for the new contract?

The contract expires on 31 March 2014. Current plans are to release an invitation to tender in the first months of the 2012–13 financial year, with a view to awarding contracts at the start of the 2013–14 financial year. This will give us approximately 12 months for transition.

11.2 What steps is the Agency taking to ensure that the new contract negotiations represent good value for money for the UK tax payer, and do not lead to any reduction in service for visa applicants?

The new contract is only one element in a broader programme (including new systems such as Immigration Case Working and “onshoring;” making visa decisions in the UK processing visas) which will create by 2015 a more efficient and effective visa operation overseas whilst maintaining customer service standards. Our objective is very clear: cost savings and improved value for money must be achieved without impacting negatively on those published customer service standards, or on the robustness of our control. We are working to ensure that we have a clear understanding of how we can best use the private sector to achieve these aims—considering a number of possible business models and establishing a thorough set of business requirements. In addition, we are participating already in an extensive governance and approvals process, which will include Joint Approvals Committee, Group Investment Board, and Office of Government Commerce Gateway reviews within the department. External approval is likely to be sought with the Treasury and through the Cabinet Office. Please see below for an explanation of these bodies.

— Joint Approvals Committee—A UKBA financial approvals board. Projects with a total value of less that £40 million need no further level of approval.
— Group Investment Board—A Home Office approvals Board. Projects with a total value of less than £100 million need no further level of approval.
11.3 Did the UKBA use consultants to help prepare and issue the tender for the original contract in 2007? If yes, please provide us with details—numbers, duration and cost

For the financial year 2007–08 we employed 16 consultants at a cost of £6 million:
- PA Consultants: 10 consultants. Total spend is: £4.6 million.
- Other agencies (contractors/agency staff): six people in total.
- Total spend: £1.4 million.

The consultants were engaged before, during and after the actual roll out of biometrics, including, the commercial partner outsourcing contract related to the introduction of biometrics and the change agenda for International Group around this operating model. It is not possible to determine the specific involvement of each consultant.

The UK Border Agency was formed in April 2008 and records prior to 2007 would be part of the FCO accounts.

12. Intelligence

12.1 In his letter dated 11 October, Jonathan Sedgwick informed the Committee: “The recording of intelligence packages created, and enforcement visits undertaken as a result of them, including arrests and prosecutions, is recorded on a common system called the National Operations Database. Removal activity, ie post enforcement activity, is recorded on the Case Information Database. We are currently working on linking the information from the two systems, so that we can link removals with the original intelligence package. We have piloted this approach in this summer’s targeted enforcement campaign, which finished at the end of September. The removals process can take several months to complete given current legal barriers, so reporting we will be in a position to provide information on outcomes in the next few months.” Can you please update us as to your progress in linking the two databases and the outcome of its use in the summer’s targeted enforcement campaign?

We have recently obtained financial approval to have a national allegations database, that will give us the ability to track an allegation from receipt to enforcement activity and when linked to the ongoing work to develop the integrated case working (ICW) system will allow us to identify those removed automatically thus giving us end to end capability. Currently we have a manual reconciliation system in place, which is providing us with ability to link enforcement activity to removals.

To update you on the summer enforcement campaign, out of the 247 enforcement visits I previously mentioned, which have resulted in 587 arrests, and, as of 30 November, made 223 removals. Please note that the removal information was obtained by matching CID and NOD data and is to be treated as provisional internal management information all data is taken from a live database and can be subject to change.

13. Child Detention

13.1 According to figures published on 24 November 2011, seven children were held under Immigration Act powers in October 2011. Please update the information for November and inform us as to the duration of each child’s detention in August, September, October and November.

You asked for updated information regarding the duration of each child’s stay in detention during August, September, October and November. The statistics for the length of time a child is held in detention are published on a quarterly basis, whilst the data for the number of children entering detention is published on a monthly basis.

In view of the Chief Statistician’s letter, we are only able to provide the data for length of detention for children for the months of August and September 2011. The number of children entering detention in October 2011 can be found at:


You can find a copy of this at Appendix E.

The detention of children at pre-departure accommodation is only used as a last resort when all other options for family’s voluntary return have been exhausted. Our pre departure accommodation at Cedars was designed with advice from Barnados and it is entirely different in look and feel from immigration removal centres.

With regard to the four children held under Immigration Act powers in August 2011, three of these were from families who were refused leave to enter at the border, two of these families were removed and one was released. The remaining case was an individual who was subject to an age dispute who was later found to be over the age of 18. This age assessment was later withdrawn when the individual’s passport became available as this showed him to be a minor.
Out of the 15 children detained in September, four of these were from families who were refused leave to enter at the border, with three families being removed and one being released. The remaining 11 cases were all detained at the Cedars pre-departure accommodation.

With regard to the October cases, three of the children came from families who were refused leave to enter at the border and three were from families being held at pre-departure accommodation with a view to removal. The final case was an age dispute case where the individual was held for one day and eventually found to be a minor.

CHILDREN HELD SOLELY UNDER IMMIGRATION ACT POWERS AND ENTERING DETENTION IN AUGUST 2011

<table>
<thead>
<tr>
<th>Length of detention</th>
<th>Under 5 years</th>
<th>Aged 5–11</th>
<th>Aged 12–16</th>
<th>Aged 17 years</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 days or less</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>4 to 7 days</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<tr>
<td>Grand Total</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>1</td>
<td>4</td>
</tr>
</tbody>
</table>

CHILDREN HELD SOLELY UNDER IMMIGRATION ACT POWERS AND ENTERING DETENTION IN SEPTEMBER 2011

<table>
<thead>
<tr>
<th>Length of detention</th>
<th>Under 5 years</th>
<th>Aged 5–11</th>
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<th>Aged 17 years</th>
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<td>3</td>
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<td>10</td>
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<tr>
<td>4 to 7 days</td>
<td>3</td>
<td>2</td>
<td>0</td>
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<tr>
<td>Grand Total</td>
<td>7</td>
<td>5</td>
<td>1</td>
<td>2</td>
<td>15</td>
</tr>
</tbody>
</table>

14. Costs

14.1 What percentage of Illegal Working Civil Penalties issued in the financial year 2010–11 have been collected by the Agency up to the end of November?

