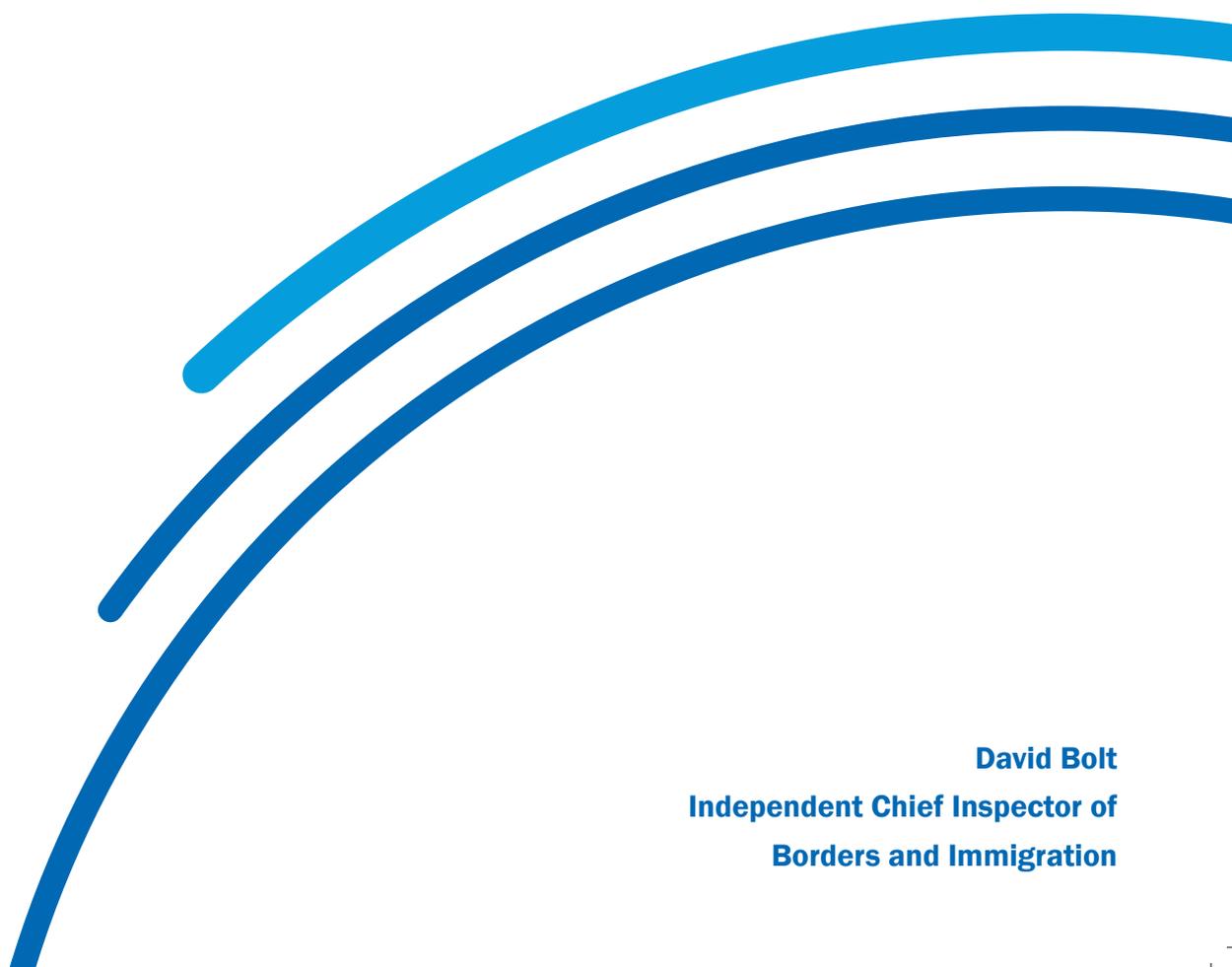




A Short Notice Inspection of the Tier 4 Curtailment Process

July - September 2015



David Bolt
Independent Chief Inspector of
Borders and Immigration

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June – September 2015

Presented to Parliament pursuant to Section 50 (2) of the UK Borders Act 2007

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Any enquiries regarding this publication should be sent to us at
Independent Chief Inspector of Borders and Immigration,
5th Floor, Globe House,
89 Eccleston Square,
London, SW1V 1PN
United Kingdom

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To help improve the efficiency, effectiveness and consistency of the Home Office's border and immigration functions through unfettered, impartial and evidence-based inspection.

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of Borders and Immigration,
5th Floor, Globe House,
89 Eccleston Square,
London, SW1V 1PN
United Kingdom



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Foreword

Individuals who wish to come to the UK for study purposes and require a visa apply to the Home Office under Tier 4 of the Points-based System (PBS). To qualify for a 'student visa', the individual must produce a Confirmation of Acceptance of Studies (CAS) form from an educational establishment licensed by the Home Office to act as a sponsor.

