House of Commons

Home Affairs Committee

The work of the Immigration Directorates (Q1 2016): Government Response to the Committee's Sixth Report of Session 2016–17

First Special Report of Session 2017–19

Ordered by the House of Commons
to be printed 31 October 2017

HC 541
Published on 3 November 2017
by authority of the House of Commons

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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The current staff of the Committee are Carol Oxborough (Clerk), Phil Jones (Second Clerk), Harriet Deane (Committee Specialist), David Gardner (Senior Committee Assistant), Mandy Sullivan (Committee Assistant) and George Perry (Senior Media and Communications Officer).

Contacts

All correspondence should be addressed to the Clerk of the Home Affairs Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 2049; the Committee's email address is homeaffcom@parliament.uk.

First Special Report

The Home Affairs Committee published its Sixth Report of Session 2016–17, The work of the Immigration Directorates (Q1 2016) (HC 151), on 27 July 2016. The Government's response was received on 26 October 2017 and is appended to this report.

In the Government response the Committee's recommendations are shown in bold type; the Government's response is shown in plain type.

Appendix 1: Letter from the Home Secretary to the Chair of the Committee

I am writing to provide to you the Government's response to your Committee's report into the work of the immigration directorates (Q1 2016). The response is annexed to this letter.

The Committee's report was published in July 2016 and the Government's response is unacceptably overdue. I apologise for the delay, which is down to a number of internal and external factors, including the need to amend the Government's response in light of a legal determination on Home Office country guidance.

The response has been updated to reflect the latest position on the issues raised in the report and includes data up to the period ending 30 June 2017. I hope you find it helpful.

The Rt Hon Amber Rudd MP

Appendix 2: Government Response

The Home Office would like to thank the Committee for its report on the work of the immigration directorates, published in July 2016. The Government's response is set out below. We apologise for the delay in responding to this report.

Introduction

Moves to tighten immigration controls for non-UK citizens seeking to come to the UK, following the outcome of the EU Referendum, will have obvious implications for the work of the Immigration Directorates, whatever the final terms of the agreement with the EU are. Past experience has shown that previous attempts to tighten immigration rules have led to a spike in immigration prior to the rules coming into force. Much will depend on the negotiations between the UK and the EU and the details of any deal to retain or constrain the free movement of people and the rights of those EU/EEA citizens arriving in the UK and UK citizens living in the European Union. If changes to the system of immigration are to work, the Government must ensure that the relevant directorates, notably UK Visas & Immigration, are given the additional resources they will certainly need to deal with their increased workload effectively. (Paragraph 6)

The Government has been clear that free movement will end following our exit from the EU. In future, EU migration will be subject to UK law. We are considering a range of options for how our immigration system will work in future. This will include a consideration of the resource implications.

In the meantime, UKVI continue to make applications quicker and easier and, since October 2016, EEA national customers can apply for residency or permanent residency online. The intelligent form and check sheet encourages customers to provide us with their most relevant evidence.

The outcome of the EU referendum has placed EU nationals living in the UK in a potentially very difficult and uncertain position. The key to resolving this is certainty. EU citizens living and working in the UK must be told where they stand in relation to the UK leaving the EU and they should not be used as bargaining chips in the negotiations. There also has to be an effective cut-off date to avoid a surge in applications. The most obvious dates include the date of the Referendum, 23 June 2016, the date Article 50 is triggered or the date when the UK actually leaves the EU. EU citizens settled in the UK before the chosen date should be afforded the right to permanent residence. The challenge of successfully resolving the practicalities of the UK exit in relation to EU citizens must not be underestimated. A unit should be established in the Home Office to deal with this issue, in addition to the newly-established Department for Exiting the European Union headed by the newly-appointed Secretary of State, Rt Hon David Davis MP. (Paragraph 7)

Establishing where EU citizens live and work is the first step in the process of clarifying their right to permanent residence in the UK. The first option may be registration, a second may be identification by National Insurance number. Whatever scheme the Government follows should be chosen as quickly as possible and be made as seamless as possible. If a system of registration is required then a pilot should be established with a local authority so that practical considerations can be further explored. (Paragraph 8)

On 26 June 2017, the Government published and laid in Parliament a policy paper which outlines our proposals to safeguard the position of EU citizens living in the UK and UK nationals living in the EU. We want to offer them certainty about their status and are prioritising this issue in negotiations. We are clear that no EU citizen lawfully in the UK today will have to leave when the UK exits the EU. This is a fair and serious offer on which we are confident that we will soon reach an agreement.