For the financial year 2010–11, a total of 1,897 civil penalties were issued to employers caught employing migrant workers illegally. As of the end of November 2011 257 of these penalties had been reviewed and cancelled following an objection or appeal and 18 were still in the appeal process. Of the remaining 1,622 collectable penalties, valued at £13.4 million: 960 (59%) had made a payment with a total value of £3.8 million collected. Detailed analysis confirms 88 employers have since defaulted on their payments, and these are being pursued through our debt enforcement process, leaving 872 compliant employers (54%). Of these 247 have paid in full, with the remaining 625 engaged in ongoing payments, with an outstanding value of £2.6 million.

14.2 What percentage of Carriers Liability Charges issued in the financial year 2010–11 have been collected by the Agency up to the end of November?

For the financial year 2010–11, 1,781 Carriers Liability Charges were issued. As at end November 2011, 124 charges had been cancelled at the objections stage following our review. Of the remaining 1,657 collectable charges, valued at £3.3 million, 1588 (96%) had been paid, valued at £3.18 million.

14.3 What percentage of Hauliers’ Civil Penalties issued in the financial year 2010–11 have been collected by the Agency up to the end of November?

For the financial year 2010–11, we imposed penalties on 814 hauliers found carrying clandestine entrants. As of the end of November 2011, 710 cases (87%) had been paid, valued at £898k.

December 2011
### IMMIGRATION AND ASYLUM RECEIPTS BY QUARTER AND CASE TYPE

<table>
<thead>
<tr>
<th>Number</th>
<th>2009–10</th>
<th>2010–11</th>
<th>2011–12</th>
<th>Annual Total</th>
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<tbody>
<tr>
<td></td>
<td>Q1</td>
<td>Q2</td>
<td>Q3</td>
<td>Q4</td>
</tr>
<tr>
<td>First Tier Tribunal (IA)</td>
<td>41,600</td>
<td>34,100</td>
<td>36,300</td>
<td>33,100</td>
</tr>
<tr>
<td>Asylum</td>
<td>3,200</td>
<td>4,200</td>
<td>3,900</td>
<td>3,900</td>
</tr>
<tr>
<td>Managed Migration</td>
<td>7,800</td>
<td>9,700</td>
<td>8,000</td>
<td>9,400</td>
</tr>
<tr>
<td>Entry Clearance</td>
<td>16,100</td>
<td>7,400</td>
<td>7,300</td>
<td>9,300</td>
</tr>
<tr>
<td>Family Visit Visa</td>
<td>14,100</td>
<td>12,600</td>
<td>16,800</td>
<td>10,200</td>
</tr>
<tr>
<td>Deport and others</td>
<td>290</td>
<td>190</td>
<td>210</td>
<td>280</td>
</tr>
</tbody>
</table>

Figures may not add to totals because of rounding

- Not applicable
- Not available
- Small Value
- Nil
- (r) Revised data
- (p) Provisional data

1 The Tribunals Service Immigration and Asylum (IA), consisting of “First Tier Tribunal Immigration and Asylum Chamber” and “Upper Tribunal Immigration and Asylum Chamber” (FTTIAC and UTIAC), replaced the Asylum and Immigration Tribunal (AIT) on 15 February 2010. Figures for 2010–11 relate to appeals dealt with by Immigration Judges at the FTTIAC. Figures for 2009–10 relate to appeals dealt with by Immigration Judges at the AIT or FTTIAC.

**APPENDIX B**

**IMMIGRATION AND ASYLUM DISPOSALS**

**Table 1.2b**

IMMIGRATION AND ASYLUM DISPOSALS BY QUARTER AND CASE TYPE

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td></td>
<td>Q1</td>
<td>Q2</td>
<td>Q3</td>
<td>Q4</td>
</tr>
<tr>
<td>First Tier Tribunal (Immigration and Asylum Chamber)</td>
<td>46,300</td>
<td>37,100</td>
<td>40,900</td>
<td>37,800</td>
</tr>
<tr>
<td>Asylum</td>
<td>2,800</td>
<td>4,700</td>
<td>4,600</td>
<td>3,900</td>
</tr>
<tr>
<td>Managed Migration</td>
<td>8,000</td>
<td>10,400</td>
<td>13,100</td>
<td>10,800</td>
</tr>
<tr>
<td>Entry Clearance</td>
<td>21,300</td>
<td>7,900</td>
<td>8,200</td>
<td>8,400</td>
</tr>
<tr>
<td>Family Visit Visa</td>
<td>14,000</td>
<td>13,900</td>
<td>14,900</td>
<td>14,600</td>
</tr>
<tr>
<td>Deport and others</td>
<td>260</td>
<td>230</td>
<td>280</td>
<td>230</td>
</tr>
</tbody>
</table>

Figures may not add to totals because of rounding
- Not applicable
- Not available
- Small Value
0 Nil
(r) Revised data
(p) Provisional data
Source: Immigration and Asylum Quarterly and Annual Reconciled Returns
## APPENDIX C

### IMMIGRATION AND ASYLUM OUTCOMES

<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Allowed</td>
<td>Dismissed</td>
<td>Withdrawn</td>
<td>Allowed</td>
<td>Dismissed</td>
<td>Withdrawn</td>
<td>Allowed</td>
<td>Dismissed</td>
<td>Withdrawn</td>
<td>Allowed</td>
</tr>
<tr>
<td>First Tier Tribunal</td>
<td>15,500</td>
<td>42</td>
<td>17,900</td>
<td>48</td>
<td>3,800</td>
<td>10</td>
<td>17,000</td>
<td>42</td>
<td>7,300</td>
<td>19</td>
</tr>
<tr>
<td>Immigration and Asylum Chamber</td>
<td>1,300</td>
<td>27</td>
<td>3,200</td>
<td>67</td>
<td>370</td>
<td>6</td>
<td>1,200</td>
<td>30</td>
<td>1,100</td>
<td>10</td>
</tr>
<tr>
<td>Asylum Migration Entry</td>
<td>3,400</td>
<td>44</td>
<td>3,300</td>
<td>44</td>
<td>1,200</td>
<td>25</td>
<td>3,300</td>
<td>40</td>
<td>3,100</td>
<td>38</td>
</tr>
<tr>
<td>Clearance Family</td>
<td>6,300</td>
<td>45</td>
<td>6,300</td>
<td>45</td>
<td>1,300</td>
<td>9</td>
<td>5,400</td>
<td>36</td>
<td>6,600</td>
<td>45</td>
</tr>
<tr>
<td>Visa Deport and others</td>
<td>60</td>
<td>26</td>
<td>150</td>
<td>64</td>
<td>22</td>
<td>10</td>
<td>81</td>
<td>29</td>
<td>130</td>
<td>67</td>
</tr>
</tbody>
</table>

Figures may not add to totals because of rounding.
- Not applicable
- Not available
- Small Value
- 0 Nil
- (r) Revised data
- (p) Provisional data

Figures are based on decisions at a hearing and on papers.

