



THE GOVERNMENT RESPONSE TO THE  
FIFTEENTH REPORT OF THE HOME AFFAIRS  
COMMITTEE SESSION 2010–12 HC 1497

# **The work of the UK Border Agency (April-July 2011)**

**Presented to Parliament  
by the Secretary of State for the Home Department  
by Command of Her Majesty**

**December 2011**

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## Government response to the Committee's Fifteenth Report of Session 2010-2012: The Work of the UK Border Agency (April - July 2011)

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The Committee published its report 'The Work of the UK Border Agency (April - July 2011)' on 7 November and included a number of recommendations. The UK Border Agency has considered the recommendations and the Government response is provided below.

**Comment 2 - The level of waste at the UK Border Agency is unacceptable. We recommend that the Government undertake and publish the results of a detailed investigation into this and consider how the UK Border Agency can improve its financial and data management. (Paragraph 5)**

### Government response

The Committee referred to the percentage of illegal penalties collected in 2010/11, and to the amounts of bad debt write-off and staff and asylum seekers overpayments in the same period, as evidence of wasteful financial management. As we acknowledged in our report on the 2010/11 accounts, and in Jonathan Sedgwick's reply to the Committee on 11 October, we recognise that we have more work to do, although the figures for 2010/11 showed an improvement on the previous financial year:

	2010/11	Change	2009/10
Overpayments to asylum seekers	£2.1m	Down 40%	£3.5m
Loss of pay - overpayments to staff	£1.9m	Down 56%	£4.3m
Penalty income collected through debt recovery	£6.9m	Up 60%	£4.3m

Over payments of asylum support occur where there is a delay in the notification of the cessation of asylum support after the conclusion of an asylum case to the individual and/or their contracted housing supplier. This results in accommodation providers continuing to provide housing in good faith despite individuals no longer being entitled to that accommodation. Over recent years this has fallen from £9.8m in 2008/09 and £3.4m in 2009/10, to £2.1m in 2010/11 and is expected to be less than £350k in 2011/12.<sup>1</sup>

Any payroll will carry some staff overpayments on their accounts; for example these can be due to staff leaving after payroll cut off or sickness absence entitlement changing. Our Human Resources teams seek recovery of all overpayments. Since April 2009 to date 60% of the Agency's cases have been completed or are in recovery. £1.2m has been recovered. A strict presumption that repayment will be pursued is applied in all cases in line with the Treasury's 'managing public money' guidance and an agreed overpayments recovery process is in place.

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<sup>1</sup> Data on overpayments of asylum support is taken from management information, which is provisional, subject to change and does not form part of national statistics.

Both the central Home Office and the Agency jointly reviewed our accounts receivable (debt management) processes, and made a number of recommendations for improvement which we are taking forward during 2011/12. In particular, we have improved training and guidance to officers issuing penalties, so that more penalties are raised correctly up front; we are improving our service level agreements on debt collection with the central Home Office service provider, who manages debt collection for the Agency, and we have engaged an external debt collection Agency to pursue older debt, as well as making a number of technical changes to our accounting and reporting processes to support more effective debt collection.

During November and December, the National Audit Office (NAO) is auditing the Agency's financial management processes and, with central Home Office Finance, we are conducting a review of the risk of financial loss that could arise from our debt management processes. These reviews are ongoing, but we look forward to their conclusion and we will implement their recommendations as soon as practicable.

**Comment 3 - We welcome the very significant reduction in the number of foreign national prisoners who were released without being considered for deportation, from 1,013 in 2006 to just 28 in 2010–11. In order for performance at the current level to be maintained, the Agency will need to ensure that it communicates regularly with prison services regarding the potential release dates of prisoners. We are nonetheless concerned about the remaining 28 and ask the Agency to take all practicable steps to locate them. We consider that with proper liaison between the HM Prison Service and the Border Agency the numbers of foreign national prisoners released without being considered for deportation will be reduced to zero. (Paragraph 7)**

### **Government Response**

Since 2006, we have greatly increased our focus on deportation of foreign criminals and have made considerable improvements to the way we deport such offenders. Every case that is referred to us which meets the deportation criteria is considered for deportation and, where appropriate, detention under immigration powers.