The Home Office constantly reviews its capabilities in order to deliver the Government's agenda. We continue to assess how our priorities will impact on the workforce and capabilities required. Operational units across the Home Office actively monitor workflows to ensure sufficient resources are in place to meet demand and will continue to do so throughout negotiations and as the UK leaves the EU. Any resultant changes to resource requirements will be factored into strategic planning.

Visa Applications

We have previously expressed concern about the large number of visa applications that have yet to be entered onto the Case Information Database. Despite the number of applications falling for consecutive quarters, the number of cases that have been

received but which UKVI have yet to begin processing continues to rise. This is unacceptable, it is a simple administrative task which should easily be completed. The Home Office's failure to put data on computers is delaying the processing of cases and does not inspire confidence in their ability to manage this caseload. (Paragraph 11)

We accept that the time taken to enter records onto the Case Information Database has been too long. This has been accentuated at points by increased intake in our paper based Citizenship and European routes.

UKVI is currently in the process of moving all in-country application processes from paper to digital submission, which will ultimately eliminate the need to input cases manually. Currently Tier 4 and Tier 2 applications are submitted digitally, and in the majority of cases are instantly created on the system as soon as the application is submitted, so that they are immediately ready for casework rather than waiting up to five days to be manually keyed onto the IT system. We are also trialling the introduction of online applications for some straightforward applications from European Nationals. More routes will shortly be adopting this process which will benefit both the business and customers. However, it should be noted that our service standards are timed from date of receipt rather than input and we continue to meet our service standards.

In our previous Report we highlighted the large number of family reunion visa applications that were outstanding. This has not been addressed. The Government must explain why so many out-of-country family reunion cases are not being processed within service standards and set out what steps it is taking to address this issue. Family reunion is important as a safe and legal migration route to the UK and we will explore this issue in more detail in a forthcoming report on the migration crisis. (Paragraph 14)

Issues with recording systems in the past have meant that published statistics indicate a high volume of outstanding cases. We are confident that the next published statistics will show that the average time taken is now 40 days and within service standards.

The number of notifications from sponsors of Tier 4 visas that require no further action is far too high and this is an obvious inefficiency in the system of enforcement. We repeat the recommendation from our previous Report that the Home Office must constructively engage with the academic sector to reduce this figure. It is unacceptable that academic institutions are wasting time generating notifications which the Home Office knows to be unnecessary. We expect this situation to be addressed by 31 December 2016. (Paragraph 18)

The increase in the proportion of Tier 4 sponsor notifications resulting in no action may be a result of UKVI action targeting non-compliance, prompting sponsors to submit notifications as a precautionary measure. UKVI is already constructively engaging with the education sector to improve its understanding of which notifications are required, including running workshops and circulating instructions.

This engagement has resulted in the number of notifications not requiring action to drop by 95% since the end of Quarter 1 2016. We are continuing to run a series of events with sponsors to encourage the number to continue to fall.

Our inquiry into the English-language testing system and the discovery of widespread fraud is ongoing. As part of that inquiry we have received evidence of serious shortcomings in the Home Office's response to the fraud. We expect to conclude our inquiry in September. (Paragraph 21)

We cooperated fully with the inquiry into handling of abuse of the Secure English Language Testing system and have provided responses to the questions raised by the Committee as part of that inquiry. We maintain that our action was a reasonable and proportionate response to the large-scale fraud identified.

