



# **An Inspection of Juxtaposed Controls**

November 2012 – March 2013



**John Vine CBE QPM**

**Independent Chief Inspector of Borders and Immigration**



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# FOREWORD FROM JOHN VINE CBE QPM INDEPENDENT CHIEF INSPECTOR OF BORDERS AND IMMIGRATION



The juxtaposed controls represent a unique example of co-operation between the UK, France and Belgium to enable border security checks to be carried out on passengers before they travel to the UK. I found excellent working relationships in place between Border Force, the French and Belgian authorities and the police, which means that thousands of people who have no right to enter the UK are prevented from doing so each year.

I inspected this complex and resource-intensive operation during the busy February half-term holiday period and was impressed by the courteous and professional approach of Border Force staff, many of whom work outside in all weathers.

Considerable effort was being made to identify those who sought to abuse what has become known as the 'Lille loophole',<sup>1</sup> and initiatives were underway with operators to detect passengers who were trying to exploit this weakness in border security. I found that all security checks were being carried out properly in accordance with the Border Force operating mandate.

There is considerable room for improvement in complying with guidance and procedures. This was particularly the case in respect of: further interviews; issuing the correct paperwork associated with detention of passengers; and in what circumstances notebook entries should be made by staff at secondary controls.

Poor record-keeping meant that in some cases it was impossible to assess whether a decision to refuse entry to the UK or to detain a passenger was correct or not. These are issues on which I have commented previously in other reports.

Finally, despite the logistical difficulties that Border Force faces in this operation, I find it surprising that people attempting to enter the UK concealed in freight vehicles, who are discovered by Border Force, are no longer fingerprinted at Calais or Coquelles. It seems odd that ordinary travellers are subject to 100% checks when those travelling illegally are not subject to a regime which enables immigration authorities to know whether they have been encountered previously.

I have made a number of recommendations for improvement.

A handwritten signature in black ink that reads 'John Vine' followed by a period.

**John Vine CBE QPM**

**Independent Chief Inspector of Borders and Immigration**

<sup>1</sup> A full explanation of this term can be found at paragraph 5.43

# 1. EXECUTIVE SUMMARY

- 1.1. Juxtaposed controls were first established in 1994 to speed up entry and exit procedures on the Channel Tunnel route. They were subsequently introduced on the Eurostar route in 2001 and at the ferry ports in northern France in 2003 to counter the significant number of undocumented people arriving in the UK and claiming asylum. They represent a unique aspect of Border Force's operation, as passengers are processed through primary immigration controls prior to boarding their train or ferry destined for the UK. Passengers using the Eurotunnel at Coquelles are also subjected to customs examination prior to entering the UK.
- 1.2. The inspection explored the efficiency and effectiveness of Border Force's operation across immigration and customs functions, based on the Independent Chief Inspector's published criteria (Appendix 1). The principal areas of focus were:
- the effectiveness of the juxtaposed controls in detecting and preventing illegal entry to the UK;
  - border security checks being carried out in accordance with the operating mandate; and
  - the effectiveness of the civil penalty regime.
- 1.3. Managers were positive about how the operation at the juxtaposed controls had developed since the split between the UK Border Agency and Border Force in March 2012. This had resulted in more distinct priorities within Border Force, and greater clarity regarding the areas that required the greatest focus. The split enabled Border Force to concentrate more effectively on border security and plan successfully for high-volume operational periods such as the Olympic Games.
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- Managers were positive about how the operation at the juxtaposed controls had developed since the split between the UK Border Agency and Border Force in March 2012*
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- 1.4. We found that all border security checks were being carried out in accordance with the operating mandate. Staff demonstrated good awareness of what was required at the Primary Control Point (PCP)<sup>2</sup> and knowledge of the relevant escalation procedures when derogation from 100% checks could occur. We found evidence that the biometric chip reading facility had been disabled on a number of occasions between November 2011 and January 2013, resulting in 2,811 travel documents being processed without having their biometric chip opened. However, Border Force had investigated these occurrences and we were satisfied that it had taken the necessary steps to resolve this issue. Subsequently there were no recorded deactivations in the month of February 2013.
- 1.5. Staff were polite, courteous and professional when dealing with passengers at both the primary and secondary<sup>3</sup> control points. Border Force officers made an effort to build rapport with passengers and we observed examples of staff going above and beyond their duties by providing additional levels of customer service.
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- We found that all border security checks were being carried out in accordance with the operating mandate*
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<sup>2</sup> The Primary Control Point (PCP) refers to the immigration control area where passengers present their travel documentation and may be questioned by Immigration Officers about their reasons for entering the UK.

<sup>3</sup> The Secondary Control Point (SCP) - an area where Border Force staff may be involved in the questioning of passengers or the searching of persons, baggage, freight or vehicles in relation to customs offences.

- 1.6. All staff demonstrated good awareness of the need to safeguard children and had undertaken specific training designed for this purpose. Each port had designated specialists, who had undergone additional training and were able to provide support when children's issues were raised. In addition, complaints information was well displayed at all locations and available to passengers where required.
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- We observed examples of staff going above and beyond their duties by providing additional levels of customer service*
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- 1.7. We found that staff processed passengers efficiently and effectively at the PCP, asking relevant questions and referring passengers for further examination under appropriate circumstances in all cases we sampled.
- 1.8. However, there was significant room for improvement in the quality of further interviews. Our file sample indicated that policy and guidance was not being adhered to in the vast majority of further interviews that were conducted. We were satisfied that the guidance had been followed correctly in only four (6%) of the 65 further interview records that we sampled. Given that we raised this issue in our previous inspection of Gatwick North, we were concerned to find that Border Force staff were still not complying with guidance. In response to our earlier report, Border Force agreed to provide additional training by 30 November 2012. It was clear this had not been done.
- 1.9. We sampled 274 case files for a variety of case types to assess decision quality. In refusal cases, we found that in two-thirds of the cases we sampled the decision to refuse entry was correct. However, in the remaining cases, we found that it was difficult to assess the quality of decision-making due to an inadequate level of detail retained on the file or electronic record to provide justification for the decision. In addition, paperwork required by local guidance was not completed in over one-fifth of the refusal cases which we sampled.
- 1.10. Record-keeping was a significant issue at juxtaposed control ports, particularly regarding the detention of passengers. In cases where passengers had been refused entry, we found that the correct paperwork regarding their detention had been issued or retained in only 21% of cases. In cases where passengers had been delayed at the controls for further examination before ultimately being granted entry, this figure was even lower at 18%. We were therefore unable to assess whether or not continued detention in the remaining cases was justified. We found a lack of an effective assurance processes in place to ensure that the quality of record-keeping was at the required standard.
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- Given that we raised this issue in our previous inspection of Gatwick North, we were concerned to find that Border Force staff were still not complying with guidance*
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- 1.11. Staff operating at the secondary controls in Coquelles and Dover operated consistent practices by adopting the same set of visual indicators for targeting vehicles or passengers for further examination. We were concerned to find, however, that contradictory guidance regarding the issue of notebook records was in operation, which led to confusion among staff as to which guidance they should be following. This echoed the findings in our November 2012 short-notice inspection of Birmingham Airport.<sup>4</sup> However, Border Force told us that it had developed a unified set of guidance to address this issue, which would be published in August 2013.
- 1.12. Some staff were unsure of the extent of the UK control zone in Coquelles. We were told that some prospective illegal immigrants were entering vehicles after they had been processed at the PCP and could therefore be apprehended in the boarding lanes by Border Force staff. However, not all staff were aware that they could operate in this area.

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<sup>4</sup> <http://icinspector.independent.gov.uk/wp-content/uploads/2013/02/Birmingham-Report-FINAL-PDF.pdf>

1.13. [REDACTED]

1.14. In January 2010, the Agency ceased processing clandestines<sup>5</sup> at Calais, primarily because of problems associated with the availability of detention facilities. As a result, all clandestines detected were immediately transferred to the French Police, a situation that remained extant at the time of our inspection. This was inconsistent with Border Force's operation at ports in the UK and the tourist controls in the juxtaposed ports, where all individuals who attempted to enter the UK illegally would be fully processed and formally refused.

1.15. Gathering biometric information such as fingerprints could also assist the decision-making process if these individuals were ultimately successful in reaching the UK and went on to claim asylum. We found that this process had not been reviewed since its implementation to ensure that it continued to represent the most effective method of protecting the UK border from clandestine entry.

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*We found a lack of an effective assurance processes in place to ensure that the quality of record-keeping was at the required standard*

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1.16. The creation of a Command & Control Unit responsible for planning and deploying staff to the juxtaposed controls was regarded as a positive move by staff. The unit arranged for contingency staff from the Ministry of Defence Police to be deployed at Calais and Coquelles during our period of observation, the busy February half-term weekend. These staff were not full-time Border Force officers, but they had received sufficient training in order to operate on the PCP. While they lacked experience, we were satisfied that Border Force had successfully mitigated against this by ensuring that each member of contingency staff was working adjacent to a full-time Border Force staff member. This was an effective use of contingency staff and enabled Border Force to process passengers more quickly during our observation.

1.17. Border Force had developed good working relationships with the local authorities. A Joint Operational Coordination Centre had been set up in Calais and this had improved the sharing of information between Border Force and the French police. Border Force had also developed positive working relationships with the port operators and the local police to reduce the build-up of excessive traffic in Calais, which had proved highly effective.

1.18. Border Force had taken a number of steps to close the Lille loophole.<sup>6</sup> They were liaising effectively with Eurostar and the local authorities to identify passengers who intended to evade immigration control. In addition, further measures were in operation on board high-risk services, which were assisting in identifying passengers seeking to abuse this travel route and preventing them from being able to enter the UK undetected. However, despite these initiatives some passengers were still able to arrive at St Pancras. This area of work therefore remains a high priority for Border Force.

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*Border Force had developed good working relationships with the local authorities*

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1.19. The operation of the Civil Penalty Scheme, wherein penalties are imposed on hauliers and drivers who facilitate clandestine entry to the UK, had improved significantly since our 2009 pilot inspection.<sup>7</sup> Debt recovery had been prioritised with the creation of an administrative team focusing on recovering debts, and Border Force had introduced intelligence-led operations to target vehicles that were the subject of previous unpaid penalties. One of these operations led to the recovery of in excess of £600,000 and the detention of around 160 vehicles between 2010 and 2012.

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<sup>5</sup> The term clandestine refers to an individual who attempts to enter the UK illegally, concealed in a vehicle or container. Formerly, the Agency would fingerprint, photograph and enter details on CID for all clandestines found at the juxtaposed controls, prior to handing them to the French police.

<sup>6</sup> A method by which some individuals have been able to bypass UK immigration controls on certain Eurostar services.

<sup>7</sup> Referred to in the Chief Inspector's Annual Report <http://icinspector.independent.gov.uk/wp-content/uploads/2012/02/ici-ukba-report-july08-sept091.pdf>

1.20. However, the level of penalty set in the majority of cases we sampled was not consistent with the guidance used by Border Force staff to implement the Civil Penalty (Level of Penalty) Code of Practice. Although the maximum penalty that Border Force could set was £4,000 per clandestine detected (£2,000 to the driver and £2,000 to the carrier), we found that none of the fines that were imposed in our file sample were remotely close to this maximum, even in cases where drivers and/or haulage operators had been fined previously. Border Force was consistently setting penalties significantly lower than the maximum sums specified in the relevant secondary legislation and the examples provided in the guidance, which diluted the deterrent effect.

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*The operation  
of the Civil  
Penalty Scheme  
had improved  
significantly since  
our 2009 pilot  
inspection*

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## 2. SUMMARY OF RECOMMENDATIONS

### We recommend that the Home Office:

1. Maintains adequate audit trails and undertakes necessary assurance procedures to ensure that:
  - passenger interviews are conducted in accordance with existing policy and guidance;
  - accurate records are maintained in cases that involve the detention of passengers to demonstrate that the duration of detention is lawful and appropriate;
  - file records are created and retained in all cases in line with guidance; and
  - case records fully justify and evidence the rationale for decision-making.
2. Ensures that there is a single set of guidance which is consistently applied regarding the completion of paperwork in all refusal cases.
3. Ensures that all staff operating at juxtaposed locations are fully aware of their jurisdiction and are deployed effectively throughout the UK control zone.
4. Improves the effectiveness of the Civil Penalty scheme by:
  - ensuring that the level of penalty imposed is appropriate and consistent with the examples set out in the guidance to implement the Code of Practice; and
  - extends the use of the automated payment process by credit or debit card.
5. [REDACTED]
6. Establishes suitable detention facilities at St Pancras.
7. Reconsiders its current approach regarding the fingerprinting of clandestines to ensure that it operates the most effective method of protecting the UK border against clandestine entry.

## 3. THE INSPECTION

- 3.1. The role of the Independent Chief Inspector ('the Chief Inspector') of the UK Border Agency (the Agency) was established by the UK Borders Act 2007 to examine the efficiency and effectiveness of the Agency. In 2009, the Chief Inspector's remit was extended to include customs functions and contractors.
- 3.2. On 20 February 2012, the Home Secretary announced that Border Force would be taken out of the Agency to become a separate operational command within the Home Office. The Home Secretary confirmed that this change would not affect the Chief Inspector's statutory responsibilities, and that he would continue to be responsible for inspecting the operations of both the Agency and the Border Force.
- 3.3. On 22 March 2012, the Chief Inspector of the UK Border Agency's title changed to become the Independent Chief Inspector of Borders and Immigration. His statutory responsibilities remain the same. The Chief Inspector is independent of the UK Border Agency and the Border Force, and reports directly to the Home Secretary.
- 3.4. On 26 March 2013 the Home Secretary announced that the UK Border Agency was to be broken up and brought back into the Home Office, reporting directly to Ministers, under a new package of reforms. The Independent Chief Inspector will continue to inspect the UK's border and immigration functions, as well as contractors employed by the Home Office to deliver any of these functions.

### Purpose and Aim

- 3.5. The purpose of this inspection was to examine how efficiently and effectively Border Force managed its operations at juxtaposed controls sites, with a particular focus on Calais, Coquelles and Paris. The inspection focussed on:
  - the effectiveness of the juxtaposed controls at detecting and preventing illegal entry to the UK;
  - Border Force compliance with its Operating Mandate;<sup>8</sup>
  - the effectiveness of the secondary controls at Coquelles, Dover and St. Pancras International in detecting and preventing passengers from carrying illegal goods into the UK; and
  - progress against relevant recommendations made in previous inspections including our:
    - 2009 juxtaposed controls pilot inspection; and
    - 2010 inspection of the Civil Penalties Compliance Team.