Source: Immigration and Asylum Quarterly and Annual Reconciled Returns

APPENDIX D

RESTRUCTURING, REDEPLOYMENT AND REDUNDANCY POLICY

— Status: Current policy.
— Validity: From November 2010.

IN BRIEF

The Home Office recognises the importance that staff attach to security of employment. For this reason the department will make every reasonable effort to avoid redundancy and, in circumstances where redundancies are inevitable, it will seek to minimise the number of staff made compulsorily redundant.

PRINCIPLES

1. Although civil servants have no entitlement to statutory redundancy provisions, the department undertakes to act consistently with these provisions and the Cabinet Office protocols which are agreed by the Cabinet Office and Council of Civil Service Unions.

2. This policy applies to all staff from AA to G6 and equivalent grades employed on a permanent basis by the Home Office. This includes those members of staff who are currently out of the office, whether overseas, absent on sick leave, maternity or adoption leave, unpaid special leave and on loan or secondment to other government departments (OGDs) or outside organisations.

WHAT IT MEANS IN PRACTICE

RESTRUCTURING

3. The need for restructuring may arise during the course of workforce planning. A review of the circumstances in the business will be required to determine if this restructuring is likely to result in staff becoming surplus. A surplus member of staff is defined as one who has no post and who cannot be immediately redeployed within the directorate, meaning they will be placed on the redeployment register and therefore be at risk of redundancy.

4. In the period immediately preceding any potential redundancy situation it is expected that managers will have implemented a range of sensible measures to reduce headcount, for example, reduction or elimination of consultants and contingent labour.

5. If a restructure or any other form of downsizing leads to surplus staff and there is a potential redundancy situation, it will be necessary to determine the scope of the “unit of redundancy”. It is from this unit that staff may be selected for redundancy.

6. Once a potential redundancy situation is identified, consultation with the departmental trade union side (TUS) should be initiated at the earliest opportunity, with a view to reaching agreement on measures for avoiding or minimising compulsory redundancies.

7. Redundancy avoidance measures will be subject to the overriding needs of the department including any financial considerations.

8. Voluntary early release (VER) will always be used as a measure to avoid compulsory redundancy; however, managers reserve the right to refuse volunteers where there are compelling operational reasons for doing so. TUS must be consulted about VER. Priority for VER will generally be given to staff in the unit of redundancy, however, schemes may be opened up beyond the unit to create opportunities for existing surplus staff.

9. Consultation with affected staff should take place as soon as practicably possible after the first consultation meeting with TUS.

REDEPLOYMENT

10. Where staff are declared “at risk of redundancy” they are placed on a redeployment register for a minimum of three months. Redeployment will continue throughout a 42 calendar day period of reflection (POR) with TUS and Cabinet Office and throughout notice periods.

11. All staff are obliged to accept offers of suitable alternative employment (see section 8 in the guidance for managers on restructuring, redeployment and redundancy) and anyone who unreasonably refuses to do so may be dismissed without any entitlement to redundancy compensation.
Redundancy

(12) The issuing of redundancy notices will not take place prior to the expiry of the period of consultation and POR. Staff who are made compulsorily redundant are entitled to periods of notice from the date on which the notice of redundancy is issued.

(13) Notice periods are set out in the Civil Service management code. The assumption will be that staff will serve their contractual notice period unless an agreement is made to waive all or part of it.

(14) Staff have an internal right of appeal against the decision of redundancy.

(15) A range of support will be available to staff at risk of redundancy. Refer to the “Supporting staff and managers through change” pages on Horizon for further details.

(16) If a person is re-employed in the Civil Service or in an organisation covered by the Civil Service pension arrangements having received lump sum compensation, they may have to repay the compensation depending on the length of time before they are re-employed.

APPENDIX E

CHILDREN ENTERING DETENTION AND BEING HELD SOLELY UNDER IMMIGRATION ACT POWERS

Children held solely under Immigration Act powers\(^{(1)}\) by place of initial location, and age\(^{(2)}\) entering in October 2011\(^{(3)}\)

<table>
<thead>
<tr>
<th>Initial location</th>
<th>Under 5 yrs</th>
<th>5–11 yrs</th>
<th>12–16 yrs</th>
<th>17 yrs</th>
<th>Total</th>
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<tr>
<td>Immigration Removal Centres</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Brook House</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<tr>
<td>Campsfield House</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<tr>
<td>Dover</td>
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<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Dungavel</td>
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<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Harmondsworth</td>
<td>0</td>
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<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Haslar</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Lindholme</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<td>Morton Hall</td>
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<td>0</td>
</tr>
<tr>
<td>Tinsley House</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Yarl’s Wood</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<tr>
<td>Short Term Holding Facilities(^{(6)})</td>
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<tr>
<td>Colnbrook Short Term</td>
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<td>0</td>
<td>0</td>
<td>0</td>
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<tr>
<td>Larne House</td>
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<tr>
<td>Pennine House</td>
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<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Detention Total</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>4</td>
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<tr>
<td>Pre-Departure Accommodation</td>
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<td></td>
</tr>
<tr>
<td>Cedars</td>
<td>0</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Grand Total</td>
<td>2</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>7</td>
</tr>
</tbody>
</table>

\(^{(1)}\) Some children may be recorded more than once if, for example, the child has entered on more than one separate occasion in the time period shown, such as a child who has left detention, but has subsequently been re-detained.

\(^{(2)}\) Recorded age at the start of their period of detention, these figures may include age disputed cases.

\(^{(3)}\) Figures exclude children recorded as entering police cells, Prison Service establishments and short term holding rooms at ports and airports (for less than 24 hours), those recorded as detained under both criminal and immigration powers and their dependants.