Asylum cases

The available data do not allow us to judge whether UKVI is meeting its service standards of processing straightforward asylum cases within six months and non-straightforward cases within 12 months as no such breakdown is provided. There is little point in having service standards if the information is published in such a way that does not allow UKVI's performance to be judged against them. The data must be published in a way that allows such scrutiny. (Paragraph 26)

The number of outstanding asylum applications is at an all-time high. Despite repeated warnings from this Committee the Home Office has done nothing to address this situation and it must set out what steps it is taking to tackle this concern. (Paragraph 27)

On service standards, we continually keep the information we publish under review, and are actively looking at how asylum data can be better represented in future publications. In the next publication of transparency data, we will publish two new tables. One will show performance against the day 182 straightforward public service standard, and one will show the initial decision work in progress broken down by straightforward and non-straightforward cases.

We continue to meet the day 182 straightforward case target every month but, in order to reduce the number of outstanding initial decisions to around 10,000 by the end of the financial year, we have implemented a new generation casework solution, based in Bootle. This new office will provide a number of opportunities, such as extra casework capacity to direct at processing asylum claims, and the consolidation of a number of existing process improvement pilots that will increase asylum casework productivity.

This is the third consecutive Report in which we have commented on the approach of the Home Office to asylum-seeking Eritreans. It is unacceptable that the Home Office is still getting so many of its decisions regarding nationals of this country wrong. This raises wider concerns over the Home Office's country guidance, particularly in the period between the Home Office acknowledging that its guidance is incorrect and revised guidance being implemented. Decisions made in this period, as the situation with Eritreans has shown, can result in foreign nationals being repatriated to countries the Home Office knows to be unsafe or has concerns over—which is unacceptable—or appeals clogging up the courts unnecessarily. When the Home Office has concerns over the accuracy of its country guidance it should suspend decisions until such a time that those concerns have been investigated and, where necessary, revised guidance put in place. (Paragraph 31)

All asylum claims lodged in the UK are carefully considered on their individual merits against a background of relevant case law and up to date country information. As explained in our previous responses, Home Office country information and guidance is based on a careful and objective assessment of the situation in Eritrea using evidence taken from a range of sources such as local, national and international organisations, including human rights organisations, information from the Foreign and Commonwealth Office, and trusted media outlets.

The Home Office does not accept that the core assessment – that whilst Eritreans may qualify for protection, not all will do so – is incorrect. However, we acknowledged that our previous guidance contained information which needed to be updated.

On 4 August 2016, we published updated country information and guidance on Eritrea. This included country information which had become available since September 2015, notably (but not limited to) a report by Amnesty International in December 2015, the UN Commission on Inquiry's report of June 2016, and information gathered from the UK's fact-finding mission to Eritrea in February 2016.

The Upper Tribunal of Immigration and Asylum Chamber heard a country guidance case in June 2016. This considered evidence up to that time on the situation regarding deserters and evaders of national service from Eritrea. The Tribunal handed down its determination on 7 October 2016 (this was published on its website on 10 October, but subsequently withdrawn on 13 October then reissued on 24 October).

The Home Office published an updated country policy and information note on Eritrea covering illegal exit and national service on 30 October. The note reflects the Tribunal's determination.

The Home Office notes the recommendation on suspending decision making and does consider whether it is necessary or appropriate to do so on a case-by-case or situation-by-situation basis.

We note the high number of appeals from Iranian nationals, more than half of which are successful. The Home Office must explain why such a high proportion of appeals in asylum cases involving Iranian nationals are successful and, if necessary, review its guidance for that country accordingly. (Paragraph 32)

The two biggest groups claiming asylum from Iran are Christian converts and political bloggers/journalists. Our guidance on these groups accepts there is a real risk to these groups; however, some individuals can be refused on credibility grounds.

There are various reasons why the First-tier Tribunal may allow an asylum appeal. These can include the submitting of new evidence that was not available to the decision maker at the time of the initial decision; and/or the Tribunal judge taking a different view on the evidence; and/or the credibility of the claimant; and/or interpretation of the case law. An allowed appeal is not in itself an indication that the initial decision was incorrect at the time it was made. Decisions relating to Iranian nationals that are overturned at appeal are often due to the Tribunal finding these cases credible.

We expect claimants to disclose all relevant evidence to support their claim at the earliest opportunity so that we can properly consider their case. Decision makers receive extensive

training on how to interview asylum seekers in a sensitive way so that they are given every opportunity to disclose information relevant to their claim before a decision is taken, even where that information may be very sensitive or difficult to disclose.