### Methodology

- 3.6. The Chief Inspector's inspection criteria<sup>9</sup> (set out in Appendix 1) were used to assess the efficiency and effectiveness of the juxtaposed controls operation under the themes of:

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<sup>8</sup> Published on 6 July 2012. It was designed to reinforce the standards for full checks that were put in place in November 2011 and to outline relevant escalation procedures.

<sup>9</sup> Revised criteria were published in February 2013. All criteria of the Independent Chief Inspector of the UK Border Agency can be found at: <http://icinspector.independent.gov.uk/wp-content/uploads/2010/03/Inspection-Criteria.pdf>

- Operational Delivery;
- Safeguarding Individuals; and
- Continuous Improvement.

3.7. In advance of the on-site phase of the inspection, we undertook:

- a pre-inspection familiarisation visit to Calais, Coquelles and Paris on 15-16 October 2012;
- an examination of Border Force management information, guidance and instructions relating to work at the juxtaposed controls;
- file sampling of 274 files, broken down as follows:
  - 91 cases where passengers were refused leave to enter at Calais, Coquelles or Paris;
  - 36 cases from Calais and Coquelles where passengers had been refused entry because they were attempting to facilitate the illegal entry of other passengers;
  - 60 cases from Calais where passengers were granted permission to enter the UK, after being issued with an IS81;<sup>10</sup>
  - 58 cases from Calais and Coquelles where Border Force had taken civil penalty action; and
  - 29 cases where passengers had made a complaint to Border Force in Calais, Coquelles or Paris.

3.8. The onsite phase of the inspection took place between 18 February and 1 March 2013. On-site inspection activity used to measure performance against the criteria included:

- observation at the Primary Control Point and Secondary Control Point at different times of the day, including weekends, between 9am and 11pm;
- observation of three detailed passenger interviews;<sup>11</sup> and
- interviews and focus groups with staff, team leaders and senior managers involved in immigration and customs operations.

3.9. Figure 1 provides a breakdown of staff spoken to by grade.

<b>Figure 1: Border Force staff interviewed during inspection</b>	
<b>Grade</b>	<b>Number</b>
Administrative Officer / Assistant Immigration Officer (AO / AIO)	15
Executive Officer / Immigration Officer / Officer (EO / IO / O)	43
Higher Executive Officer / Chief Immigration Officer / Higher Officer (HEO / CIO / HO)	17
Senior Executive Officer / Senior Officer (SEO / SO)	7
Assistant Director / Grade 7	5
Deputy Director / Grade 6	2
Director / Grade 5	2
<b>Total</b>	<b>91</b>

<sup>10</sup> A form issued by Border Force to passengers who are delayed at the PCP for further checks to be made prior to a decision to grant or refuse entry.

<sup>11</sup> These interviews are a fundamental part of the decision-making process in determining whether to grant or refuse entry to the UK for the passengers concerned.

- 3.10. During the on-site phase of the inspection, we also interviewed a range of British, French and Belgian stakeholders from the public, private and voluntary sectors who had an interest in the juxtaposed controls operation.
- 3.11. Nine days after the completion of the on-site phase of the inspection, the inspection team provided feedback on high level emerging findings to Border Force. The inspection identified seven recommendations to improve the efficiency and effectiveness of the juxtaposed controls operation. A full summary of recommendations is provided on page 2 of this report.

## 4. BACKGROUND

- 4.1. Juxtaposed controls refer to reciprocal arrangements between Belgium, France and the United Kingdom, whereby immigration checks on certain cross-Channel routes take place before passengers board the train or ferry, rather than upon arrival after disembarkation. The principal reasons for the existence of these juxtaposed controls are to prevent undocumented passengers reaching the UK in order to lodge an asylum application. Border Force currently operates juxtaposed controls at seven locations in France and Belgium:
- Calais and Dunkirk for ferry passengers and vehicles;
  - Coquelles for vehicles using the Channel Tunnel; and
  - Paris, Brussels, Lille and Calais-Fréthun for Eurostar foot passengers.
- 4.2. Customs checks are carried out at the port of Coquelles; however, the agreements relating to the other juxtaposed controls ports only permit immigration checks being carried out in the host country. Customs checks are therefore carried out when passengers arrive in the UK, either in Dover, Ashford, Ebbsfleet or at St Pancras.

### **The ‘Lille Loophole’<sup>12</sup>**

- 4.3. Within the Schengen Agreement are a set of arrangements which underpin the EU’s common visa policy. These allow for freedom of movement over international borders within many countries in Europe. The UK is not a signatory to this agreement and therefore passengers possessing a Schengen visa are subject to immigration control – they are not automatically granted entry into the UK.
- 4.4. Belgium and France participate in the border control elements of the Schengen Agreement. As a result, passengers boarding Eurostar trains in Brussels who produce a valid ticket that demonstrates that they intend to travel to Lille are exempt from UK Border Force immigration checks at this location. However, all of these trains continue from Lille and terminate at St Pancras, while some services on this route also make stops at Ashford or Ebbsfleet in the UK. As a result, Border Force has identified immigration offenders at St Pancras, many of whom go on to claim asylum in the UK.
- 4.5. During our familiarisation visit in October 2012, managers confirmed that this was still a cause for concern regarding the security of the border. [REDACTED]<sup>13</sup>

### **Civil Penalties**

- 4.6. Under the Immigration and Asylum Act 1999 and the Carriers’ Liability Regulations 2002 (SI 2002/2817), Border Force may issue civil penalty notices to persons and commercial carriers who facilitate the illegal entry of clandestine entrants or concealed persons to the UK. The fines can reach a maximum of £2,000 liability for the driver and £2,000 liability for the haulier, per person detected. This civil penalty scheme is underpinned by a code of practice which defines to what extent, if any, liability should be attributed to both the driver and the vehicle owner. This determines the level of penalty that is to be imposed. Port staff initiate civil penalty proceedings before the level of penalty

<sup>12</sup> Also referred to as the ‘Schengen loophole’.

<sup>13</sup> [REDACTED]

is set by an operational team based in the UK at Border Force south east regional headquarters. A separate administrative team, the Civil Penalty Central Administration Unit (CPCAU), is responsible for recovering monies owed.

- 4.7. The Chief Inspector's annual report published in 2009 identified several concerns regarding the operation of this civil penalty scheme. They included:
- a lack of key performance targets;
  - no overarching strategy being in place to ensure accountability for the scheme; and
  - no effective debt recovery strategy being in place to chase unpaid debts, which led to a build-up of significant backlogs of work as well as reduced income.
- 4.8. The 2009 pilot inspection of freight operations at the juxtaposed controls made several recommendations regarding improving the efficiency of this scheme which were accepted by the Agency. These included:
- implementing a strategy to improve the efficiency and effectiveness of the civil penalty scheme;
  - managing the scheme effectively to drive performance; and
  - taking immediate steps to recover debts, either through seizure of vehicles or through civil recovery methods.
- 4.9. The 2010 inspection of the Civil Penalties Compliance Team, regarding illegal working in the UK, found that many of the issues unearthed during our earlier pilot inspection remained to be dealt with. As a result, this report made further recommendations that reiterated many of those highlighted in the 2009 pilot.<sup>14</sup>

## **Clandestines**

- 4.10. The term clandestine is used by Border Force to describe an individual who attempts to enter the UK illegally without presenting themselves for examination at passport control, usually concealed in a vehicle or container. Operations to prevent clandestine entry into the UK continue to represent a significant area of focus for Border Force. In the 12-month period from September 2011 to August 2012, over 8,000 clandestines were detected and prevented from entering the UK at juxtaposed controls at Calais, Coquelles and Dunkirk. We found that the number of clandestines being detected was stable during the period considered for our inspection.

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<sup>14</sup> Referred to in the Chief Inspector's Annual Report <http://iciinspector.independent.gov.uk/wp-content/uploads/2012/02/ici-ukba-report-july08-sept091.pdf>

## 5. INSPECTION FINDINGS – OPERATIONAL DELIVERY

Decisions on the entry, stay and removal of people should be taken in accordance with the law and the principles of good administration.

- 5.1. This section gives the results and detailed analysis of the file sampling undertaken as part of this inspection, as well as presenting our findings in relation to border security checks at the Primary Control Point (PCP).

### **Warnings Index and Secure ID border security checks at the PCP**

- 5.2. In our investigation report into border security checks,<sup>15</sup> it was noted that the suspension of 100% Warnings Index<sup>16</sup> (WI) checks occurred most frequently at juxtaposed control sites. In fact, Calais, Coquelles and Paris combined accounted for 202 of the 354 suspensions between 1 July 2007 and 27 October 2011 (57% of the total number of WI suspensions that occurred).
- 5.3. In response to the recommendations made in our border security checks report, Border Force published an operating mandate for staff on 6 July 2012. This set out the border security checks that officers must conduct at both the PCP and the Secondary Control Point (SCP).<sup>17</sup> We observed staff working at the PCP in Calais, Coquelles, Paris and Brussels conducting security checks when processing passengers in accordance with the Operating Mandate. This included conducting:
- WI checks in all relevant cases, including opening the biometric chip (photograph) within all travel documents; and
  - Secure ID checks.<sup>18</sup>
- 5.4. We found that no suspensions of WI or Secure ID checks had taken place since 4 November 2011. This was confirmed by the staff whom we observed and interviewed during the course of our inspection.

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*We found that no suspensions of WI or Secure ID checks had taken place since 4 November 2011*

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<sup>15</sup> Published in February 2012, <http://icinspector.independent.gov.uk/wp-content/uploads/2012/02/2012-02-20-Report-of-the-UKBA-ICI-Report3.pdf>

<sup>16</sup> Used to ascertain whether passengers are of interest to the Border Force, the police, or other government departments.

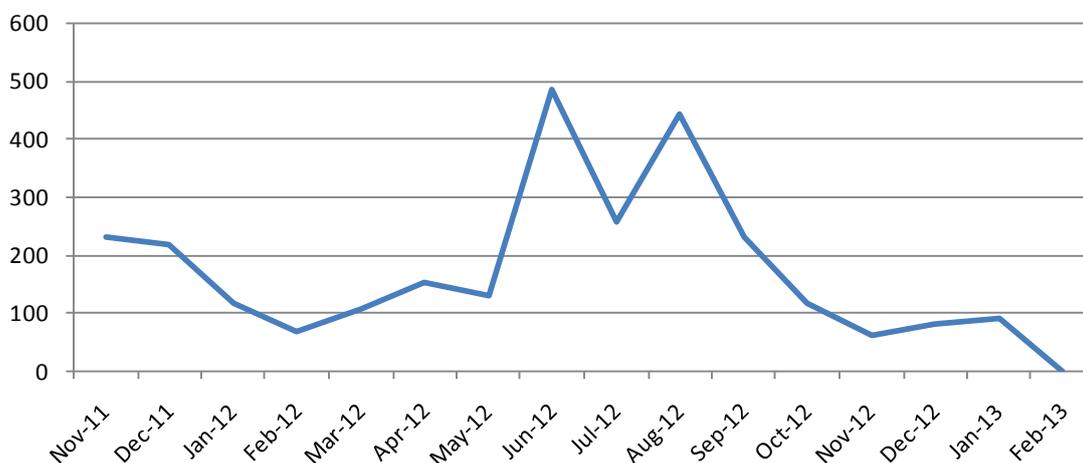
<sup>17</sup> The Secondary Control Point (SCP) - an area where Border Force staff may be involved in the questioning of passengers or the searching of persons, baggage, freight or vehicles in relation to customs offences.

<sup>18</sup> Checks passengers' fingerprints at the immigration controls and verifies them against those previously provided during the visa application process. Secure ID was available in Coquelles (for coach passengers only), but was not available in Paris, Brussels or Calais.

## Biometric chip reading facility

- 5.5. Officers at the PCP are required to open the biometric chip in all travel documents where this feature is present, including those belonging to European Economic Area (EEA) citizens. This allows them to check that the passenger's passport photo corresponds with the photo embedded in the biometric chip. At the time of our investigation into border security checks we found that between January and June 2011 (inclusive) the biometric chip reading facility had been deactivated at a number of ports on 14,812 occasions.
- 5.6. During this inspection, we found that the biometric chip reading facility had been deactivated in respect of 2,811 passengers who were processed through the PCP in Calais, Coquelles or Paris, between 4 November 2011 and 28 February 2013. This meant these passengers did not have the biometric chip opened in their passport. Figure 3 provides a monthly breakdown of this.

**Figure 3: Passengers processed while biometric chip reading facility was disabled**



Note: Highest numbers of deactivations reflect periods of peak passenger volume.

- 5.7. We were told that these deactivations had occurred accidentally. Our findings were similar to those identified during our short-notice inspection of Birmingham Airport,<sup>19</sup> where we found this facility had been disabled on 11 separate occasions, meaning that 278 passengers had not had the biometric chip opened in their passports.
- 5.8. In response to our findings, in December 2012, Border Force implemented an IT solution to prevent accidental disabling of the chip reading facility. We were therefore surprised to find that, in January 2013, three immigration officers at Coquelles and one at Calais had disabled the chip reading facility. As a result, 90 passengers (one in Calais and 89 in Coquelles) did not have their biometric chip opened in their passports. Border Force told us it had already identified these occurrences and had conducted an investigation to find out why they occurred.
- 5.9. This investigation revealed that of the three incidents in Coquelles, two officers had deactivated the biometric chip reading facility in error, one on two occasions, the other on three occasions. The final officer had deactivated the facility for 84 transactions. Border Force told us that an internal investigation revealed that the IT solution had not been applied in one of the PCP terminals in

<sup>19</sup> Published on 28 February 2013

<http://icinspector.independent.gov.uk/wp-content/uploads/2013/02/Birmingham-Report-FINAL-PDF.pdf>

Coquelles, which had allowed these deactivations to occur. We were told that this had subsequently been rectified. It is noted that in February 2013 no reported deactivations were recorded.

- 5.10. The single incident at Calais occurred because the system had initially failed to recognise that the passport contained a biometric chip. We were told that, although the chip reading facility was initially turned off, the officer had subsequently turned it back on and scanned the passenger's passport. This incident was reported to senior managers at the time it occurred.

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*We were pleased to see that Border Force had taken positive action to prevent accidental deactivation of the biometric chip reading facility*

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- 5.11. We were pleased to see that Border Force had taken positive action to prevent accidental deactivation of the biometric chip reading facility. Early indications show that Border Force has now taken the necessary action to prevent this occurring in future. However, this is an area we will continue to review during future port inspections.

