



House of Commons  
Home Affairs Committee

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# **The work of the UK Border Agency (July– September 2012)**

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**Fourteenth Report of Session 2012–  
13**





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

*Ordered by the House of Commons  
to be printed 19 March 2013*

## Home Affairs Committee

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

### Current membership

Rt Hon Keith Vaz MP (*Labour, Leicester East*) (Chair)  
Nicola Blackwood MP (*Conservative, Oxford West and Abingdon*)  
James Clappison MP (*Conservative, Hertsmere*)  
Michael Ellis MP (*Conservative, Northampton North*)  
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Mark Reckless MP (*Conservative, Rochester and Strood*)  
Chris Ruane MP (*Labour, Vale of Clwyd*)  
Mr David Winnick MP (*Labour, Walsall North*)

The following Members were also members of the Committee during the parliament.

Rt Hon Alun Michael MP (*Labour & Co-operative, Cardiff South and Penarth*)  
Karl Turner MP (*Labour, Kingston upon Hull East*)

### Powers

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

### Publication

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

### Committee staff

The current staff of the Committee are Tom Healey (Clerk), Richard Benwell (Second Clerk), Ruth Davis (Committee Specialist), Eleanor Scarnell (Committee Specialist), Andy Boyd (Senior Committee Assistant), Michelle Garratty (Committee Assistant), Iwona Hankin (Committee Support Officer) and Alex Paterson (Select Committee Media Officer).

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# Contents

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<b>Report</b>	<i>Page</i>
<b>1 Introduction</b>	<b>3</b>
Profile of the Agency	4
<b>2 Focus: clearing the immigration and asylum backlog</b>	<b>5</b>
Background	5
The Agency's handling of the asylum and immigration backlog	6
The Agency's response to the Chief Inspector's findings	8
The tracing programme since April 2012	10
Checks against DWP's databases	11
Security checks	11
Cases with a hit on the Police National Computer	12
Asylum cases that were not reported to this Committee	13
Other issues about the clearing of the asylum and immigration backlogs	18
Use of Terminology	18
Correspondence with applicants, legal representatives and MPs	19
<b>3 Key indicators of the Agency's performance</b>	<b>20</b>
Foreign National Offenders and ex-Foreign National Offenders	21
Ex-FNOS released without being considered for deportation	21
Ex-FNOs living in the community	21
Key issue: tackling the backlog of ex-FNOs living in the community	22
Asylum and immigration backlog: live casework	23
Asylum backlog	23
Immigration backlog	23
Key issue: prioritising the conclusion of legacy casework	23
New asylum cases	24
Initial decisions and conclusions	24
Applicants previously removed from the UK	24
Settlement applications	24
Immigration	26
Number of visas issued	26
Processing of in-country immigration cases	26
Processing of out of country immigration cases	26
Key issue: backlog of in-country immigration applications	27
Postal applications	27
Premium applications	27
In-country applications not yet loaded onto the Agency's computer systems	28
Immigration detention	29
Rule 35 reports	29
Child detention	29
Key issue: Acting on rule 35 reports	29
Appeals and tribunals	31
Appeals Improvement Plan: progress against targets	31

Key issue: closing the Family Visit Visa full right of appeal	32
Sponsors and licensing	33
New sponsor applications	33
Pre registration visits	33
Follow up visits	33
Key issue: post licence visits	33
Enforcement action	34
Non compliance notifications	34
Suspension and revocation of sponsor licences	34
Key issue: tracking the follow up of non-compliance notifications	34
Migration Refusal Pool	35
Key issue: tackling the continued growth of the Migration Refusal Pool	35
Size of the Migration Refusal Pool	35
Intelligence	36
Allegations received in Q3 2012	36
Progress on the National Allegations Database	36
Key issue: an improved intelligence picture about the results of allegations made	36
Departmental information and cooperation with Parliament	37
Departmental information	37
Cooperation with Parliament	37
<b>4 Border Agency Backlogs</b>	<b>38</b>
<b>Conclusions and recommendations</b>	<b>39</b>
<b>Formal Minutes</b>	<b>48</b>
<b>Witnesses</b>	<b>49</b>
<b>List of printed written evidence</b>	<b>49</b>
<b>List of Reports from the Committee during the current Parliament</b>	<b>50</b>

# 1 Introduction

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1. The Home Affairs Committee asks for quarterly data from the UK Border Agency about its performance against a set of key indicators. The Agency's statistics relate to the calendar year as follows:

Q1: January–March

Q2: April–June

Q3: July–September

Q4: October–December

This Report analyses data from July–September 2012, or 'Q3 2012'.

2. After analysing the Agency's performance data we took evidence from its Chief Executive Rob Whiteman. The recent controversy about the Agency's handling of the asylum and immigration backlog and its provision of information to this Committee meant that it was also necessary to take evidence from its former Chief Executives: Lin Homer and Jonathan Sedgwick. We also took evidence from the Chief Inspector of Borders and Immigration, John Vine, who uncovered the fiasco in the course of his inspections this year.

3. We have sought to make our scrutiny of the Agency understandable to Parliament and the public. This report is divided into two sections, the first focusing on the Agency's handling of the asylum and immigration backlog and the accuracy of the information it provided to this Committee on its work in this area. The second section assesses the Agency's performance across the main areas of its work by comparing on a quarterly basis its progress against a set of 'key indicators'. It will therefore be clear to the public, Parliament and to the Agency what is of most interest to the Committee.

## Profile of the Agency

4. An overview of the Agency, its budget and staffing levels can be seen in the table below:

Role		The Agency is responsible for administering the UK's visa, immigration and asylum systems.
Budget (2012-2013) <sup>1</sup>	Resource	£1001m
	Capital	£88m
Number of FTE staff	UK	13,165 <sup>2</sup>
	Global	23,500 <sup>3</sup>

5. The salaries of the Agency's Directors can be seen in the table below:

Role	Salary Bracket (2011-2012) £'000
Chief Executive, Rob Whiteman	175—180
Director of Operations and Deputy CEO, David Wood	100—105
Director of Resources and Organisational Development, Michael Parsons	Not in post
Director, Strategy and Intelligence, Emma Churchill	80—85
Immigration and Settlement Director, Michael Wells	Not in post
Director, Enforcement and Crime, Hugh Ind	Not in post
Director, International Operations and Visas, Jonathan Sedgwick	110—115
Board Adviser on Growth and Engagement, Jeremy Oppenheim	Not in Post
Director of Migration Foreign and Commonwealth Office, Susannah Simon	Not in Post

<sup>1</sup> Taken from Home Office Main Estimate 2012-13

<sup>2</sup> At the end of Q3 2012, taken from Ev 36, para 82

<sup>3</sup> Taken from UK Border Agency website

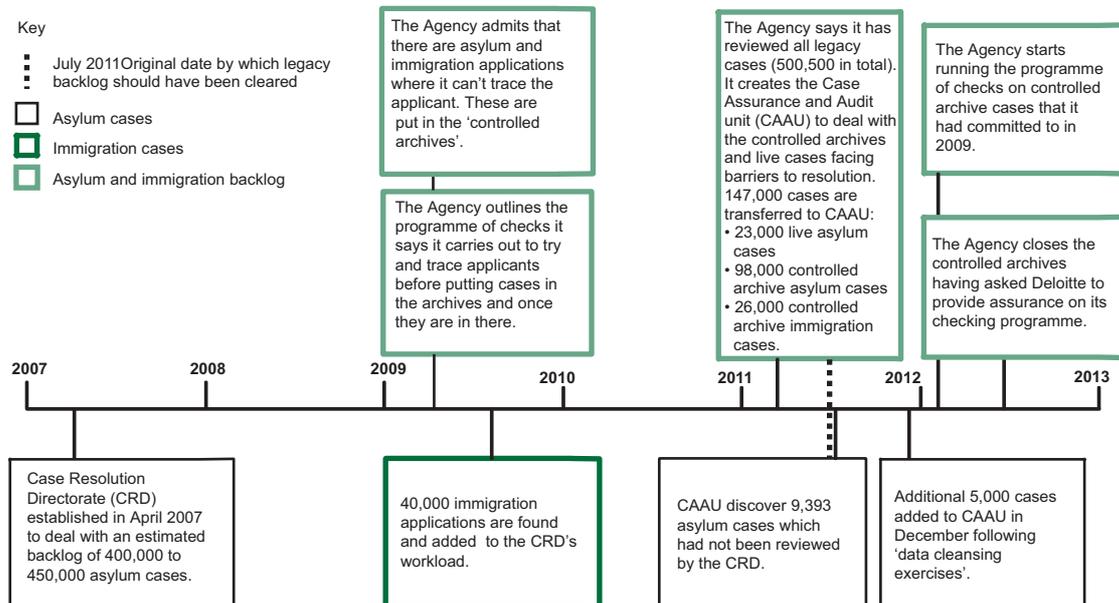
## 2 Focus: clearing the immigration and asylum backlog

### Background

6. The issue of most concern to us in this period has been the Agency's closure of the asylum and immigration controlled archives. The archives contained legacy asylum and immigration applications where the Agency was no longer able to trace the applicant.

7. The controlled archives came into existence through the Agency's work on the asylum legacy programme, set up in 2007, to try and clear the enormous backlog of approximately 460,500 asylum cases that had built up throughout the 1990s. An additional 40,000 immigration legacy cases were discovered and added to the legacy programme in 2009. The Agency first told us about the existence of the controlled archives in July 2009. At our request, it has provided regular updates on the number of cases within them and the checks it claimed to be carrying out to try and trace the applicants. A timeline of the archives and their place within the legacy program can be seen from the diagram below.

#### Background to the controlled archives and their place in the Agency's legacy programme



## The Agency's handling of the asylum and immigration backlog

8. In September this year The Chief Inspector of Borders and Immigration reported on the Agency's handling of legacy asylum and immigration cases. His report revealed many failings, including that:

- prior to April 2012 the Agency had not been properly carrying out its programme of checks on the legacy applications in order to try and trace applicants;
- the Agency had repeatedly supplied this Committee with incorrect information about the programme of checks; and
- the Agency had not informed the Committee about 33,000 asylum legacy cases being worked on by the Case Assurance and Audit Unit.

9. The diagram on the next page gives an overview of the Agency's public statements about its tracing programme and the Inspector's findings.<sup>4</sup>

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<sup>4</sup> Sources: Home Affairs Committee, The Work of the UK Border Agency, Second Report of the Session, 2009-2012; Lin Homer, Letter to the Chairman of the Home Affairs Select Committee, 19 July 2010; The Home Affairs Committee, The Work of the UK Border Agency November 2010-March 2011, Ninth report of the session 2010-2012; Home Affairs Committee, The Work of the UK Border Agency December 2011-March 2012, Fifth report of the session 2012-2013 and the Chief Inspector of Borders and Immigration, An Inspection of the UK Border Agency's handling of legacy asylum and migration cases

Separating fact from fiction: the agency's tracing programme for the legacy cases