Nevertheless, we aim to reduce the allowed appeal rate by analysing the reasons why appeals are allowed and using this to further improve guidance and training. Similarly, the Home Office's country information and guidance is kept under review and we will amend it as and when it is necessary and appropriate to do so.

We remain concerned about the Government's ability to increase capacity sufficiently to meet its commitment to resettle 20,000 Syrian refugees by 2020, and the separate commitment to resettle thousands of unaccompanied children, which the Government has rightly made. We will explore this issue in more detail in our forthcoming report on the migration crisis. (Paragraph 36)

We continue to work with local authorities to identify opportunities to resettle Syrian families as part of the Syrian Vulnerable Persons Resettlement Scheme as well as vulnerable children and their families as part of the Vulnerable Children's Resettlement Scheme. Some authorities have not resettled any refugees in the initial stages but have committed to resettle people in the future.

We are determined to ensure that no local authority is asked to take more than the local structures are able to cope with and so we ask local authorities to think very carefully about whether they have the infrastructure and support networks needed to ensure the appropriate care and integration of these refugees before telling us how many individuals they believe they are able to resettle. We want to ensure that capacity can be identified and the impact on those accepting families under this scheme can be managed in a fair and controlled way.

So far 8,535 people have been granted humanitarian protection under the VPRS since the scheme began, and in the year ending June 2017, 5,637 people were resettled under the VPRS across 246 different local authorities.

The bureaucratic hurdles that are being put in front of refugees after a decision has been made allowing them to enter the UK to be reunited with family members are totally unacceptable, particularly as many of those affected are fleeing conflict and will have already undergone severe hardship. The UK Government should be doing all it can to help people in these circumstances rather than hindering their chance to reach safety. Where an individual receives notification of permission to enter the UK but it arrives too late for transport to be secured, it is ridiculous for that permission to be cancelled and for the process then to have to be restarted. The system must be more flexible. (Paragraph 39)

UKVI have revised operational processes for family reunion applications to allow migrants to plan their journey to the UK within the validity of their 30 day travel visa. We have published revised guidance for Entry Clearance Officers to ensure they check the application form for a proposed date of travel and check with the applicant or their sponsor to confirm they are able to travel by that date before issuing the visa. We have also updated guidance on the options available to people if the 30 day travel visa expires

before they can travel. In such cases a visa can be replaced free of charge without any need for a fresh application. Applicants can also defer the start date of their visa for up to three months to make sure they have time to make necessary arrangements.

All family reunion applications are carefully considered on their individual merits and without unnecessary delay. In 2015, the average time taken to resolve an application was 40 days. Some applications are decided more quickly and some may take longer, for example if further information is needed to reach a decision, or if a case is subject to an appeal hearing.

We have also revised Home Office policy guidance on family reunion to streamline the process and make clearer for caseworkers, applicants and sponsors what is expected of them, including the types of evidence that can be provided to support an application. We have worked closely with external partners, including the British Red Cross, to improve our guidance and have committed to monitoring how the policy is applied in practice to make sure there is no unnecessary bureaucracy.

It seems to us perverse that children who have been granted refugee status in the UK are not then allowed to bring their close family to join them in the same way as an adult would be able to do. The right to live safely with family should apply to child refugees just as it does to adults. The Government should amend the immigration rules to allow refugee children to act as sponsors for their close family. (Paragraph 41)

We do not accept this recommendation. Our current family reunion policy meets our international obligations and we do not believe that widening the criteria is necessary. We must not create perverse incentives for children to be encouraged, or even forced to leave their families and risk dangerous journeys hoping relatives can join them later. This has the potential to play into the hands of criminal gangs seeking to exploit vulnerable people and goes against our safeguarding responsibilities. Those who need international protection need to claim in the first safe country they reach – that is the fastest route to safety – rather than travelling into and across Europe to reach the UK.

Where an entry clearance application fails under the Immigration Rules, we consider whether there are exceptional circumstances or compassionate reasons to justify granting a visa outside the Rules. This caters for extended family members, including parents of children recognised as refugees here, in exceptional circumstances.