### **File sampling**

- 5.12. We requested 280 case files, chosen at random from decisions made between 1 April 2011 and 30 September 2012. Of these, we received and sampled 274 case files. Figure 4 sets out the case categories, together with details of the case files produced by the Agency.

**Figure 4: Categories and number of files sampled**

Category	Requested	Sampled	Not received <sup>20</sup>	Out of scope
Refusals of leave to enter Calais	30	31 <sup>21</sup>	0	
Refusals of leave to enter Coquelles	30	30	0	
Refusals of leave to enter Paris	30	30	0	
Civil Penalties cases Calais	45	45	0	
Civil Penalties Coquelles	15	13	2	
Facilitation cases Calais	15	15	0	
Facilitation cases Coquelles	25	21	0	4 <sup>22</sup>
Grants of leave to enter after IS81 issue cases in Calais	60	60	0	
Complaints	30	29 <sup>23</sup>	0	
<b>Total</b>	<b>280</b>	<b>274</b>	<b>2</b>	<b>4</b>

### **Refusals of Leave to Enter in Calais, Coquelles and Paris**

- 5.13. We sampled 91 cases where passengers were refused leave to enter at juxtaposed controls ports in Calais, Coquelles and Paris. Our focus was on decision quality and timeliness.

<sup>20</sup> Border Force was unable to locate these files.

<sup>21</sup> One additional file received.

<sup>22</sup> Refusal cases that did not involve facilitation.

<sup>23</sup> Two separate complaint files requested referred to the same passenger and the same complaint.

## Decision quality

5.14. In all cases where we were able to assess decision quality (60 cases – 66% of our sample), the decision to refuse a passenger leave to enter was correct. However, in the remaining 31 cases (34% of our sample), we were unable to assess the quality of decision-making due to poor record-keeping. For example, because the:

- files we received were copies of files rather than original files, and did not include all the relevant documentation to enable us to assess whether decisions had been made based on all the available evidence; or
- notes on the case file or the Case Information Database<sup>24</sup> (CID) were too brief to enable us to fully understand the reason for the decision.

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*We have commented on our concerns with regard to record-keeping and the importance of maintaining an adequate audit trail in a number of our previous reports*

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5.15. We have commented on our concerns with regard to record-keeping and the importance of maintaining an adequate audit trail in a number of our previous reports, most recently in our report of the Agency's and Border Force handling of customs and immigration offences at ports.<sup>25</sup> It is important that the Home Office addresses this, to ensure that the rationale for the decisions made by its staff can be fully understood. We therefore make the following recommendation:

### **We recommend that the Home Office:**

Ensures that case records fully justify and evidence the rationale for decision-making.

## Timeliness

5.16. When a passenger is refused leave to enter, Border Force officers are expected to complete a report setting out the reasons for refusal. The Calais Operations Manual states that this form should be completed within 28 days of the decision being made. We noted that guidance for Coquelles and Paris did not specify a deadline for completion. This was surprising, and indicated some inconsistency between different juxtaposed controls ports. We assessed performance at all three ports against this 28-day deadline. Figure 5 illustrates our findings.

<b>Figure 5: Completion of IS25 form</b>	
<b>Port</b>	<b>Report completed after 28-day deadline</b>
Paris (30 files)	8 (27%)
Calais (24)	4 (17%)
Coquelles (14)	4 (29%)

5.17. These figures show that this was an issue in each of the three ports. We therefore consider that the Home Office should work to address this issue, and make the following recommendation:

### **We recommend that the Home Office:**

Ensures there is a single set of guidance which is consistently applied regarding the completion of paperwork in all refusal cases.

<sup>24</sup> The Case Information Database is an administrative tool, used by Border Force to perform case working tasks and record information electronically.

<sup>25</sup> Published on 24 January 2013 <http://icinspector.independent.gov.uk/inspections/inspection-reports/>

## Passenger Interviews

- 5.18. Border Force guidance covering how interviews with passengers should be conducted at ports set out a number of requirements. Figure 6 describes the key requirements.

### Figure 6: Border Force guidance regarding interview conduct

Before commencing the interview, the person must be asked whether they are fit and well to be interviewed and their response recorded.

Immigration officers should take notes which must be dated, timed and signed with the name of the immigration officer conducting the interview being clearly shown.

The person should be asked if they can understand the person conducting the interview and whether they are happy to be interviewed in English (or the language being used).

At the conclusion of the interview, the passenger should be allowed to add anything that they think may be of assistance, and you should seek to confirm that they have understood everything you have discussed and again record their response. Once again the notes should be dated, signed and timed.

- 5.19. We assessed whether this guidance had been followed for passenger interviews in refusal cases, facilitation cases and cases where passengers were granted permission to enter after being issued with an IS81 form. We found that in 104 (56%) of these cases, passenger interviews had been conducted, broken down as follows:

- 50 (55%) of the 91 refusal cases we assessed, where passengers were refused leave to enter at juxtaposed controls ports in Calais, Coquelles and Paris;
- 20 (56%) of the 36 facilitation cases we assessed in Calais and Coquelles; and
- 34 (57%) of the 60 cases where passengers were granted permission to enter after being issued with an IS81 form in Calais.

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*In the remaining 65 cases, we identified only four where we were satisfied that interviews had been carried out in accordance with the guidance*

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- 5.20. We found insufficient documentation had been retained in 39 cases (38% of our sample). This meant we were unable to establish whether or not the interviews had been carried out in accordance with the guidance. In the remaining 65 cases, we identified only four where we were satisfied that interviews had been carried out in accordance with the guidance, mainly because:

- interview records had not been signed by the passenger being interviewed, therefore there was no evidence that they had confirmed the accuracy of the interview record;
- interview records had not been dated, timed or signed by the interviewing officer; or
- passengers were not invited to add anything to the interview record that they thought may have been of assistance.

- 5.21. While onsite, we observed three passenger interviews, two in Paris and one in Coquelles. Our onsite observation confirmed our concerns regarding the treatment of passengers during the further interview process, and in none of the further interviews we observed was the passenger asked to sign to approve its content. In general, the conduct of the interviewing officer was satisfactory; however, in each interview observed, we identified either ambiguous statements that were not clarified or discrepancies that the passenger was not given the opportunity to explain – Figure 7 refers.

## Figure 7: Case study of a passenger interview

The passenger was a non-EEA national and sought leave to enter the UK. They held no prior entry clearance. A further interview with the assistance of an interpreter was conducted.

The passenger stated that they held two credit cards with no credit on them. This was construed by the IO to mean that the passenger had spent all the available funds on these cards, but it could equally have been the case that each of these cards had a balance of zero. This was not clarified by the IO.

The passenger was not given the opportunity to sign the interview record to confirm that they were happy with its content. The interpreter was told they could leave immediately after the interview was concluded.

When the referral was made to the CIO, the IO declared at the outset that the application should be refused. In addition, the IO answered questions asked by the CIO about the case which did not relate to what we observed being asked during the interview.

The passenger was refused entry. The refusal notice was simply handed to them without any explanation as they were escorted to the French border police. The passenger was heard saying “no-comprendre” as they were led away.

### Chief Inspector’s comments:

Financial resources are a significant factor in a decision to grant or refuse admission under the Immigration Rules. This passenger’s financial resources were assessed, at least in part, based on a statement which could have been interpreted in two different ways but was not clarified by the IO.

The CIO’s recommendation could have been materially affected by the partisan manner in which the case was referred by the IO.

The passenger clearly did not understand what was happening at the point when they were refused entry, because the interpreter had already been discharged and no attempt was made to explain the decision.

This passenger was not treated fairly during and following the further interview process.

- 5.22. We believe that ambiguous statements made by passengers must always be clarified. Passengers must also be given the opportunity to comment on the interview record, prior to the conclusion of the interview, to confirm that the content accurately represents what they have said. If a passenger is to be refused entry, Border Force must ensure that the passenger understands the content of the refusal notice prior to handing the passenger over to the local authorities.
- 5.23. Staff and managers at each location we visited confirmed that they were aware of the policy regarding the conduct of interviews and, in particular, the need for the interview record to be reviewed and signed by the passenger. Our file sampling and onsite observation, however, indicated that this practice was not occurring.
- 5.24. This issue was raised during our previous inspection of Gatwick North,<sup>26</sup> at which time we

<sup>26</sup> Published 10 May 2012 <http://icinspector.independent.gov.uk/wp-content/uploads/2012/02/Inspection-of-Gatwick-Airport-North-Terminal.pdf>

recommended that Border Force: Improve consistency of practice in immigration casework, ensuring that the conduct of case interviews is in line with guidance and case file documentation provides a robust audit trail of all decision stages. Border Force accepted this recommendation, and agreed to implement refresher training to officers and managers in relation to passenger interviews and supporting casework by 30 November 2012.

5.25. We reported this to Border Force senior managers. We were told that this training had not been carried out due to limited resources and the need to prioritise planning for the Olympics. However, we were also told that, on a number of occasions, staff had been reminded of the requirement for staff and passengers to sign interview records. We were also shown a copy of a training plan, which included refresher training on interviews and casework. This training was due to take place between March and June 2013.

5.26. In response to the recommendation made following our inspection of Gatwick North, Border Force also agreed to undertake assurance work to improve the quality and consistency of passenger interviews. We were told that this work would be supported by a new assurance programme which would include more observation of interviews by managers and mentoring to improve staff performance. However, we found no evidence that this recommendation had been implemented and the overwhelming number of passenger interviews in our sample showed that:

- significant progress remains to be made to ensure that interviews are carried out in accordance with policy and guidance;
- management assurance activities need to be significantly improved to ensure that staff apply policy and guidance effectively; and
- file records need to be maintained appropriately to enable the evidence to be properly assessed.

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*We found no evidence that this recommendation had been implemented*

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5.27. Managers told us that they read through the content of passenger interview records for assurance purposes. However, our file sampling provided no indication that this was being done, due to the amount of further interviews that were not conducted in line with guidance. Interviews form a key part of the decision-making process, as this is an opportunity for the passenger to fully explain the circumstances of their case. It is therefore essential that Border Force staff comply with guidance when conducting interviews, as failure to do so could unfairly prejudice the outcome of a case. We therefore make the following recommendation.

#### **We recommend that the Home Office:**

Ensures that passenger interviews are conducted in accordance with existing policy and guidance.

#### **Verification of documents**

5.28. Staff in all locations demonstrated good knowledge of available processes regarding the verification of travel documents. We were told about a particular problem with Romanian ID cards which were legitimately produced by a number of authorities, resulting in many variations which made them more difficult to verify.

5.29. To overcome this difficulty, Border Force had established a good working relationship with the Romanian authorities, who verified the authenticity of ID cards within 30 minutes. Similarly, Border Force staff liaised with the French and Belgian authorities to good effect if they had concerns over a travel document produced by either country.

## Passengers in Calais granted leave to enter after being issued with an IS81 form

- 5.30. IS81 forms are issued to passengers who are delayed at the PCP to enable the Border Force officer to carry out further checks. Our pre-inspection analysis of Border Force management information showed that 1,432 IS81 forms were issued in Calais between September 2011 and August 2012 and, of these, 558 (39%) resulted in passengers being granted entry, which was a significantly higher proportion than at any other juxtaposed control site. We therefore considered that this warranted further investigation. For this reason, we sampled 60 of these cases from Calais.

### Decision quality

- 5.31. In 59 of these cases (98% of our sample), there was justification for referring the passenger for further examination prior to the decision to grant entry. In the one remaining case, we could not tell why the passenger was referred for further examination as there were no details on either the paper file or the electronic record regarding this. However, overall performance was good and our onsite observation in Calais confirmed that staff were using their initiative and their professional skills when deciding to refer passengers for further examination.

### Timeliness

- 5.32. Border Force guidance states that once a passenger has been issued with an IS81, they can only be held for a maximum of four hours. After this time, if a decision cannot be made, formal detention procedures must commence.
- 5.33. In 17 of the 60 cases we sampled (28% of our sample) there were delays exceeding four hours, therefore an IS91/IS91R<sup>27</sup> should have been served. We found evidence of the service of an IS91 in only three of these 17 cases. We were concerned that the lack of records in these cases made it extremely difficult to ascertain the legitimacy of any period of detention beyond the initial four hours permitted by the service of the IS81. We cover this issue in greater depth in the section of the report that deals with the use of Enforcement Powers.

### Record-keeping

- 5.34. The Calais Operational Manual sets out the actions that are required following a decision to grant a passenger entry after the service of an IS81. Among these required actions are the need to generate a port file and to enter details of the case on CID. We were pleased to find that all of the cases we sampled had been entered on CID. The following instructions should be followed regarding the port file:

*CID should be checked to see if there is an existing Home Office file.*

*If there is an existing Home Office file, after our actions are complete the port file should be sent to FDSU in Martello House for linking to the Home Office file.*

*If there is no existing Home Office file, a seven-year destruction date (from the date of refusal) should be annotated on the front of the port file. The completed file should be sent for data quality checks and finally to archive filing.*

<sup>27</sup> Explaining to the passenger/detention staff the reasons for detention.

5.35. Of the 60 files we requested, only six (10%) original files were provided. The remaining 54 (90%) files had been created by Border Force solely using screenshots from CID and copies of documents printed from the electronic record. Each of these 54 files had the words 'File Missing / Destroyed' printed on the front cover and none contained a further interview record. This contravened the Calais Operational Manual, which clearly states that paper files should be created and retained for seven years. The earliest date of any of the files we examined was 7 April 2011, as illustrated in Figure 9.

**Figure 9: Landed cases – file retention**

	Number	Percentage
Case files requested	60	100%
Case files received	6	10%
File missing / destroyed	54	90%
Date at which oldest file should be destroyed	07 April 2018	-

5.36. Our analysis indicated that Border Force staff at Calais were not following their file retention policy regarding landed cases. In addition, only two (4%) of these 54 cases had data quality checks carried out using the original paper file before it was destroyed. Twelve (22%) cases were data quality checked without the paper file, using only the information contained on the electronic record. The remaining 40 (74%) received no data quality checks. We were therefore concerned that Border Force was not following its own policy regarding data quality checking for landed cases.

5.37. Border Force must keep records consistently regarding the detention of passengers in landed cases. Failure to do so runs the risk of facing claims of unauthorised detention which Border Force will find difficult to defend, because either the necessary paperwork to justify a passenger's continued detention has not been retained, or it was not issued in the first place.