2009	<p><b>Agency's Public Statements</b></p> <ul style="list-style-type: none"> <li>The legacy cohort contains cases the Agency cannot trace. Checks are carried out against internal and external databases. If tracing fails they are placed in the archives, after 6 months they are concluded.</li> <li>Archive cases are checked against the Watchlist and PNC every 3 months.</li> <li>No cases where the applicant has a positive PNC hit are placed in the archives.</li> <li>Cases are put through up to 19 different checks. These include: Internal check, Voters Registry, DWP databases, HMRC databases, Local Authorities, Prison and Probation Service, Credit Reference Agencies and some store cards.</li> </ul>	<p><b>Agency's operational guidance to staff</b></p> <p>Agency guidance to staff on procedure to follow before placing cases in the controlled archives was as follows:</p> <ul style="list-style-type: none"> <li>All checks to establish an applicant's whereabouts should be made.</li> <li>Applicants granted leave beyond July 2011, had been removed or left voluntarily should not be put in the controlled archive.</li> <li>Any information in the paper file or Case Information Database (CID) which could be a lead to the applicant's whereabouts should be pursued before the file is put in the controlled archive.</li> </ul>	<p><b>Inspector's findings – asylum backlog</b></p> <p>The Inspector's sample of 145 files contained:</p> <ul style="list-style-type: none"> <li>6 cases where no asylum claim had been recorded, 2 where the applicants had been given UK citizenship, one claim that had been withdrawn and one EU national.</li> <li>'7% of the file sample had been wrongly allocated to the controlled archive'</li> </ul> <p>The Agency had not taken any proactive work to trace any of the individuals in the Inspector's file sample. Overall only 12,000 cases had undergone extensive checks before being placed in the archive.</p> <p><b>Data matching with external providers</b></p> <p>Only 5 cases in the Inspector's sample had been subject to any external checks. These checks took place long before the cases were put in the controlled archive (August 2010 was the most recent).</p> <p>The Agency did not fulfil its commitments to carry out checks with DWP, HMRC or credit reference agencies.</p> <p><b>Data matching against internal systems</b></p> <ul style="list-style-type: none"> <li>PNC checks had been carried out on all files before they were placed in the archive.</li> <li>Once files were placed in the archive the Agency did not carry out regular checks against the PNC or the Home Office Warnings Index (WI) from April 2011 when the cases were transferred to the CAUU.</li> <li>The Agency only used Warnings Index checks when deciding whether to grant leave. Contrary to public claims they were not routine.</li> </ul>	<p><b>Inspector's findings – immigration backlog</b></p> <p>The Inspector's sample of 64 cases contained:</p> <ul style="list-style-type: none"> <li>3 individuals who had claimed asylum,</li> <li>1 who had been granted leave,</li> <li>1 who had never had an initial decision made on their case</li> <li>3 cases which contained strong evidence the individuals had left the UK</li> </ul> <p><b>Data matching against internal and external systems</b></p> <ul style="list-style-type: none"> <li>Cases in the Inspector's sample were not checked against the PNC or WI until April 2011 despite the Agency's claims that this had taken place in 2009.</li> <li>The Agency wrote to all applicants in the immigration controlled archive between April and June 2011. Where replies weren't received and security checks came back negative cases were transferred to the controlled archive.</li> <li>No checks were carried out on files in the immigration controlled archive until April 2012.</li> <li>In 55% of cases sampled the Inspector came across information which could have been used to trace the applicant.</li> </ul>
2010	<ul style="list-style-type: none"> <li>The Agency makes every effort to trace cases, checking a number of internal and external databases.</li> <li>If tracing fails, the case is placed into a controlled archive which is checked against Watchlists every 3 months.</li> <li>No cases where the applicant has a positive hit on the PNC are placed in the archives.</li> </ul>			
2011	<p>Jonathan Sedgwick (Acting)</p> <ul style="list-style-type: none"> <li>Each of those cases has been the subject of the most exhaustive checks and scrutiny, both with the voluntary sector – often people have come to light and been traced through their contact with MPs, for example. We have also checked every single one of them against 19 databases – Government, Home Office, private sector databases. As a result of that there is no trace of them.'</li> <li>Due to the length of time cases will spend in the controlled archive and the low level of re emergence, from 1 April the frequency of checks will be reduced to once every 6 months.</li> </ul>			
2012	<p>Rob Whiteman</p> <ul style="list-style-type: none"> <li>We know that these are people who have not left a footprint in terms of DWP, HMRC and Equifax tracing for more than 6 years and often longer.'</li> <li>The real issue about the controlled archive is that the majority of cases have gone home.'</li> </ul>			
2013				

10. The Inspector's report makes it clear that, contrary to its public claims, the Agency was not carrying out its full programme of checks on legacy cases either before or after they were placed in the controlled archives. The Agency has repeatedly told this Committee that it could have confidence that legacy applicants were no longer in the country as an extensive checking programme carried out over five years had not found any trace of them. We know that there are a significant number of failed asylum seekers and illegal immigrants living in the UK and avoiding contact with public authorities. Recent figures from the London School of Economics put the number of illegal immigrants in the UK at 618,000 and in 2008 the Red Cross reported that it had been approached for help by 10,000 destitute asylum seekers. Therefore, no tracing programme was likely to discover everyone who had slipped through the net. The fact that a sustained and thorough tracing programme did not even take place makes it even less likely that individuals living here have been identified. It is possible that tens of thousands of individuals whom the Agency has not been able to trace are still here.

### *The Agency's response to the Chief Inspector's findings*

11. There have been three Chief Executives of the Border Agency since it was established in 2006:

- Lin Homer, now Chief Executive of HMRC (August 2005– January 2010);
- Jonathan Sedgwick, Acting Chief Executive (January 2010 – September 2011), now Director of International Operations and Visas; and
- Rob Whiteman (since September 2011).

All three individuals have now apologised for supplying the Committee with inaccurate information on the asylum backlog.

12. **Lin Homer** has apologised for wrongly telling the Committee that the group of 40,000 immigration cases discovered in October 2009 had been immediately checked against the Police National Computer and the Watchlist. In fact, with the exception of 800 cases, The Agency did not make these checks until 18 months later between April and June 2011.<sup>5</sup> She has not however apologised for giving the Committee incorrect information about the size of the asylum backlog.

13. **Jonathan Sedgwick** has apologised for wrongly telling the Committee that cases being placed in the controlled archives were checked against 19 databases.

I informed your committee that legacy asylum cases being placed in the controlled archive were checked against 19 databases ... it is now clear to me that this is not correct and that I should have said 'up to 19 databases'.<sup>6</sup>

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<sup>5</sup> Home Affairs Committee, Session 2012-13, *Provision of information to the Committee by the UK Border Agency*, HC 781-i, Q37 and Chief Inspector of Borders and Immigration, *An Inspection of the UK Border Agency's handling of legacy asylum and migration cases*.

<sup>6</sup> HC 781-i, Ev14

We welcome Mr Sedgwick's apology, however, according to the Inspector's report, the majority of cases had not been checked against any databases at all.

14. **Rob Whiteman** wrote to us following the publication of the Inspector's report and said that he takes the provision of inaccurate information to the Committee 'very seriously'.<sup>7</sup> He went on to list the actions he had taken when he realised that the tracing programme had not been carried out properly:

- Set up an internal investigation by the Agency's Professional Standards unit.
- Ensured a proper programme of checks was started.
- Set up a disciplinary investigation.

We understand from Mr Whiteman that a new unit, the Performance and Compliance Unit, has been set up to improve the quality of the data provided by the Agency to Parliament and the public. This unit will be subject to independent scrutiny by the Chief Inspector for Borders and Immigration.<sup>8</sup>

**15. Mr Whiteman did not however inform this Committee that the Agency had regularly supplied it with incorrect information since 2006. This in our view is unacceptable and undermines Mr Whiteman's claims to take the provision of accurate information to the Committee seriously. No senior official in the Border Agency took any steps to alert this Committee to what had happened until the Independent Chief Inspector published his report. This is hardly the mark of a transparent organisation which recognises its accountability to Parliament. Instead the Agency appears to have tried to sweep its mistakes under the carpet in the hope that they would remain unnoticed.**

**16. We are astonished that the Agency provided this Committee, and its predecessors, with information that turned out to be patently wrong on so many occasions over the last six years. If it was not attempting to mislead the Committee then it must be a sign that senior officials had no idea as to what was actually going on in their organisation. We find it very hard to believe that no one within the Agency had any idea that checks were not being carried out as they should have been and we expect the Agency to share the findings of its disciplinary investigation with us as soon as it is completed.**

**17. However, we welcome the establishment of the Performance and Compliance Unit within the Agency, if indeed it will actually ensure that the data provided are robust and reliable, and really can be relied on. We also welcome the oversight that the Chief Inspector will have of its work. We expect this to mark the beginning of a move towards greater transparency on behalf of the Agency; transparency that is evidenced by accurate and clear information provided to Parliament in a timely manner.**

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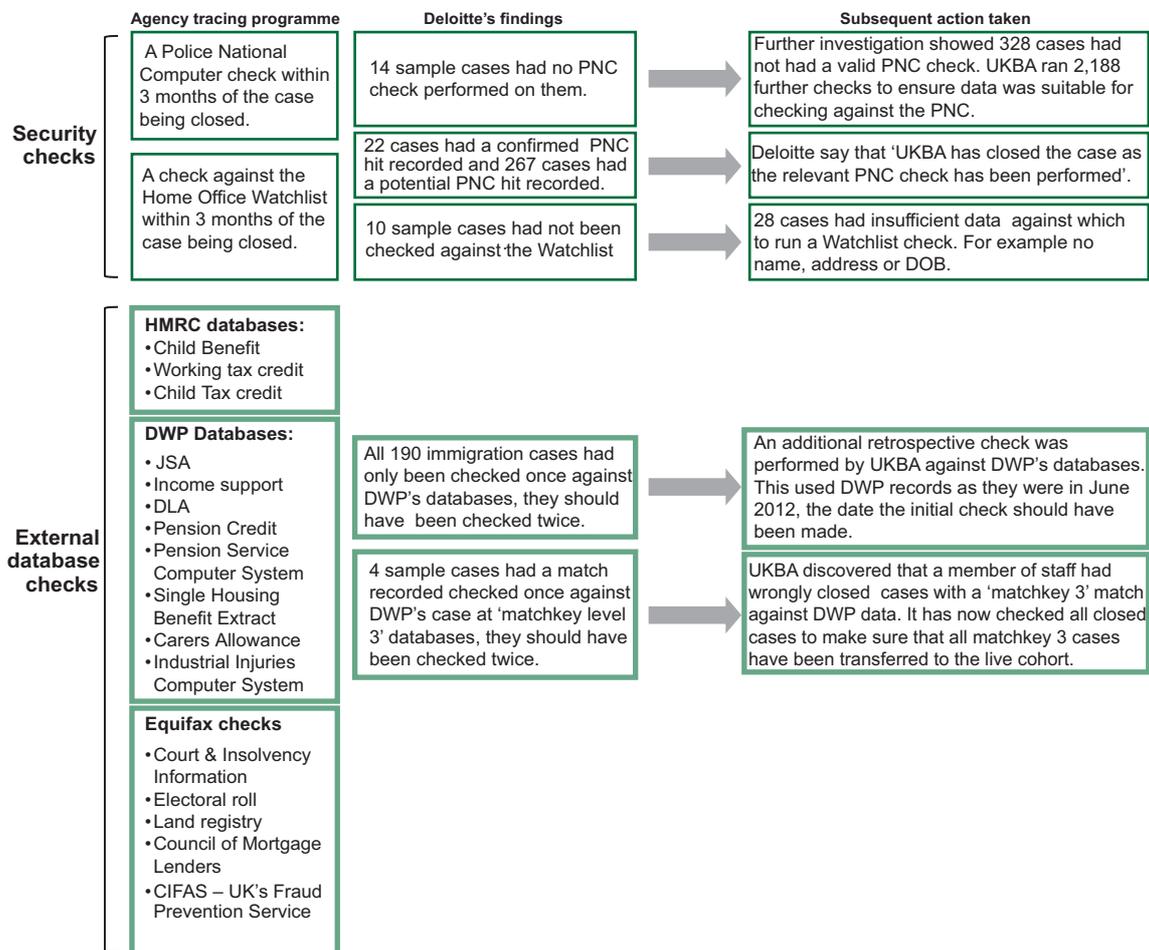
<sup>7</sup> HC 781-i, Ev12

<sup>8</sup> Ev 37

## The tracing programme since April 2012

18. The Agency says that all the cases in the controlled archives were subject to a full checking programme between April 2012 and the closure of the archives on 21 November.<sup>9</sup> In total, 64,600 asylum cases and 15,700 immigration cases have been closed as the Agency cannot trace the applicants.<sup>10</sup> The Agency asked Deloitte to carry out assurance work on the cases in the archives to make sure that the checking programme had been completed properly. Deloitte checked a sample of 1,000 cases (810 asylum cases and 190 immigration cases). This represented only 1.2% of the total number of cases in the archives.<sup>11</sup> A summary of the checks the Agency said it had carried out and Deloitte's subsequent findings can be seen in the diagram below.

### The Agency's final tracing programme and the findings of Deloitte's assurance work<sup>12</sup>



<sup>9</sup> Ev 38

<sup>10</sup> UKBA, Controlled Archives Closure Report, p9

<sup>11</sup> Deloitte, Independent Review of Controlled Archive Process Prior to Case Closure, 12 December, p1

<sup>12</sup> Information taken from Deloitte, Independent Review of Controlled Archive Process Prior to Case Closure, 12 December 2012 and from the UK Border Agency, Controlled Archives Closure Report, December 2012.