Under the terms of their licence, Tier 4 sponsors must notify the Home Office of any changes in a student's circumstances that would affect their sponsorship, for example, failure to enrol on their course, a pattern of unauthorised absences, withdrawal or expulsion, or early completion of their studies. Once notified, the Home Office considers the case and decides whether to curtail the student's leave to remain in the UK (or cancel their leave to enter).

In 2014/15, the Home Office issued over 60,000 Tier 4 visas, a reduction of roughly 25,000 from the previous year, which the Home Office attributed to the tightening up (from October 2014) of the Tier 4 visa entry route to make it less prone to abuse. In each of the last two years (2013/14 and 2014/15) it received 86,000 notifications from Tier 4 sponsors, and over the two years it curtailed the leave previously granted to almost 44,000 students.

This inspection considered the efficiency and effectiveness of the Home Office's management of the Tier 4 curtailment process, examining how it handled notifications from sponsors, the checking of these cases, decision-making and subsequent actions. It found that the creation of a dedicated Curtailment Team had resulted in significant progress in reducing the large volume of outstanding notifications that had built up by 2012, and that the Home Office was largely on top of new notifications. Security checks were carried out consistently and thoroughly, and a Decision Quality Framework had been introduced (in October 2014) that set clear expectations of caseworkers and monitored and measured performance.

However, the inspection also identified a number of areas for improvement. These included providing direct feedback to sponsors to clarify their reporting obligations and reduce the high levels of unnecessary notifications, and the time taken to progress notifications to the point where a consideration of curtailment was made.

Of most concern were 'curtailment not pursued' (CNP) cases, which included those who had a period of leave remaining that was shorter than the time they would be permitted to 'wrap up' their stay and depart, plus those who had already overstayed.

There was no process in place to monitor CNP cases to ensure that individuals with no right to remain in the UK had in fact departed voluntarily or, where necessary, had been identified for enforcement action. In the two years to April 2015, the Home Office made 71,601 CNP decisions. Many of these individuals might have departed the UK, or might have been granted leave to remain on other grounds. However, the true position, including the number and whereabouts of those who have remained in the UK illegally was not known.

The report makes 9 recommendations. It was sent to the Home Secretary on 8 January 2016.

David Bolt

Independent Chief Inspector of Borders and Immigration

1. Purpose and Scope

Purpose

- 1.1 This inspection considered the efficiency and effectiveness of the Home Office's management of the curtailment of student visas, issued under Tier 4 of the Points-based System,¹ by examining whether:
- the Home Office handled notifications from licensed sponsors in an effective and timely manner;
 - mandatory checks were carried out in all cases, and appropriate action was taken as a result of those checks;
 - decision-making in respect of Tier 4 curtailment considerations was in accordance with Immigration Rules and Home Office guidance;
 - appropriate action was taken in respect of individuals whose Tier 4 leave was curtailed; and
 - the Home Office had improved processes and performance in relation to the management of curtailment casework since the inspection of Tier 4 in 2012.²

Scope

- 1.2 The inspection involved:
- a familiarisation visit to the Curtailment Team in Manchester;
 - examination of Home Office information and documentary evidence, including performance data, staffing information, process guidance and risk registers;
 - sampling of 150 case files;
 - interviews and focus groups with UKVI staff at three locations (Manchester, Sheffield and London), as well as interviews in Sheffield with managers and staff of the Home Office contractor Capita plc, Removals Core Casework and a local Immigration and Compliance Enforcement team;
 - Interviews with four representative bodies of licensed sponsors, including public and private colleges and universities; and
 - an online survey to which 74 licensed sponsors responded.
- 1.3 The inspection team presented its high-level emerging findings to the Home Office on 22 September 2015.

¹ The Points-based System applies to visa nationals of countries from outside the European Economic Area (EEA) seeking entry to the UK. Tier 4 specifically applies to those applicants wishing to study in the UK.

² 'An Inspection of Tier 4 of the Points-based System (Students)' was published on 29 November 2012 and can be accessed at: <http://icinspector.independent.gov.uk/inspections/inspection-reports/2012-inspection-reports/>

2. Key Findings

What was working well

- 2.1 By creating a dedicated Curtailment Team in January 2013, UKVI had made significant progress in reducing the large volume of outstanding Sponsor Management System (SMS) notifications that had built up by 2012, and at the time of the inspection was largely on top of the intake of new notifications. Moves in 2015 to pilot the use of HMPO staff to manage seasonal pressures on the Curtailment Team, if successful, meant that UKVI should be able to prevent any backlog from recurring.
- 2.2 The Decision Quality Framework (DQF) introduced by UKVI in October 2014 had the potential to enhance performance, by setting clear expectations of caseworkers and through monitoring and measuring.
- 2.3 Based on the files sampled, caseworkers were consistent and thorough in carrying out checks on the Police National Computer (PNC) and the Home Office Warnings Index (WI) as required by the UKVI Operating Mandate, and the evidential threshold set in Home Office guidance for curtailing leave was met in 49 of the 50 curtailed cases.