\(^{(4)}\) Figures include dependants.

\(^{(5)}\) May include children detained for less than 24 hours.

\(^{(6)}\) Short Term Holding Facilities suitable for up to seven days detention, excluding police cells and short term holding rooms at ports and airports (for less than 24 hours).

\(^{(M)}\) These figures are based on management information and are not subject to the detailed checks that apply for National Statistics. They are provisional and subject to change. These figures may alter when produced for the National Statistics publication following more detailed checking.

Supplementary correspondence from the UK Border Agency

Thank you for your letter of 20 December in which you requested further information following my evidence session on the same date. Please find my response to your questions below.

1. Of those found trying to enter the UK via the Lille loophole in the past year, how many were returned and how many claimed asylum? Were there other outcomes?

   It is my view that providing figures in response to this question has the potential to jeopardise border security.

Can you confirm whether passengers who are stopped at St Pancras without a valid ticket are able to claim asylum in the UK?

   It is an established legal principle that individuals should claim asylum at the earliest opportunity once they have reached a safe country.
   
   All foreign national passengers who gain entry to the UK by either legal or illegal methods are eligible to claim asylum.

2. Please inform the Committee of the outcome of the investigation into ECS as soon as the investigation is concluded.

   We believe that the allegations referred to in the press relate to incidents that occurred in 2006 and 2007. Those incidents were referred to ECS and internal disciplinary action was taken by the company against its employees. We continue to review the company’s performance and do not believe that there have been any further similar occurrences.

3. What term does the UKBA use to describe the archive of the 26,000 migration cases and when do you expect to start working on resolving them?

   The UK Border Agency refers to the archive of 26,000 migration cases as the “migration controlled archive”. Of the 40,000 cases reported as outstanding in October 2009, as reported to the Committee in the Government’s Response to its Ninth Report of session 2010–12, entitled: “The Work of the UK Border Agency” (November 2010–March 2011), 3,100 had been granted, 2,000 refused and 32,900 had received other conclusions (which include 26,000 cases which are in the migration controlled archive). We are in the process of reviewing the 26,000 case records in the migration controlled archive; cleansing the data and bulk checking it against our internal databases. We will take tracing action to reduce the numbers in this archive over the coming months and will report on our progress.

4. You said 59% of asylum decisions were taken within 30 days. How long has it taken for the other 41%?

   Of the remaining 41%, 23% (of the original 100%) were taken within 90 days. Published statistics show that we have reduced the number of applications which spend over six months awaiting an initial decision from 4,922 in June to 2,400 at the end of October 2011.

5. Please can you confirm why the 110 Foreign National Prisoners released in 2010–11 did not meet deportation criteria?

   In my last letter ahead of my evidence session I informed the Committee that of the 5,010 Foreign National Prisoner cases became time served in 2010–11 and that in respect of 110 of these, it was concluded that they did not meet the deportation criteria. These were cases where the sentence served was less than 12 months (or 24 months in EEA cases unless the conviction was for an offence involving drugs, violent or sexual crimes) and the person did not otherwise meet the criteria for deportation. These cases may still however be subject to enforcement action. Where a prisoner is found not to meet the deportation criteria, but has no legal right to remain in the UK, the case will be referred to the Local Immigration Team so that removal under administrative powers can be considered.

6. Will the use of biometric residence permits make it easier to identify the nationality of those foreign nationals who commit crimes and become Foreign National Prisoners subject to deportation?

   We are taking steps to improve the identification of foreign nationals at the earliest possible stage in their journey through the criminal justice system. The introduction of biometric residence permits will assist in the identification of foreign nationals who have committed criminal offences having been granted leave to remain in the UK. Biometric information collected at the time leave is granted will be cross-checked with other UK Border Agency records (and police records in criminal cases) to ensure that multiple identities for that person are not held. The issue of the biometric residence permit will then lock foreign nationals to a single identity, thus improving our ability to obtain travel documentation from their country of origin in order to enforce...

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8 Paragraph 345 (1) and (2)(i) of the Immigration Rules read in conjunction with Part 2, 3, 4 or 5 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004
deportation. We are also working with the police to ensure that UK Border Agency records are checked in custody suites.

7. You say the National Offender Management Service should refer Foreign National Prisoners to the UKBA within 5 days of sentence—in what percentage of cases does this happen?

The current agreement with the National Offender Management Service (NOMS) is that prisons will refer foreign nationals who appear to meet the deportation criteria to the Criminal Casework Directorate within five working days of sentence. Analysis is being conducted to establish the proportion of cases referred within five days of sentence which I will provide when available.

8. You say you are currently looking at improving your success at appeals. Do you have any targets associated with the improvement project?

The Appeals Improvement Plan has a number of performance indicators around representation rates (90%) and our performance in providing the Courts with the bundles of papers (90% by the due date). Furthermore, our business plan states the objective to reduce the allowed appeal rate. Therefore, we are working with regional presenting units to improve our win rates. These are monitored on a monthly basis so that we can determine whether changes that have been implemented have been successful and to inform whether further analysis should be commissioned which may lead to proposals for further changes to help improve performance.

9. After e-Borders is rolled out to maritime and rail traffic, will it still be possible for passengers to turn up, buy a ticket and go, or will they—like travellers—have to book in advance and check in hours before travelling?

e-Borders does not preclude “last-minute” travel as data can be submitted right up until the time of departure.

10. How will this affect the very large percentage of freight traffic that is carried on lorries through ports like Dover? Will there be significant delays to freight at channel ports?

The method used for the collection of data is not prescribed by e-borders. It is the carriers who will decide how data is to be collected and whether it will be done manually or by scanning. As long as carriers opt for an efficient system, transaction times should not be increased.

11. The Port of Dover told our predecessors in 2009 that the port would have to be rebuilt to accommodate the queues that would form if the ferry operators had to scan all passports. Given the fact that you envisage a rapid roll-out to ferry companies, does this mean you have addressed the problem of scanning at ports? How?

We have worked with the carriers to develop an operational model based on passenger data being collected in advance of arrival at the port. If an efficient business model is adopted by carriers, there is no reason to suppose that major infrastructure changes will be required. Scanning documents may be necessary in some cases, for example last minute travel or opt-out situations, but it is unlikely to occur in every case.