### Checks against DWP's databases

19. We understand from the Agency that it identified and flagged to Deloitte its failure to check some of the immigration cases against DWP's databases twice. This amounted to 19% of the cases in Deloitte's total sample but all of the cases in question came from the immigration controlled archive. On the basis of this sample there is no evidence that any of the 15,953 immigration cases received two checks against the DWP's databases prior to Deloitte's assurance work. Deloitte has verified that the cases in its sample have now been subject to two DWP checks using retrospective DWP records from June. We also understand that DWP has provided a 'statement of assurance about the data'. **We expect the Agency to provide us with a copy of the Department of Work and Pensions' statement about the checks performed by the Agency against its databases. The Agency must also tell us how many of the cases this statement of assurance applies to.**

20. The Agency's and Deloitte's assurance processes showed that a number of cases with a 'matchkey three' level match against DWP's data had been wrongly placed into the controlled archives instead of the live cohort. If Deloitte's findings are extrapolated to account for the whole controlled archive this could have applied to around 300 cases in total. The Agency says it has double checked all closed cases to ensure that those with a level three match or higher have been transferred to the live cohort.<sup>13</sup> Deloitte has verified that this has taken place in relation to the cases in its sample. **We are satisfied that misallocation to the controlled archive of cases with a 'matchkey three' against DWP data has, most likely, been corrected appropriately.**

### Security checks

21. We are concerned that 328 cases were not able to have a Police National Computer check completed because of poor-quality data, this is equivalent to around 1,100 cases in the combined archive. We are also concerned that 28 cases were identified as having such poor data that they could not have a Watchlist check because they were missing information such as a surname, address or date of birth. We are astounded that anyone would be able to apply for a visa or for asylum without providing this information. When we asked the Agency how this was possible it said that:

'data held for these legacy cases contained errors and duplication and that records for some of the cases predated the electronic information held on the Case Information Database (CID). Incomplete records may have occurred during the migration of previously held electronic data onto CID'.<sup>14</sup>

22. **It is totally unacceptable for case records to be missing such fundamental data which enables them to undergo important security checks. We cannot understand how this can have been allowed to happen for so many applications. We recognise that this issue is a historical rather than a current failing on the Agency's behalf and one that should be attributed to its leadership at the time the applications were made. The Agency says it is satisfied with the action it took to try and improve the data quality by**

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<sup>13</sup> UKBA Controlled Archives Closure Report p7

<sup>14</sup> Ev 38

reformatting it. However, given that 328 cases were still unable to undergo a PNC check and 28 were unable to be checked against the Watchlist we regard this as a most unsatisfactory consequence.

### *Cases with a hit on the Police National Computer*

23. Of Deloitte's sample, 29% of cases had a 'hit' on the Police National Computer, 22 were confirmed and 267 were 'possible'. The Agency says that it only required Deloitte to confirm that the check had been carried out, not to comment on the outcome of the check, therefore Deloitte has said that 'no remediation is required' as the 'relevant PNC check has been performed'.<sup>15</sup> The Agency tells us that in total there were 3,077 cases with previous hits on the Police National Computer but no contact information to enable the case to be progressed even after it re-ran these cases against the Computer's live database.<sup>16</sup> The Agency tells us these cases can be broken down into the following categories:

- 1,502 cases had a positive hit on the PNC for 'non-criminal reasons such as holding a firearms licence. These cases remain closed'.<sup>17</sup> **We understand that these individuals are unlikely to pose a security risk but we are puzzled that there is no contact information available for any of them. In the example given by the Agency (holding a shotgun licence), licence-holders have to supply their name and address.**
- 1,468 cases had convictions that predated April 2011 and were considered as addressed as part of the Case Review Directorate's work on the controlled archives. Therefore the Agency did not re-open these cases.<sup>18</sup> **Given the Agency's poor record in carrying out checks on legacy cases prior to April 2012 we are by no means reassured that this issue has been addressed properly. We recommend the Agency re-examines these cases individually before closing them and reports its findings to this Committee. The public has a right to know about individuals who may be living in their communities with no legal right to be here and who may have committed criminal offences whilst in the country.**
- 24 cases have been identified as having an impending prosecution, the Agency is working with the police to trace the individuals in question.
- 83 cases had a PNC hit which post-dated April 2011, again the Agency is working with the police to trace these individuals. **We are concerned to hear that the authorities do not have contact details for individuals who are awaiting prosecution or who have recently been in contact with the police. It is vital that the Agency continues to work with the police and prosecutors to try and locate these individuals.**

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<sup>15</sup> Deloitte, Independent Review of Controlled Archive Process Prior to Case Closure, p3

<sup>16</sup> UKBA Controlled Archives Closure Report, p7-8

<sup>17</sup> UKBA Controlled Archives Closure Report, p5

<sup>18</sup> UKBA Controlled Archives Closure Report, p6

**24. We are disappointed that even after the Inspector's discovery in April 2012, the Agency failed to carry out its programme of checks properly. This is especially worrying given that the controlled archives were to be closed upon completion. We had expected the Agency to take a thorough approach to the task, one that demonstrated awareness of its responsibility to trace all the individuals it was possible to trace and to ensure that all cases were closed appropriately.**

25. The exceptions uncovered as a result of Deloitte's and the Agency's assurance work raise concerns that, despite the remediation carried out by the Agency, there are still potentially hundreds of legacy applicants in the UK of whom the Agency has found a footprint but has not been able to locate.

26. The uncovered exceptions aside, we find it difficult to agree with the Agency that:

'Doing these checks means we have confirmed that individuals are not working, receiving benefits, have financial products or have come into contact with the police. Where there is no trace of the individual we have to conclude that they are no longer in the UK.'<sup>19</sup>

**27. We know that there are a large number of failed asylum and immigration applicants living in the shadows in the UK who are unlikely to have records on many of the databases searched by the Agency. Based on evidence seen so far we do not believe that the checking programme, even when properly completed, can offer reassurance that all 80,300 applicants whose cases the Agency has now closed have left the UK.**

28. Mr Whiteman has told us that:

'if in the future...an individual from a closed case does come to the attention of the UK Border Agency, the case will be reactivated and progressed.'<sup>20</sup>

**We are unsure as to how any matches with the controlled archive cases will be achieved. We expect the Agency to tell us what mechanisms it has in place for flagging up individuals it come into contact with who have a record in the closed archives.**

## **Asylum cases that were not reported to this Committee**

29. A key discovery made by the Chief Inspector of Borders and Immigration was that 33,000 legacy asylum applications being caseworked by the CAAU were not reported to the Committee as part of the asylum legacy backlog. These cases included Active Review cases,

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<sup>19</sup> UK Border Agency, Controlled Archives Closure Report, p4

<sup>20</sup> HC 781-i, Ev14.

Leave in Line cases and cases affected by data quality errors.<sup>21</sup> CAAU staff told the Inspector that they represented 30-40% of their work.<sup>22</sup> The Inspector's report said that it:

'remains unclear as to why these statistics were excluded, as the original asylum claims all fell before March 2007. We therefore...recommend that the UK Border Agency ensures that all the information it provides to the Home Affairs Select Committee is accurate and includes all legacy cases where asylum applications were made before March 2007.'<sup>23</sup>

30. When he gave evidence to this Committee the Inspector told us that

'They [CAAU staff] were adamant that the cases had not been reported to you. It was something of a bugbear for the staff in the CAAU, because 30% to 40% of their work fell into this category and they felt it was not being reported or acknowledged'.<sup>24</sup>

He also told us that when his draft inspection report was sent to the Agency for factual checking this conclusion was never challenged.<sup>25</sup>

31. When Lin Homer, the Chief Executive of the Agency from August 2005 until January 2010, came to give evidence to this Committee she told us that these cases had been reported to the Committee but not as part of the asylum backlog.<sup>26</sup> We challenged Ms Homer's statement on the basis of the Inspector's report but Ms Homer continued to insist throughout the session that she has reported the cases to the Committee.

'I would repeat that I don't believe those 33,000 cases were not brought to this Committee. I think they were not brought under the CRD banner'.<sup>27</sup>

We put it to Ms Homer that she had supplied the information:

'In such a way that we could not find it...and the Chief Inspector also didn't find it'.<sup>28</sup>

32. Ms Homer undertook to write to the Committee setting out the evidence in which she had reported these cases. Her statements and our response can be seen from the diagram below.

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<sup>21</sup> Active Review cases are cases where an individual has been granted a temporary form of humanitarian protection or Discretionary Leave to Remain and has applied for further leave to remain. Leave in Line cases are cases where there has been a change in the applicant's circumstances which mean that dependents now also need to be taken into consideration.

<sup>22</sup> Chief Inspector of Borders and Immigration, Report into the Agency's handling of the legacy asylum and migration cases, p58

<sup>23</sup> Chief Inspector of Borders and Immigration, Report into the Agency's handling of the legacy asylum and migration cases, p52

<sup>24</sup> Chief Inspector of Borders and Immigration, evidence to HASC, 4 December, Q3

<sup>25</sup> Chief Inspector of Borders and Immigration, evidence to HASC, 4 December, Q3

<sup>26</sup> HC 781-i, Q48

<sup>27</sup> HC 781-i, Q64

<sup>28</sup> HC 781-i, Q75 and 76

**Lin Homer's statements about the unreported asylum cases**

Lin Homer's statement	Committee's response
<p>In my letter to you of 7 July 2009 footnote 6 of the annex explained that the figures reported included such cases (active review cases) as they had been granted and concluded. This footnote was repeated in my letters of 19 October 2009, 4 February 2012 and 1 November 2010</p>	<ul style="list-style-type: none"> <li>• The footnote in question references 'Cases granted some form of leave, be it limited or indefinite commissioned by Case Resolution Directorate' as forming part of the cohort of asylum cases so far granted leave to remain.</li> <li>• There is no information to suggest that these cases were reported to the Committee as forming part of the continuing backlog as the Committee was not given a figure in any of the letters referred to by Ms Homer for the total remaining number of cases in the backlog.</li> <li>• It is not clear that this category covers the three types of cases the Inspector is concerned were not reported to the Committee (Active Review cases, Leave-in Line cases and those affected by data quality errors). From the description in the footnote it seems likely it is limited to Active Review cases.</li> <li>• These cases are not referred to by the terminology used by the Agency (Active Review, Leave in Line and data quality errors) above, neither are they addressed in the main body of the letter.</li> </ul>
<p>'During the evidence session of the 15 January 2008 Ms Buck questioned me about asylum cases given exceptional leave to remain (Q71-73). In paragraphs 15-18 of my follow up letter to the Committee on 18 February 2008 I explained that an applicant granted a period of less than four years exceptional leave will, upon application be subject to an 'Active Review' to determine whether they continue to qualify for leave to remain in the UK.</p>	<ul style="list-style-type: none"> <li>• Ms Homer and her then colleague Ms Miles did not provide any information on exceptional leave to remain cases that had been refused indefinite leave to remain in the session of 15 January.</li> <li>• In her letter of 18 February 2008 Ms Homer discusses Exceptional Leave to Remain (ELR) cases and confirms that cases granted ELR will be subject to an Active Review.</li> <li>• In answer to Ms Buck's question of the 15 January she says the following: <ul style="list-style-type: none"> <li>'We do not hold the information requested about the exact number of individuals granted exceptional leave who have then been refused Indefinite Leave to Remain (ILR). However, a distinction is made between cases where an applicant was previously granted a block period of four years' exceptional leave to remain, and cases where a shorter period of leave was granted.'</li> </ul> </li> <li>• It is not clear how this relates to asylum cases that were in the Controlled Archive or the Case Resolution Directorate. In any case Ms Homer is unable to provide the information requested by the Committee.</li> </ul>
<p>You will also be aware that the Public Accounts Committee took evidence on the 'active review' of refugee status as part of its inquiry into the management of asylum applications in 2009</p>	<ul style="list-style-type: none"> <li>• The Inspector raised concerns that the extent of the backlog was not reported to the Home Affairs Committee. He did not address the issue of the provision of information by the Agency to other Committees.</li> </ul>

33. We do not believe that Ms Homer informed this, or our predecessor committees about the cohort of cases in question. The statements referred to by Ms Homer have, at best, a tenuous link with the issue and certainly do not provide evidence that she informed this Committee about the full extent of the asylum backlog. We are supported in this opinion by the Chief Inspector of Borders and Immigration, John Vine, who told us that, despite Ms Homer's statements:

'I stand by my report...I do not recognise those figures as being part of this issue'.<sup>29</sup>

**34. It is appalling that a senior civil servant should have misled the Committee in the way that Ms Homer did and that she continues, even in the light of the Inspector's findings, to try and evade responsibility for her failings. Reference to important figures in an obscure footnote in a previous letter is not an acceptable response. The Inspector's findings about the asylum and immigration backlog are the latest in a long**

<sup>29</sup> Q3 [John Vine]

**line of failings in the Border Agency, many of which occurred throughout Ms Homer's time as Chief Executive.**

35. When he gave evidence to us the Chief Inspector said that, in respect of dealing with the asylum and immigration backlog the Agency was not fit for purpose.<sup>30</sup> He also said that there was 'a lack of transparency' in the Agency and that 'customer and complaints handling ... are shockingly poor'.<sup>31</sup> Furthermore the Inspector commented that 'sometimes this Agency feels as though it were in silos'.<sup>32</sup> He went on to offer several examples of incidents where different Directorates within the Agency had been unaware of each others' work on the same cases. He cited in particular the case of an individual who, at his appeal for Further Leave to Remain in the UK, produced a letter from the Agency granting him leave to remain which the Agency's Presenting Officer was completely unaware of.<sup>33</sup> In fact the Inspector could only name one part of the Agency that he judged to be performing well, the International Directorate.<sup>34</sup>