Areas for improvement

- 2.4 The fact that almost half of the SMS notifications received from licensed sponsors in both 2013/14 and 2014/15 were sifted 'out' as not requiring consideration of curtailment or requiring no further action (NFA) indicated both a lack of clarity on the part of sponsors about what changes in a student's circumstances they were required to report and an exaggerated fear of the consequences of not reporting even the most minor change.
- 2.5 Because SMS worked only in one direction, the Home Office faced practical difficulties in providing direct feedback on notifications. While the Home Office looked to improve sponsors' understanding of their reporting obligations through road shows, seminars and educational fairs, the absence of direct feedback made it unlikely that the tens of thousands of unnecessary notifications submitted each year would reduce significantly, and staff in academic institutions and in the Home Office would continue to waste their time processing large volumes of worthless notifications.
- 2.6 The sifting process used by the Curtailment Team was open to human error. It involved manually entered keyword searches of the weekly spreadsheet produced by the Performance Reporting and Analysis Unit, which typically ran to more than a thousand entries. This risked cases that should have been sifted 'in' for a curtailment consideration being missed and sifted 'out'. No records were kept of the quality assurance of the process and sifted 'out' cases were not subject to any further checks, so it was not possible to say whether the risk was mitigated effectively.
- 2.7 It was taking the Curtailment Team too long to progress individual SMS notifications to the point where curtailment was considered, one consequence of which was that decisions to curtail leave to 60 days became 'curtailment not pursued' (CNP) decisions by default, as there were fewer than 60 days leave remaining when the case was considered.
- 2.8 The internal Home Office target of 90 days from receipt of the SMS notification to consideration of the curtailment case was out of step with the 10-day deadline licensed sponsors had by which to

submit a notification. In any event, based on file sampling, the 90-day target was frequently missed. Whatever timescale the Home Office judges to be appropriate and achievable, it would improve sponsors' confidence in the system if this were a published service standard rather than an internal target. Sponsors would also welcome feedback on curtailment decisions, and while the means to provide this easily might not exist, the Home Office should as a minimum clarify for managers and staff whether this is permitted under the Data Protection Act (DPA).

- 2.9 Although an average of 2% of Curtailment Team decisions was quality assured over a six-month period, the 2% target was not reached consistently month by month, and so the process was not operating as intended. Based on file sampling, the assurance, whether using the DQF or other management checks, needed to focus on a number of areas. These included: completion of mandatory checks; use and recording of the correct Immigration Rule when curtailing leave (decisions to curtail were correct, but the wrong Rule was cited); and periods of grace ('wrap-up' periods) not being understood and therefore being misapplied.
- 2.10 Practice in relation to the closure of Tier 4 cases was inconsistent. If caseworkers are to rely on API data, with or without additional information, as confirmation of departure from the UK, or the absence of an API record of entry as confirmation that an individual in possession of a Tier 4 visa has not travelled to the UK, this should be applied consistently and all such cases closed. By passing cases that could have been closed on this basis to Capita for action, caseworkers were creating unnecessary work, including for Removals Core Casework (RCC) when Capita passed the case back to them as unworkable.
- 2.11 UKVI deemed curtailment of leave a 'negative decision'. It resulted in the case entering the migration refusal pool (MRP), from where it was retrieved by Capita to make contact with the individual in order to encourage them to depart voluntarily. If this contact was unsuccessful, the case was passed to RCC as the individual became liable for enforced removal. Curtailment not pursued (CNP) decisions were not deemed 'negative', and no further action was taken in respect of them. This included cases where the individual had already overstayed their leave, or had a period of leave remaining that was shorter than their permitted period of grace ('wrap-up'). In such cases, the decision not to curtail leave was based on the fact that it would have no practical effect rather than on the understanding that the individual had either departed or obtained further leave. As such, these cases should have been treated in the same way as cases where leave was curtailed.
- 2.12 Curtailed cases were being referred to Capita while still within the period of grace, with the result that Capita was, correctly but unhelpfully, bouncing them back to the Home Office (Removals Core Casework) because there was a 'barrier to removal'.³ This was wasted effort for all parties.
- 2.13 There was no process in place to monitor curtailment not pursued (CNP) cases to ensure that individuals with no right to remain in the UK had departed voluntarily or, where necessary, had been identified for enforcement action. Between 1 April 2013 and 31 March 2015, the Home Office made 71,601 CNP decisions. Many of these individuals may have departed the UK or have been granted leave to remain on other grounds. However, the true position, including the number and whereabouts of those who have remained in the UK illegally is not known.
- 2.14 Immigration Enforcement's tasking process did not classify the removal of students whose leave had been curtailed as high priority. This was despite the Home Office having accepted a recommendation from a previous inspection⁴ to take necessary steps to locate and remove students with curtailed leave, and the view of staff and managers that these individuals were generally easier to remove than many other migrants, as they generally held valid travel documents and had not been in the UK for long enough to have built up significant Article 8 rights.⁵

³ We were informed by the Home Office on 18 December 2015 that "A change to the MRP algorithm on 1 April 2015 was implemented to correct the point at which these cases entered the MRP, so these should no longer be an issue".