12. How will e-Borders cope with the fact that in 2012 any European rail company will be able to run trains through the Channel Tunnel? Do you expect stations all over Europe to have terminals through which they transmit information to the UK Border Agency? Or will it be impossible to travel by train to the UK unless you have booked a ticket at a limited number of large stations?

We are working with train operators to set out a range of viable solutions for international rail journeys. E-Borders does not and will not require “terminals” in order to collect data. Data collection can take place at many points and using many methods in the same way airlines collect data, with customers being offered several ways of submitting their Travel Document Information data. It is likely that the main method of collection will be online—following the main route for ticket sales. It should be noted that through tickets to the UK are already widely available from many rail stations in Europe. Although the ticket may be for a journey from a small rural station in France to St Pancras, the journey will involve changes of train. As we are only entitled to receive data on the last leg of the journey to the UK it is likely that the carriers would focus their efforts to collect remaining data at that point.

13. Is it still illegal in France and Belgium for anyone other than their own state authorities to demand information such as passenger name records (PNRs) from passengers?

It is not, and has never been, illegal in France and Belgium for anyone other than their own state authorities to request passenger information. In fact, carriers already provide PNR or Advance Passenger Information (API) for passengers travelling from France and Belgium to states that require this data (eg USA and India).
14. What percentage of air travel to the UK currently originates from within the EU?

Information regarding aviation traffic is published by the Department of Transport at www.dft.gov.uk/statistics/tables/avi0105. You will find this information at Appendix A.

15. We assume that you have now read John Vine’s latest inspection report into visa verification checks on sponsors and applicants. What measures are you proposing to introduce to ensure these crucial checks take place and when will these measures be implemented fully?

All settlement applications are subject to mandatory stringent checks. Every applicant is required to provide their fingerprints which are then checked against a range of police and immigration databases. We conduct forgery checks on all passports, but checks on sponsors and applicants are often targeted to make the best use of resources. The guidance regarding additional sponsor verification checks (referred to in the New York Visa Section report) was issued in April 2010 to all entry clearance staff dealing with settlement applications. New York had an exemption from the requirements of this instruction, and had produced thorough guidance for staff in the region to follow on a risk-assessed basis. The exemption from the additional guidance was granted on the basis that the region had compiled evidence to show that this application base was generally low-risk in this region. This guidance is being reviewed and any amendments to it will be issued by the end of the financial year.

The UK Border Agency has a basket of assurance measures in place to monitor the quality of visa decision making, including a minimum number of refused and issued visa decisions that are subject to review by an Entry Clearance Manager (ECM). An assessment on what verification checks should be conducted forms part of this review.

13 January 2012

APPENDIX A

DEPARTMENT FOR TRANSPORT STATISTICS

Aviation

Table AVI0105 (TSGB0205)

INTERNATIONAL PASSENGER MOVEMENTS AT UK AIRPORTS¹ BY COUNTRY OF EMBARKATION OR LANDING, 2000–10

Thousands/percentage

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<tbody>
<tr>
<td>% of total in</td>
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<td></td>
<td></td>
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</tr>
</tbody>
</table>

European Union:

Austria 1,257 1,278 1,443 1,749 1,796 1,877 1,826 1,746 1,662
Belgium 2,864 2,686 2,343 2,277 1,863 1,711 1,626 1,624 1,398 1,185 1,121
Bulgaria 172 187 279 382 585 771 919 953 992 881 858
Cyprus 2,670 2,962 2,683 2,776 2,989 3,006 2,869 2,951 2,703 2,596
Czech Republic 654 736 916 1,296 2,069 2,355 2,155 2,071 1,817 1,516 1,276
Denmark 1,965 1,988 2,070 2,013 2,186 2,355 2,305 2,345 2,395 2,452 2,404
Estonia 28 29 45 83 186 178 179 157 99 104
Finland 770 753 659 702 813 799 930 944 946 946 982
France 8,235 8,435 9,657 10,232 10,941 10,994 11,560 11,785 11,676 11,729 9,659
Germany 8,717 8,432 8,651 9,571 10,283 10,937 11,502 11,607 11,155 10,716 11,168
Greece 5,912 6,410 6,246 6,204 5,840 5,686 5,519 5,457 5,199 4,873 4,724
Hungary 403 383 375 375 375 375 419 389 389 389 389
Irish Republic 9,295 9,293 9,813 10,163 10,862 11,789 12,356 12,259 12,321 10,896 9,555
Italy 7,033 7,456 7,654 8,913 9,677 10,713 10,571 11,207 10,737 9,914 9,619
Latvia 51 54 58 61 126 309 461 474 464 458 550
Lithuania 51 48 48 55 95 222 319 340 359 319 473
Luxembourg 224 203 184 159 173 182 209 251 245 203 210
Malta 1,022 1,039 1,025 1,055 1,096 1,110 1,148 1,101 1,024 1,038
Netherlands 7,066 7,313 7,804 7,780 7,933 7,888 8,256 8,352 7,660 6,972 6,875
Poland 498 453 467 516 998 1,845 3,328 4,352 5,023 4,228 4,225
Portugal & Madeira 3,607 3,752 3,967 4,022 4,256 4,540 4,745 5,339 5,536 6,055 5,011
Romania 110 109 117 143 157 194 335 488 553 651
Slovak Republic 0 2 29 127 285 470 529 716 559 499
Slovenia 69 52 48 53 116 157 183 190 168 139 127
Sweden 2,032 1,958 1,976 1,993 2,253 2,321 2,290 2,267 2,288 2,073 2,188
Total EU–27 90,658 93,586 97,459 104,558 111,224 117,584 121,817 125,355 123,293 111,625 107,222

Other Europe:

Netherlands 1,432 1,244 1,277 1,353 1,606 1,726 1,893 1,856 1,990 2,016 2,080
Switzerland 3,925 3,829 3,983 4,108 4,184 4,501 4,957 5,142 5,416 5,228 5,243
Gibraltar 208 215 227 264 309 346 329 296 369 357 301
Turkey 2,019 2,112 2,173 2,791 3,551 4,106 3,887 4,355 4,796 5,408
Former USSR¹ 667 724 814 911 1,030 1,098 1,177 1,234 1,232 1,144 1,243
Former Yugoslavia² 222 269 310 351 433 548 730 848 770 797 823

¹ Includes Malta, Cyprus, Gibraltar and the Channel Islands.
² Includes Former Yugoslavia, the Former Soviet Union and the Baltic States.