5.38. Border Force must also ensure that data quality checks are conducted in line with guidance. This process is important in ensuring that failures to adhere to guidance are identified and can be addressed. We therefore make the following recommendation:

**We recommend that the Home Office:**

Ensures that file records are created and retained in all cases in line with guidance.

**Jux 3 Form**

5.39. At the PCP in Paris and Brussels, staff were able to postpone a decision regarding entry to the UK in cases where they felt further information was required in order to make an entry clearance decision. In such cases they served passengers with a Jux 3 form, which allowed a passenger to exit the immigration controls to obtain the information that was missing.

5.40. Where the passenger was able to provide the information required by a Border Force officer, Eurostar would then exchange the passenger's ticket for an alternative service free of charge. We were told that this facility should only be used as a last resort and only in cases where the Border Force officer was confident that the information required to be granted entry was available to the passenger, despite not being presented at the time. Examples given included where a passenger had forgotten or not realised that they needed to present a travel document.

- 5.41. This practice had been initiated to represent the spirit of the Channel Tunnel agreement. Both Paris and Brussels kept a log of Jux 3 cases. We were told that a similar process existed at other juxtaposed ports. Managers and staff felt that this practice improved the effectiveness of the controls in Paris and Brussels.
- 5.42. This process represented a positive development for Border Force's Eurostar operation. Not recording these cases as refusals resulted in less administrative work for Border Force and also meant that the person's details would not be added to the WI system unnecessarily, which could lead to them being held up at the controls in the future. We believe that the use of the Jux 3 form represents a common sense approach in cases where Immigration Officers were satisfied that a passenger has made a genuine oversight.

## Customs and immigration offences should be prevented, detected, investigated and, where appropriate, prosecuted.

### 'Lille loophole'

- 5.43. The Schengen Agreement allows for freedom of movement over international borders within 26 countries in Europe.<sup>28</sup> The UK does not participate in the elements of the Agreement which relate to border controls and immigration and therefore passengers possessing a Schengen visa are subject to full immigration controls and are not automatically granted entry into the UK.
- 5.44. Some passengers boarding Eurostar trains in Brussels are alighting at Lille and not travelling to the UK. As a result, those passengers producing a valid ticket to Lille are exempt from UK immigration checks in Brussels. Many of these trains, however, continue from Lille to locations in the UK and terminate at St Pancras. This is commonly referred to as the 'Lille loophole'. Border Force has identified that some passengers who are purporting to be travelling to Lille remain on the train beyond Lille and are able to enter the UK by this method, thereby evading immigration control.
- Key to their success was working effectively with both Eurostar and the local authorities responsible for conducting exit checks when passengers leave the Schengen area*
- 5.45. Border Force had implemented a number of initiatives to take preventative action to mitigate this risk. Key to their success was working effectively with both Eurostar and the local authorities responsible for conducting exit checks when passengers leave the Schengen area.
- 5.46. One of these initiatives involved Border Force staff at Brussels and Lille taking action which enabled passengers arriving in the UK to demonstrate that they had been granted leave to enter. In conjunction with this, full ticket inspections were also undertaken on board services leaving Lille. Passengers who were found not to have tickets with the UK as their final destination were asked to leave the train at Calais-Fréthun, the last stop before the train travelled to the UK.
- 5.47. A further initiative saw Border Force taking action in advance of travel to identify passengers who may have been intending to try and enter the UK illegally. We reviewed this initiative and found that it was effective in helping to prevent passengers circumventing UK immigration controls.

<sup>28</sup> Twenty two from the EU plus Iceland, Liechtenstein, Norway and Switzerland. The Republic of Ireland and the United Kingdom do not participate in the elements of the agreement relating to border controls and immigration.

- 5.48. Border Force had also introduced an effective process in the UK to identify passengers who had not had their identity or credentials checked prior to boarding the service in Brussels or Lille. [REDACTED].

**Figure 10: [REDACTED]**

- 5.49. [REDACTED]
- 5.50. The initiatives introduced by Border Force and its partners to detect passengers trying to abuse this travel route were having an impact. However, Border Force was continuing to meet regularly with Eurostar and the local Belgian and French authorities to explore other methods to further reduce the risks caused by some passengers exploiting this method of entry into the UK.

**Facilitation**

- 5.51. The criminal offence of facilitation is defined at section 25 of the Immigration Act 1971<sup>29</sup>. Acts which constitute facilitation include assisting the unlawful entry of individuals who are not citizens of the European Union to the UK. We sampled 36 facilitation case files – 15 from Calais and 21 from Coquelles – to examine whether Border Force officers processed facilitation cases in accordance with policy and guidance.
- 5.52. In 22 of the cases we sampled (61% of our sample), we found that EEA national passengers were refused admission for attempting to facilitate a non EEA national's entry to the UK. Guidance states that all refusals in this category must be authorised by a grade no lower than HM Inspector (HMI). During our onsite interviews and focus groups, Chief Immigration Officer (CIO) and HMI staff confirmed that they were aware of this requirement. However, our file sampling showed that in:
- six of these cases (27% of our sample), the decision to refuse was authorised by a CIO instead of a HMI; and
  - a further three cases (14% of our sample), the level of authorisation was not recorded.
- 5.53. Border Force told us that it was likely these refusal decisions were verbally authorised by an HMI in accordance with guidance. However, they accepted that there was no evidence on file or on the Case Information Database to confirm this. Border Force was also unable to confirm the level of authorisation obtained in the three cases in which this was not recorded, either in the paper file or on CID.
- 5.54. Border Force must ensure that its staff and managers follow its own policy and guidance. The failure to do so in these nine cases again demonstrates that there is a lack of effective management assurance in place to provide confidence to more senior management that staff are carrying out their duties in accordance with the Department's own policy and guidance. This was a recurring theme throughout our inspection.
- 5.55. We were told by managers in Calais and Coquelles that the criminal process in France regarding facilitation offences was very efficient. Facilitators could be charged and sentenced very quickly, resulting in a custodial sentence or a banning order from the area around the port for up to three years. While there was a mechanism for providing facilitation case outcomes to Border Force, we were told that the process needed to be improved to ensure that Border Force obtained feedback in all cases. We were told that Border Force were working with the French police to address this problem.

29 The legislation can be accessed here - <http://www.legislation.gov.uk/ukpga/1971/77/section/25>

- 5.56. Prosecutions for facilitation offences at the juxtaposed controls rely heavily on evidence provided by Border Force staff. It is therefore important that Border Force is aware of how effective the evidence it provides is, and where it needs to improve in order to assist the French authorities in safeguarding the UK against this threat.

### **Referrals for secondary examination**

- 5.57. As the juxtaposed controls at the port of Calais operate solely an immigration function, secondary controls (customs work) are not undertaken until passengers reach Dover. During our observation in the car lanes at Dover, we observed that staff working in the secondary area consistently used a set of visual indicators when selecting vehicles for further examination. This ensured that there was good consistency in approach when determining which vehicles to stop for additional searches. In addition, justification for these searches could be readily attributed to one of the pre-identified indicators.
- 5.58. Coquelles operates both an immigration and customs function. We noted during our observation of the car booths that, in addition to the Border Force officer at each PCP desk, a designated member of staff with a background in secondary detection work observed the activity at both PCP desks inside the booth. When a vehicle or passenger who met a sufficient number of the visual indicators was at the booth, this member of staff would ask certain questions of the driver to establish whether a secondary search was necessary. This additional questioning was conducted while the staff member stationed on the desk conducted the necessary passport checks and therefore did not add to the passenger's waiting time.
- 5.59. This was good practice, as it enabled Border Force staff to identify vehicles for further examination in an efficient way and without causing unnecessary delays to passengers who were not of interest. The use of the same set of visual indicators also ensured that the selection process of vehicles for further examination remained consistent with the operation in Dover.

### **Notebook record-keeping**

- 5.60. During our short-notice inspection of Birmingham Airport in November 2012,<sup>30</sup> we identified that conflicting guidance was provided to staff in relation to the actions they should take when intercepting passengers as they passed through the SCP. The HMRC Enforcement Handbook<sup>31</sup> instructed staff to make a notebook entry whenever such interceptions took place, whereas a subsequent Border Force Interim Operational Instruction stated that notebook entries should not be made in relation to negative interceptions – those where no illicit goods were found.
- 5.61. During this inspection, we identified similar findings. During focus groups and interviews, it became apparent that there was some confusion over the threshold for creating notebook records, and some staff told us that they were inundated with guidance and found it difficult to keep track. Staff were unsure as to what stage during an examination a notebook entry needed to be made and whether negative interceptions had to be recorded for assurance purposes. However, Border Force told us that it had developed a unified set of guidance to address this issue, which would be published in August 2013.

### **Coquelles 'fence jumpers'**

- 5.62. Following a change to the site layout in Coquelles, vehicles in the tourist lanes are now routed through the PCP before being directed to the passenger terminal building until they are ready for their scheduled departure time. The Passenger Terminal Building is outside of the UK control zone and security in this area is managed by Eurotunnel and the French police.

<sup>30</sup> <http://icinspector.independent.gov.uk/wp-content/uploads/2013/02/Birmingham-Report-FINAL-PDF.pdf>

<sup>31</sup> The HMRC Enforcement Handbook was created when HMRC controlled all customs activity at the border. While much of this work is now under the control of Border Force, this handbook still contains the guidance for practices that are common to both HMRC and Border Force, and is accessible (web-based) to Border Force staff.

- 5.63. Staff considered that this change in routing had created some additional risks to the UK border regarding ‘fence jumpers’. We were told that this commonly occurred when vehicles that had passed through the PCP were later occupied by additional passengers who had gained access to the site by climbing over the perimeter fence and thus had evaded UK immigration and customs checks. Eurotunnel had invested significant sums of money in order to combat this, spending £4 million each year on site security, which included £100,000 on repairs to the 32km perimeter fence.
- 5.64. Managers were aware of this issue and assured us that, although it remains a risk, it was mitigated by the fact that all vehicles return to the UK control zone prior to boarding the shuttle. While vehicles are not systematically rechecked, Border Force officers have control powers in this area, including the boarding lanes and platforms and officers are often sent to patrol the lanes, particularly if intelligence has indicated this may be necessary.
- 5.65. However, some immigration staff we interviewed were unsure of the exact extent of the UK control zone, and in particular whether or not they had control powers within the boarding lanes. Some staff told us that they were concerned that there was no port security in the boarding lanes, and as they had not received the necessary level of personal safety training, they did not believe they could work in the boarding lanes area. Managers told us that this could be explained by a distinction between customs and immigration staff, because immigration staff were less likely to have undergone the highest level of personal safety training.
- 5.66. As immigration staff are routinely deployed to the PCP in either the car booths or the coach hall, we accept that they may not have had any experience of operating in the boarding lanes. We noted, however, that the offences that we were told were occurring in the boarding lanes were primarily attempts to evade immigration control. We therefore consider that immigration staff should also be clear as to how far their powers extend, in order to counteract all potential immigration offences that are committed at Coquelles.
- 5.67. Managers told us that the passenger terminal building was monitored by Eurotunnel surveillance cameras and that the French police would arrest those found to be trespassing on the site. Due to its size and layout, local authorities in Coquelles arrest a higher proportion of trespassers than at other juxtaposed sites. Site security, including the area outside of the UK control zone, represented a greater challenge at Coquelles than at other juxtaposed sites. The role of other agencies was therefore important in ensuring the security of the port outside of the UK control zone, which in turn affected the number of clandestines attempting to travel to the UK. The table at Figure 11 demonstrates the contrast between Coquelles and Calais in this regard.

**Figure 11: Coquelles: total clandestines (September 2011 – August 2012)**

Location	Coquelles	Calais
Total number of clandestines detected	2273	4180
Clandestines detected by other authorities	1709	1935
Clandestines detected by Border Force	564	2245
% detected by Border Force	25%	54%

Note: This information was provided by Border Force. It had not been quality assured to the level of published National Statistics and should be treated as provisional and therefore subject to change.

- 5.68. Border Force needs to ensure that the entirety of their control zone is monitored effectively, and that immigration offenders are prevented from bypassing the PCP by trespassing on site. We believe that all Border Force staff deployed at Coquelles, be it primarily in an immigration or a customs role, must have knowledge of where the UK control zone extends to and where they have jurisdiction.

- 5.69. We are satisfied that Border Force are aware of the issues relating to fence jumpers, but believe that they can do more to ensure that there is a presence in the boarding lanes when necessary in order to counteract this risk.

### **We recommend that the Home Office:**

Ensures that all staff operating at juxtaposed locations are fully aware of their jurisdiction and are deployed effectively throughout the UK control zone.

### **Civil penalties**

- 5.70. Under the Immigration and Asylum Act 1999, Border Force may issue civil penalty notices to persons and carriers who facilitate the illegal entry of persons to the UK. The fines can reach a maximum of £2,000 liability for the driver and £2,000 liability for the haulier, in relation to each clandestine passenger that is detected.
- 5.71. We examined 58 civil penalties files; 45 from Calais and 13 from Coquelles, to determine whether Border Force officers processed civil penalties cases in accordance with the guidance set out in the Border Force civil penalties procedures. This included:
- the forms/paperwork that should be served on the driver and/or company;
  - the forms that should be sent to the Civil Penalty Central Administration Unit (CPCAU);
  - the photographs that must be taken, including photographs of the vehicle, the seal, the clandestines, etc.; and
  - the information to be included in the initial notebook minute.
- 5.72. The correct paperwork had been served on the driver and company in all of the cases that we examined and this included sending the relevant paperwork to CPCAU. In the majority of cases, these notices were sent on the day that the clandestine was detected, which demonstrated an efficient process.
- 5.73. Border Force guidance requiring officers to take relevant photographs was not always adhered to. In 25 cases (43% of our sample), we found not all the necessary photographs had been taken, particularly in Calais where the required photographs were not taken in 21 cases (47% of the sample relating to Calais). These photographs were an important factor in the chain of evidence to accompany the staff member's notebook minute detailing their account of the discovery of clandestines which could lead to civil penalty action.

### **Level of penalty**

- 5.74. As part of our assessment of civil penalties case files, we also considered whether Border Force was setting penalties in line with guidance. Border Force guidance to implement the *Level of Penalty: Code of Practice*<sup>32</sup> defines four distinct categories to consider when setting the level of penalty. It also describes examples of scenarios whereby the level of penalty should be set according to each of these four categories. Although the guidance stipulates that these examples are non-exhaustive, staff told us that they set penalties according to how the facts of each case fell into each of these categories.
- 5.75. The overwhelming majority of the penalties imposed in the files which we sampled were in the lowest bracket available, even though the level of negligence on the part of drivers and companies often fitted examples in the guidance where the middle or upper bracket (penalties up to £2000) should have been imposed.