⁴ 'An Inspection of Tier 4 of the Points-based System (Students)' was published on 29 November 2012 and can be accessed at: <http://icinspector.independent.gov.uk/inspections/inspection-reports/2012-inspection-reports/>

⁵ Article 8 of the European Convention on Human Rights provides a right to respect for one's "private and family life, his home and his correspondence", subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society".

3. Summary of Recommendations

The Home Office should:

1. Find a workable solution to providing Tier 4 licensed sponsors with direct feedback on the quality of their SMS notifications, with a view to achieving a significant reduction in the number of unnecessary notifications submitted each year.
2. Maintain a record of the quality assurance of the sifting process for SMS notifications in order to evidence its effectiveness in ensuring that cases are not being incorrectly sifted 'out' as not requiring consideration for curtailment or any other action.
3. Ensure that the assurance regime for Tier 4 curtailment covers the correct application by caseworkers of all relevant Immigration Rules and Home Office guidance (including the UKVI Operating Mandate), and that it informs the training and individual feedback provided to caseworkers;
4. Publish service standards for the curtailment consideration process that:
 - » take account of the 10-day deadline imposed on licensed sponsors for the submission of SMS notifications; and
 - » drive the efficient use of resources.
5. Issue clear instructions to caseworkers in relation to the closing of cases, and the referral of cases to issuing Entry Clearance Officers for cancellation, based on Advance Passenger Information (API) indicating that a Tier 4 student has departed the UK, or the absence of an API record of an individual in possession of a Tier 4 visa having entered the UK, and ensure that instructions are followed consistently.
6. Treat cases that attract a curtailment not pursued (CNP) decision because the individual is an overstayer, or has a period of leave remaining that is shorter than their permitted period of grace and curtailment would have no practical effect, in the same way as curtailed cases.
7. Take the necessary steps to identify and locate those individuals amongst the c.71,000 curtailment not pursued (CNP) cases decided between 1 April 2013 and 31 March 2015 who have remained in the UK illegally, with a view to effecting their removal.
8. Review the flow of cases referred to Capita to eliminate cases bouncing back as unworkable, including those that should have been closed based on Advance Passenger Information (API) and those curtailed cases where the period of grace has not expired when referred.
9. Review whether the priority currently given to Tier 4 curtailed cases within the Immigration Enforcement national prioritisation matrix is appropriate.

4. The Inspection

Background

- 4.1 Tier 4 of the Points-based System (PBS) allows nationals of countries outside the European Economic Area (EEA)⁶ to enter the UK for the purposes of study. To be eligible for Tier 4 leave, the Immigration Rules require a prospective student to be sponsored by an educational establishment accredited by the Home Office to hold a sponsor licence. Under Home Office guidance, the student must evidence this sponsorship when applying for Tier 4 leave, by submitting a Confirmation of Acceptance of Studies (CAS) form obtained from the licensed sponsor.
- 4.2 Under the terms of their licence, Tier 4 sponsors must notify the Home Office, using the Sponsor Management System (SMS),⁷ of changes in circumstances affecting their sponsorship of a student. The SMS notification specifies the change in the student's circumstances, such as:
- failure to enrol on the course;
 - ten consecutive unauthorised absences;
 - withdrawal or expulsion; or
 - completion of a course earlier than expected.
- 4.3 In 2013/14 (1 April – 31 March) 87,149 Tier 4 visas were issued. In 2014/15 the figure was 61,814. The Home Office explained the decrease as the result of changes to the Immigration Rules which came into effect in October 2014. These changes were designed to tighten the Tier 4 route and make it less prone to abuse. In 2014/15, a number of Tier 4 sponsors⁸ had their licences revoked, which also contributed to a reduction in the number of new visas issued.
- 4.4 Where the sponsor notifies the Home Office of a change in a student's circumstances, the Home Office must consider curtailing the student's leave. In some cases, such as when a student fails to enrol, curtailment is mandatory.⁹ In other instances, such as where the student is granted leave with another sponsor, it is discretionary.¹⁰ In 2013/14 and 2014/15, the number of notifications submitted by licensed sponsors to the Home Office was 86,037 and 86,019 respectively.
- 4.5 Since January 2013, decisions on curtailment have been made by the Curtailment Team, a unit within UKVI's Temporary Migration Directorate, based in Manchester. In addition to the Tier 4 curtailment considerations resulting from SMS notifications from licensed sponsors, the Curtailment Team also makes curtailment decisions in cases where a Tier 4 sponsor's licence has been revoked, surrendered or expired.¹¹

6 European Economic Area countries include all 28 members of the European Union (EU) as well as Switzerland, Iceland, Liechtenstein and Norway.