We receive around 500 referrals per month and work closely with other agencies to ensure we deal with foreign national offenders who meet the deportation criteria, including cases where the offender will be released on sentencing directly from court, those serving short sentences and remand prisoners. In 2010/11 we became aware of 28 individuals who were not referred to the UK Border Agency for consideration for deportation prior to being released into the community. This was down from 64 cases in 2009/10.<sup>2</sup>

The Home Secretary has set out the steps that should be taken to reduce this number further. She has asked for progress to better identify foreign nationals early,

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<sup>2</sup> Data on foreign national prisoners is taken from management information, which is provisional, subject to change and does not form part of national statistics.

promote earlier removals, and share information. This includes: ensuring the police more routinely use finger scanning technology to identify and fix nationality at the point of arrest; working more closely with the National Offender Management Service to establish more foreign national only prisons to increase timeliness of removal and working with Criminal Justice System partners, in particular the Ministry of Justice, so that foreign national prisoners are not released from prison, or by the courts, without first referring them to the UK Border Agency to consider deportation.

Of the 28 individuals released in 2010/11 prior to consideration for deportation, three are not in contact with the Agency. Our Trace and Locate team are continuing to pursue these individual cases.

## **Government Response**

**Comment 4 - The UK Border Agency is considering whether to deport 1,300 foreign national prisoners who were released in 2010–11. The fact that only 500 of these are detained is troubling, and the UK Border Agency needs to provide a full and detailed explanation for why they have released 800 foreign nationals who have previously broken the law. It is unacceptable that in more than a quarter of cases, the Agency is unable to explain why these foreign nationals have not yet been removed. This is another example of poor data management and inconsistent with the UK Border Agency's stated commitment to transparency. The Agency must improve its systems for recording difficulties in deporting former foreign national prisoners. (Paragraph 9)**

Once a prison sentence has been served, or if an offender has not been jailed, our powers only allow us to detain for as long as there is a realistic prospect of removal within a reasonable timescale. Our policy does however take into account the imperative to protect the public from foreign nationals who have offended in the UK and are liable to deportation. For this reason, proximity of removal, risk of reoffending, and risk of absconding are all taken into account at the point at which the detention decision is made and every 28 days thereafter.

A high proportion of FNOs are therefore detained under immigration powers after their release from prison, but our powers do not allow us to detain indefinitely. In 2010, for an average month, approximately 105 FNOs were released from immigration detention on restrictions while deportation was considered. Approximately 90% of these were released on bail by the courts; the remaining 10% were released by the UK Border Agency, having assessed the risk of harm posed to the public and the prospects of removal in a reasonable timescale.<sup>3</sup>

Despite the best efforts of the UK Border Agency, deportation of foreign national offenders can be delayed in many ways, such as the use of judicial challenges or by the individuals' failure to comply with the re-documentation process. We are working on policy solutions to increase FNO removals, including tackling non compliant

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<sup>3</sup> Data on the release of foreign national prisoners is taken from management information, which is provisional, subject to change and does not form part of national statistics

individuals by making greater use of prosecution powers against FNOs who do not cooperate with the deportation process or breach bail conditions. We are also working hard to reach agreements with other Governments to open up routes of return of their nationals and to streamline documentation processes.

In our letter to the committee following Jonathan Sedgwick's appearance in September we incorrectly recorded the barriers to removal in 350 cases as being 'unknown' for data quality reasons. UK Border Agency case owners were in fact aware of the immigration status of the 350 individuals who had served their sentence, but the barriers to deportation had been entered on our management information database (casework information database, CID) under the category of 'other' rather than specifying the barrier. We have now taken steps to rectify how case workers enter barriers on CID to ensure that our management information is up to date. Further work is ongoing to improve data quality through clear guidance and standards as well as improved monitoring of cases.<sup>4</sup>

**Comment 5 - We recommend that the Agency undertake an analysis of contact between case owners and foreign national prisoners. If certain methods are found to increase the likelihood of foreign national prisoners returning to their country of origin, they ought to be invested in as a priority. (Paragraph 11)**

### **Government Response**

The implementation of the hubs and spokes prison model, and the UKBA / NOMS service level agreement in 2009, have provided a clear and effective framework for contact with Foreign National Offenders (FNOs) and Agency embedded staff. The current system builds consistency and rapport and encourages compliance.