**36. This whole episode raises serious concerns about the accountability of the most senior civil servants to Parliament. It is shocking that after five years under Lin Homer's leadership an organisation that was described at the beginning of the period as being 'not fit for purpose' should have improved its performance so little. Given this background, we are astounded that Ms Homer has been promoted to become Chief Executive and Permanent Secretary at Her Majesty's Revenue and Customs and can therefore have little confidence in her ability to lead HMRC at what is a challenging time for that organisation. Indeed we note from Ms Homer's appearance before the Public Accounts Committee in January that one million letters were left unanswered at HMRC throughout 2012 and that 100,000 of these still remained unanswered on the date of her appearance before the Public Accounts Committee.**

**37. We recommend that Parliament be given a stronger role in the pre-appointment scrutiny of civil servants who will be leading government departments and we believe this strengthens the case for select committees to be given the power of veto. The status quo, in which catastrophic leadership failure is no obstacle to promotion, is totally unacceptable. We recommend that in future any failures of this nature should have serious consequences for the individual's career.**

38. Rob Whiteman has since written to this Committee and told us that the Agency did not continue to include these asylum cases in the legacy backlog because:

'On expiry of their limited leave these individuals will need to make a fresh application for further leave to remain should they wish to remain in the UK and therefore no action was required by the CRD and CAAU teams working on the legacy cases.'<sup>35</sup>

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<sup>30</sup> Q12 [John Vine]

<sup>31</sup> Q12 [John Vine]

<sup>32</sup> Q14 [John Vine]

<sup>33</sup> Q24 [John Vine]

<sup>34</sup> Q27 [John Vine]

<sup>35</sup> Ev 37 [18 December letter]

39. **This statement appears to be at odds with the report from the Chief Inspector which found that these cases represented 30-40% of the CAAU's casework and that staff were upset that this substantial element of their work was not being reported to this Committee. It is difficult to see how both the Chief Inspector's findings and Mr Whiteman's statement can be correct and we expect Mr Whiteman to clarify the issue immediately.**

40. Mr Whiteman also told us that, having analysed the Active Review cases

'We estimate that there are currently 11,000 Active Review cases. These cases will be managed as part of a new Directorate, Complex Casework Directorate, which will be established early next year to manage the Agency's older and complex cases'.<sup>36</sup>

**We expect the Agency to tell us how these 11,000 Active Review cases relate to the group of 33,000 cases uncovered by the Chief Inspector. We also note that, far from having cleared the backlog, the Agency appears to be setting up a new directorate, the Complex Casework Directorate, to solve the more difficult cases which still remain outstanding. The Agency needs to tell us how this new Directorate is related to the CAAU and the backlog casework that they are currently concluding.** Further comments on the Agency's use of changing terminology to disguise unresolved problems can be found in the section below.

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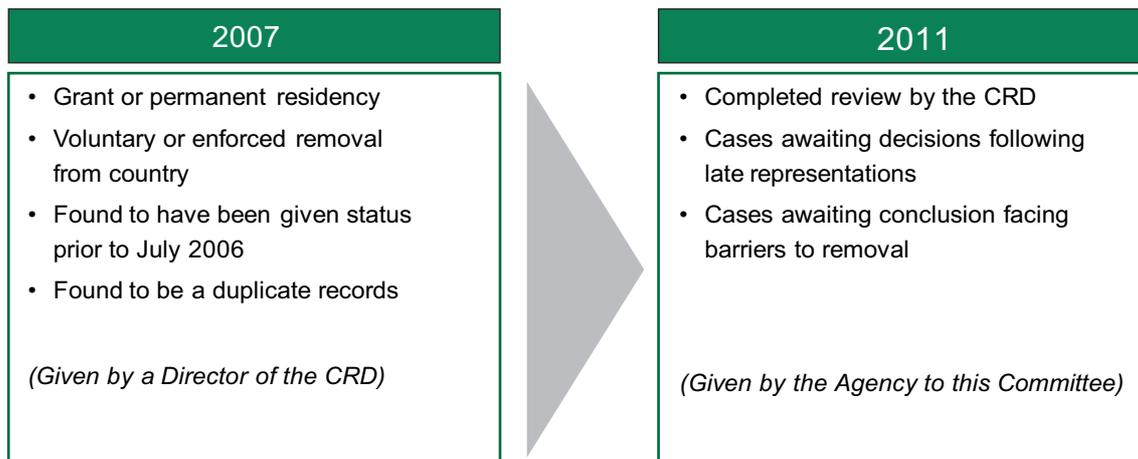
<sup>36</sup> As above.

## Other issues about the clearing of the asylum and immigration backlogs

### Use of Terminology

41. The Agency's target for the legacy programme was to conclude all legacy cases by the summer of 2011. However, as shown by the diagram below, when it became clear that it wasn't going to make this target the Agency simply changed its definition of 'conclusion' and set up a new directorate to deal with un-concluded cases.

#### Changes to the Agency's definition of 'conclusion'<sup>37</sup>



42. **The Agency did not conclude its work on the legacy programme within its original target time. Rather than admit this, it simply sent the cases which it had reviewed but not yet concluded off to a new unit, the Case Assurance and Audit Unit (CAAU). We are disappointed that the Agency chose to address the issue in this way. The Agency's action in setting up a further Directorate, the Complex Casework Directorate, to conclude difficult older cases suggests to us that, despite its claims, the Agency has no intention of taking a more transparent approach to terminology and reporting in the future.**

43. It is unclear as to what genuinely new purpose the CAAU was set up to achieve. The handover of cases between units led to unnecessary confusion, resulting in extra work and delay. The Chief Inspector found that:

- There was no strategic oversight of the transition from the CRD to the CAAU and that management of the change was 'fundamentally flawed';<sup>38</sup>
- over 9,000 cases that had not even been reviewed by the CRD were transferred to the CAAU in error;

<sup>37</sup> Chief Inspector of Borders and Immigration, An Inspection of the UK Border Agency's handling of legacy asylum and migration cases, p14-15

<sup>38</sup> Q2

- the CAAU was inadequately resourced for the task it was given;<sup>39</sup>
- and, as discussed below, the Agency's correspondence handling over this period was seriously flawed.

**44. Keeping the cases in the Case Resolution Directorate and concluding them properly would have been a more prudent and transparent approach than establishing the Case Assurance and Audit Unit to take on cases which were not concluded by the Case Review Directorate.**

### ***Correspondence with applicants, legal representatives and MPs***

45. The Inspector's report found that throughout the handover of cases from the CRD to the CAAU the Agency was completely overwhelmed with correspondence from affected individuals, their legal representatives and MPs. The Inspector found that, throughout July and August 2011 there were in excess of 100,000 pieces of post in the CAAU which were inherited from the CRD in March 2011. At one point, he said, over 150 boxes of post from applicants, Members and legal representatives 'lay unopened in a room in Liverpool'.<sup>40</sup> The Inspector told this Committee that much of the correspondence was generated by the Agency and its commercial partner rushing to chase up cases before the closure of the CRD. In his opinion, this led to many cases being put into the controlled archives erroneously.<sup>41</sup>

46. As regards terminology, it is indeed very confusing the way in which designation is given to what is essentially a very large backlog. In this report, we have mentioned the controlled archives, the Case Assurance and Audit Unit, Case Review Directorate, Active Review cases, and now a new one, Complex Casework Directorate, leaving aside the Performance and Compliance Unit mentioned earlier. What all this means cannot be clear to the public, the legal profession, or for that matter the media, who want to know the latest and accurate situation of outstanding applications to UKBA, and how long they have been outstanding.

**47. We agree that this shambolic approach to correspondence is likely to have led to many cases being placed in the controlled archives when in fact the applicant was trying to make contact with the Agency. The deluge of correspondence was no doubt the result of the Agency publicly claiming to have cleared its backlog when it had not done so and a poorly timed mail merge exercise to the nine thousand or more individuals whose cases were passed to the CAAU without even being reviewed by the CRD. On this issue alone, of totally misplaced boxes of correspondence involving thousands of cases, we can only conclude the organisation has been poorly led and mismanaged. We hope that the Agency will learn from this episode and undertake to finish programmes properly in the future instead of fudging its terminology to meet targets.**

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<sup>39</sup> Q9

<sup>40</sup> Chief Inspector of Borders and immigration, An Inspection of the UK Border Agency's handling of legacy asylum and migration cases, p2 and p6

<sup>41</sup> Q5

## 3 Key indicators of the Agency's performance

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48. The Committee assesses the Agency's performance on a quarterly basis against a number of key indicators covering the major aspects of its work. This list is not definitive and the committee may decide, as and when new issues arise, to add further indicators.

- Foreign national offenders
- The asylum and immigration backlog: live casework
- New asylum cases
- Immigration
- Immigration detention
- Appeals and tribunals
- Sponsors and licensing
- Enforcement action
- Migration Refusal Pool
- Intelligence
- Departmental information and cooperation with Parliament

## Foreign National Offenders and ex-Foreign National Offenders

### *Ex-FNOS released without being considered for deportation*

#### No significant change:

- 47 of the ex-FNOS released without being considered for deportation in 2006 remained untraced at the end of Q3 2012. This was down from 50 in the previous quarter.
- Four additional ex-FNOS from the 2006 cohort were removed from the UK in Q3 2012 taking the total to 405.
- Three of the 28 ex-FNOS released without being considered for deportation in 2011 remain untraced.
- Three ex-FNOS were released without being considered for deportation in 2012.

### *Ex-FNOS living in the community*

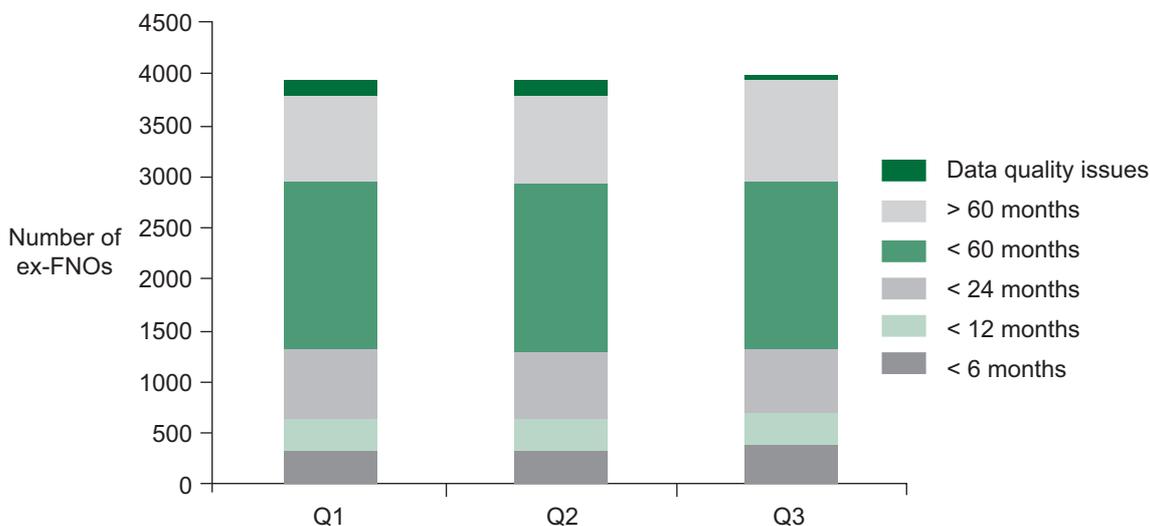
- No significant change: 3,980 ex-FNOS were living in the community whilst awaiting deportation in Q3 2012 a slight increase of 26 on Q2 2012. 65% of these cases are over two years old.

### *Removals in this quarter*

- No significant change: 340 ex-FNOS eligible for deportation were released in Q3 2012, 96% of their cases were outstanding at the end of Q3 2012. This is similar to Q2 2012 when 318 ex-FNOS were released with 94% of cases outstanding at the end of the quarter.
- Worse performance: Of the ex-FNOS whose deportation cases were outstanding 211 were delayed because their cases were still being concluded by the UKBA. This is a rise of 39% from Q2 2012.
- Worse performance: 118 days was the average length of time it took to deport an ex-FNO in Q3 2012, an increase of 10 days from the previous quarter.
- Improved performance: There were 165 failed removals in Q3 2012, 13% of the total number of removals. This is an improvement from Q2 2012 when there were 200 failed removals.
- No significant change: 45% of removals were carried out during the Early Release Scheme period in Q3 2012 compared with 43% in Q2 2012.
- No significant change: 38% of removals were carried out under the Facilitated Returns Scheme in Q3 2012 compared with 39% in Q2 2012.

**Key issue: tackling the backlog of ex-FNOs living in the community**

**Graph 1: Number of ex-FNOs living in the community whilst awaiting deportation by time**



49. The Committee is pleased to note that the Agency is making some progress in locating and removing ex-FNOs from the 2006 cohort who were released without being considered for deportation.

50. However, the overall number of ex-foreign national offenders living in the community whilst awaiting deportation has grown incrementally since the beginning of the year and the backlog of ex-offenders who have been here for over two years remains stubbornly high. The Government is simply not getting to grips with an issue that both endangers and infuriates the public. We reiterate our previous recommendation that ex-FNOs should be considered for deportation earlier in their sentence. The Home Office should work to overcome logistical and legal obstacles to doing so.