Former Yugoslavia³ 222 269 310 351 433 548 730 848 770 797 823

Former Soviet Union³ 222 269 310 351 433 548 730 848 770 797 823

Former Yugoslav³ 222 269 310 351 433 548 730 848 770 797 823
Correspondence from the Children’s Commissioner for England

GENTLEMAN’S AGREEMENT

I hope that you will have had an opportunity to look at the latest report from the Children’s Commissioner for England entitled Landing in Dover. If not, I attach a copy with this letter for ease of reference.9 I would particularly draw your attention to Appendix’s 3 and 4 which contain a copy of the “Gentleman’s Agreement”10 and associated memos and the correspondence between the Commissioner and Rob Whiteman11 on the issue.

You will note from the correspondence that we have asked for historic data on the use of the agreement in respect of children. This has not been forthcoming to date. You will also note that we remain concerned about its potential use in “age disputed” cases given that the commitment from the UK Border Agency is a unilateral one and has not involved any renegotiation of the agreement with our French colleagues.

Although the evidence we have relates only to Vietnamese children (who may not claim asylum on account of having been trafficked into the UK—normally to work as “gardeners” in Cannabis factories) we remain concerned that the agreement may have been used in the past to prevent access to the UK territory for those wishing to claim asylum. We can not of course prove this but there is a certain amount of circumstantial evidence to suggest it.

9 Not printed
10 Not printed
11 Not printed
In particular, when we visited the Asylum Screening Unit in Croydon in 2007 we “tracked” an Afghan boy through the screening process and were surprised to find that there was a Eurodak fingerprint match with Poole in Dorset from a few weeks previously. It appears likely that this child was returned to Cherbourg and then managed to re-enter the country and make his way to the ASU.

We are keen to find out the extent of the use of this agreement—in particular in relation to children who may not always articulate an asylum claim to the immigration officer on arrival.

You should also know that we have taken Counsel’s advice on the status and application of the agreement in respect of children and received a strong opinion that it was unlawful due to the conflict with the duty to safeguard children and promote their welfare.

I was wondering whether there might be an interest on the part of the Home Affairs Select Committee in running a short inquiry into the use of the agreement. There are some surprising elements that have not yet come to light publicly. Although it was clear that Rob Whiteman had no knowledge of the agreement before we alerted him to it, I was somewhat surprised that Hugh Ind, Director of London and the South East, also told us that he was unaware of its existence. How this could be the case is very perplexing and worrying. Furthermore, there was an indication from Mr Whiteman in his conversation with the Commissioner that a parallel agreement existed with Belgium. We have not had sight of any other bi-lateral agreements nor any guarantees that any other such agreements would not be used to remove children who failed to articulate an asylum claim.

If you would like to discuss these matters further, please do not hesitate to contact me.

January 2012

Further written evidence submitted by the UK Border Agency

In my letter to the Committee of 15 December I implied that appeals representation is published by Her Majesty’s Courts and Tribunals Service (HMCTS), who publish quarterly statistics. Their last publication covered the period from 1 April-30 June 2011. This should have read that it forms a sub set of the data which is published by HCMTS. I apologise for this inaccuracy but as stated previously in my letter, in view of the Chief Statistician’s letter we cannot provide you with the data you have requested beyond June 2011. We would of course be happy to provide you with management information up to June 2011.

<table>
<thead>
<tr>
<th>Month</th>
<th>UKBA representation rate</th>
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<tbody>
<tr>
<td>April 2011</td>
<td>81%</td>
</tr>
<tr>
<td>May 2011</td>
<td>82%</td>
</tr>
<tr>
<td>June 2011</td>
<td>85%</td>
</tr>
</tbody>
</table>

December 2011

Correspondence from Chair to UK Border Agency

Bogus Colleges

I am writing to you to regarding bogus colleges and the processes UKBA has in place to run checks on sponsors and to inspect Tier 4 colleges.

I would be most grateful if you could provide the following information:

— What is the total number of checks carried out on Tier 4 sponsors in the past three months?
— What is the total number of inspections carried out on Tier 4 colleges in the past three months?
— What is the total number of Tier 4 sponsors found to be breaking the terms of their licence and how many had their licences revoked as a result?
— What is the total number of Tier 4 colleges found to bogus and how many have been closed as a result?
— What is the total number of (a) unannounced (b) announced inspections carried out on Tier 4 colleges, broken down by month, within the last year?
— What is the total number of students affected by the closure of Tier 4 colleges in the past year?
— Does UKBA have in place a mechanism whereby proceeds gained by bogus Tier 4 colleges are reclaimed?
— How do you ensure individuals have completed the minimum required hours for English language courses before certifying their accreditation?
— Has UKBA considered publicising Tier 4 colleges it fears may be suspicious?

It would be helpful if we could receive this information by noon on Monday 6 February 2012.

26 January 2012
Correspondence from UK Border Agency to Chair

Thank you for your letter of 26 January in which you requested information regarding the processes the UK Border Agency (UKBA) has in place to inspect Tier 4 sponsors. Please accept my apologies for the delay in responding to you.

All Tier 4 sponsors have been visited at least twice—once by their accreditation body and once by the UK Border Agency—and approximately half of the inspections the Agency carries out each year are unannounced. All Tier 4 sponsors are, or were, functioning providers of educational or training courses however not all colleges have been compliant with the duties and obligations of a licensed sponsor.

Where the Agency has serious concerns about a sponsor, it will suspend its sponsor licence pending further investigation. During this time the institution’s name is removed from the “Tier 4 Register of Sponsors (approved education providers)” published on our website. The Agency does not publicise action where it has yet to conclude its investigations. The college is, however, prevented from recruiting new students and is removed from the register until investigations are complete.

The UK Border Agency does not have the power to “close” any education or training provider. The UK Border Agency can however revoke the Tier 4 licence of any sponsor found to be non-compliant with its sponsorship duties, rescinding its permission to sponsor Tier 4 students from outside the European Economic Area. Where there is criminality involved colleges will be subject to the Proceeds of Crime Act 2002.

I regret that I am unable to provide you with the figures you have requested as these would be derived from management information that, while fit for internal management decision making, is not normally considered suitable for formal dissemination.