The principle of the hub and spoke strategy is to promote interaction with foreign nationals from the start of their custodial sentence. UK Border Agency staff embedded in prisons are able to develop face to face relationships with FNOs at hub and spoke locations through presence at regular surgeries and respond to ad hoc requests and concerns. Our assessment of the hub and spoke strategy is that it has been very effective at driving up the early removal of FNOs. Removals under the Early Removal Scheme (ERS) have increased from 19% of CCD removals in 2008 to 43% last year. In 2010 76% of removals from hub prisons were during the ERS period.<sup>5</sup>

The current model frees case owners' time to progress cases and avoids the need for extensive travel to difficult FNO locations.

**Comment 6 - In his statement to Parliament in 2006, the then Home Secretary suggested that the Home Office would deal with the legacy backlog in five**

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<sup>4</sup> This data quality information is management information, which is provisional, subject to change and does not form part of national statistics.

<sup>5</sup> Data on removals under the Early Removals Scheme is taken from management information, which is provisional, subject to change and does not form part of national statistics.

years or less. They have concluded 455,000 cases, however we do not consider the 18,000 cases which have received an initial decision but are awaiting removal as 'dealt with'. No matter how those at the UK Border Agency interpreted that pledge, it was not a pledge that all cases would have a decision but rather that all cases would be concluded. We recommend that the Agency establish a challenging target date for the completion of these removals in any case no later than 31 March 2012 and we expect Mr Whiteman to present us with a time table for completion when he next gives evidence. (Paragraph 17)

### **Government Response**

We have explained that the legacy programme reviewed 500,500 cases by the summer of 2011. The vast majority (479,000) were fully concluded. A further 23,000 live cases had been caseworked to the furthest possible point at that time but barriers to their conclusion remained.

We will continue to pursue the conclusion of all live cases and have already made good progress having concluded more than 7,700 of these cases to date. These cases are the most complex and the timescales will be largely outside the control of the Agency, in most cases because of the courts or the difficulty of removing to certain countries. The Case Assurance and Audit Unit (CAAU) will progress them as soon as the remaining barriers specific to each case are overcome. We have also conducted a detailed analysis of all the cases that could potentially fall into the remit of the CAAU and have, as a result of this, identified a number of cases which could fall to be dealt with by CAAU. As a result, an additional 1,300 cases have been added to the overall controlled archive figure which now totals 93,100 and 1,500 to the live cases to give a total of 17,000 cases.

**Comment 7 - We are also concerned by the transfer of 18,000 outstanding files from the Case Resolution Directorate to the Case Assurance and Audit Unit. This action risks giving the impression that the UK Border Agency are using bureaucratic terms to hide the fact that they were unable to meet the July 2011 deadline. We recommend the Government investigate whether this transfer was simply a name change or whether the files were transferred to a different location to be worked on by different staff. We note that in general the claim that the backlog has been dealt with conflicts with the experience of MPs in terms of what they are told in response to enquiries about individual cases.**

### **Government Response**

The role of the Case Resolution Directorate (CRD) was to review and casework each legacy case as far as possible. It was always anticipated that there would be a number of cases not fully resolved at the end of the legacy programme due to certain barriers. Establishing the CAAU is our commitment to the onward management of these cases. It was decided to base this unit in Liverpool and use experienced staff from the legacy programme to continue this work.