## Asylum and immigration backlog: live casework

### Asylum backlog

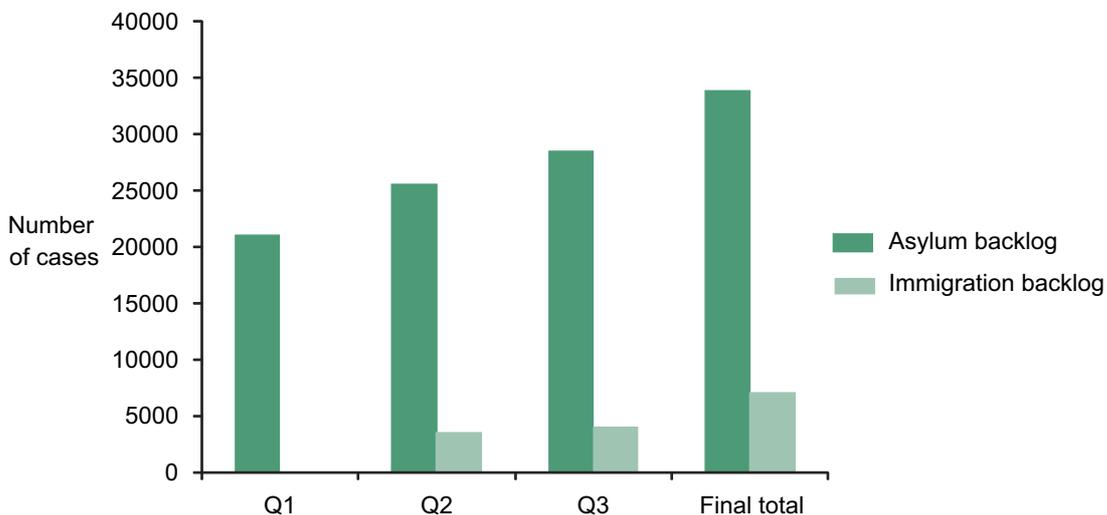
- 28,500 backlog asylum applications were being caseworked by the Agency in Q3 2012.
- At the end of Q3 2012 56% of all legacy asylum applications concluded to date had been granted leave to remain and 24% of applicants were removed. 21% of applications were found to be duplicates.

### Immigration backlog

- 4,000 backlog migration cases were being caseworked by the Agency in Q3 2012.
- At the end of Q3 2012 48% of all legacy migration cases concluded to date had been granted leave to remain and 29% of applicants had been removed. 24% of cases were found to be duplicates.

### Key issue: prioritising the conclusion of legacy casework

Graph 2: Asylum and immigration backlog casework



51. The asylum and migration backlog is made up of “live” cases, where the Agency has established contact with people who were previously untraceable. The number of live asylum and immigration backlog cases has grown steadily throughout the year, this is to be expected as the Agency began to properly implement its tracing programme in this period. **When the controlled archives closed the Agency had 33,900 backlog asylum cases and 7,000 backlog immigration cases that it needs to conclude. Most of the individuals concerned will have waited many years to find out the result of their applications. The Agency must now prioritise the conclusion of their cases and work fast to give them a**

swift decision. The age of the cases and the controversy surrounding the backlog make it important that the Agency considers the merits of each application properly and records the reasons behind its decision making. As we recommended in our Fourth Report of 2010-12, in cases where severe delays in decision-making have been the fault of the Government and not the applicant, and where the passage of time has made evidence harder to find or has led to the applicant's being better integrated into British society, there is an argument in favour of granting the applicant leave to remain.

## New asylum cases

### *Initial decisions and conclusions*

- **Worse performance:** 10,914 asylum cases were awaiting an initial decision at the end of Q3 2012 a 19% increase on the previous quarter.
- **Worse performance:** There was a 53% rise in the number of asylum seekers awaiting an initial decision for more than 6 months in the year up to September 2012.
- **No significant change** 63% of asylum cases were concluded within one year in Q3 2012 a 3% rise on the previous year.

### *Applicants previously removed from the UK*

- 4 individuals were removed from the UK and subsequently granted refugee status or humanitarian protection in Q3 2012. The individuals were nationals of Iran, Pakistan and Sri Lanka.

### *Settlement applications*

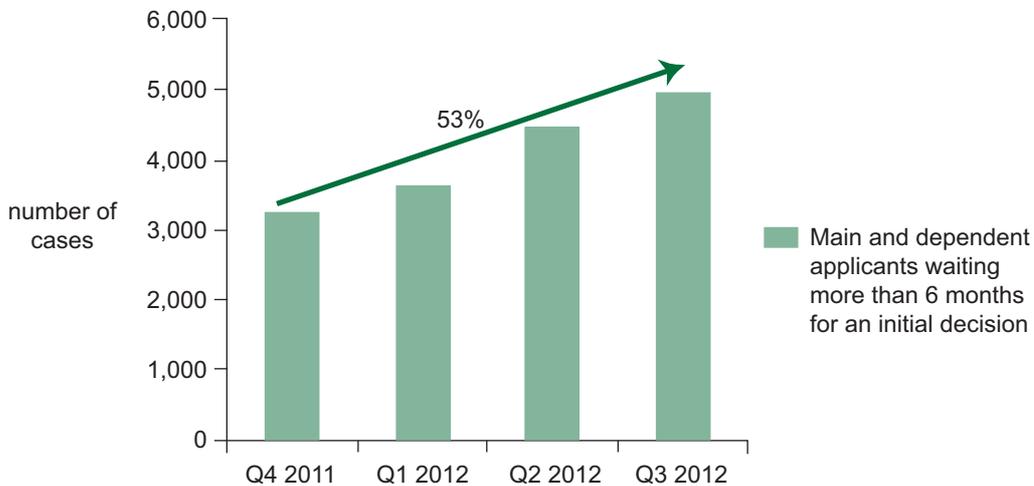
- **Unacceptable performance:** 1,754 settlement applications were made by asylum seekers in Q3 2012, 91% were outstanding at the end of the quarter.<sup>42</sup>
- **Unacceptable performance:** 109 days was the average length of time taken to process a settlement application in Q3 2012.

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<sup>42</sup> Settlement applications are made by individuals whose period of leave on the grounds of humanitarian protection or being granted asylum has expired and who have applied for a residence permit to remain in the UK.

**Key issue: a growing backlog of cases pending an initial decision for more than 6 months**

**Graph 3: Main and dependent applicants waiting more than 6 months for an initial decision**



52. We are concerned to see a 53% rise in the number of asylum seekers awaiting an initial decision for more than six months in the year up to September 2012. The number of cases being concluded within a year has only risen by 3% in the same period, now accounting for only 63% of the total. We recognise that there will be difficulties with some cases but if our asylum system is to function properly the Agency must keep on top of its caseload. The figures for the last year indicate that this is not what is happening, the Agency should review its resource model for processing these cases and make the changes needed to start reversing the increase in the number of cases waiting for an initial decision for longer than six months.

## Immigration

### *Number of visas issued*

- There was a 14% decline in the number of visas issued in the year up to September 2012.
- There has been a 28% decrease in the number of settlement visas issued in the year up to September 2012.<sup>43</sup>
- There has been a 26% decline in the number of student visas issued in the year up to September 2012.

### *Processing of in-country immigration cases*

The Agency's targets are to process 90% of Tier 1, 2 and 5 and 85% of in-country postal applications within four weeks.

- **New backlog:** Only 18% of Tier 1 and 14% of Tier 4 applications were processed on time in Q3 2012 a decline from 26% and 28% respectively in the previous quarter.
- **Improved performance:** 79% of Tier 2 and 71% of Tier 5 applications were processed on time in Q3 2012, an increase from 33% and 34% respectively in the previous quarter.
- **New backlog:** 59,000 in-country immigration applications had not been loaded onto the Agency's Case Information Database (CID) at the end of Q3 2012.

### *Processing of out of country immigration cases*

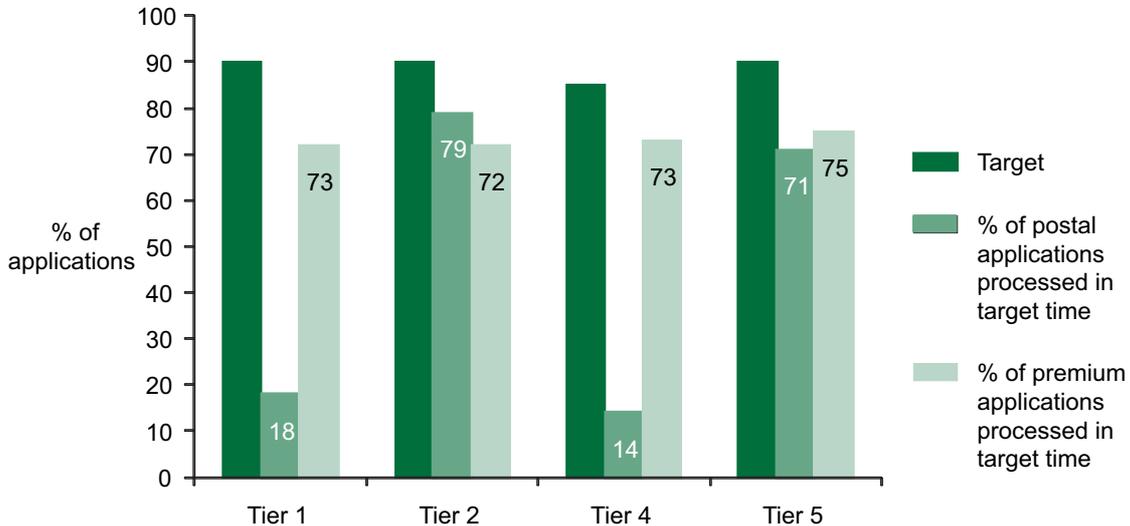
- **Improved performance:** The Agency consistently exceeded its processing targets for out-of-country visa applications in Tiers 2, 4 and 5 in Q3 2012. 100% of visas in all three tiers were processed within its final 60 day target time.
- **No significant change:** The Agency missed its processing targets for out of country visa applications in Tier 1 by a few percentage points. 99% of visas were processed within its final 60 day target time.

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<sup>43</sup> Settlement visas are applications for permanent leave to reside in the UK.

## Key issue: backlog of in-country immigration applications

Graph 4: % of in-country visa applications processed within target time in Q3 2012



53. The Agency's performance in processing applications for Further Leave to Remain in Q3 2012 is shocking. Its targets for Tiers 1, 2 and 5 are to process 90% of postal applications in four weeks and 90% of premium applications in 24 hours. Its targets for Tier 4 are to process 85% of postal applications in four weeks and 85% of premium applications within 24 hours.

### Postal applications

54. In Quarter 3 2012 only 18% of Tier 1 applications made by post were processed within target time (four weeks), within Tier 1, only 20% of Entrepreneur applications were processed on time. Tier 4 fared even worse with only 14% of student postal applications being processed within four weeks. Tier 2 and Tier 5 saw a better performance but still fell considerably short of the 90% target.

### Premium applications

55. The Agency's premium service is designed to enable users to have their applications for Further Leave to Remain processed within 24 hours. In Q3 2012 the Agency processed only 73% of Tier 1 and 72% of Tier 2 FLTR applications within the 24 hour target time. It processed 73% and 75% of Tier 4 and 5 visas on time. This is an unacceptable performance considering that the Agency is charging main applicants between £661 and £1,800 for premium applications.<sup>44</sup> In Tier 2, where a premium application costs £306 more than the postal route, the Agency processed more postal applications on time than premium applications, this is unacceptable.

<sup>44</sup> Prices are dependent on Tier, please see the Agency's website for a full breakdown of fees: <http://www.ukba.homeoffice.gov.uk/aboutus/contact/applyinginperson/cost/>

56. The Agency has given applicants a notably poor level of customer service which cannot be serving the Government's aim of keeping the 'brightest and the best' in the UK. Parliamentary Questions reveal that it takes 45 minutes to deal with a case. Given that figure, it is inexcusable that so many people are not having their cases processed on time. In total 28,558 visa applications were not processed within target times in Q3 2012, more than double the number that were, 10, 842. The delays create a vicious cycle of paperwork as, the longer the delay, the more letters MPs will write and the more bureaucracy there will be to handle. People are paying a high cost to obtain their visas, and more for the premium services. The Agency needs to consider these people more as customers, and fulfil its responsibilities in the timescale it has promised. The Agency must explain to Parliament what has gone wrong throughout 2012, what it is doing to solve the problem and when services will be running within target times again. We note that, in contrast, out of country visa applications are processed within target times and that the Agency often exceeds these targets, as we saw recently in Abu Dhabi. The Agency needs to examine how the strong performance of the International Directorate can be replicated for in-country applications.