7 The Sponsor Management System (SMS) is a secure IT system used by Tier 4 sponsors to inform the Home Office of relevant information that may affect the sponsor licence.

8 In February 2014, Educational Testing Services (ETS) were suspended as a provider of English language tests for immigration purposes after tests taken at some centres were taken by proxy sitters. The Home Office launched Operation Agantuk to deal with this systematic abuse; actions included the revocation of sponsor licences of those colleges that knowingly participated in this abuse.

9 Mandatory curtailment is under paragraph 323A (a) of the Immigration Rules.

10 Discretionary curtailment is under paragraph 323A (b) (iv) of the Immigration Rules.

11 This inspection only considered curtailment considerations arising from SMS notifications.

- 4.6 SMS notifications informing the Home Office of a change in a student's circumstances are sifted by the Curtailment Team on a weekly basis. Those notifications that do not require a curtailment consideration are sifted 'out' and all remaining cases are passed to caseworkers to consider curtailment. Caseworkers consider the nature of the notification,¹² the status of the student, and other information held by the Home Office and decide whether leave should be curtailed. Figure 1 sets out the outcomes of UKVI's curtailment considerations in FY 2013-14 and 2014-15.

Figure 1: Outcomes of UKVI's curtailment considerations in FY 2013/14 and 2014/15.

Total intake	Combined two-year total
Curtailment considerations	144,021
Curtailed cases	43,940
Not curtailed (CNP)	71,601
Other ¹³	28,480

- 4.7 Students who remain in the UK after their Tier 4 leave has expired or has been curtailed are liable to removal unless they have been granted further leave. At the time of the inspection, students whose leave was curtailed entered the Migration Refusal Pool (MRP) so that Capita plc, the Home Office's service provider, and Removals Core Casework (RCC), a Directorate of Immigration Enforcement, could manage these cases towards removal, through either voluntary departure or, if necessary, enforced removal.

Previous Tier 4 inspection

- 4.8 Our 2012 inspection of Tier 4¹⁴ recommended improvements in the way the then UK Border Agency (UKBA):¹⁵
- handled notifications on SMS;
 - allocated resources to and prioritised curtailment work;
 - identified students whose leave should be curtailed; and
 - located and removed those students whose leave was curtailed.

- 4.9 In response, UKBA stated that it '*recognised the importance of maintaining its compliance regime; identifying those students whose leave should be curtailed quickly and removing those that fail to leave the UK of their own accord*'.¹⁶ The report highlighted that in March 2012 153,000 Tier 4 SMS notifications were awaiting consideration. In January 2013, UKBA established the Curtailment Team to deal with this accumulation of referrals. At the time of this inspection, the Team continued to be responsible for sifting SMS notifications and considering whether to curtail leave. As at June 2015, the Curtailment Team had 7,237 Tier 4 SMS notifications awaiting consideration.

Methodology

- 4.10 This inspection examined the performance of the Curtailment Team, including the handling of SMS notifications, as well as the quality and timeliness of curtailment decisions. It also considered whether there were effective management processes in place for those students whose leave was curtailed and who had no right to remain in the UK, and for those who fell into the 'curtailment not pursued' category. It did this using six of the Independent Chief Inspector's inspection criteria.¹⁷

¹² Some notifications do not lead to a curtailment consideration, For example, where the licensed sponsor has informed the Home Office of a change of residential address for the student.

¹³ Other outcomes include cases where, for example, individuals embarked with leave or never entered the UK, and duplicate records.

¹⁴ 'An Inspection of Tier 4 of the Points-based System (Students)' was published on 29 November 2012 and can be accessed at: <http://icinspector.independent.gov.uk/inspections/inspection-reports/2012-inspection-reports/>

¹⁵ On 26 March 2013, the Home Secretary announced that the UK Border Agency was to be broken up and, under a new package of reforms, brought back into the Home Office.

¹⁶ The Agency's full response can be found on the Chief Inspector's website: <http://icinspector.independent.gov.uk/>

¹⁷ The criteria used in this inspection are detailed at Appendix 1 of this Report. The full set of inspection criteria can be found on the

4.11 Our inspection process involved the following:

- A familiarisation visit to the Curtailment Team in Manchester.
- Analysis of Home Office performance data relating to curtailment activities over 2013/14 and 2014/15.
- Examination of documentary evidence, including staffing information, process guidance and risk registers.
- a file sample of 150 cases, broken down as follows:
 - 50 cases considered between 1 October 2013 and 31 March 2014 in which leave was curtailed; and
 - 100 cases considered between 1 October 2014 and 31 March 2015, in 50 of which leave was curtailed and in 50 of which leave was not curtailed.
- Engagement with stakeholders, which included:
 - interviews with representative bodies of licensed Tier 4 sponsors including The UK Council for International Student Affairs (UKCISA),¹⁸ Study UK,¹⁹ Universities UK,²⁰ and the Association of Colleges (AOC);²¹ and
 - an online survey with members of the above representative bodies to canvass views on the effectiveness and efficiency of Home Office processes from a licensed sponsor’s perspective, to which we received 74 responses.²²