**Comment 8 - When Mr Sedgwick gave evidence to us on 13 September he confirmed that 26,000 of those 40,000 cases had been moved to the controlled archive. This means that 65% of those cases which we were told would be resolved, have not been and the UK Border Agency is now unable to find those applicants. Whilst we appreciate the difficulties involved in tracing people with whom the Agency have lost contact, usually for a period of several years, it is clear that the controlled archive has become a dumping ground for cases on which the Agency has given up. The controlled archive has increased significantly as the deadlines for the legacy backlog and the migration case review have approached. From 18,000 files in November 2010, the archive now contains 124,000 files, roughly equivalent to the population of Cambridge. With the end of the legacy backlog and review of the outstanding migration cases, we see no reason why the size of the controlled archive should increase further. We recommend that the Agency produce clear and specific guidance on the controlled archive which covers:**

- how often the files will be reassessed;**
- how many staff will work on reassessing files in the controlled archive; and,**
- when, if ever, files will be closed without the applicant being located.**

### **Government Response**

When the legacy backlog was publicised in July 2006, the then Home Secretary, John Reid, announced the priorities set out in the IND review for dealing with these cases:

*“We will prioritise those who may pose a risk to the public, and then focus on those who can more easily be removed, those receiving support, and those who may be granted leave. All cases will be dealt with on their individual merits.”*

The legacy programme adhered to these priorities. The priorities were such that the cases of applicants who had remained in contact with the Agency were resolved first; for example to receive support or to be categorised as more easily removable individuals needed to be in contact with the Agency. It was expected that towards the end of the legacy programme we would see a higher proportion of cases being assigned to the controlled archive than in the early days of the programme. Where our records clearly indicated that we had not been in contact with the applicant for a number of years, or where individuals had been identified as long term absconders, their cases did not fall within the priorities outlined and were therefore considered towards the end of the legacy programme. Many remained untraceable and were therefore assigned to the controlled archive. We have continued to conduct some dip sampling of the controlled archive against our internal and external databases and have seen some encouraging new results in terms of tracing individuals whom we have previously been unable to contact. New contact information received from Members of Parliament has also been extremely helpful in establishing contact with individuals.

We have always been open about our expectations that numbers in the controlled archive would increase. In her letter of 1 November 2010, Lin Homer confirmed that

there were 18,000 cases in the controlled archive and she advised of an expected increase in the next reporting period as cases in the pipeline became six months old and were added to the conclusion statistics for cases in the controlled archive.

We actively manage those cases assigned to the controlled archive and I can confirm that the archive has reduced by approximately 5,000 cases. As you are aware there is an additional 26,000 migration cases in a separate archive and these will be subject to the same tracing processes as those in the asylum controlled archive.

We have refined the processes so that we are:

- Reassessing files a minimum of every 6 months. This will include bulk checking cases against our reporting data and our other databases to see whether applicants have re-established contact with the UK Border Agency and bulk checking cases against e-borders data. Discussions have been held with Department for Work and Pensions, HM Revenue & Customs and other public sector and external bodies to undertake the checking of significant numbers of cases against their databases on a regular basis and we are also considering new approaches – for example, targeted tracing through social network sites and running selected cases through the fingerprint system of our Five Country Conference partners.
- 126 full time staff will be deployed to the CAAU which will conduct this work and pursue conclusion of the live cases.
- Where we are unable to locate individuals their cases will remain in the archive. Their cases will not be closed but will remain under review by CAAU and will be reactivated should we receive intelligence that will assist us in tracing them. However, as these cases become older our checks will be conducted on a less frequent basis. We will review our processes and the resources deployed to the continued management of these cases after 18 months.

**Comment 9 - We also object to the term ‘controlled archive’. It is another instance of a bureaucratic term which hides the true nature of a government department’s activity and is designed to deflect attention away from it. The controlled archive would be more appropriately referred to as an archive of lost applicants.**

### **Government Response**

It is recognised that cases in this archive are there because we have been unsuccessful in our efforts to locate them and re-establish contact. However, we reiterate that we are actively reviewing these cases at regular intervals and CAAU will continue to pursue these cases as outlined above. Where we identify information that may lead to us tracing an individual we will reactivate their case and pursue its conclusion. We do anticipate that we will reduce the resource deployed to this work over time as the return of new intelligence diminishes. We believe the archive is

controlled and we will continue to look to trace all individuals with cases in the archive.