The UK Border Agency does not use the term “bogus college” in the context of compliance actions. The term bogus means different things to different people—to some the term “bogus college” means an institution which is a sham offering no courses of any kind; to others it can mean a college offering low-quality or low-value courses, rather, we record institutions’ accreditation by an approved body, and whether they are compliant with their sponsor duties.

Where a Tier 4 sponsor’s licence is revoked, non EEA students who were registered to that institution have 60 days to find a new sponsor or to leave the country.

The UK Border Agency does not certify an individual’s accreditation with regard to English Language courses—we assess how long students spend attending their course by checking student attendance registers and other relevant information when we visit sponsors as part of our regular compliance activity.

Where we find students are not completing the required hours, we will take compliance action which might include sponsor licence suspension or revocation; and curtailment of student leave.

Prior to issuing students a visa, the UK Border Agency has verification arrangements in place with each of the approved Secure English Language Test providers, including online verification systems, in order to check that qualifications purported to have been issued by them are genuine where reasonable doubt exists regarding the authenticity of a document.

9 February 2012

Correspondence from Rob Whiteman to Chair

Thank you for your letter of 12 February in which you requested information regarding the processes UKBA has in place to inspect Tier 4 sponsors, and for information on those seeking to enter the UK illegally by abusing Eurostar’s international service.

Tier 4 Compliance Checks

I have sought advice from the Home Office’s Head of Profession for statistics who has confirmed I am able to provide the requested information however I must stress that this is internal management information derived from “live” internal operational databases that has not been externally validated and we would not normally consider this to be of publication quality. It is therefore provisional and subject to change.

The UK Border Agency carries out a range of checks on Tier 4 sponsors, these include pre-licence verification, post-licence (announced and unannounced) visits, specific verification linked to sponsors who apply to be highly trusted and intelligence-led non-compliance investigations. Approximately 725 such checks were carried out in the three months October to December 2011.

All Tier 4 sponsors have been visited at least twice—one by their accreditation body and once by the UK Border Agency. In 2011, the UK Border Agency carried out approximately 900 inspections, approximately half of these inspections were unannounced and a third took place in October to December 2011.

All Tier 4 sponsors are, or were, functioning providers of educational or training courses, however, not all colleges have been compliant with the duties and obligations of a licensed sponsor.
Where the Agency has serious concerns about a sponsor, it will suspend its sponsor licence pending further investigation preventing them from recruiting new students. The total number of sponsors, since the inception of sponsorship, found to be breaking the terms of their licence is approximately 355.

We have revoked the licence of approximately 150 of these sponsors, with the remainder suspended or downgraded. Approximately 88 sponsors had their licence revoked in the last year for non-compliance, these sponsors had issued over 26,500 Confirmation Acceptance for Studies (CAS) to non-European Economic Area nationals in 2011. However, of these students, some may not have taken up the offer of a place, some may have had their visa application refused, and many will have completed their course, left the UK, switched to another institution or varied their leave to remain in the UK.

Lille

You also asked for an explanation of why providing figures for the number of people trying to enter the UK illegally abusing Eurostar’s international service has the potential to jeopardise border security. It is my view that by releasing this information we would be providing potentially useful information to those who seek to evade our immigration controls and facilitate illegal migration. Releasing port specific information gives an insight into our capabilities and operational activity at ports which has the potential to be of interest to those seeking to facilitate illegal migration.

We have worked closely with Eurostar to identify how the risk of abuse of their international service by those seeking to enter the UK unlawfully might be reduced.

I receive regular updates on this issue from operational and policy staff in both the UK Border Agency and the Home Office and on 10 February led a delegation of senior Home Office/UK Border Agency officials to Paris where the issue was discussed.

The Immigration Minister has regular meetings on all aspects of border security. He also has regular contact with his Belgian counterpart (Maggie De Block) and the Senior Management of Eurostar. The Home Secretary is kept apprised of developments around the border control issues on the Eurostar service.

The outcome has been that Eurostar has decided to suspend the sale of all point to point Brussels to Lille tickets other than to regular travellers who are holders of season tickets for that route. This arrangement came into effect on 21 February.

Border Control officers will closely monitor the new arrangement while ensuring that adequate resources continue to be deployed to secure the border. Additionally, we will continue to review the efficacy of the new arrangement and discuss with Eurostar and any other additional measures that might be necessary.

22 February 2012

Correspondence from the Chair to UK Border Agency

Bogus Colleges

I am writing in response to your letter of 9 February 2012 regarding bogus colleges and the processes UKBA has in place to run checks on sponsors and to inspect Tier 4 colleges.

You state in your letter that you are unable to provide the Committee with certain figures related to bogus colleges. The Committee would like you to give oral evidence at 11.20 am on 28 February to answer our questions and to explain why these data have not been provided to us.

You may recall that when you appeared before the Committee on 15 November 2011 you said that you “very much want to work on the basis of trust with this Committee” and that the Committee had an important role to play in ensuring that the Agency was transparent about its activities. Unfortunately, responses to subsequent letters have twice been delayed and the Committee has been told it is not allowed to receive certain information.

The Prime Minister has been clear in his determination to set new standards for transparency.

I am concerned that the UK Border Agency continues to display the lack of communication that the Committee highlighted in its report into UK Border Controls (Seventeenth Report of the 2010–12 Session). I hope this is not the case.

Please find attached the Committee’s outstanding questions and I look forward to seeing you on 28 February 2012.

Outstanding Questions

Bogus Colleges:

— What is the total number of checks carried out on Tier 4 sponsors in the past three months?
— What is the total number of inspections carried out on Tier 4 colleges in the past three months?
— What is the total number of Tier 4 sponsors found to be breaking the terms of their licence and how many had their licences revoked as a result?
— What is the total number of Tier 4 colleges found to be bogus and how many have been closed as a result?
— What is the total number of (a) unannounced (b) announced inspections carried out on Tier 4 colleges, broken down by month, within the last year?
— What is the total number of students affected by the closure of Tier 4 colleges in the past year?

Lille loophole:

We also expect an explanation as to why the response to the question “Of those found trying to enter the UK via the Lille loophole in the past year, how many were returned and how many claimed asylum? Where there any other outcomes?” was considered to jeopardise border security.