### *In-country applications not yet loaded onto the Agency's computer systems*

57. We report quarterly on UKBA's performance and with each Quarter a new backlog is revealed. The appearance of the backlog of cases still to be loaded onto the UKBA's computers—which numbers some 59,000 people—is absolutely unacceptable.<sup>45</sup> As Members of Parliament, we receive countless calls from constituents who are distressed by the Agency's unresponsiveness. It was Rt Hon John Spellar MP who wrote to us to alert us to this backlog, which was not previously disclosed by the Agency. A further backlog was revealed by John Vine's work on visas.

58. It is completely unacceptable for Members of Parliament to ring up about constituency cases and be told that the Agency has no record of them, because they have not been entered onto its databases yet. This should be a priority for the Agency so Members can at least access case information.

59. Information on this backlog was only volunteered by the Chief Executive when questioned by the Committee. The Agency needs to be transparent and keep the Committee informed of any new backlogs that emerge, and of any current backlogs that exist that the Committee is not aware of.

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<sup>45</sup> Q105 (footnote), Ev 17

## Immigration detention

### **Rule 35 reports**

- Rule 35 of the Detention Centre Rules states that medical practitioners are required to report to the Agency any detainee whose health is likely to be injuriously affected by detention or any condition of detention and any detainee they are concerned may be a victim of torture.
- 231 reports were made under Rule 35 to the Agency in Q3 2012, 13 reports (6%) resulted in the individual in question being released. This is a similar number to the previous quarter when 5% of reports resulted in the individual being released.

### **Child detention**

- **Improved performance:** 48 children entered immigration detention in Q3 2012 a decline from 60 the previous quarter.
- **Improved performance:** 54 children left immigration detention in Q3 2012. 87% of these had been held for 3 days or less an improvement from 77% on the previous quarter.

### **Key issue: Acting on rule 35 reports**

60. In our previous “focus” report, we recommended that the Agency inform us how many individuals the Rule 35 reports it receives each quarter relate to and why medical advice was overruled on so many occasions. We also recommended that it should immediately carry out an independent review of the application of Rule 35 across the immigration detention estate. When Rob Whiteman gave evidence to us this quarter he told us that the Agency took Rule 35 reports very seriously.<sup>46</sup> He told us that the reason such a small number of reports resulted in an individual’s release was that detainees could refer themselves to the Agency under Rule 35 and that their legal team could too.<sup>47</sup> This however contradicts both the Detention Centre Rules and the Agency’s own guidance which states quite clearly:

‘Rule 35 reports should be prepared and submitted by medical practitioners only’.<sup>48</sup>

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<sup>46</sup> Q80

<sup>47</sup> Q81

<sup>48</sup> UK Border Agency, *Detention services order 17/2012*, p3

61. The same guidance defines a medical practitioner as:

A person who is vocationally trained as a general practitioner and fully registered within the meaning of the Medical Act 1983.<sup>49</sup>

When pressed by this Committee in follow up correspondence Mr Whiteman conceded that only medical practitioners are able to make Rule 35 reports.<sup>50</sup>

**62. The Agency cannot plausibly claim to take Rule 35 reports very seriously when its Chief Executive does not understand his own guidance. Furthermore Mr Whiteman's answer gave the misleading impression that a proportion of reports may not have a sound medical basis as they were not necessarily made by medical practitioners. We are concerned at the enormous gap between the number of reports received and the number of individuals released. The Agency must tell Parliament the reasons for which its caseworkers overrule the advice of medical practitioners. We reiterate our previous recommendation that the Agency should carry out an immediate independent review of the application of Rule 35 in immigration detention. Further intransigence will continue to pose a risk to individuals, as mental health issues may not be properly identified.**

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<sup>49</sup> UK Border Agency, *Detention services order 17/2012*, p2

<sup>50</sup> Ev 38, para 9

## Appeals and tribunals<sup>51</sup>

### *Appeals Improvement Plan: progress against targets*

#### *Border Agency to represent at 90% of appeals*

- **Improved performance:** An Agency representative was present at 95% of all appeal hearings by the end of Q3 2012 an increase of 19% on the previous quarter.

#### *90% of bundles to be received by the court by the prescribed date*

- **Unacceptable performance:** 66% of cases bundles were delivered to the court on time by the Agency in Q2 2012.

#### *UK Border Agency to increase the number of appeals it wins*

##### **No significant change:**

- The Agency won 64% of asylum appeals in Q2 2012 and lost 30%, as it had done the previous quarter.
- The Agency won 46% of managed migration cases in Q2 2012 and lost 43% as it had done the previous quarter.
- The Agency won 38% of entry clearance cases in Q2 2012 and lost 36%, as it had done the previous quarter.
- The Agency won 52% of family visit visa cases in Q2 2012 and lost 30%. This was a 5% increase in win rate from the previous quarter.
- The Agency won 60% of deportation cases in Q2 2012 and lost 30%. This was a 5% decrease in win rate from the previous quarter.<sup>52</sup>

#### *Reduce appeal volumes*

- **No significant change:** 25,500 appeals were lodged against the Agency's decision in Q2 2012 the same volume as were lodged in the previous quarter.

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<sup>51</sup> Figures relate to First Tier Tribunal cases.

<sup>52</sup> Appeal outcomes are published as national statistics, the latest available statistics are for Q2 2012 the previous quarter to the one covered by the report. Management statistics relating to the Agency's Appeals Improvement Programme are available for Q3 2012.

***Key issue: closing the Family Visit Visa full right of appeal***

63. We are concerned that the full right of appeal for the Family Visit Visa is being closed off at a time when the Agency is winning only just over half the appeals made against its decisions. We reiterate below the recommendations we made in our previous two reports which should help to reduce the volume of appeals without closing off important routes of appeal. Removing this will create extra pressure on the entry clearance operation with no guarantee it will save time or money.

64. There are a number of simple changes the Agency could make to reduce the volume of appeals it handles. Firstly the refusal notices it issues should set out in clear bullet points why the application has been rejected. If, for example, it is due to missing documentation the applicant should be asked to provide this to the Agency as part of the same application. It should then be reviewed within an acceptable timescale. This could reduce both the time it would take for the applicant to get a decision and the resources spent on appeals. Secondly, we understand that the Agency does not specify all the documentation it requires to grant an application. For example it asks for “proof of funds” instead of bank statements. We recommend that the Agency list specific documents that are likely to be needed in order to grant an application. This will ensure that the application process is as clear as possible and should reduce the amount of verification work and appeals work that has to be done at a later stage. We will return to the issue of the entry clearance operation as the focus of our next report.

## Sponsors and licensing

### *New sponsor applications*

- 834 new sponsorship applications were made in Q3 2012, 722 for Tier 2, 35 for Tier 4 and 77 for Tier 5.<sup>53</sup>
- 89% of applicants who applied for sponsor status in Q3 2012 had a decision made on their application by 17 December 2012.
- 41 days was the average length of time it took to process a sponsor application in Q3 2012. This was a decrease from 82 days in the previous quarter.

### *Pre registration visits*

- 8% of successful Tier 2 sponsor applicants whose applications were received in Q3 2012 had a pre-registration visit.
- 47% of successful Tier 4 sponsor applicants whose applications were received in Q3 2012 had a pre-registration visit.
- 5% of successful Tier 5 sponsor applicants whose applications were received in Q3 2012 had a pre-registration visit.

### *Follow up visits*

#### **Worse performance:**

- 31% of follow up visits to Tier 2 sponsors were unannounced in Q3 2012 a decrease from 42% in the previous quarter.
- 30% of follow up visits to Tier 4 sponsors were unannounced in Q3 2012 a decrease from 36% in the previous quarter.
- 11% of follow up visits to Tier 5 sponsors were unannounced in Q3 2012 a decrease from 33% in the previous quarter.

### *Key issue: post licence visits*

65. We are concerned that the proportion of post licence visits that are unannounced is declining in all sponsor Tiers. We reiterate the recommendation made in our previous reports that the majority of post licence visits should be unannounced. This should ensure that the enforcement system is both rigorous and gives the public confidence that the government is cracking down on illegal immigration. In its Fifth Report of the

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<sup>53</sup> Not all applications for sponsor status in Tier 4 are for new licences, the figure also includes reinstatements.

Session the Agency committed to test the approach of undertaking 100% unannounced visits on sponsors where it suspects non-compliance by March 2013. We will expect to see the results of this test when we next take evidence from the Agency.

## Enforcement action

### *Non compliance notifications*

#### Performance unknown:

- 22,780 sponsor notifications regarding the non-compliance of overseas students were made to the Agency by Tier 4 sponsors in Q3 2012.<sup>54</sup>
- 5,967 sponsor notifications regarding the non-compliance of employees and temporary workers were made to the Agency by Tier 2 and Tier 5 sponsors in Q3 2012.
- The Agency told this Committee that it does not know how many of the non-compliance notifications received in Q3 2012 were followed up within the quarter.

### *Suspension and revocation of sponsor licences*

- 96 Tier 2 sponsors had their licenses revoked in Q3 2012 and 271 had their licenses suspended.
- 47 Tier 4 sponsors had their licenses revoked in Q3 2012 and 62 had their licenses suspended.
- 4 Tier 4 sponsors had their licenses revoked in Q3 2012 and 15 had their licenses suspended.

### *Key issue: tracking the follow up of non-compliance notifications*

66. It is unacceptable that the Agency does not know how many of the potential non-compliance notifications received in Q3 2012 had been followed up by the end of the Quarter. If the Agency does not keep track of its performance in this area then it will undermine the work of Sponsors who are required to make non-compliance reports if they suspect a sponsee of breaking the terms of their visa. We reiterate our comments from our previous report:

**We recommend that the Agency immediately instigates a way of tracking follow up actions taken on potential non-compliance reports. Without this we cannot**

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<sup>54</sup> The Agency points out that sponsors self select from a number of categories when they make notifications so a proportion of non-compliance notifications will be miscategorised. It has not told us how many non-compliance notifications were miscategorised.

see how it can keep track of the number of people who may be breaking the terms of their visa and therefore remaining in the country illegally.

## Migration Refusal Pool

### *Size of the Migration Refusal Pool*

**Worse performance:** The size of the Migration Refusal Pool grew by 4% in Q3 2012 to 181,541 cases. This is a 12% increase since the start of the year.

### *Key issue: tackling the continued growth of the Migration Refusal Pool*

67. The Migration Refusal Pool has increased by 4% since Q2 2012. The Committee welcomes the fact that the Agency has now contracted Capita to concentrate on clearing this backlog and has established performance benchmarks against which to measure the result. The Committee has taken evidence from Capita at the start of this contract and will be closely monitoring its performance throughout. We expect the Government to publish its own assessment of Capita's performance in delivering this contract twice a year.

68. Capita informed the Committee that it was dealing with the existing backlog but was not dealing with more recent refusals. The way to prevent the backlog from growing is to check applicants as soon as they are refused, rather than wait months to do so. The Agency must have sufficient resources in place to carry out timely checks that individuals refused Leave to Remain have left the country. Otherwise the backlog will build in perpetuity.

69. We note that there are 86 members of Capita staff on UKBA premises with access to the database. We are concerned that Capita was unable to answer our question about whether it had the permission of applicants to deal with their data.

Q30 Chair: Just two questions that come out of that before I call other colleagues; when applicants sign their application to the UKBA they agree that their information can be passed to other Government departments when they make an application?

Alistair MacTaggart: I believe that is the case, yes.

Q31 Chair: There is no agreement that it should be passed to a private-sector company. Were you aware of that?

Alistair MacTaggart: I was not aware of that.

Chair: The problem being that you are looking at information that the applicant has not consented to you seeing.

Paul Pindar: We are not aware of that, if that is the case.

Chair: No. Obviously I think you should have a look at it to make sure you don't get into difficulties with the Information Commissioner, since you are not the data owner.

Alistair MacTaggart: I believe the Information Commissioner will be looking at that with UKBA.<sup>55</sup>

**Although we welcome the fact that the Migration Refusal Pool backlog is now to be tackled in a focused way it appears that Capita's contract amounts to telephoning or sending text messages to individuals asking them to leave and cleansing the Agency's data in the process. This is a contract worth between £2.5 and £3m. We do not understand why the Agency was not able to do this in a strategic and timely way itself.**

## Intelligence

### ***Allegations received in Q3 2012***

- 28,243 allegations about possible illegal immigration or other immigration violations were received in Q3 2012.
- 99% of these were given an initial assessment in 48 hours.
- 15,269 allegations (54%) were investigated further by the UKBA.
- 797 allegations (2.8% of the total) resulted in enforcement being taken, including 561 arrests.
- The Agency is not yet able to track how many enforcement actions resulted in an individual being deported.

### ***Progress on the National Allegations Database***

- The National Allegations Database went live on 30 September. UKBA informed us that this will enable the Agency to track individual allegations through to outcome.