**Comment 10 - We have long been concerned by the conduct of staff towards detainees during enforced removal and have previously questioned contractors, the UK Border Agency and ministers about the issue. We are particularly concerned by reports of the questionable behaviour of contracted staff taking place after the system was put under scrutiny and stated to have been reformed following the death of Jimmy Mubenga. We intend to take evidence from the Chief Inspector of Prisons regarding his recent reports on the treatment of detainees and will produce a report on enforced removals in the near future. However, it should be expected that appropriate disciplinary action should be taken at all times against those who behave in ways that clearly are not acceptable. Companies involved should be made aware that further incidents as described in previous paragraphs could lead to the loss of contracts with the UK Border Agency. (Paragraph 29)**

### **Government Response**

Detainee custody officers conduct one of the most difficult and sensitive parts of our business. They are highly trained and operate in very difficult circumstances where they sometimes suffer serious verbal and physical abuse from those being removed. The fact that they persuade so many to leave compliantly without the use of restraint is testament to that. Up until 30 September 2011 we removed 12,256 individuals from detention this year.<sup>6</sup> 3,575 of these were escorted and we used restraint in 375 cases.<sup>7</sup>

Whatever the circumstances, we and our contractors expect the highest standards from officers, which are set out in our operating standards and a code of conduct. They are highly trained, and the vast majority are most professional in their care of detainees whatever their behaviour, a fact that has been acknowledged on numerous occasions by the Chief Inspector of Prisons and Independent Monitoring Boards.

If an officer falls below these standards, we take action. This is against the individual but also his or her employer under the terms of our contracts. In relation to individuals this ranges from a requirement for re-training through to revocation of the certificate issued to work with detainees. In the case of their employer, it normally includes the application of service credits under the terms of their contract but could ultimately extend to termination of the service. This is clearly set out in the terms and conditions of our contracts.

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<sup>6</sup> Source of removals from detention: Table dt.06.q of Immigration Statistics July – September 2011, Home Office

<sup>7</sup> Data on the use of escorts and restraint is taken from management information, which is provisional, subject to change and does not form part of national statistics.

Management information shows that as of 11 November, we received 30 complaints regarding the use of restraint this year.<sup>8</sup> Investigations have been completed in 18 cases with 13 being found to be unsubstantiated and complaints in five cases being found to be partially substantiated. The investigations found that officers had used excessive force in 1 case, unapproved restraint techniques in 2 cases, made inappropriate remarks in 1 case and had failed to observe procedural requirements in 1 case. In some cases this has resulted in the revocation of accreditation certificates and suspension of officers, with ongoing disciplinary action taking place in others.

**Comment 11 - It is unacceptable that the UK Border Agency is unable to give us more detailed information about the role that intelligence plays in protecting the UK's borders. The Independent Chief Inspector's report suggested that there was inconsistency in the way that intelligence was collected and used and this is also unacceptable. We recognise that the Agency is trying to improve the way it uses intelligence but we feel that in order for its staff and the public to appreciate the importance of individual allegations, the outcomes must be demonstrated. (Paragraph 34)**

**Comment 12 - The Prime Minister has called on the public to report those believed to be guilty of immigration offences. We strongly support the Government in this stance but there is no point if the UK Border Agency does not use the intelligence provided. We believe that the vigilance of the public ought to be rewarded by the publication of recorded outcomes. We recommend that the UK Border Agency produces a timetable for the improvement of intelligence processes which contains information on:**

- **how the Agency will process information;**
- **how many staff will be working on intelligence; and**
- **the date that the intelligence database will be linked with the recommendations database. (Paragraph 35)**

We recognise the value of 'tip offs' and are making improvements to the end-to-end process of handling such allegations. Responsibility for the delivery of intelligence in the UK Border Agency has been reviewed and a new Strategy and Intelligence Directorate, led by a new strategic director, has been introduced. This will bring greater rigour, challenge and transparency to the Agency's intelligence operations.

By the end of December we will have introduced several new structures including a strategic intelligence command and an operational rules team. In addition, a new operational intelligence directorate will ensure greater consistency of approach to the development of intelligence and will introduce more robust standards to ensure best practice in the reporting and use of intelligence.

The UK Border Agency is committed to making it easier for members of the public to provide intelligence and have made a new web form available on the UK Border

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<sup>8</sup> Management information is provisional, subject to change and does not form part of national statistics.

Agency website on 2 November to assist with this and to improve the quality of the information which is provided.