Individuals granted asylum in this country must not be forgotten amidst the attention paid to refugees being resettled from the Middle East. They too will have fled abuse, torture and conflict and are equally deserving of the right to be treated with respect and dignity. Evidence from the Refugee Council and others suggests that this support is not always available when it should be, with the result that refugees can find themselves destitute at the moment their need for asylum is recognised. We are aware that the Government has acknowledged this problem and has asked the Department for Work and Pensions to undertake a review of its support to newly recognised refugees. If the study concludes that there is a need for the grace period to be extended then the Government must implement that recommendation swiftly. We will return to this subject as part of our inquiry into asylum accommodation later this year. (Paragraph 46)

When a destitute asylum seeker is recognised as a refugee, the support that the Home Office has been providing to them stops 28 days later. This is because they are free to take work and become eligible to mainstream benefits. We have worked closely with DWP to ensure that when refugees apply for benefits promptly after they are granted they are able to receive payment immediately after the 28 day period has ended. We are also introducing a new service where UKVI contacts the refugee as soon as they are granted to help them arrange an appointment at their local Job Centre Plus. We will be evaluating how these interventions are helping, making improvements where necessary and rolling them out across all regions in the coming months.

Progress in concluding cases in the Older Live Cases Unit (OLCU) has slowed over the last 18 months. The caseload of the OLCU is currently shrinking by an average of 250 cases per quarter. At this rate, it will take a further 24 years to clear the backlog of 23,962 outstanding cases, the majority of which date back to before 2007. It is unacceptable that people have had to wait over nine years for a conclusion to their case. The Home Office must explain why, nine years after its creation, the Older Live Cases Unit is still in existence, and when it expects the unit to have concluded its work. Sarah Rapson, the Director General of UK Visas and Immigration promised this Committee that this work would be a priority. Unfortunately she has been unable to live up to her promise. In our next report we expect to see better progress. (Paragraph 56)

UKVI and its then-Director General undertook to review and communicate decisions on these legacy cases (migration and asylum cases pre-dating March 2007) by the end of 2014, other than in exceptional circumstances. This commitment has been met – all cases, a small number of exceptional cases aside, were reviewed and decisions communicated by the end of 2014. The cases which are outstanding are those where the decision communicated was to refuse leave but that person has not left the UK as they should. As with the other failed asylum seekers, these people have been advised that they have no basis to be in the UK, and should leave. It is incorrect to equate these outstanding cases to people who are still awaiting a decision from the Home Office.

From April 2015, Complex Casework Directorate (CCWD) has been responsible for the removals element of the work of OLCU. That means these cases are subject to the same actions as the general failed asylum seeker population, and CCWD continues to work with Immigration Enforcement colleagues to remove these individuals where it is possible to do so. Where individuals do not leave, their cases are referred to Immigration Enforcement for consideration of enforcement activity. Immigration Enforcement takes a threat-based approach to prioritisation and tasking; assessing all requests dynamically to ensure they are consistent with our strategic priorities as well as being responsive to emerging threats.

Immigration Enforcement

Around half of the cases in the Migration Refusal Pool (MRP) examined by Capita have been returned to the Home Office, but no breakdown is provided as to why those cases were returned. We note that the number of cases in the MRP has begun to fall, but we remain concerned about the large number of cases sent to Capita for processing only to be returned to the Immigration Enforcement directorate. We note also the Independent Chief Inspector of Borders and Immigration's recent report which concluded that cases were being entered into the pool unnecessarily. This suggests to us

that the Home Office continues to lack an effective and efficient system for managing its immigration casework, a theme which we have noted many times. The Home Office must explain why so many cases transferred to the Migration Refusal Pool for processing by Capita are being returned to the Immigration Enforcement directorate and what steps it is taking to reduce this obvious inefficiency. (Paragraph 64)

The contract with Capita expired on 28 October 2016. After careful consideration it was decided that a contractor was no longer required to support our work on the Migration Refusal Pool and so the contract has been allowed to expire naturally. Any outstanding cases which Capita was handling were returned to Immigration Enforcement. The Home Office will continue to actively manage the Migration Refusal Pool in a systematic and timely manner, as pursuing those individuals who are not lawfully present in the UK is vital to upholding the principles of the Immigration Rules. At the end of Q2 2017, the total Migration Refusal Pool stood at 135,727. This is a reduction of just under 9% from Q2 2016, and continues to reduce.