4.12 The onsite phase of the inspection took place between 6 and 14 August 2015. During the onsite phase, we:

- interviewed two Capita senior managers in Sheffield;
- held interviews with staff from a local Immigration, Compliance and Enforcement (ICE) Team, and from Removals Core Casework in Sheffield; and
- held focus groups and interviews with the Curtailment Team in Manchester, senior managers in Sheffield, and the policy lead in London.

Figure 2 sets out the grades of the Home Office staff we interviewed:

Figure 2: Staff interviewed (by grade).	
Senior Civil Servant	1
Grade 6	1
Grade 7	3
Senior Executive Officer	3
Higher Executive Officer	1
Executive Officer	3
Administrative Officer	10
Total	22

Independent Chief Inspector’s website at:

<http://icinspector.independent.gov.uk/inspections/inspection-programmes/>

18 The UK Council for International Student Affairs (UKCISA) is the UK’s national advisory body serving the interests of international students and those who work with them.

19 Association representing independent further and higher education institutions and specialist training providers

20 Universities UK is a representative body for universities in the UK.

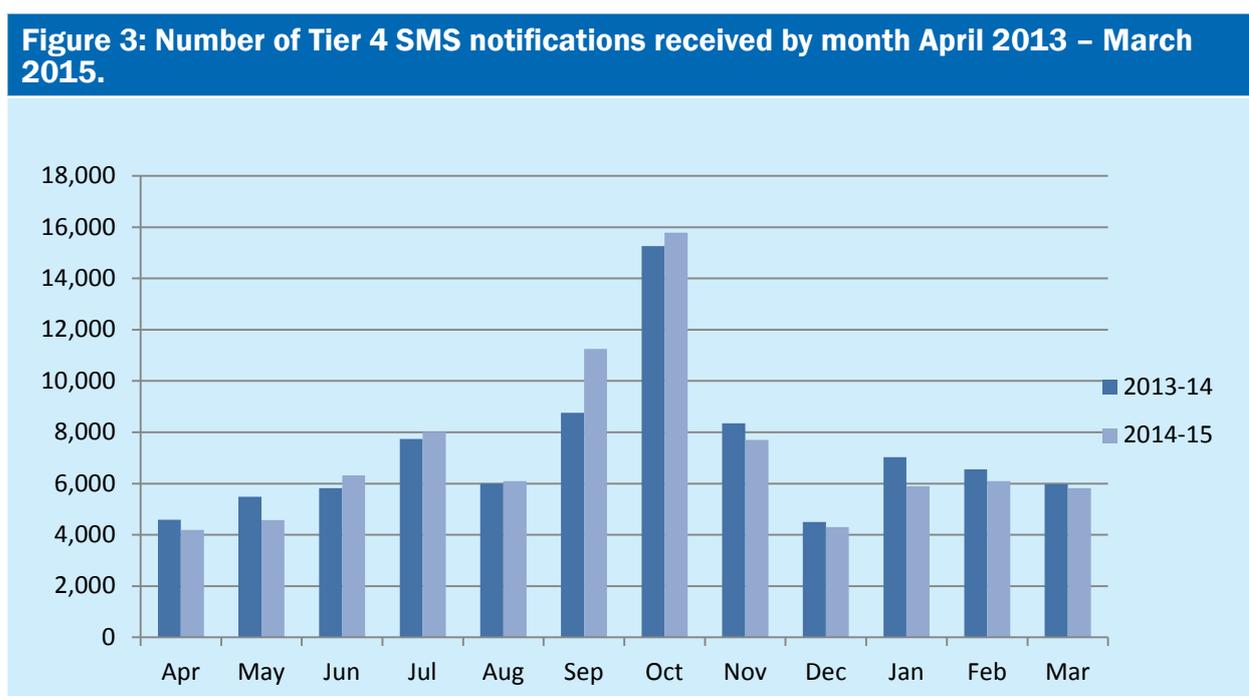
21 The Association of Colleges (AoC) represents and promotes the interests of further education, sixth form, tertiary and specialist colleges across the UK.