We are collating information on allegations from across the Agency and are examining how this can be linked to arrests and removals data. This summer the Agency conducted a campaign which targeted those working illegally in the UK known as Operation Golding and this resulted in 587 arrests, many of which were the result of allegations from the public.

We are planning to have a central database in place by the end of March 2012 to record all allegations and the contribution they make to the detection of immigration and customs offences.

**Comments 13 - We further recommend that the Agency produce quarterly figures showing:**

- **How many ‘tip-offs’ they have received;**
- **on how many cases they have taken action; and**
- **how many people have been removed following a ‘tip-off’.**
- **(Paragraph 36)**

### **Government Response**

We shall report quarterly in our letter to the Committee on allegations, the action taken and their outcomes and on progress on the use of intelligence by the Agency.

**Comment 14 - The figures for successful appeals at immigration tribunals are worrying. However we have been informed that the success rate of the UK Border Agency will improve following statutory changes restricting new evidence being introduced at appeal. There is no doubt that the outcome of appeals would be improved if the Agency were to improve the quality of its representation. We expect the Agency to be represented at all appeal hearings so that the case for refusal can be properly made. (Paragraph 38)**

### **Government Response**

We recognise that providing representation in appeals is important and seek to do so whenever practicable. We have improved our representation rates considerably since mid 2010 and the Agency is now routinely represented in over 80% of appeals. The Agency also continues to maintain a 100% representation rate in Upper Tribunal hearings.<sup>9</sup>

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

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<sup>9</sup> All statistics regarding appeals representation are management information, which is provisional, subject to change and does not form part of national statistics.

The Agency prioritises hearings of vulnerable applicants and those who may cause harm in the UK, but may take a pragmatic decision not to attend and rely instead on written submissions to the court in some instances. This will generally be where the case for refusal is strong; the appellant has signalled they will not be in attendance and can thus not be cross-examined; or in cases where the witnesses' credibility is not in question. Where the Agency plans not to be represented at a hearing, it makes every effort to notify the Tribunal in advance, and to request that the adjudicator deals with the appeal on the basis of the contents of the letter of refusal and any other written submissions which the Agency makes when indicating it will not be represented. Non-attendance does not mean that the Agency is withdrawing its decision. Where a decision is taken to withdraw in an individual case, the Agency will notify the Tribunal in writing.

The Committee observed in its report that the Agency hoped statutory changes would lead to an increased success rate. In May this year s19 of the UK Borders Act 2007 was commenced, which limits the circumstances in which the post decision evidence can be taken into account by the Tribunal in Points Based System (PBS) appeals.

We are committed to providing high quality representation in as many cases as possible to allow us to give a robust defence of our decisions. We are working hard to improve the quality and professionalism of our presenting staff and are making real progress in this area. We have consulted directly with presenting staff and this has led to the introduction of several new measures, which have been led by our recently appointed Head of Profession for presenting staff, who is tasked with driving improvements.

We have published a set of Professional Standards for presenting staff, which formalises the behaviour and values we expect from those representing the Agency in court. A new Appeals Training Team, with a wider scope of training courses, was launched in June 2011. These courses are tailored according to the needs of regional appeals staff and benefit from being delivered by qualified trainers alongside existing, experienced, Senior Presenting Officers. Consideration is currently being given to offering legal accreditation to appeals staff. Staff and the judiciary consider that this is a positive developmental initiative that will reinforce our desire to further professionalise the presenting role.

**Comment 15 - The case of Mr Raed Salah highlighted a number of flaws in the UK's border control. Six opportunities for intervention were missed. These mistakes were then compounded by the lack of information provided to Mr Salah following his arrest, which mean that the Home Office will now have to pay damages to a man who the Home Secretary believed should never have been able to enter the country in the first place. This is inexcusable and unacceptable. When the Home Secretary signs an exclusion order, it ought to be served. We urge the UK Border Agency to implement urgently the eight recommendations of the HMIC to ensure that this never happens again. (Paragraph 41)**

## Government Response

Exclusion decisions are an essential tool to prohibit a person whose presence in the United Kingdom is deemed not to be conducive to the public good, and who is outside the UK, from entering. We fully recognise the importance of implementing an exclusion decision and following the HMIC recommendations, have identified a number of areas where we can improve our procedures and ways of working to reduce the opportunity for incidents such as this to occur and thereby ensure that border security is maintained at the very highest level.