The Home Office has a capable workforce of Immigration Enforcement caseworkers who are trained to progress cases. A robust process to ensure cases do not enter the Migration Refusal Pool unnecessarily was put in place by UKVI in March 2016 following the Independent Chief Inspector's report "A short Notice Inspection of the Tier 4 Curtailment Process". The Independent Chief Inspector was satisfied with the process at the re-inspection in January 2017, the report for which was published in July 2017.

The Government should make a commitment to clear the pre-2008 migration cases and put forward a specific deadline by which to do this. Progress on clearing those cases has slowed significantly over the last six months. Given that the bulk of the work has been outsourced there is a clear cost to work being prolonged. (Paragraph 66)

There has always been a clear commitment to the resolution of the pre-2008 cohort, and the vast majority of this cohort was cleared by the end of 2016. At the beginning of Q1 2016, the pre-2008 cohort stood at 55,547, and by the end of Q4 2016 it stood at 4,972. Any residual cases continue to be pursued vigorously. The work is no longer outsourced.

Ten months on from Stephen Shaw's report on detention, the number of people spending more than two months in detention has increased. The Government aims to address the problem of long detention in its 'adults at risk' policy. The policy states that "a failure to remove within the expected timescale might also tip the balance to the extent that release becomes appropriate." This does not strike us as a firm commitment to reduce the length of time people are detained. We will monitor the implementation of this policy closely. It must meet our and Mr Shaw's recommendations that the length of detention be reduced. If it fails to do so then further interventions such as a statutory limit on detention will have to be considered. (Paragraph 70)

The adults at risk policy is part of a range of measures set out in the Government's Written Ministerial Statement of 14 January 2016, which represents the Government's response to Mr Shaw's report. It is not necessarily the case that the adults at risk policy will, in isolation, account for a reduction in the average length of detention or, indeed, that its specific impact can be measured given the range of factors at play. However, the Government expects the policy to improve the way in which vulnerable people in

detention are managed and to have the greatest impact in the cases of individuals who are most at risk. The Government has asked Stephen Shaw to carry out a short review later this year in order to assess progress against the key actions from his previous report.

We welcome the increase in the number of people who are considered unfit for detention being released. However, as we have repeatedly stated, it is unacceptable that the large majority of detainees subject to Rule 35 Reports remain in detention. The Shaw review makes clear that safeguards for vulnerable people should be increased. The Government's 'adults at risk' policy must satisfy this objective. (Paragraph 73)

The Adults at Risk in Immigration Detention policy was implemented on 12 September 2016. The aim of the policy is to ensure that vulnerable people are properly protected. The process for determining whether specific individuals should be detained is more transparent, more dynamic, more effective and more balanced than it was before. As was set out in the Government's written ministerial statement on 14 January 2016, the policy strengthens the existing presumption against the detention of those who are particularly vulnerable to harm in detention.

In the context of the adults at risk policy, reports from medical professionals working in the detention estate, including Rule 35 reports, are regarded as evidence in the same way in which other professional evidence is regarded, and treated on its merits. Individuals are also at liberty to provide whatever additional evidence they consider appropriate. Decisions on detention are based on case by case consideration of the available evidence and the immigration factors, with detention not occurring (or being maintained) unless and until the immigration factors outweigh the evidence of risk.

We considered the issue of foreign national offenders in detail in our Q4 2015 Report and expressed concern that the number of FNOs in the community was so high. It is Government policy to remove all foreign national offenders, but, despite large numbers of FNOs being returned, the number in the prison estate and living in the community continues to grow. The Government must set out how many of those FNOs in prison and in the community it intends to deport and the barriers that are currently preventing it from doing so; how many of the FNOs in the community are there as a result of being released from the prison estates of Northern Ireland and Scotland and what action the UK Government has taken to secure their removal, both while in prison and once released into the community. The Government should include in its response how many FNOs there are currently in Scottish and Northern Irish prisons. (Paragraph 77)

We welcome the Committee's observation of the large numbers of foreign national offenders being returned.