22 A list of all respondents to our survey can be found in Appendix 3.

5. Processing of Sponsor Management System Notifications.

Background

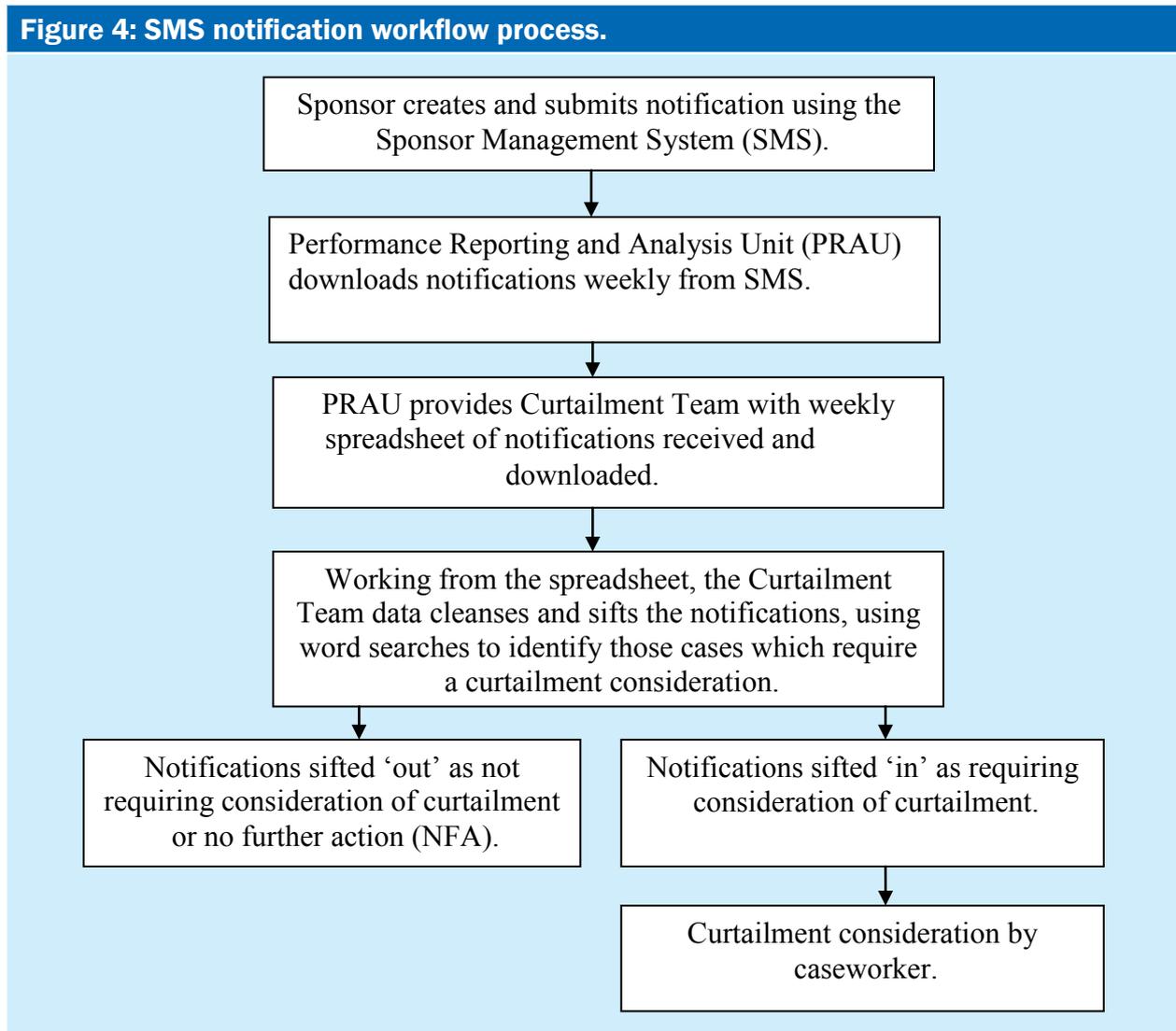
- 5.1 The Home Office has published detailed guidance²³ for licensed sponsors which explains when they need to notify UKVI via the Sponsor Management System (SMS) of changes in a student's circumstances. This guidance outlines the requirement for licensed sponsors to inform UKVI of any circumstantial changes which may affect the Confirmation of Acceptance for Studies (CAS) issued to the student by the sponsor, and which the student used to apply for their Tier 4 leave. Sponsors have 10 working days in which to submit a notification.
- 5.2 Figure 3 shows a monthly breakdown of SMS notifications received in 2013/14 and 2014/15.



- 5.3 The spike in notifications in the autumn was due to sponsors informing the Home Office that students had failed to enrol onto courses at the start of the academic year.

²³ Tier 4 Sponsor Guidance can be found at: <https://www.gov.uk/government/publications/sponsor-a-tier-4-student-guidance-for-educators>
Details of SMS guidance provided to sponsors can be found at: <https://www.gov.uk/government/collections/sponsorship-information-for-employers-and-educators>

5.4 The diagram at Figure 4 details the workflow for the handling of SMS notifications.



5.5 The sifting process, undertaken by an Administrative Officer (AO) from the Curtailment Team, consisted of manually entered keyword searches of the PRAU spreadsheet, which typically ran to more than a thousand entries. Examples of keywords used were *'withdrawn'*, *'expelled'* and *'suspended'*. Managers told us that AOs went through the spreadsheet line by line to ensure accuracy of sifting, and the AOs confirmed this. Managers also told us that Executive Officers (EOs) quality assured the sifting process through random dip sampling checks. UKVI was unable to provide us with evidence of this QA activity because it did not retain the records.