### ***Key issue: an improved intelligence picture about the results of allegations made***

70. In successive reports we have called for the Agency to inform people who make allegations as to their outcome. We are particularly concerned that a spouse reporting marital fraud, for example, is still being treated as a third party reporting the case. It is important that where a family member is making a report, particularly if they have sponsored the individual in question, they are kept up to date with progress. We will be monitoring closely the performance of the National Allegations Database. As a result of

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<sup>55</sup> Home Affairs Committee, Session 2012–13, *Capita's work for the UK Border Agency*, HC 914-i, Qq 30-31

being able to track allegations through the system we expect to see a proper analysis from the Agency as to why such a small proportion of allegations made result in enforcement action being taken.

## Departmental information and cooperation with Parliament

### *Departmental information*

- 13,165 FTE equivalent staff were working for the Agency in Q3 2012.
- The Agency spent £27,000 on external consultants in Q3 2012

### *Cooperation with Parliament*

#### No significant change:

- The Agency responded to 83% of MPs' emails within 20 working days in Q3 2012. This fell 12% short of their target and was a slight decrease from the previous quarter.
- The Agency resolved 78% of queries made via their MP's Inquiry Line within 10 working days. This fell 12% short of their target, the same as in the previous quarter.
- The Agency's response to this Committee's data request for Q3 2012 arrived 6 days late.

71. We are concerned by the Agency's failure to meet targets for responding to MPs, as people only turn to their Member of Parliament as a last resort. For this reason, they need to be dealt with in a timely and proper manner. We note that even if the Agency meets these targets it does not mean that cases are resolved. Part of the problem in responding to MPs is the delay in uploading information to the Case Information Database and this must be dealt with as a first step.

72. It is only because of our questioning of the Minister that we heard about the Migration Refusal Pool and even now we are hearing about further backlogs. This is unacceptable. UKBA must disclose all relevant information to Parliament and not wait until it is asked.

## 4 Border Agency Backlogs

	No. of cases Q2.	No. of cases Q3	Difference	% Increase or decrease since Q2 2012
'Live' asylum cohort	25,500	28,500	+3,000	+12%
Asylum controlled archive <sup>56</sup>	74,000	0	-74,000	-100%
Live immigration cases	3,500	4,000	+500	+14%
Immigration controlled archive <sup>57</sup>	21,000	0	-21,000	-100%
FNOs living in the community	3,954	3,980	+26	+4%
FNOs – untraced	50	47	-3	+1%
Migration refusal pool	174,057	181,541	+7,484	+6%
FLTR applications not processed within targets	23,095	28,558	+5,463	+24%
No of cases still to be loaded on CID	Unknown	59,000	+59,000	Unknown
FLTR on the basis of marriage or civil partnership – cases pending review	Unknown	14,000	+14,000	Unknown
FLTR on basis of marriage or civil partnership – cases pending initial decision	Unknown	+2,100	+2,100	Unknown
<b>Total</b>	<b>325,156</b>	<b>321,726</b>	<b>3,430</b>	<b>-1%</b>

73. Bearing in mind that this has been an exceptional Quarter, where 96,000 cases in the controlled archives were simply closed, we find that UKBA's progress in dealing with the backlogs is far too slow. At this rate, it would take years to deal with the current backlog.

74. Senior Agency staff should not receive bonuses until there is evidence that the backlog is being substantially reduced and new backlogs are not emerging.

75. Despite the closure of the controlled archives, 96,000 cases since last quarter, the total backlog has only reduced by 1%. New backlogs are continuing to emerge. The Agency's work affects thousands of people's lives, public safety, public services and the economy, but it continues to be an Agency playing catch up. Until we are able to publish a Report on the Agency both without the discovery of a new backlog and with a decrease in the present backlogs we will not be able to declare it fit for purpose.

<sup>56</sup> The asylum controlled archive was closed in Quarter 4 2012

<sup>57</sup> The immigration controlled archive was closed in Quarter 4 2012

# Conclusions and recommendations

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## The Agency's handling of the asylum and immigration backlog

1. The Inspector's report makes it clear that, contrary to its public claims, the Agency was not carrying out its full programme of checks on legacy cases either before or after they were placed in the controlled archives. The Agency has repeatedly told this Committee that it could have confidence that legacy applicants were no longer in the country as an extensive checking programme carried out over five years had not found any trace of them. We know that there are a significant number of failed asylum seekers and illegal immigrants living in the UK and avoiding contact with public authorities. Recent figures from the London School of Economics put the number of illegal immigrants in the UK at 618,000 and in 2008 the Red Cross reported that it had been approached for help by 10,000 destitute asylum seekers. Therefore, no tracing programme was likely to discover everyone who had slipped through the net. The fact that a sustained and thorough tracing programme did not even take place makes it even less likely that individuals living here have been identified. It is possible that tens of thousands of individuals whom the Agency has not been able to trace are still here. (Paragraph 10)

## The Agency's response to the Chief Inspector's findings

2. Mr Whiteman did not however inform this Committee that the Agency had regularly supplied it with incorrect information since 2006. This in our view is unacceptable and undermines Mr Whiteman's claims to take the provision of accurate information to the Committee seriously. No senior official in the Border Agency took any steps to alert this Committee to what had happened until the Independent Chief Inspector published his report. This is hardly the mark of a transparent organisation which recognises its accountability to Parliament. Instead the Agency appears to have tried to sweep its mistakes under the carpet in the hope that they would remain unnoticed. (Paragraph 15)
3. We are astonished that the Agency provided this Committee, and its predecessors, with information that turned out to be patently wrong on so many occasions over the last six years. If it was not attempting to mislead the Committee then it must be a sign that senior officials had no idea as to what was actually going on in their organisation. We find it very hard to believe that no one within the Agency had any idea that checks were not being carried out as they should have been and we expect the Agency to share the findings of its disciplinary investigation with us as soon as it is completed. (Paragraph 16)
4. However, we welcome the establishment of the Performance and Compliance Unit within the Agency. We also welcome the oversight that the Chief Inspector will have of its work. We expect this to mark the beginning of a move towards greater transparency on behalf of the Agency; transparency that is evidenced by accurate and clear information provided to Parliament in a timely manner. (Paragraph 17)

### Checks against DWP's databases

5. understand that DWP has provided a 'statement of assurance about the data'. We expect the Agency to provide us with a copy of the Department of Work and Pensions' statement about the checks performed by the Agency against its databases. The Agency must also **tell us how many of the cases this statement of assurance applies to.** (Paragraph 19)
6. Deloitte has verified that this has taken place in relation to the cases in its sample. We are satisfied that misallocation to the controlled archive of **cases with a 'matchkey three' against DWP data has, most likely, been corrected appropriately.** (Paragraph 20)

### Security checks

7. It is totally unacceptable for case records to be missing such fundamental data which enables them to undergo important security checks. We cannot understand how this can have been allowed to happen for so many applications. We recognise that this issue is a historical rather than a current failing on the Agency's behalf and one that should be attributed to its leadership at the time the applications were made. The Agency says it is satisfied with the action it took to try and improve the data quality by reformatting it. However, given that 328 cases were still unable to undergo a PNC check and 28 were unable to be checked against the Watchlist we regard this as a most unsatisfactory consequence. (Paragraph 22)

### Cases with a hit on the Police National Computer

8. We understand that these individuals are unlikely to pose a security risk but we are puzzled that there is no contact information available for any of them. In the example given by the Agency (holding a shotgun licence), licence-holders have to supply their name and address (Paragraph 23)
9. Given the Agency's poor record in carrying out checks on legacy cases prior to April 2012 we are by no means reassured that this issue has been addressed properly. We recommend the Agency re-examines these cases individually before closing them and reports its findings to this Committee. The public has a right to know about individuals who may be living in their communities with no legal right to be here and who may have committed criminal offences whilst in the country (Paragraph 23 )
10. We are concerned to hear that the authorities do not have contact details for individuals who are awaiting prosecution or who have recently been in contact with the police. It is vital that the Agency continues to work with the police and prosecutors to try and locate these individuals. (Paragraph 23 )
11. We are disappointed that even after the Inspector's discovery in April 2012, the Agency failed to carry out its programme of checks properly. This is especially worrying given that the controlled archives were to be closed upon completion. We had expected the Agency to take a thorough approach to the task, one that

demonstrated awareness of its responsibility to trace all the individuals it was possible to trace and to ensure that all cases were closed appropriately. (Paragraph 24)

12. We know that there are a large number of failed asylum and immigration applicants living in the shadows in the UK who are unlikely to have records on many of the databases searched by the Agency. Based on evidence seen so far we do not believe that the checking programme, even when properly completed, can offer reassurance that all 80,300 applicants whose cases the Agency has now closed have left the UK. (Paragraph 27)
13. We are unsure as to how any matches with the controlled archive cases will be achieved. We expect the Agency to tell us what mechanisms it has in place for flagging up individuals it come into contact with who have a record in the closed archives. (Paragraph 28)

### **Asylum cases that were not reported to this Committee**

14. It is appalling that a senior civil servant should have misled the Committee in the way that Ms Homer did and that she continues, even in the light of the Inspector's findings, to try and evade responsibility for her failings. Reference to important figures in an obscure footnote in a previous letter is not an acceptable response. The Inspector's findings about the asylum and immigration backlog are the latest in a long line of failings in the Border Agency, many of which occurred throughout Ms Homer's time as Chief Executive. (Paragraph 34)
15. This whole episode raises serious concerns about the accountability of the most senior civil servants to Parliament. It is shocking that after five years under Lin Homer's leadership an organisation that was described at the beginning of the period as being 'not fit for purpose' should have improved its performance so little. Given this background, we are astounded that Ms Homer has been promoted to become Chief Executive and Permanent Secretary at Her Majesty's Revenue and Customs and can therefore have little confidence in her ability to lead HMRC at what is a challenging time for that organisation. Indeed we note from Ms Homer's appearance before the Public Accounts Committee in January that one million letters were left unanswered at HMRC throughout 2012 and that 100,000 of these still remained unanswered on the date of her appearance before the Public Accounts Committee. (Paragraph 36)
16. We recommend that Parliament be given a stronger role in the pre-appointment scrutiny of civil servants who will be leading government departments and we believe this strengthens the case for select committees to be given the power of veto. The status quo, in which catastrophic leadership failure is no obstacle to promotion, is totally unacceptable. We recommend that in future any failures of this nature should have serious consequences for the individual's career. (Paragraph 37)
17. This statement appears to be at odds with the report from the Chief Inspector which found that these cases represented 30-40% of the CAU's casework and that staff were upset that this substantial element of their work was not being reported to this

Committee. It is difficult to see how both the Chief Inspector's findings and Mr Whiteman's statement can be correct and we expect Mr Whiteman to clarify the issue immediately. (Paragraph 39)

18. We expect the Agency to tell us how these 11,000 Active Review cases relate to the group of 33,000 cases uncovered by the Chief Inspector. We also note that, far from having cleared the backlog, the Agency appears to be setting up a new directorate, the Complex Casework Directorate, to solve the more difficult cases which still remain outstanding. The Agency needs to tell us how this new Directorate is related to the CAAU and the backlog casework that they are currently concluding. (Paragraph 40)

### **Use of Terminology**

19. The Agency did not conclude its work on the legacy programme within its original target time. Rather than admit this, it simply sent the cases which it had reviewed but not yet concluded off to a new unit, the Case Assurance and Audit Unit (CAAU). We are disappointed that the Agency chose to address the issue in this way. The Agency's action in setting up a further Directorate, the Complex Casework Directorate, to conclude difficult older cases suggests to us that, despite its claims, the Agency has no intention of taking a more transparent approach to terminology and reporting in the future. (Paragraph 42)
20. Keeping the cases in the Case Resolution Directorate and concluding them properly would have been a more prudent and transparent approach than establishing the Case Assurance and Audit Unit to take on cases which were not concluded by the Case Review Directorate. (Paragraph 44)

### **Correspondence with applicants' legal representatives and MPs**

21. We agree that this shambolic approach to correspondence is likely to have led to many cases being placed in the controlled archives when in fact the applicant was trying to make contact with the Agency. The deluge of correspondence was no doubt the result of the Agency publicly claiming to have cleared its backlog when it had not done so and a poorly timed mail merge exercise to the nine thousand or more individuals whose cases were passed to the CAAU without even being reviewed by the CRD. On this issue alone, of totally misplaced boxes of correspondence involving thousands of cases, we can only conclude the organisation has been poorly led and mismanaged. We hope that the Agency will learn from this episode and undertake to finish programmes properly in the future instead of fudging its terminology to meet targets. (Paragraph 47)

### **Key issue: tackling the backlog of ex-FNOs living in the community**

22. The Committee is pleased to note that the Agency is making some progress in locating and removing ex-FNOs from the 2006 cohort who were released without being considered for deportation. (Paragraph 49)