The number of FNOs serving a prison sentence has reduced by more than 1,200 since its high point in May 2012 (from 7,708 in May 2012 to 6,466 in December 2016).

The number of FNOs in the community is 5,728, all of whom are subject to ongoing removal or deportation action. The Government's policy on managing adults at risk and our response to the Stephen Shaw report on detention means that we are now ensuring consideration of release takes place in every case, particularly where there are vulnerability concerns, such as those who are potential victims of trafficking. These decisions have to be carefully balanced against the risk of harm an individual poses to the public.

The police routinely carry out checks for overseas criminal convictions on foreign nationals who are arrested. If those checks reveal serious or persistent convictions overseas, they are referred to Immigration Enforcement for deportation consideration. This, coupled with a tougher approach to low level offenders, has put more foreign nationals in scope for deportation and has inflated the number of FNOs reported as being in the community. Previously, these foreign nationals with convictions abroad were in our communities but were unknown to us. Our tougher approach has led to the removal of more harmful individuals on the basis of their convictions outside the UK.

As of December 2016 there were 108 FNOs in the community having been released from Scottish prisons and 26 FNOs in the community having been released from Northern Irish prisons. In all of these cases the Home Office is pursuing deportation.

The latest data shows that, as of March 2017 there were 312 FNOs in Scottish prisons and 134 in Northern Ireland prisons. Please note that this number includes those on remand.

The Committee will explore the implications of the UK leaving the EU in a subsequent inquiry. In our last report we expressed concern over the failure of prisoner transfer arrangements with the EU. The House was told that by the end of the year 50 Polish offenders in British jails would be automatically transferred as the derogation would have ended. Since the UK is still in the EU we expect this commitment to be honoured. (Paragraph 78)

HM Prison and Probation Service and the Home Office are continuing to work together to secure the transfer of prisoners to Poland under the EU PTA. Transfers have now taken place and others are planned.

Marriage fraud has a devastating impact on the individuals affected, while those perpetrating the fraud often go unpunished. We are concerned that it is not being treated with the seriousness it deserves, both by the police and, where matters of immigration are involved, by the Home Office. The Home Office must set out how many cases of marriage fraud have been reported to it in the last three years; what investigations have taken place; and how many people have had their Leave to Remain revoked and how many of these have been removed from the UK as a result. (Paragraph 81)

The Home Office takes abuse of the immigration system seriously, including all types of marriage abuse. Through the Immigration Act 2014 we have made it much harder for individuals to enter into 'sham' marriages as a way of abusing the immigration system. As the Committee notes, there is a difference between a 'sham' marriage and what the Committee described as 'marriage fraud'. This is not a term we recognise, and there is no specific offence of 'marriage fraud'.

Immigration Enforcement review all allegations of marriage abuse. This can lead to enforcement action, criminal prosecution, or through information sharing with UK Visas & Immigration the removal of permission to remain in the UK.

Data on allegations that lead to curtailments of leave as a result of abuse of the type described by the committee in their report is not recorded in a way that can be reported on centrally.

Where allegations about immigration crime are made, Immigration Enforcement will investigate and prosecute if there is sufficient evidence to do so.

If the current system of civil penalties is to work as a genuine deterrent against illegal working and the employment of illegal workers, then those engaged in that criminal activity must face severe consequences for their actions. Too often in the past, those found guilty have been able to evade the sanctions imposed upon them. It is not acceptable that less than a third of the penalties imposed are recovered, even accounting for appeals and early payment discounts. It is ridiculous for it to take over two years to recover the debt owed. This allows unscrupulous employers to have the benefit of illegal workers and subsequently not pay the sanctions given to them, making a mockery of the system. Rapid progress needs to be made. The Home Office must set out the amount that has been collected for each of the last three years and include the amount collected in all future quarterly reports on illegal working. In our next report our assessment of the civil penalty system will be expanded to include penalties for renting accommodation to individuals not entitled to be in the UK, including what effect this has had on landlords and on those who are entitled to be here seeking accommodation. We will also look to see whether there is evidence about the consequences of the new sanctions on illegal working, in terms of labour exploitation. (Paragraph 85)