32 <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/transportindustry/levelofpencodeofpractice.pdf>

- 5.76. Border Force told us that the reason for this was that if the driver or company had not been involved in previous detections, the lower bracket of penalty was appropriate. We noted that this provision was not specifically accounted for in the guidance, which instead indicated that being a first time offender could result in a penalty in either the lower or the middle range. In these cases, the level of vehicle security must also be taken into account when the level of penalty was decided.
- 5.77. We found some examples in our file sample where drivers/hauliers had been involved in previous detections. In all seven cases (12% of our sample) where there was evidence that the driver or the company had been involved in previous detections, penalties in the lower range were imposed, despite the example in the guidance where involvement in previous detections was one of the factors which was likely to result in the imposition of the maximum level of penalty. Figure 12 details one example of this.

### Figure 12 – Case study – level of penalty

Three clandestines were discovered in a haulage vehicle.

There were no seals or padlocks available to the driver and a tilt cord<sup>33</sup> was available but not deployed.

The driver claimed not to have received a vehicle checklist but the company later provided one after the penalty had been set. The company provided no evidence of any training or monitoring systems to ensure that drivers were compliant.

A penalty of £400 per clandestine was imposed on the company.

#### **Chief Inspector's comments:**

The fabric of the vehicle was well maintained and the company claimed to have given initial training regarding vehicle security. These factors appear in examples in the guidance which recommend a middle or lower range penalty.

However, penalties had been imposed on the company after previous incidents of clandestine detection and the vehicle was not equipped with adequate security measures. Both these factors appear solely in the example in the guidance which recommends the maximum penalty

The level of penalty set should have been significantly higher in this case.

#### **Border Force response:**

The penalty for the company was appropriate, but due to the failure to provide security devices and no evidence of monitoring, a penalty towards the lower end of the middle range (between £500 and £999 per clandestine) would also have been appropriate.

- 5.78. The level of penalty imposed in these seven cases indicated that Border Force were not imposing penalties in accordance with the examples provided in the guidance to the Code of Practice, even in cases where the driver/haulier had been involved in previous detections and had still not addressed issues relating to vehicle security. Of these seven cases, where a company had been the subject of previous detections, the average penalty imposed was just £260 for each clandestine detected. Where the driver had been the subject of a previous detection, the average penalty imposed was just £175 for each clandestine.

<sup>33</sup> A security measure on soft-sided haulage vehicles used to secure the load.

- 5.79. The code of practice also outlined that penalty-setting was subject to consideration of means to pay, but only after evidence of financial circumstances had been provided. Although we found evidence that this had been taken into account after drivers had raised an objection to the level of penalty that had been set, we found that penalties were being set substantially lower than the examples set out in the guidance to the code of practice, even before details regarding financial circumstances had been submitted.
- 5.80. Border Force told us that work had begun to encourage greater consistency over the level of penalty set, including:
- regularly exchanging feedback with CPCAU regarding case file quality and case progression;
  - reviewing the Clandestine Illegal Entrant – Codes of Practice and associated guidance; and
  - consultation with the haulage industry to better understand the deterrent effect of the regime and to consider the appropriateness of current penalty levels and how they are applied in different circumstances.
- 5.81. This work should help in ensuring greater consistency in setting penalties, thereby helping to ensure that this legislation acts as a strong deterrent to preventing clandestine entry to the UK.

### Payment process

- 5.82. While we were on-site in Calais and Coquelles, we found there was no facility to make an automated payment at the port using a debit or credit card. Outstanding penalties could only be paid in cash or via secure payment to CPCAU (only between 9am and 5pm, Monday to Friday). This was surprising, particularly as automated payments could be made for other penalties imposed at port by Border Force, for example those related to commodity<sup>34</sup> finds at Dover.

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*We found that penalties were being set substantially lower than the examples set out in the guidance to the code of practice*

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- 5.83. This was a significant failing, as it meant that Border Force missed an opportunity to secure immediate payment of fines, something which would improve the efficiency of this process. We reported our concerns to managers, who told us that this issue had been identified by Border Force, and that work was in progress to ensure that the ability to process credit card payments was imminent at the time of our inspection.

### Debt Recovery

- 5.84. One of the recommendations made in our 2009 pilot report of juxtaposed controls was to implement a strategy to improve the efficiency and effectiveness of the Civil Penalty scheme. The pilot report found that there was:
- no effective debt recovery strategy; and
  - a lack of key performance targets to drive improvements in this area.
- 5.85. We considered what measures had been put in place to address these findings.
- 5.86. Following our 2009 report, the Civil Penalty Central Administration Unit (CPCAU) was moved from that part of the UK Border Agency which focussed on Border Force Operations to the Border Force Assurance Performance and Resource Directorate. This was done to facilitate an increased focus on debt recovery. The three groups of Border Force staff responsible for civil penalty action were:

<sup>34</sup> A generic term used to describe prohibited and restricted goods e.g. illegal drugs, tobacco and alcohol.

- Front-line staff at the port who were responsible for detecting clandestines and initiating civil penalty action by sending the relevant information about the case to the juxtaposed civil penalty team;
- staff in the juxtaposed civil penalty team, responsible for setting the level of penalty and issuing the penalty notice; and
- staff in CPCAU responsible for recovering the debt.

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*At the time of our inspection we were told that the payment rate in civil penalty cases was 87%, the highest of any debt recovery scheme in the Home Office*

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- 5.87. At the time of our inspection we were told that the payment rate in civil penalty cases was 87%, the highest of any debt recovery scheme in the Home Office. Staff in CPCAU were allocated one working day each week on which to pursue unpaid penalties. CPCAU staff told us that their only target was to achieve 100% debt recovery.
- 5.88. The debt recovery process commenced 67 days after the penalty was set and included adding details to the Vehicle Action List (VAL).<sup>35</sup> Managers said that staff chased payments fortnightly by telephone or by post; whichever method was deemed more appropriate. Policy teams had approved plans to chase unpaid penalties by email and there were plans to use text messages to recoup unpaid penalties in the future. One of the reasons managers gave for the high payment rate on the civil penalty scheme was the unit's flexibility in accepting payments, including, for example, the ability to make payments by instalments.
- 5.89. Management information provided by Border Force indicated that, between 2009 and 2012, around £4.63m in civil penalties was imposed and £4.64m collected.<sup>36</sup> Additionally, 303 vehicles were detained to secure the payment of outstanding debts. In April 2010 Border Force introduced an intelligence led operation to target and detain vehicles at port and recover outstanding debt. This led to the recovery of in excess of £600,000 and the detention of around 160 vehicles between 2010 and 2012.
- 5.90. In addition, staff told us that the VAL is passed through the national intelligence teams and if an incoming vehicle is on the VAL, the company is contacted to inform them that the vehicle will be detained on arrival unless the outstanding penalty is paid. This often prompts the quick payment of outstanding penalties. These factors demonstrate that Border Force has made real progress in relation to debt recovery since our pilot inspection.
- 5.91. We received contrasting views from staff regarding CPCAU's operating hours (9am to 5pm Monday to Friday) and how helpful this was in enabling the civil penalties scheme to operate efficiently and effectively, particularly in relation to the detention of vehicles. Some CPCAU staff told us that port staff could not detain vehicles that appear on the VAL without authorisation from CPCAU, as there was a risk that the VAL had not been properly updated. As CPCAU was only contactable during office hours, this caused difficulties for 24-hour port operations, especially during the night and at weekends.
- 5.92. Port staff whom we spoke to at both Calais and Coquelles echoed this view and indicated that, although action regarding detaining vehicles on the VAL was rare, they would always ensure that CPCAU was contacted prior to taking this action.
- 5.93. Contrastingly, managers in CPCAU informed us that port staff could detain vehicles based on the information on the VAL, without checking this with CPCAU. Border Force needs to clarify its

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*Border Force demonstrated that it had made real improvements to the operation of this scheme since our 2009 pilot inspection*

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<sup>35</sup> A list of vehicles or companies with debts outstanding in relation to civil penalties

<sup>36</sup> The collected figure is higher due to the inclusion of debts collected for penalties that were set in previous years.

processes in this regard, to ensure that front-line staff are clear as to when they have the authority to detain vehicles.

- 5.94. We were told that the accreditation scheme for hauliers<sup>37</sup> was being promoted to increase compliance levels. The accreditation process could be completed online and information regarding this was disseminated to drivers at ports using leaflets. This had resulted in CPCAUC receiving additional enquiries about the scheme. CPCAUC team members attended the haulier's groups to promote the accreditation scheme and we were told that the number of accredited companies was increasing, with 54 new additions since our 2009 pilot report.

## Conclusion

- 5.95. Border Force demonstrated that it had made real improvements to the operation of this scheme since our 2009 pilot inspection. The increased use of targeting and intelligence to detain vehicles and recover outstanding debts had resulted in a proportionate increase in the penalty amount recouped compared with the amount levied.
- 5.96. However, we were told by staff and managers at CPCAUC that they rarely communicated with the staff who had levied the original penalty and there was no framework in place for regular feedback. The result of this was that staff at CPCAUC considered that, in general, the level of penalty being set was too low; but, as they had no authority to increase it, nothing was done. We consider that greater communication between staff across the three silos responsible for civil penalty cases would lead to greater consistency concerning the level of penalty set. Limited evidence of communication between the three areas responsible for civil penalty action – the front-line staff at the port, those who issued the penalty notice and set the level of penalty and those who recovered the debt – meant that there were further opportunities to improve and strengthen this deterrent.
- 5.97. To improve on its successes, Border Force should ensure that the civil penalty scheme represents a suitable deterrent to those who, either maliciously or through negligence, facilitate the entry of clandestines into the UK. The level of penalty set must be consistent with the Level of Penalty Code of Practice, any guidance in relation to that code of practice and sufficient to encourage companies to improve vehicle security and increase compliance among drivers.
- 5.98. Border Force should also provide drivers and haulage operators with the opportunity to pay civil penalty fines using credit or debit cards – a facility offered in relation to other penalties that it imposes at ports, for example those related to commodity<sup>38</sup> finds at Dover. Such a facility would allow payment to be made at any time of the day or night, including weekends, replacing the restrictive practice limiting payment between the hours of 9am till 5pm, Monday to Friday. We therefore make the following recommendation.

### We recommend that the Home Office:

Improves the effectiveness of the Civil Penalty scheme by:

- ensuring that the level of penalty imposed is appropriate and consistent with the examples set out in the guidance to implement the Code of Practice; and
- extending the use of the automated payment process by credit or debit card.

<sup>37</sup> Hauliers who have demonstrated an understanding and commitment to providing adequate vehicle security can be accepted onto the accreditation scheme and would not be liable to a civil penalty notice if clandestines were found in one of their vehicles.

<sup>38</sup> A generic term used to describe prohibited and restricted goods e.g. illegal drugs, tobacco and alcohol.

# Resources should be allocated to support operational delivery and achieve value for money

## Border Force command and control unit

- 5.99. A command and control unit was set up in May 2012, primarily to ensure that juxtaposed ports were resourced effectively during the Olympic period, and to deal with any critical incidents. This unit delivered both forward-planned and immediate deployment, where there was a business need for additional resource, for example during busy periods such as half term holidays.
- 5.100. Staff deployed through the unit were taken from other ports in the region or from flexible brigades on various deployment lengths. During the onsite phase of the inspection, we spoke to staff and managers who were satisfied with the effectiveness of the unit. However, we were told that its success was dependent on the willingness and flexibility of staff to work longer hours. We were told that the unit is due to be expanded and will be retained permanently

## Queue Management

- 5.101. In order to maintain an effective presence at juxtaposed locations, Border Force relied on sustaining good working relationships with the local authorities in France and Belgium. A key aspect of maintaining these relationships was Border Force's commitment to ensuring that passenger queue times were kept at an acceptable and manageable level, due to health and safety concerns of vehicles backing up out of the port onto public highways.

## Calais

- 5.102. The command and control unit told us that queuing time was the only performance measure that their unit worked to. We were told that queue times attributable to the UK PCP at Calais were difficult to measure due to the fact that the motorway leading into the port ends only 16 coach lengths before the UK immigration control area, and that vehicles pass through the French exit controls just a few metres before they encounter the UK controls.
- 5.103. Queuing times were measured by visibly watching the position of the incoming vehicles and timing the speed of their progress. As Calais has no segregation for EU and non-EU traffic, all traffic is measured against EU queuing targets, but there was no service level agreement in place with the ferry operators or the port owners regarding these targets.<sup>39</sup> These factors made accurate queue measurement problematic at the port of Calais.
- 5.104. The Calais Chamber of Commerce told us that the traffic problems at the port of Calais were often caused by Border Force not deploying sufficient staff to the PCP to deal with immigration queues. [REDACTED]

## Figure 13: [REDACTED]

5.105. [REDACTED]

5.106. [REDACTED]

5.107. [REDACTED].

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<sup>39</sup> 25 minutes

5.108. [REDACTED]

5.109. It was clear from our focus groups and interviews that staff and managers felt that resources in Calais were stretched at times, [REDACTED]

**We recommend that the Home Office:**

[REDACTED]

5.110. Border Force had taken a number of measures to combat excessive queuing times for passengers. We observed the operations at Calais on the final day of the February half-term school holiday; traditionally one of the busiest times of the year for the port. After consultation between Border Force and the French authorities, a decision was taken to use a disused hoverport located adjacent to the motorway in close proximity to the port.

5.111. Ordinarily, ferry operators allow coaches to enter the port in advance of their designated crossing time and, if there is availability, to board earlier ferries. Due to the large number of coaches expected through the port on the day of our observation, Border Force worked with the ferry operators and French authorities to use the hoverport to contain the coaches until their designated crossing time was imminent, and only then allowed them into the port. This was designed to ease congestion in the port and ensure that vehicles could pass through quickly and efficiently at their designated crossing time.

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*This was a highly effective initiative that enabled Border Force to successfully manage a difficult period of peak traffic flow*

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5.112. This was a highly effective initiative that enabled Border Force to successfully manage a difficult period of peak traffic flow. Border Force showed good collaboration with the other bodies engaged in the port operation in both organising and enacting this operation. The success of this operation demonstrated that collaborative working and prior organisation for peak traffic flow periods were crucial elements in ensuring that Border Force was able to contribute effectively to ensuring that the port of Calais processed passengers and vehicles efficiently.