We would also like the answer to the following questions:
— Has the loophole now been closed?
— How many meetings regarding the loophole have you attended since your last appearance before us on 20 December 2011 and who was present at each of these meetings?
— In the same period of time, how many meetings has Damian Green held regarding the loophole and with whom?
— In the same period of time, how many meetings has Theresa May held regarding the loophole and with whom?
— What was the outcome of these meetings?

23 February 2012

Correspondence from the Chair to the UK Statistics Authority

Thank you for speaking to me yesterday regarding the provision of information from the Home Office to the Select Committee.

For last five years the Home Affairs Select Committee has been investigating the UK Border Agency (UKBA). This consists of a set of questions given to the head of UKBA every four months. In this way the Committee is able to effectively scrutinise work of the agency.

Only last Tuesday, the Home Secretary pointed out that the Committee have argued consistently that UKBA has been a troubled organisation since it was founded in 2008.

In our conversation I told you that our request for factual information on the number of unannounced inspections on Tier 4 College could not be provided because you had said to the Home Office that management information should not be published unless it is quality checked. I would be grateful if you could confirm that this is the case.

The Home Affairs Select Committee has a long standing commitment to scrutiny, this was echoed by the Prime Minister when he said he wanted to set a new standard for transparency across Government and its Agencies.

We are concerned that this refusal of information is an attempt to prevent the Committee from getting proper information to effectively scrutinise an agency of the Home Office and may be contempt of Parliament.

The questions asked by the Committee were:
— What is the total number of checks carried out on Tier 4 sponsors in the past three months?
— What is the total number of inspections carried out on Tier 4 colleges in the past three months?
— What is the total number of Tier 4 sponsors found to be breaking the terms of their licence and how many had their licences revoked as a result?
— What is the total number of Tier 4 colleges found to be bogus and how many have been closed as a result?
— What is the total number of (a) unannounced (b) announced inspections carried out on Tier 4 colleges, broken down by month, within the last year?
— What is the total number of students affected by the closure of Tier 4 colleges in the past year?
— Does UKBA have in place a mechanism whereby proceeds gained by bogus Tier 4 colleges are reclaimed?
— How do you ensure individuals have completed the minimum required hours for English language courses before certifying their accreditation?
— Has UKBA considered publicising Tier 4 colleges it fears may be suspicious?

22 February 2012
Correspondence from the UK Statistics Authority to the Chair

Thank you for your letter dated 22 February. I was glad to have had the opportunity to speak to you about your Committee’s attempts to obtain from the UK Border Agency the data that the Committee had asked for. I am told that the Committee has now been sent the data that had been requested.

The Statistics Authority will always do all that it can to support the work of Select Committees, particularly in ensuring that Committees have the official statistics and related advice that they need to enable them to fulfil their scrutiny role.

Although it is, clearly, highly desirable that the quality of data is checked before being made widely available, the Statistics Authority did not advise the Home Office that it should not send your Committee, or otherwise issue, management information about Tier 4 colleges unless it had been quality checked. Our advice is normally restricted to data that are already recognised as official statistics, or which we think should in future be treated as such.

The principles that the Statistics Authority apply in recommending to departments that they should publish a particular set of management information as official statistics, are set out in a published statement on our website. I have appended a copy of the statement to this letter.12

We strongly support the Government’s Open Data policy, but we will also continue to encourage departments to ensure that all statistical data and related analyses are carefully checked before dissemination and release, and that they have taken the advice of professional statisticians on the release of data that are not regularly published, as required by the former Cabinet Secretary’s guidance on the matter.

12 March 2012

APPENDIX 1

MANAGEMENT INFORMATION AND RESEARCH DATA AS OFFICIAL STATISTICS

This Statement supersedes the Statements dated 27 September 2010 and 22 July 2009

This Statement sets out the Statistics Authority’s position in relation to numerical information that is not currently treated as official statistics. Typically this will be described as management information, research findings or estimates of the effects of policy changes.

The Authority acknowledges that government bodies need to collect management information, carry out research, and make estimates of various kinds in order to run their own businesses, and will often wish to make these numbers public in the interests of transparency. Whilst such data are sometimes described as statistics, they are not necessarily official statistics. Where they are not the Code of Practice for Official Statistics may not apply. In particular, two important requirements of the Code would not apply:

— the requirement to publish the statistics separately from political comment; and
— the requirement to publish in the form of a statistical release before any political or other public use is made of the statistics.

There are circumstances under which the Statistics Authority will regard some such data—particularly where it is issued in aggregate form—as being official statistics; and expect it to be produced in accordance with the Code. In some fields this is normal practice. Crime records, hospital records, school records, social security records, among others, begin, at the local level, as management information and are then aggregated to create high profile and important official statistics. This raises the question of which sets of aggregate management information should, in the public interest, be treated as official statistics, and which may reasonably continue to be produced without reference to the Code.

The National Statistician has issued guidance on the principles to which government bodies should have regard in deciding whether or not a particular set of data should be treated as official statistics.13 This guidance acknowledges that not all cases will be clear-cut; and there may be some in which the Statistics Authority will conclude that data that have not previously been published as official statistics should in future be treated as such, and that, in the interests of maintaining public confidence, the requirements of the Code should be observed.

In deciding whether to propose to Ministers or the senior official responsible for the producer body that a particular set of data produced by their organisation should in future be treated as official statistics, the Statistics Authority will place particular weight on two considerations:

— whether the data are used publicly by the organisation in support of major decisions on policy, resource allocation or other topics of public interest; or
— whether the data attract public controversy when published and the Authority takes the view that public debate would be better informed if the figures were, in future, handled as official statistics.

12 Printed as Appendix 1
The Authority will not press for data to be treated as official statistics where it believes that, despite the public use, they share few characteristics in common with what are accepted to be official statistics by Parliament or the public. This could apply to much financial data, to one-off estimates of future policy impacts, and to many ad-hoc research findings.

Where the Authority concludes that the data should be treated as official statistics, it will write to the Minister, or senior official, responsible for the producer body to explain its view. Depending on the circumstances, the Authority may further comment on the manner in which the figures have previously been published and indicate respects in which the requirements of the Code of Practice ought to have been, but appear not to have been, met. The Authority will publish all such correspondence.

The Authority will keep this Statement under review, and will amend it as necessary.

21 March 2011