Our response to the HMIC recommendations and subsequent changes in our procedures are as follows:

- A single clear point of responsibility at a senior level to co-ordinate activity, overseas and at the border.
- A heightened response nationally in the event of the arrival of an excluded person, including interception by UK Border Agency officers immediately upon disembarkation in the UK.
- Technical changes to systems and a national refresh training programme on alert handling for all border officers.
- Arrangements to ensure that the Agency is routinely able to respond to alerts overseas.
- In addition an amendment to the Immigration Act 1971 to make it an offence for an excluded person knowingly travelling to the UK in contravention of the exclusion, is under consideration and the inclusion within the Police National Computer records of details of persons excluded is being taken forward with the police service.

**Comment 16 - We cannot understand why the UK Border Agency is unable to tell us how many students had their leave curtailed or were deported for breaking the terms of their visa. We are surprised that the Agency is unaware of the term 'bogus college' as it has been used by Ministers and this Committee. We are also shocked if the worst punishment a sponsor who misuses their licence faces is the revocation of their licence, although previous evidence seems to contradict this statement. We would ask the Agency to confirm this is the case and clarify this point. On previous occasions we have come across anecdotal evidence that the Agency is not always clear, fair and consistent in its dealing with colleges, and while we support efforts to deal with wrongdoers and institutions that fall below the required standard, we are satisfied that most colleges provide an important educational service and contribute to their local economy. It is therefore important that the Agency understands the need to maintain a proper balance and is helpful to genuine educational institutions.**

**(Paragraph 45)**

## Government Response

We recognise that colleges provide a valuable service to students. For that benefit to be realised, it is vital that the education providers are well regulated and by doing this we ensure that institutions apply the necessary scrutiny to students' attendance and progress.

Students who have been reported to us for failing to attend their course or who have left their course of study, who have more than six months leave left to remain, will have their leave curtailed.

In our letter of 19 October we advised the Committee that 4,249 students had their leave curtailed between April 2011 and the end of September 2011. We provided the following breakdown of students whose leave had been curtailed in the last six months.<sup>10</sup>

	Number of students who had their visa curtailed
April 2011	680
May 2011	512
June 2011	1072
July 2011	707
August 2011	964
September 2011	314

Not all of those whose stay is curtailed will be referred for removal action: some may be able to extend their stay, for example, where a college closes and the migrant finds an alternative education provider to continue their studies; others may leave the UK voluntarily.

The current IT capability does not allow a break down of the figures above to show how many have been made the subject of removal proceedings. The information could only be obtained by undertaking a manual review of each individual case record. We are looking at how we might improve our IT systems to enable us to develop both a greater understanding of migrant behaviour and to allow us to report in greater detail around removal activity.

We are of course aware of the term "bogus college". However, not all colleges who have been taken off the Tier 4 register were necessarily bogus. Prior to being licensed under Tier 4 all sponsors have been visited at least twice, once by their accrediting body and once by the Agency. All licensed sponsors have been observed to be functioning providers of educational or training courses. Additionally, in order to be licensed, and to remain licensed, a sponsor must also demonstrate that they meet the standards and obligations we require.

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<sup>10</sup> Please note that this data is taken from management information, which is provisional, subject to change and does not form part of national statistics.

Where a sponsor is found not to be meeting these standards we will review its licence. Within the Sponsorship Rules revocation of a sponsor's licence is the strongest action that can be taken where they are found to be non-compliant. Revocation prevents institutions from bringing any further students to the UK and is likely to impact significantly on those whose business relies heavily on international students.

The fact that a sponsor has had its licence revoked does not mean that it has committed an immigration offence or broken the law. Where there is evidence of criminal activity we will work with the police and courts, as well as other regulatory bodies such as Trading Standards and HMRC, to secure prosecutions.

If convicted of immigration offences, or any other criminal activity, those involved, and any organisations they are employed by, will be prevented from holding a sponsor licence.