23. However, the overall number of ex-foreign national offenders living in the community whilst awaiting deportation has grown incrementally since the beginning of the year and the backlog of ex-offenders who have been here for over two years remains stubbornly high. The Government is simply not getting to grips with an issue that both endangers and infuriates the public. We reiterate our previous recommendation that ex-FNOs should be considered for deportation earlier in their sentence. The Home Office should work to overcome logistical and legal obstacles to doing so. (Paragraph 50)

### **Key issue: prioritising the conclusion of legacy casework**

24. When the controlled archives closed the Agency had 33,900 backlog asylum cases and 7,000 backlog immigration cases that it needs to conclude. Most of the individuals concerned will have waited many years to find out the result of their applications. The Agency must now prioritise the conclusion of their cases and work fast to give them a swift decision. The age of the cases and the controversy surrounding the backlog make it important that the Agency considers the merits of each application properly and records the reasons behind its decision making. As we recommended in our Fourth Report of 2010-12, in cases where severe delays in decision-making have been the fault of the Government and not the applicant, and where the passage of time has made evidence harder to find or has led to the applicant's being better integrated into British society, there is an argument in favour of granting the applicant leave to remain. (Paragraph 51)

### **Key issue: a growing backlog of cases pending an initial decision for more than 6 months**

25. We are concerned to see a 53% rise in the number of asylum seekers awaiting an initial decision for more than six months in the year up to September 2012. The number of cases being concluded within a year has only risen by 3% in the same period, now accounting for only 63% of the total. We recognise that there will be difficulties with some cases but if our asylum system is to function properly the Agency must keep on top of its caseload. The figures for the last year indicate that this is not what is happening, the Agency should review its resource model for processing these cases and make the changes needed to start reversing the increase in the number of cases waiting for an initial decision for longer than six months. (Paragraph 52)

**Premium applications** The Agency's premium service is designed to enable users to have their applications for Further Leave to Remain processed within 24 hours. In Q3 2012 the Agency processed only 73% of Tier 1 and 72% of Tier 2 FLTR applications within the 24 hour target time. It processed 73% and 75% of Tier 4 and 5 visas on time. This is an unacceptable performance considering that the Agency is charging main applicants between £661 and £1,800 for premium applications.

26. The Agency has given applicants a notably poor level of customer service which cannot be serving the Government's aim of keeping the 'brightest and the best' in the UK. Parliamentary Questions reveal that it takes 45 minutes to deal with a case.

Given that figure, it is inexcusable that so many people are not having their cases processed on time. In total 28,558 visa applications were not processed within target times in Q3 2012, more than double the number that were, 10, 842. The delays create a vicious cycle of paperwork as, the longer the delay, the more letters MPs will write and the more bureaucracy there will be to handle. People are paying a high cost to obtain their visas, and more for the premium services. The Agency needs to consider these people more as customers, and fulfil its responsibilities in the timescale it has promised. The Agency must explain to Parliament what has gone wrong throughout 2012, what it is doing to solve the problem and when services will be running within target times again. We note that, in contrast, out of country visa applications are processed within target times and that the Agency often exceeds these targets, as we saw recently in Abu Dhabi. The Agency needs to examine how the strong performance of the International Directorate can be replicated for in-country applications. (Paragraph 56)

### **Key issue: Acting on rule 35 reports**

27. The Agency cannot plausibly claim to take Rule 35 reports very seriously when its Chief Executive does not understand his own guidance. Furthermore Mr Whiteman's answer gave the misleading impression that a proportion of reports may not have a sound medical basis as they were not necessarily made by medical practitioners. We are concerned at the enormous gap between the number of reports received and the number of individuals released. The Agency must tell Parliament the reasons for which its caseworkers overrule the advice of medical practitioners. We reiterate our previous recommendation that the Agency should carry out an immediate independent review of the application of Rule 35 in immigration detention. Further intransigence will continue to pose a risk to individuals, as mental health issues may not be properly identified. (Paragraph 62)

### **Key issue: closing the Family Visit Visa full right of appeal**

28. We are concerned that the full right of appeal for the Family Visit Visa is being closed off at a time when the Agency is winning only just over half the appeals made against its decisions. We reiterate below the recommendations we made in our previous two reports which should help to reduce the volume of appeals without closing off important routes of appeal. Removing this will create extra pressure on the entry clearance operation with no guarantee it will save time or money. (Paragraph 63)
29. There are a number of simple changes the Agency could make to reduce the volume of appeals it handles. Firstly the refusal notices it issues should set out in clear bullet points why the application has been rejected. If, for example, it is due to missing documentation the applicant should be asked to provide this to the Agency as part of the same application. It should then be reviewed within an acceptable timescale. This could reduce both the time it would take for the applicant to get a decision and the resources spent on appeals. Secondly, we understand that the Agency does not specify all the documentation it requires to grant an application. For example it asks for "proof of funds" instead of bank statements. We recommend that the Agency list

specific documents that are likely to be needed in order to grant an application. This will ensure that the application process is as clear as possible and should reduce the amount of verification work and appeals work that has to be done at a later stage. We will return to the issue of the entry clearance operation as the focus of our next report. (Paragraph 64)

### **Key issue: post licence visits**

30. We are concerned that the proportion of post licence visits that are unannounced is declining in all sponsor Tiers. We reiterate the recommendation made in our previous reports that the majority of post licence visits should be unannounced. This should ensure that the enforcement system is both rigorous and gives the public confidence that the government is cracking down on illegal immigration. In its Fifth Report of the Session the Agency committed to test the approach of undertaking 100% unannounced visits on sponsors where it suspects non-compliance by March 2013. We will expect to see the results of this test when we next take evidence from the Agency. (Paragraph 65)

### **Key issue: tracking the follow up of non-compliance notifications**

31. It is unacceptable that the Agency does not know how many of the potential non-compliance notifications received in Q3 2012 had been followed up by the end of the Quarter. If the Agency does not keep track of its performance in this area then it will undermine the work of Sponsors who are required to make non-compliance reports if they suspect a sponsee of breaking the terms of their visa. We reiterate our comments from our previous report:

We recommend that the Agency immediately instigates a way of tracking follow up actions taken on potential non-compliance reports. Without this we cannot see how it can keep track of the number of people who may be breaking the terms of their visa and therefore remaining in the country illegally. (Paragraph 66)

### **Key issue: tackling the continued growth of the Migration Refusal Pool**

32. The Migration Refusal Pool has increased by 4% since Q2 2012. The Committee welcomes the fact that the Agency has now contracted Capita to concentrate on clearing this backlog and has established performance benchmarks against which to measure the result. The Committee has taken evidence from Capita at the start of this contract and will be closely monitoring its performance throughout. We expect the Government to publish its own assessment of Capita's performance in delivering this contract twice a year. (Paragraph 67)
33. Capita informed the Committee that it was dealing with the existing backlog but was not dealing with more recent refusals. The way to prevent the backlog from growing is to check applicants as soon as they are refused, rather than wait months to do so. The Agency must have sufficient resources in place to carry out timely checks that

individuals refused Leave to Remain have left the country. Otherwise the backlog will build in perpetuity. (Paragraph 68)

34. Although we welcome the fact that the Migration Refusal Pool backlog is now to be tackled in a focused way it appears that Capita's contract amounts to telephoning or sending text messages to individuals asking them to leave and cleansing the Agency's data in the process. This is a contract worth between £2.5 and £3m. We do not understand why the Agency was not able to do this in a strategic and timely way itself. (Paragraph 69)

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36. We are concerned by the Agency's failure to meet targets for responding to MPs, as people only turn to their Member of Parliament as a last resort. For this reason, they need to be dealt with in a timely and proper manner. We note that even if the Agency meets these targets it does not mean that cases are resolved. Part of the problem in responding to MPs is the delay in uploading information to the Case Information Database and this must be dealt with as a first step. (Paragraph 71)
37. It is only because of our questioning of the Minister that we heard about the Migration Refusal Pool and even now we are hearing about further backlogs. This is unacceptable. UKBA must disclose all relevant information to Parliament and not wait until it is asked. (Paragraph 72)

### **Border Agency Backlogs**

38. Bearing in mind that this has been an exceptional Quarter, where 96,000 cases in the controlled archives were simply closed, we find that UKBA's progress in dealing with the backlogs is far too slow. At this rate, it would take years to deal with the current backlog. (Paragraph 73)
39. Senior Agency staff should not receive bonuses until there is evidence that the backlog is being substantially reduced and new backlogs are not emerging. (Paragraph 74)

40. Despite the closure of the controlled archives, 96,000 cases since last quarter, the total backlog has only reduced by 1%. New backlogs are continuing to emerge. The Agency's work affects thousands of people's lives, public safety, public services and the economy, but it continues to be an Agency playing catch up. Until we are able to publish a Report on the Agency both without the discovery of a new backlog and with a decrease in the present backlogs we will not be able to declare it fit for purpose. (Paragraph 75)

# Formal Minutes

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**Tuesday 19 March 2013**

Members present:

Keith Vaz, in the Chair

Nicola Blackwood  
James Clappison  
Michael Ellis  
Julian Huppert  
Steve McCabe

Bridget Phillipson  
Mark Reckless  
Chris Ruane  
Mr Davis Winnick

Draft Report (*The work of the UK Border Agency (July–September 2012)*), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 75 read and agreed to.

*Resolved*, That the Report be the Fourteenth 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 printing with the Report (in addition to that ordered to be reported for publishing on 18 December 2012 and 22 January 2013).

[Adjourned till Tuesday 26 March at 2.15 p.m.]

## Witnesses

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	<i>page</i>
<b>Tuesday 4 December 2012</b>	
<b>John Vine CBE OPM</b> , Chief Inspector of Borders and Immigration	Ev 1
<b>Tuesday 18 December 2012</b>	
<b>Rob Whiteman</b> , Chief Executive, UK Border Agency	Ev 8
<b>Mark Harper MP</b> , Minister of State for Immigration	Ev17

## List of printed written evidence

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1	Letter from Rob Whiteman to Chair, 6 December 2012	Ev 26
2	Letter from Rob Whiteman to Chair, 18 December 2012	Ev 37
3	Letter from Rob Whiteman to Chair, 16 January 2013	Ev 37
4	Letter from Mark Harper to Chair, 16 January 2013	Ev 39
5	Email from UKBA staff to Chair, 4 January 2013	Ev 39
6	Letter from Rob Whiteman to Chair, 22 February 2013	Ev 40
7	Letter from Rob Whiteman to Chair, 8 March 2013	Ev 43

## List of Reports from the Committee during the current Parliament

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### Session 2012–13

First Report	Effectiveness of the Committee in 2010–12	HC 144
Second Report	Work of the Permanent Secretary (April–Dec 2011)	HC 145
Third Report	Pre-appointment Hearing for Her Majesty's Chief Inspector of Constabulary	HC 183
Fourth Report	Private Investigators	HC 100
Fifth Report	The work of the UK Border Agency (Dec 2011–March 2012)	HC 71
Sixth Report	The work of the Border Force	HC 523
Seventh Report	Olympics Security	HC 531
Eighth Report	The work of the UK Border Agency (April–June 2012)	HC 603
Ninth Report	Drugs: Breaking the Cycle	HC 184
Tenth Report	Powers to investigate the Hillsborough disaster: interim Report on the Independent Police Complaints Commission	HC 793
Eleventh Report	Independent Police Complaints Commission	HC 494
Twelfth Report	The draft Anti-social Behaviour Bill: pre-legislative scrutiny	HC 836
Thirteenth Report	Undercover Policing: Interim Report	HC 837

### Session 2010–12

First Report	Immigration Cap	HC 361
Second Report	Policing: Police and Crime Commissioners	HC 511
Third Report	Firearms Control	HC 447
Fourth Report	The work of the UK Border Agency	HC 587
Fifth Report	Police use of Tasers	HC 646
Sixth Report	Police Finances	HC 695
Seventh Report	Student Visas	HC 773
Eighth Report	Forced marriage	HC 880
Ninth Report	The work of the UK Border Agency (November 2010–March 2011)	HC 929
Tenth Report	Implications for the Justice and Home Affairs area of the accession of Turkey to the European Union	HC 789
Eleventh Report	Student Visas – follow up	HC 1445
Twelfth Report	Home Office – Work of the Permanent Secretary	HC 928
Thirteenth Report	Unauthorised tapping into or hacking of mobile communications	HC 907
Fourteenth Report	New Landscape of Policing	HC 939
Fifteenth Report	The work of the UK Border Agency (April–July 2011)	HC 1497

Sixteenth Report	Policing large scale disorder	HC 1456
Seventeenth Report	UK Border Controls	HC 1647
Eighteenth Report	Rules governing enforced removals from the UK	HC 563
Nineteenth Report	Roots of violent radicalisation	HC 1446
Twentieth Report	Extradition	HC 644
Twenty-first Report	Work of the UK Border Agency (August-Dec 2011)	HC 1722