5.113. Managers considered that the controls at Calais were under-resourced, most notably at times of peak traffic flow. To mitigate this, Border Force had deployed Ministry of Defence police employees at the PCP on a temporary basis to assist at the juxtaposed controls. During our observations, we were satisfied that the Ministry of Defence Police staff made a positive contribution to Border Force's operation. They were always deployed together with an experienced Immigration Officer in order to provide assistance where required. This arrangement helped to mitigate risks regarding lack of experience and also increased the efficiency of the operation at the PCP during our period of observation.

### **Coquelles**

5.114. A Service Level Agreement introduced in 2009 existed between Border Force and Eurotunnel which included commitments based on queuing time and how this was measured. Provided that vehicles checked in at least 35 minutes prior to their scheduled departure, they should not expect to queue more than eight minutes between the moment they were released from the French controls and the point when they arrived at the UK PCP.

5.115. We met with a representative from Eurotunnel who told us that they had agreed funding to build an additional eight PCP booths following a formal complaint from the French government to the UK Ambassador about delays being caused by Border Force. Eurotunnel indicated that this complaint was lodged as a result of 4km queues at the PCP in January 2012. In February 2012, with the implementation of these supplementary control booths, Border Force made a local agreement with

Eurotunnel to deploy according to traffic predictions based on one lane open for every 50 cars per hour.

- 5.116. Eurotunnel told us that this local agreement was rarely met. Eurotunnel provided traffic data to Border Force one year in advance in order to identify red, amber and green days.<sup>40</sup> In addition, hour-by-hour figures were provided six weeks in advance informing Border Force about how many traffic lanes they needed to have open in order to adhere to the local agreement. Figure 14 sets out the number of times in 2012 that Eurotunnel made telephone calls to Border Force to request the opening of additional traffic lanes.

**Figure 14: Eurotunnel requests for additional PCP lanes**

	Passenger	Freight	Total
Jan	9	9	18
Feb	7	14	21
Mar	16	24	40
Apr	34	11	45
May	28	21	49
Jun	24	6	30
Jul	36	2	38
Aug	39	2	41
Sep	31	11	42
Oct	22	5	27
Nov	28	3	31
Dec	24	1	25
<b>Total</b>	<b>298</b>	<b>109</b>	<b>407</b>

- 5.117. We found that Border Force were not always able to adhere to this local agreement. We reported this to managers, who told us that they would endeavour to meet these targets when deploying staff, but on occasions the targets could not be met due to a lack of resources. We were told that since the start of 2013, managers have had greater success in bringing contingency staff to Coquelles to assist on the PCP to combat this deficiency.

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*We found that Border Force were not always able to adhere to this local agreement*

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- 5.118. During our observation at Coquelles, as with Calais, Ministry of Defence police staff had been deployed to ensure that every PCP booth was in operation and that all lanes were open, as required by Eurotunnel's predictions for that time period. It is clear from the table above, however, that this was not always the case. Border Force must take steps to ensure that Coquelles is sufficiently resourced in order to match the demand of the traffic flow, in line with the local agreement with Eurotunnel.

### **Eurostar Terminals**

- 5.119. At the Eurostar terminals, Border Force staff work to ensure that all passengers are processed in time for them to board their designated train. Passengers undergo Schengen exit checks conducted by the French or Belgian authorities prior to reaching the UK PCP. As there is a limited amount of space

<sup>40</sup> Red days represent peak traffic, amber days represent medium traffic and green days represent low traffic expectations.

between the French or Belgian controls and the UK controls, queuing at the UK PCP is prevented from developing past the French or Belgian exit control point and passengers will be held up prior to this point if required.

- 5.120. Staff told us that there were no mechanisms in place to combat periods of increased passenger volume and, in particular, staff deployed on the PCP desks would not always have support staff available to conduct further checks. The consequences of this would be that passengers who had been referred for further checks by the service of an IS81 would have to wait longer to be interviewed, for checks of electronic databases to be carried out or even in some circumstances, served with a jux 3 form and asked to return the following day.<sup>41</sup> Border Force should review this situation and take any action necessary to ensure that the control is resourced appropriately.

## Complaints procedures should be in accordance with the recognised principles of complaints handling

### Complaints and correspondence handling

- 5.121. We examined 29 complaint files selected at random from complaints concluded between 1 April 2011 and 30 September 2012, which originated from the juxtaposed controls in either Calais, Coquelles or Paris. As part of our assessment, we considered whether those complaints had been dealt with inappropriately or not in accordance with Border Force's complaints handling policy.
- 5.122. We also considered recommendations made in our previous inspection reports, in addition to determining whether Border Force were following the Parliamentary and Health Service Ombudsman's (PHSO) complaint handling principles<sup>42</sup> when dealing with complaints. These principles illustrate what is expected from public bodies when dealing with complaints and include:
- getting it right;
  - being customer focused;
  - being open and accountable;
  - acting fairly and proportionately;
  - putting things right; and
  - seeking continuous improvements.
- 5.123. In general, written responses to complaints were effective in dealing with the issue raised. During focus groups and interviews staff also demonstrated good awareness of the complaints handling process and were aware of the procedures to follow. Managers at ports also attempted to resolve issues without the need for a formal complaint to be lodged.
- 5.124. During the onsite phase of the inspection, we found that complaints posters and complaints leaflets were displayed in appropriate locations informing passengers how they could lodge a complaint.
- 5.125. We had some concerns about the way in which complaints were investigated. We noted, for example, that there was a lack of impartiality in the assessment of complaints and the starting position of the complaints team was to assume that the complaint was unfounded. One example of this is illustrated in the case study at Figure 15.

<sup>41</sup> We were told that this may occur if further checks were required which would delay the passenger past the point at which the final Eurostar service that day had departed.

<sup>42</sup> <http://www.ombudsman.org.uk/improving-public-service/ombudsmansprinciples/principles-of-good-complaint-handling-full>

### Figure 15: Case study - complaints handling

The passenger complained that they were held up at the PCP for 40 minutes and only provided with a vague explanation that there were problems with their travel documents. After 40 minutes their travel documents were returned and they were allowed to proceed to the UK. The passenger also complained that the treatment received from staff was rude and intimidating.

The response to the complaint from Border Force accused the passenger of becoming aggressive and stated that they could find no evidence to support any of their concerns.

Border Force expected the passenger to respond with an additional complaint which they duly did and this required an additional response from the complaints team.

#### **Chief Inspector's comments:**

By their own admission, Border Force's response was worded in such a manner that they fully expected a follow-up letter from the complainant.

Although Border Force may not have agreed with the substance of the complaint, the original response should have addressed the stated concerns of the passenger from an objective standpoint and focused on apologising and explaining the incident without accusing the passenger of any wrongdoing.

We considered that the response in this case was unprofessional.

- 5.126. The purpose of responding to a complaint should be to satisfactorily address all issues and defuse the situation, rather than to become involved in a protracted discussion. Although Border Force may not agree with the substance of a particular complaint, it should demonstrate in its response that it has taken the complaint seriously and is acting in an impartial manner.
- 5.127. We identified poor file management and administration in respect of complaint files. Multiple files and file reference numbers had been created for single complaints as it developed. This created inaccurate management information relating to the number of complaints received as complaints were recorded on multiple occasions, despite the additional correspondence received relating to the original incident.
- 5.128. Border Force should ensure that all complaints are dealt with in accordance with its complaint handling procedures. Responses should also be worded in a manner which defuses rather than exacerbates the issue. Complaints responses should also address all issues raised by the complainant in an unbiased manner.

#### **Timeliness**

- 5.129. The Border Force complaints procedure states that it aims to respond to complaints within 20 working days. We found that 26 (90%) of the complaints files we reviewed met the target for complaints, with the average time taken to respond being 13 days. The longest a complainant had to wait for a response was 33 days. While this was a good performance, there remained further room for improvement to ensure that all complaints meet the 20-day response deadline.

## 6. INSPECTION FINDINGS – SAFEGUARDING INDIVIDUALS

All individuals should be treated with dignity and respect and without discrimination in accordance with the law

- 6.1. At all the juxtaposed controls locations we visited during the on-site phase of the inspection, our observations revealed that staff treated passengers with dignity and respect. We observed several positive examples of this, as demonstrated in the case study at Figure 16.

### Figure 16: Case Study – Dignity and Respect

While observing the PCP desks in the coach hall in Calais during a relatively quiet period, one staff member was observed leaving their desk to prevent an elderly passenger with mobility issues walking all the way round the queuing system to reach the control.

The staff member brought the passenger to a seated area while all necessary entry clearance procedures were undertaken.

After granting entry to the passenger, another staff member then physically assisted the passenger's exit from the PCP area.

#### **Chief Inspector's comments:**

This demonstrated good customer service, with staff showing their attentiveness by identifying the passenger's personal requirements and acting quickly to provide assistance.

- 6.2. Also evident during our observation was that staff showed good initiative when encountering language issues at the PCP, as we observed in the case study at Figure 17.

### Figure 17: Case Study – Good Practice

A Farsi-speaking passenger, who was not seeking entry, was having difficulty explaining their reasons for being at the control. It was established that the passenger could also speak German and subsequently, an IO who had enough of a command of the language was found who was able to resolve the issue satisfactorily for the passenger.

#### Chief Inspector's comments:

Staff demonstrated their initiative by identifying another language spoken by the passenger and finding a colleague who was able to communicate with them.

- 6.3. Staff in all locations spoke to passengers in a polite and suitably formal manner at both the PCP and the SCP. This enabled them to build a level of rapport with passengers, which assisted greatly in putting passengers at ease when there was a need to ask further questions or refer the passengers for additional searches.

## Enforcement powers should be carried out in accordance with the law and by members of staff authorised and trained for that purpose

### Detention

- 6.4. Paragraphs 16 (1), (1A) and (2) of Schedule 2 to the Immigration Act 1971 give power to an Immigration Officer to authorise detention pending examination or further examination for a decision on the granting, refusal or cancellation of leave; pending the issue of removal directions; and pending the removal of the person from the UK. The Border Force Operating Manual sets out the paperwork that must be served when passengers are detained pending further examination. This is set out in Figure 18.

### Figure 18: Detention paperwork

**IS81 (Authority to Detain for Examination/Further Examination)** sets out the reasons for the initial detention and should be used only while the passenger remains solely in the custody of the Immigration Officer. Once a passenger served with form IS81 is handed over to a detaining authority (escorting or removal centre contractor, Prison Service, Police) forms IS91 (Detention Authority) and IS91R (Reasons for Detention) must be served.

No person should be detained using form IS81 for longer than four hours, even in the sole custody of an immigration officer. If a passenger remains in detention any longer, form IS91R must be served.

- 6.5. We were told by staff in Calais that, when they refer a passenger for further examination, they use pre-prepared packs of paperwork which contain the various forms they may need to serve, including the IS81, IS91 and IS91R forms. These forms had been printed and photocopied in bulk and were therefore not linked to any particular CID record. We were told that once a passenger had been processed and a decision was made to either land or refuse, a CID record and paper file would be created. Both the file and electronic record should contain details of all relevant paperwork served on

the passenger, including timings for when this paperwork was issued, to ensure compliance with the Border Force Operating Manual.

- 6.6. We sampled 30 cases from Calais and 30 from Coquelles relating to passengers who had been refused entry to the UK. In each case we sampled, we found evidence that the passenger had been served with an IS81 form, which validated their detention for up to four hours while in the sole custody of the Immigration Officer, as outlined in the guidance above. We considered 14 cases where passengers had been detained for over four hours. Our findings are outlined in Figure 19.

<b>Figure 19: Detention</b>		
<b>Location</b>	<b>Calais</b>	<b>Coquelles</b>
Number of cases held up over four hours	9	5
Longest time held up	11 hours 45 minutes	8 hours 30 minutes
Average time held up	7 hours 32 minutes	6 hours 26 minutes
Number of cases with evidence of IS91R	3	0

- 6.7. Only three of the 14 cases (21% of our sample) contained evidence that an IS91R had been issued, as shown below:
- 6.7.1. **Case 1:** a copy of the IS91R was contained within the paper file and an entry had been made on the CID case notes, but there was no record of the time this form was served and a copy of the IS91 had not been added to the electronic CID record;
- 6.7.2. **Case 2:** a copy of the IS91R had not been retained on file and there was no entry on the CID case notes, but the CID electronic record indicated that a copy of the IS91R was printed, albeit six hours after the IS81 was served; and
- 6.7.3. **Case 3:** a hand-written note on file indicated the IS91R was served 25 minutes after the IS81 was issued. No copies of these forms were on file, on the CID electronic record or CID case notes.
- 6.8. In the remaining 11 cases (79% of our sample) there was no evidence either on file or the electronic record that the IS91R form had been produced. In the three cases where there was evidence, there was no consistency in approach regarding how this information should be recorded and what documents should be retained on both the paper file and the electronic record.
- 6.9. We acknowledge that, especially at busy periods, Border Force needs to be able to serve paperwork quickly without the risk that IT failures could significantly delay proceedings and decrease productivity. We therefore recognise why Border Force does not insist that all paperwork is printed from the passenger's individual CID record prior to service. However, it is important that Border Force maintains consistent records in accordance with its guidance and operating mandate, especially in cases where passengers have been detained for significant periods of time. We therefore make the following recommendation:

**We recommend that the Home Office:**

Ensures that accurate records are maintained in cases that involve the detention of passengers in order to demonstrate that the duration of detention is lawful and appropriate.