**Comment 17 - The involvement of an MP in a constituent's case often comes as a last resort, when other approaches have failed. The high degree of correspondence between the UK Border Agency and MPs is evidence of failure earlier in the process. We intend to examine this further the next time the Chief Executive of the UK Border Agency comes before the Committee in December. In the meantime, we would welcome evidence from MPs and their staff about their dealings with the Agency. (Paragraph 46)**

### **Government Response**

Whilst we do receive a larger number of enquiries from MPs than any other government department, we do not accept that this is entirely due to failures earlier in the process. Given the nature of the decisions that we make and their potential significance to individuals, it is inevitable that people will not always agree with, or accept them, and will seek their MP's intervention.

**Comment 18 - We recommend that it become UK Border Agency policy that if an MP becomes involved in a case then the Agency automatically copies the MP in on any correspondence to the applicant. This will enable MPs to close cases once they have been resolved. This would be both courteous and efficient and should be acted upon at once. (Paragraph 47)**

Former acting Chief Executive of the UK Border Agency, Jonathan Sedgwick, has previously given an undertaking that where we are aware of an MP's recent involvement in a case we will provide them with an update when a decision is made that helps to conclude that case. This is already happening in a number of cases and we will continue to roll this out across the Agency.

**Comment 19 - We welcome the introduction of MP account managers but they have to have authority within the Agency and be able to obtain information quickly and accurately in order to provide an improved service to MPs. In order to aid our fellow parliamentarians, we have attached the list of the account managers of each region to this report. We will be asking MPs**

**whether the new system has provided the improvements that are being claimed for it. If the improvements we wish to see take place, it could well be there would be a reduction in the 66,000 letters from MPs and peers in a single year. (Paragraph 48)**

### **Government Response**

We remain committed to improving the services we provide to MPs; this includes our dedicated MPs' Enquiry Line, regional MP Account Managers, MPs' web pages and regular MPs' events. At our most recent MPs' event, held on 8 November, we received positive feedback on these services. MPs and their staff have told us that the MPs' Enquiry Line is a useful alternative to writing as call handlers are able to answer specific immigration enquiries arising from individual cases and can also provide a written confirmation of the call that a MP can pass to their constituent. MPs have also told us their MP Account Manager provides a valuable contact within the Agency to help with their more complex or urgent enquiries.

Since the introduction of the MP Account Managers and re-launching the MPs' Enquiry Line, we have seen a significant reduction in written enquiries. In 2009 we received 66,320 written enquiries, in 2010 this was reduced to 57,651 and this year we expect to receive fewer than 50,000 written enquiries.<sup>11</sup>

**Comment 20 - The UK Border Agency's provision of information to this committee falls short of the standards that the House is entitled to expect and on which the Government itself insists. The Agency has certainly not been "as open and helpful as possible", as civil service guidance requires. There is every risk that the Agency's failure to provide us with the information we require, in a format which is appropriate for our needs and within the time requested will undermine effective Parliamentary scrutiny of the Agency's work. We hope that the standard of information provided by the Agency will improve in response to this Report. If it does not, then we will seek the information from the Home Secretary in person, in accordance with the principles set out in the Ministerial Code and related guidance on the provision of information to select committees. (Paragraph 54)**

### **Government response**

We acknowledge that the Committee provides an important mechanism to ensure effective Parliamentary scrutiny of the work of the UK Border Agency. As indicated by Chief Executive Rob Whiteman when he appeared in front of the Committee on 15 November, we will seek to fulfil requests for information whenever it is possible to do so.

**Comment 21 - Despite the scandals of both foreign national prisoners and the legacy backlog happening in 2006, they have still not been completely**

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<sup>11</sup> Please note that this data is taken from management information, which is provisional, subject to change and does not form part of national statistics.

**resolved five years later. Immigration is an issue which affects the safety, the social cohesion and the economy of Britain as well as its standing on the world stage. For that reason we will continue to hold sessions with the UK Border Agency every four months or possibly even more frequently. (Paragraph 55)**

#### **Government response**

We look forward to ongoing engagement with the Committee.



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