Data provided by the Home Office show that, as with civil penalties for illegal working, the Home Office has failed to recover the full amount of fines issued. The civil penalty system will not be an effective means of deterring people from smuggling migrants or incentivising better security measures if hauliers and their drivers can simply evade the fines that are imposed. The Home Office must set out how much it has been unable to collect in each of the last three years; the reasons for this failure; and what steps it is taking to improve rates of collection. In order for us to accurately assess the Department's management of the clandestine entrant civil penalty regime there must be regular data releases, which must include not just the total penalties imposed, but the amount outstanding from previous years. Any reduction in the amount due, including as a result of appeals or any early payment initiative, must be explained. Collection of civil penalties will be one of our key performance measures for the Department. (Paragraph 89)

The Government is committed to tackling illegal working, and the civil penalty scheme remains the principal sanction against employers of illegal workers in routine cases, where negligence is generally the cause of the non compliance. In 2014 the maximum penalty was doubled to £20,000 per illegal worker to better reflect the harm caused by illegal working, and we took action in the Immigration Act 2014 to strengthen our power to pursue unpaid penalty debt in the courts. In the financial year 2016/17, we imposed over 2,900 penalties and recovered £ 16.5m of debt. This is the highest level of debt recovery since the start of the scheme in 2008. It represents a 32% increase compared to £12.5m collected in the financial year 2015/16. In the financial year 2014/15 a total of £7m debt was recovered.

In the financial year 2016/17, the faster payment option, which provides a discount for early and full penalty payment, accounted for 49% of all recoveries and equated to £8.1m of debt recovered. Early payment also reduces administrative costs to the Home Office. We also offer the option of paying in instalments. The significant increase to penalty values in 2014, doubling the penalty per illegal worker, means the ability to offer payment

by instalment is critical to recovering the debt, particularly from small and medium-sized enterprises (SMEs). The ability to pay the debt in this way lessens the justification for courts to reduce the amount on the grounds the employer is unable to pay in one lump sum.

We know that there is more we can do to further increase the percentage of civil penalty debt recovered, and we continue to improve the effectiveness of our debt recovery mechanisms. The Cabinet Office Fraud, Error, Debt and Grants Function provide strategic leadership and sets cross-government standards for debt management. One initiative being taken forward is the Debt Market Integrator (DMI) – a commercial framework for the provision of third party debt collection services to Government. In August 2015 the Home Office was one of the first of the six departments to begin using DMI to collect Government debt.

The civil penalty scheme is just part of a package of measures which may be used against employers to provide a proportionate and graduated response to cases of illegal working. We used the Immigration Act 2016 to strengthen sanction against employers of illegal workers. We made it easier to prosecute them; to shut their businesses for repeat non-compliance and subject them to an intensive inspection regime under a court-imposed compliance order; and ensured that holding licences for alcohol and late night refreshment and private hire and taxi operator and driver licences are conditional on complying with the UK's immigration laws. In addition to these sanctions for illegal working, non-compliance may also trigger other consequences for the employer. For example, it may impact on licences for sponsoring skilled migrants, lead to adverse credit references and the ability to act in the capacity of a director. Employers of illegal workers also risk reputational damage as the Home Office publishes the details of those who don't make the civil penalty payment.

Conclusion

Legacy cases and those cases which are being processed outside of service standards constitute a backlog. There was a modest reduction in the size of the backlog during Q1 2016 but the Department must do better. There must be substantial reductions to the backlog before the Immigration Directorates are faced with the additional demands that the UK leaving the EU will bring. (Paragraph 91)

The commitment to review and communicate all decisions in the legacy cohort has been met.

At the end of the period in question, Temporary and Permanent Migration outstanding visa applications outside of service standards accounted for only 474 (0.46%) of 101,878 total cases.

At the end of Q2 2017, outstanding applications outside of service standards accounted for only 259 (0.17%) of 150,435 total cases.