## Eurostar Terminals

- 6.10. The Border Force operation at the Eurostar terminals in Paris and Brussels does not have detention facilities. Where a passenger does not qualify for entry to the UK they were handed to the competent French or Belgian authorities. We were told by managers that passengers held up for further enquiries at these locations also had the opportunity to voluntarily leave the UK control zone and return to the French- or Belgian-controlled area at any stage prior to a decision to refuse entry. This was also reflected in the Border Force guidance document entitled Paris Operational Procedures, which states the following:

*At any stage before refusal, the passenger may withdraw his/her application for leave to enter. Details should be noted on CID, and the appropriate endorsement placed in the passport/ travel document. The passenger should then be escorted from the control zone, usually by the AIO or, if busy, any available officer. French police must be advised of the situation. The passenger should be given a locally produced form **JUX3** that should enable him/her to exchange the ticket for a later train.*

- 6.11. We noted that in each of the 30 cases we sampled where passengers were refused entry in Paris, the electronic record of the case referred to a period spent in detention while their request for leave to enter the UK was considered. CID records indicated that, in over a quarter of the cases we sampled, passengers were recorded as being in detention for over two hours and one passenger was recorded as being in detention for a period of four hours and thirty-five minutes before being refused entry to the UK.
- 6.12. It was evident that the CID records were inaccurate and related rather to the length of time passengers had to wait at the controls while further inquiries were undertaken. Accurate record-keeping is important, as CID records are accessed by Home Office staff in many locations who may not be aware of the procedures used in Paris and would interpret this information incorrectly. This could have an impact on the decision-making process involving these passengers in the future.
- 6.13. In addition, during a further interview that we observed in Paris, the passenger was noted as stating that they wished to remain in Paris rather than join a contact in the UK. We consider that this was a clear statement that they were willing to withdraw their application for leave to enter. However, this was not picked up during the interview and the passenger was kept in the interview room until the Immigration Officer was satisfied that the interview was concluded.
- 6.14. When the case was referred, the Chief Immigration Officer highlighted this but the interviewing officer indicated that as the passenger initially sought leave to enter the UK, the correct course of action was refusal. The application was refused. We believe that this passenger should have been given the opportunity to withdraw his application for leave to enter the UK. We consider that Border Force has failed to follow its own guidance in this case. Border Force should ensure that its staff follow guidance and allow passengers who elect to withdraw their application to enter the UK the opportunity to do so, without discrimination.

## St Pancras

- 6.15. Border Force does have detention facilities at St Pancras, which are largely needed for 'Lille loophole' cases. Staff and managers at St Pancras told us that the detention facilities were not adequate, a view we concurred with during our observation. Passengers detained at St Pancras are kept in converted interview rooms, one of which is a designated family room.
- 6.16. Unlike other juxtaposed locations, St Pancras does not have contractors who manage the detention of passengers. Border Force staff therefore have responsibility for the welfare of detainees. Additionally, we were told that the Border Force operation at St Pancras does not have the capability to transport detained passengers off site. Passengers are kept in unlocked rooms while they are waiting to be

transferred to initial accommodation,<sup>43</sup> into the care of Social Services, or to immigration detention. In practice, this often results in Border Force staff positioning themselves between the doorways of two open interview rooms to guard detained passengers until they can be transferred.

- 6.17. We were unanimously told by staff and managers that St Pancras was not initially designed for the purpose of detaining passengers and this is why the facilities were so inadequate. As the juxtaposed controls in Brussels, Paris, Lille and Calais are designed to screen all UK-bound passengers, St Pancras was only ever intended to have a secondary function, to respond to customs referrals. It is noted however, that with the recent increase of passengers attempting to enter the UK illegally, that St Pancras has increasingly been required to operate as an additional control point to prevent unlawful immigration.
- 6.18. While we acknowledge that Border Force is working to find a solution to the Lille loophole issue, we believe that the Home Office should introduce some interim measures to improve detention facilities at St Pancras. We therefore make the following recommendation:

**We recommend that the Home Office:**

Establishes suitable detention facilities at St Pancras.

## All UKBA and Border Force functions should be carried out with regard to the need to safeguard and promote the welfare of children

- 6.19. Section 55 of the Borders, Citizenship and Immigration Act 2009 sets out the requirement for the Secretary of State to make arrangements to ensure that immigration, asylum, nationality and customs functions are exercised having regard to the need to safeguard and promote the welfare of children in the United Kingdom. Although section 55 is not directly applicable at the juxtaposed ports as it only applies to children who are in the United Kingdom, staff followed the same principles.
- 6.20. During our interviews and focus groups, all staff demonstrated a good awareness of their responsibilities under Section 55. Each had completed mandatory e-learning training and each port also had several members of staff who had undergone additional training which enabled them to conduct further interviews with children. We also observed several examples of good practice by staff operating at the PCP which provided assurance that they were aware of the need to safeguard children and of the processes to be followed.
- 6.21. Staff deployed in the car booths in Coquelles and Calais routinely asked additional questions or for additional documentation when they were confronted with children who had different surnames to the adults they were travelling with. We found that although this was potentially a sensitive issue to query the parentage of these passengers, staff remained both professional and vigilant when undertaking this procedure, until they were satisfied of the claimed relationships. When questioned by passengers regarding this procedure, staff successfully put passengers at ease by explaining their safeguarding responsibilities.
- 6.22. At the time of our observation in Paris, very large numbers of children were being processed at the PCP as it was the end of the February half-term week. Staff issued leaflets to passengers who travelled

<sup>43</sup> When an asylum claim is made and continued detention is not appropriate, applicants are entitled to request to be provided with initial accommodation.

with children who held different surnames, to remind them of the need to travel with their child's birth certificate to avoid unnecessary delays in future.

- 6.23. Our file sampling revealed that staff were proactive in referring cases for further examination when they had potential concerns regarding the welfare of minors. One case we sampled concerned a 17-year-old girl who was travelling in the company of two older men who were not related to her. After an informal interview, it was established that the driver of the van was known to the passenger's mother and the passenger's account of her purpose for travelling to the UK was corroborated by her aunt with whom she intended to stay in the UK. A member of staff spoke to the aunt directly to confirm this. After referral to a CIO, the passenger was granted entry.
- 6.24. Our file sampling also showed that staff were willing to be patient when reaching a decision on cases with complex safeguarding aspects, as Figure 20 demonstrates.

### **Figure 20: Case Study - Safeguarding Children**

The passenger, an 11-year-old girl, sought entry to the UK along with a 20-year-old man who claimed to be in a romantic relationship with her. Both were EEA nationals of an accession state.

The passengers were interviewed separately. The 20-year-old admitted to being responsible for causing bite marks to the 11-year-old on an intimate part of her body.

The 11-year-old was coming to the UK to care for the two young children of the 20-year-old's sister. She was not going to be paid for this.

Both passengers were refused entry on public policy grounds.

A French-speaking IO explained the case details in great depth to the PAF when handing the passengers to them. It was recommended that the 11-year-old be separated from the 20-year-old and taken to French Social Services. The PAF assured Border Force that they would do this.

#### **Chief Inspector's comments:**

This case took almost 12 hours to resolve but represents an excellent example of Border Force showing great consideration to the welfare of the child involved.

- 6.25. We were told by staff deployed in Paris and Brussels that they encounter a large number of unaccompanied minors who travel using the Eurostar service, often to travel to specialist schools. Staff informed us that they would always conduct additional checks in these cases, such as telephoning the school to ensure they were expecting the passenger and confirming reception arrangements at their intended destination. In addition, Eurostar issued these passengers with a form confirming that they would be travelling unaccompanied, which staff will request from the passenger when they approach the controls. We were content that staff were identifying suitable contacts and conducting additional checks in cases regarding unaccompanied minors.
- 6.26. Overall, we were satisfied that Border Force officers were meeting their obligations under Section 55 of the Borders, Citizenship and Immigration Act 2009.

# Personal data of individuals should be treated and stored securely in accordance with the relevant legislation and regulations

- 6.27. We found that staff were aware of the need to protect personal data and that Border Force operated appropriate procedures to ensure that data security issues were mitigated against. We noted that all staff had completed relevant e-learning packages intended for this purpose and were aware of policies designed to protect personal data, such as the 'clear desk' policy.
- 6.28. Staff at St Pancras, for example, told us that all witness statements, notebooks and date stamps were kept in locked cabinets. Managers in Paris informed us that the design of the PCP booths and a filter on the laptop screens prevented queuing passengers from viewing WI information.
- 6.29. Under the Immigration (Landing and Embarkation Cards) Order 1975, any passenger over the age of 16 arriving in the UK from a country outside the Common Travel Area, who does not have the right of abode in the UK, must, if required to do so, produce to an immigration officer a completed landing card. The Border Force Operations Manual instructs staff to record the following passenger information on landing cards:
- name;
  - date of birth;
  - sex;
  - nationality;
  - address; and
  - passport number.
- 6.30. We were told by managers that landing cards were regarded as restricted documents, due to the personal information that was contained within them. During our observation in the coach hall in Calais, we found several unattended PCP desks which had completed landing cards left on them. We were concerned that this activity could lead to a breach in data protection. Managers told us that there had not been any incidents which resulted in a breach of Border Force's responsibilities regarding data protection. However, they were unaware that completed landing cards were routinely left on unattended PCP desks and showed concern when we highlighted to them that this was occurring.
- 6.31. Border Force needs to review storage procedures for these documents, to ensure adherence to the organisation's 'clear desk' policy and prevent any opportunity for restricted documents being viewed or accessed by passengers.

## 7. INSPECTION FINDINGS – CONTINUOUS IMPROVEMENT

### The implementation of policy and processes should support the delivery of Home Office objectives

#### Border Force operating mandate

- 7.1. The Border Force operating mandate was published on 6 July 2012. It was designed to bring together guidance and instructions relating to the work of Border Force and reinforce the standards for full checks that were put in place in November 2011, following our findings during the inspection of Heathrow Terminal 3, which led to the border security checks investigation.<sup>44</sup>
- 7.2. The operating mandate defined the roles and responsibilities of staff working at the border by setting out the border security checks that officers must conduct at the both the PCP and the SCP. The operating mandate also outlined the level of authority required and the circumstances in which 100% checks may be suspended.
- 7.3. Although no specific training had been undertaken following the introduction of the operating mandate, managers assured us that all staff were aware of the importance of following the instructions laid out in it. Staff confirmed this during our focus groups and demonstrated good awareness of the level of authority required to suspend 100% checks. Our observations also confirmed that staff were conducting security checks in accordance with the operating mandate.
- 7.4. Managers were positive about how the operation at the juxtaposed controls had developed since the split between the UK Border Agency and Border Force. This had resulted in more distinct priorities within Border Force, and greater clarity regarding the areas of the business that required the greatest focus. Staff and managers also told us that the split had enabled Border Force to concentrate more effectively on border security and successfully plan for high-volume operational periods such as the Olympic Games.

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*This had resulted in more distinct priorities within Border Force, and greater clarity regarding the areas of the business that required the greatest focus*

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#### Operational Briefings

- 7.5. At each location we visited, staff told us that they were almost entirely focused on front-line operational work. As a result, they had limited amounts of time to dedicate to non-operational work in the office. This was particularly evident at the Eurostar terminals in Paris and Brussels, where staff were allocated one non-operational day every three weeks. We asked how staff were made aware of information that affected their daily operational duties, such as Interim Operational Instructions (IOIs),<sup>45</sup> policy changes and procedural developments. Managers told us that this information was disseminated to staff in daily operational briefings conducted by the duty CIO. Staff told us that

<sup>44</sup> <http://icinspector.independent.gov.uk/wp-content/uploads/2012/02/2012-02-20-Report-of-the-UKBA-ICI-Report3.pdf>

<sup>45</sup> Interim guidance for staff.

these briefings were effective and covered a wide range of topics including the latest intelligence trends.

- 7.6. In addition to these briefings, we observed real-time intelligence information being physically handed to staff on the PCP during shifts. For example, during one observation session in Calais, descriptions of a group of vehicles refused at one juxtaposed location had been quickly fed to the other juxtaposed ports. We considered this to be good practice and a positive initiative to ensure that potentially valuable intelligence was available to front line staff at the earliest possible opportunity.

### Progress against previous recommendations

- 7.7. Our last full inspections were of Gatwick Airport North Terminal and Heathrow Airport Terminal 3.<sup>46</sup> During this inspection, we considered what progress had been made against the recommendations made in the earlier inspections, which were particularly relevant to juxtaposed controls. We also considered what progress Border Force had made regarding the recommendations made in our investigation into border security checks.<sup>47</sup> A summary of our findings is shown in Figure 18.

**Figure 18: Summary of progress against recommendations**

Report	Recommendation	Chief Inspector's comments
Border Security Checks	A new framework of border security checks, authorised by Ministers, should be produced and implemented urgently. This needs to take account of the different operational environments at ports, the benefits to border security of conducting the checks and the implications for border security of any reduction in checks.	All staff demonstrated good awareness of the requirement for 100% checks and were aware of the relevant escalation procedures in cases where these may be suspended. All staff also understood their responsibilities outlined in the operating mandate.
Inspection of Gatwick Airport North Terminal	Improve consistency of practice in immigration casework ensuring that the conduct of case interviews is in line with guidance and case file documentation provides a robust audit trail of all decision stages.	We found no evidence of any progress in this area. However, a training package had been approved and scheduled for the coming year which incorporated this area of training.
Inspection of Gatwick Airport North Terminal	Ensure all detection staff are selecting passengers for challenge with sufficient basis and in line with guidance; and enforce the law in relation to goods in excess of non-EU allowances.	We found that the selection process at Dover and Coquelles in terms of secondary detection was effective, consistent and in line with guidance.
Inspection of Border Control Operations at Terminal 3, Heathrow Airport	Provide up-to-date complaint information at UK ports, with complaint posters and leaflets being available at the Primary Control Point and in the detection channels	We found that complaints procedures were well displayed and promoted in all locations.

46 Published on 10 May 2012 - <http://icinspector.independent.gov.uk/wp-content/uploads/2012/02/Inspection-of-Border-Control-Operations-at-Terminal-3-Heathrow-Airport1.pdf>

47 Published on 20 February 2012 - <http://icinspector.independent.gov.uk/wp-content/uploads/2012/02/2012-02-20-Report-of-the-UKBA-ICI-Report3.pdf>

# Risks to operational delivery should be identified, monitored and mitigated

## Risk Registers

- 7.8. We were provided with separate risk registers that were maintained for Coquelles, Calais and Dunkirk (combined) and for the Eurostar operation.<sup>48</sup> In each risk register that was supplied, the format followed a standard template where the risk was identified, assessed for impact and probability, before documentation of what action had been taken or was planned to mitigate the risk was recorded. Contingency plans were also in place for certain risks.
- 7.9. Staff were aware of risk assessments relating to health and safety issues that were designed to identify and mitigate hazards that may occur during everyday activity, but staff below management level were not aware of the content or involved in the management of risk registers. Senior managers were responsible for managing the high-level risks that existed in the operation of juxtaposed controls.
- 7.10. The risk registers we examined contained information regarding the day-to-day management of largely general issues, such as border security. However, other significant risks which became evident during our inspection and which we would have expected to see in recorded in risk registers were not. These risks are considered in detail below.

## Clandestines not processed by Border Force

- 7.11. In January 2010, the Agency ceased processing clandestines discovered in freight vehicles at Calais. Formerly, the Agency would fingerprint, photograph and enter details on CID for all clandestines found at the juxtaposed controls, prior to handing them to the French police. However, the lack of available detention facilities in Calais led to the immediate transfer of all clandestines detected to the French Police. Despite having access to detention facilities, Coquelles also adopted this process 15 months later.
- 7.12. This approach, which was agreed with the French authorities, was piloted initially for three months. It was deemed successful and was continuing at the time of our inspection. Border Force had based its decision to maintain this policy because:
- it allowed staff to focus on searching vehicles to prevent clandestines reaching the UK;
  - appropriate detention facilities were not available at Calais; and
  - managers considered that the fingerprinting of clandestines was achieving no demonstrable outcome for what was then the UK Border Agency.
- 7.13. On this latter point, managers added that fingerprints obtained at the juxtaposed controls in France could not be used for third country removals under the Dublin Regulation<sup>49</sup> and asylum caseowners had not used the fingerprint information previously to assess an applicant's credibility in cases where asylum claims were made in the UK.
- 7.14. However, staff and managers at St Pancras told us that the fingerprinting of clandestines detected at Calais or Coquelles would be beneficial, as the information could be used as evidence if they were ultimately successful in reaching the UK and claiming asylum. In addition, some staff in Calais considered that the fingerprinting of clandestines would be useful in assisting decision-makers in the UK when considering any subsequent asylum claim.

<sup>48</sup> A single risk register was maintained for all Eurostar ports combined.

<sup>49</sup> The Dublin Regulation EC No. 343/2003 was implemented on 1 September 2003 to determine which State should be responsible for examining an application for asylum made within EU territory. If an asylum applicant had previously been fingerprinted in another member state, in relation to an asylum claim or illegal entry, the original state may be required to take responsibility for considering their asylum claim.

- 7.15. If the individual ultimately reached the UK and claimed asylum, the decision-maker would have no knowledge of their previous attempts to enter the UK. This would potentially be a highly significant point regarding the credibility of their claim and their failure to take the opportunity to claim asylum in a safe country prior to entering the UK.<sup>50</sup> Had the individual been processed during their previous attempts to enter the UK via France, the decision-maker would have indisputable evidence that they had come into direct contact with the French authorities when they were removed from the UK control zone by the French police.
- 7.16. It is also noted that some non-EU nationals have a legal right of residence in the Schengen area but require a visa to enter the UK. It is therefore considered that the French authorities would have no legal power to fingerprint these nationals as they would not be committing any offence by being on French soil. We were consistently told by staff that around half of the clandestines they were currently detecting fell into this category. By failing to process these nationals, therefore, Border Force were missing opportunities to take preventative action regarding their attempts to enter the UK.
- 7.17. We believe that there are risks associated with this practice, none of which were identified in the risk registers at Calais or Coquelles. While we understood the interim decision to stop fingerprinting at Calais, caused by a lack of detention facilities, this was not the case in Coquelles, where detention facilities were available at that time. We were also told that fingerprints and photographs continued to be taken at Dunkirk, although Border Force were hoping to cease this process in order to achieve consistency between juxtaposed ports.
- 7.18. Not collecting biometric information<sup>51</sup> for individuals attempting to enter the UK clandestinely, concealed in freight vehicles, was a significant variation from the norm, which is that the Home Office:
- has a programme of 100% capture of biometric data for visa applicants abroad;
  - collects biometric data for all passengers refused at ports in the UK; and
  - collects biometric data for passengers refused entry at the juxtaposed tourist controls where passengers were subject to full processing and formal refusal.
- 7.19. We recognise that there are difficulties in collecting biometric information at Calais caused by a lack of available detention facilities. However, this was not the case in Coquelles and Dunkirk because detention facilities were available.
- 7.20. We believe that this approach should now be formally reviewed to ensure that the Home Office is satisfied that it continues to outweigh the benefits of capturing biometric data and maintaining records of these individuals. We therefore make the following recommendation.

**We recommend that the Home Office:**

Reconsiders its current approach regarding the fingerprinting of clandestines to ensure that it operates the most effective method of protecting the UK border against clandestine entry.

**Communication between juxtaposed sites**

- 7.21. The juxtaposed controls are a unique aspect of Border Force in terms of its operational output, for a variety of reasons. Not only does the bulk of the operation take place on foreign soil, the number of sites and the different ways in which they operate mean that communication between the ports is a fundamental aspect of their operation.

<sup>50</sup> Paragraph 8 (4) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 states that in determining whether to believe a statement made by a person who makes an asylum claim, a deciding authority shall take account, as damaging the claimant's credibility failure by the claimant to take advantage of a reasonable opportunity to make an asylum claim while in a safe country.

<sup>51</sup> Fingerprints, photograph and personal details.

- 7.22. Under the relevant bilateral agreement with France, officers at Calais have no secondary powers to search or control goods. This function is carried out by staff on the UK side of the channel at Dover, where all traffic from Calais is received. Likewise, the Eurostar ports at Brussels, Paris and Calais-Fréthun also do not have secondary customs powers. Secondary functions must therefore be carried out by Border Force after trains have arrived in the UK at either Ashford, Ebbsfleet or St Pancras.
- 7.23. Good communication links between Border Force staff at juxtaposed controls in France and those based in the UK are important to ensure that referrals concerning passengers suspected of customs-type offences are appropriately made to Border Force staff in the UK who can intercept such passengers upon their arrival.
- 7.24. During focus groups with staff in Brussels and Paris, we were told that, although they do follow mechanisms for referring passengers for secondary examination at stations in the UK, they do not routinely receive any feedback regarding the outcome of any of these referrals. We consider that providing staff at the PCP with feedback will enable them to improve the quality of referrals and increase effective detection work at the secondary controls in the UK.
- 7.25. Contrastingly, in relation to immigration offences, we were told by staff in Brussels that they do routinely receive feedback whenever an illegal entrant is discovered at St Pancras having boarded the train in Brussels. We consider this to be good practice and an important mechanism in identifying trends and taking preventative action.

### **EEA family group pilot**

- 7.26. The EEA family group pilot scheme was initiated on 14 October 2012 and was initially scheduled to operate for six months. This pilot operated in a variety of locations including Calais and Coquelles, and involved waiving the requirement of Border Force officers to routinely scan passports of EEA children under the age of 16 travelling in family groups. The pilot was subject to a 10% random full checking regime. The scheme was introduced in order to process low risk passengers through the PCP more quickly and thereby reduce traffic levels.
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- Running a pilot scheme where the majority of staff do not participate creates a risk of creating an inconsistent approach to border control and has no value in driving improvement.*
- 
- 7.27. We were told on a number of occasions by managers and staff at both locations that they were fully in favour of any schemes which would promote a risk-based approach at the PCP. Despite this, staff in Calais and Coquelles told us that, in general, they did not participate in the EEA family group pilot. We were told that their reasons for this were that:
- they were concerned about the consequences of failing to intercept a WI hit; and
  - they considered that the pilot made no positive difference in terms of time saving, as facial recognition with the children was still required in all cases.
- 7.28. As a consequence, the majority of staff told us that they were continuing to scan all passports. This was also reflected in our observations. We observed staff scanning every passport against the WI and also opening the biometric chip in all cases, regardless of whether children within EEA family groups were concerned. Managers in both Calais and Coquelles confirmed that they were aware that not all staff were participating in the pilot, but did not have any concerns regarding this and believed that staff should not be criticised for being extra vigilant.

7.29. We consider that if Border Force is going to operate pilot schemes, it is vitally important that all staff participate in order for the results to be properly analysed. Running a pilot scheme where the majority of staff do not participate creates a risk of creating an inconsistent approach to border control and has no value in driving improvement.

### **Joint Operational Coordination Centre**

7.30. In February 2010, a Joint Operational Coordination Centre (JOCC), responsible for Calais, Dunkirk and Coquelles, opened in Calais. Its purpose is to act as a communications hub in order to share information regarding the movement of goods and people between France and the UK to improve border security. The JOCC is manned by representatives from Border Force, the PAF, the Douanes<sup>52</sup> and the Calais Chamber of Commerce. Due to the fact that the Chamber of Commerce is involved, the JOCC is unable to operate as an intelligence function, as intelligence cannot be shared with a commercial body.

7.31. We were told by staff that the JOCC performs a positive function in terms of the juxtaposed controls operation and is particularly useful when a quick response is needed. For example, during our observation, a fence jumper<sup>53</sup> was identified and the JOCC was able to put all parties on alert. This type of activity also allowed CIOs to conduct dynamic shift briefings to provide real time updates to staff. In addition, Border Force's involvement in the JOCC enabled them to view overarching statistical information, such as the total traffic volume for each port, which may assist in planning for future staffing deployments.

7.32. The JOCC was intended to be a 24-hour operation but we were told that the representative from Border Force was often called to assist on the PCP. We are therefore concerned that it is not always manned effectively and as a result, important information may be delayed in reaching Border Force.

7.33. We believe that the existence of the JOCC represents a positive development in terms of the relationship between Border Force and the French authorities and their ability to quickly share information relating to border security. Border Force needs to ensure that it provides staff to the JOCC when required to ensure that the JOCC is fully operational at all times. We consider that if Border Force feels that the lack of an intelligence function in the JOCC is limiting its effectiveness, Border Force should explore alternative methods of sharing intelligence data with the French authorities.

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<sup>52</sup> French customs officers

<sup>53</sup> A passenger who attempts to bypass immigration control by trespassing through the site without authorisation.

# APPENDIX 1

## Inspection Framework and Criteria

The criteria used in this inspection were taken from the Independent Chief Inspector's Inspection Criteria.

### Inspection Criteria used when inspecting the Juxtaposed Controls Operation

#### Operational Delivery

1. Decisions on the entry, stay and removal of individuals should be taken in accordance with the law and the principles of good administration.
2. Customs and immigration offences should be prevented, detected, investigated and, where appropriate, prosecuted.
3. Resources should be allocated to support operational delivery and achieve value for money
4. Complaints procedures should operate in accordance with the recognised principles of complaints handling

#### Safeguarding Individuals

5. All individuals should be treated with dignity and respect and without discrimination in accordance with the law.
6. Enforcement powers, should be carried out in accordance with the law and by members of staff authorised and trained for that purpose.
7. All UKBA and Border Force functions should be carried out with regard to the need to safeguard and promote the welfare of children.
8. Personal data of individuals should be treated and stored securely in accordance with the relevant legislation and regulations.

#### Continuous Improvement

9. The implementation of policies and processes should support the delivery of Home Office objectives.
10. Risks to operational delivery should be identified, monitored and mitigated.

# APPENDIX 2

## Glossary

Term	Description
<b>A</b>	
Agency	Refers to the UK Border Agency.
Assistant Director	Senior manager within the UK Border Agency equivalent to a civil service Grade 7 position.
Assistant Immigration Officer	Junior grade, equivalent to an administrative officer. Supports Border Force staff in carrying out administrative and operational tasks linked to the Primary Control Point.
<b>B</b>	
Border Force	A separate operational command within the Home Office, responsible for frontline operations at air, sea and rail ports.
<b>C</b>	
Case Information Database (CID)	An administrative tool used by Border Force to perform case working tasks and record information electronically.
Chief Immigration Officer (CIO)	Team leader equivalent to Higher Executive Officer grade responsible for the effective running of the primary control (immigration) point.
Civil Penalty Scheme	Scheme whereby penalties are imposed on hauliers and drivers who facilitate clandestine entry to the UK.
Clandestine	An individual who attempts to enter the UK illegally, concealed in a vehicle or container.
Complaint	Defined by the UK Border Agency as ‘any expression of dissatisfaction about the services provided by or for the UK Border Agency and/or about the professional conduct of UK Border Agency staff including contractors’.
Customs	Collecting and safeguarding customs duties and controlling the flow of goods including animals, transport, personal effects and hazardous items in and out of the UK. This function is carried out by Border Force staff. See also Detection.
<b>F</b>	
Facilitation	Assisting the unlawful entry of passengers in to the UK.
Fence Jumper	A passenger who attempts to bypass UK immigration control by trespassing through juxtaposed control sites without authorisation.
<b>H</b>	

Her Majesty's Inspector of Immigration (HMI)	The UK Border Agency senior manager (equivalent to Senior Executive Officer grade) with overall responsibility for the effectiveness of legacy immigration operations on shift.
Home Office	The Home Office is the lead government department for immigration and passports, drugs policy, crime, counter-terrorism and police.
<b>I</b>	
Immigration Officer (IO)	Employees of the Border Force, appointed by the Home Secretary, whose powers are conferred by the Immigration Act 1971 and who act in accordance with Immigration Rules. They have the power of arrest and detention conferred on them by the Immigration Act 1971, both at ports and inland.
IS81 form	Issued to all passengers who are delayed at the primary checkpoint for further examination.
IS91R form	Issued to passengers to explain the reasons for their detention.
<b>J</b>	
Jux 3	A form issued to passengers in Paris and Brussels where they have provided insufficient evidence to make an entry clearance decision
<b>L</b>	
Lille loophole	A method by which individuals have attempted to bypass UK immigration controls on certain Eurostar services.
<b>M</b>	
Minor	(As in 'unaccompanied minor') A child under the age of 18 years
<b>O</b>	
Operating Mandate	Border Force guidance designed to reinforce the standards for full checks that were put in place in November 2011, following our findings during the inspection of Heathrow Terminal 3, which led to the border security checks investigation.
<b>P</b>	
Primary Control Point (PCP)	The immigration control area where passengers present their travel documentation and may be questioned by Immigration Officers about their reasons for entering the UK.
<b>S</b>	

Secondary Control Point (SCP)	An area where Border Force staff may be involved in the questioning of passengers or the searching of persons, baggage, freight or vehicles in relation to customs offences.
Secure ID	Checks passengers' fingerprints at the immigration controls and verifies them against those previously provided during the visa application process. Secure ID was available in Coquelles (for coach passengers only), but was not available in Paris, Brussels or Calais.
<b>U</b>	
UK Border Agency (UKBA)	The Agency of the Home Office formerly responsible for enforcing immigration and customs regulations. Its Agency status was removed on 31 March 2013 and its functions returned to the Home Office to form two new bodies.
<b>V</b>	
Vehicle Action List (VAL)	A list of vehicles or companies with debts outstanding in relation to civil penalties.
<b>W</b>	
Warning Index (WI)	A database used to ascertain whether passengers are of interest to the Border Force, the police, or other government departments.

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