5.6 Cases that have not been sifted 'out' require a curtailment decision, and are passed to Curtailment Team caseworkers to input onto the Case Information Database (CID).²⁴

5.7 Part of this CID data entry includes Police National Computer (PNC) and a Home Office Warnings Index (WI) checks which are requested by the curtailment team. These checks are detailed in UKVI's Operating Mandate which sets out *'the minimum mandatory security checks required in all applications to establish the identity of the customer - that they are who they say they are - and that there are no other reasons why they should be refused leave to enter or remain in the UK, for example, a previous criminal conviction'*.

²⁴ Case Information Database (CID) is an electronic database which caseworkers use to record curtailment decisions.

- 5.8 In addition, Advance Passenger Information (API) checks are requested by the Curtailment Team to ascertain whether or not the individual has already entered the UK or has entered and subsequently left. The main purpose of the API check at this stage is to determine whether any future curtailment decision should be served to a UK or overseas address. Results of checks are then added to the case record on CID. Each AO has a target of inputting 35 cases onto CID per day. Spreadsheets with cases are then allocated to caseworkers in date order for the curtailment consideration.

Efficiency and effectiveness of the pre-decision process

- 5.9 In 2013/14 and 2014/15, almost half of all SMS notifications received by the Curtailment Team were sifted 'out' as not requiring action (of 84,464 notifications received in 2013/14, 42,174 were sifted out, and of 93,724 notifications in 2014/15, 49,551 were sifted out).
- 5.10 During our visit to the Curtailment Team, we were told that one reason why such high numbers of notifications were sifted 'out' was that many related to short, temporary student absences or failures to submit specific student assignments, which sponsors were not required to report. Managers told us there was a culture of 'over-reporting' and many sponsors were overly cautious following the revocation of licences linked to bogus colleges²⁵ in 2014 and felt that they needed to report any minor changes to protect their own licensed status. This was confirmed by the representative bodies of licensed sponsors. They told us their members were risk-averse and nervous about getting the SMS process wrong, not least because they feared losing the right to sponsor students from outside the EEA.
- 5.11 The Curtailment Team did not provide feedback to sponsors on individual notifications. SMS was configured as a one-way communication tool, from sponsors to the Home Office. Senior managers told us that they engaged with licensed sponsors at road shows, seminars and educational fairs and used these events to improve sponsors' understanding of when they were required to submit notifications. Thirty-six (of the 74) respondents to our online survey of licensed sponsors indicated that they would value direct feedback on the SMS notifications they submitted.

Conclusions

- 5.12 The fact that almost half of the SMS notifications received from licensed sponsors in both 2013/14 and 2014/15 were sifted 'out' as not requiring consideration of curtailment or requiring no further action (NFA) indicated both a lack of clarity on the part of sponsors about what changes in a student's circumstances they were required to report and an exaggerated fear of the consequences of not reporting even the most minor change.
- 5.13 Because SMS worked only in one direction, the Home Office faced practical difficulties in providing direct feedback on notifications. While the Home Office looked to improve sponsors' understanding of their reporting obligations through road shows, seminars and educational fairs, in the absence of direct feedback it was unlikely that the tens of thousands of unnecessary notifications submitted each year would reduce significantly, and staff in academic institutions and in the Home Office would continue to waste their time processing large volumes of worthless notifications.
- 5.14 The sifting process used by the Curtailment Team was open to human error. It involved manually entered keyword searches of the weekly spreadsheet produced by PRAU, which typically ran to more than a thousand entries. This risked cases that should have been sifted 'in' for a curtailment consideration being missed and sifted 'out'. No records were kept of the quality assurance of the process and sifted 'out' cases were not subject to further checks, so it was not possible to say whether the risk was mitigated effectively.

²⁵ Operation Agantuk which commenced in February 2014, targeted the systematic abuse of the Tier 4 entry clearance route after Educational Testing Services (ETS) was suspended as a provider of English language tests for immigration purposes after tests taken at some of its centres were found to have been taken by proxy sitters.

Recommendations

The Home Office should:

1. Find a workable solution to providing Tier 4 licensed sponsors with direct feedback on the quality of their SMS notifications, with a view to achieving a significant reduction in the number of unnecessary notifications submitted each year.
2. Maintain a record of the quality assurance of the sifting process for SMS notifications in order to evidence its effectiveness in ensuring that cases are not being incorrectly sifted 'out' as not requiring consideration for curtailment or any other action.

6. Decision-making Process and Decision Quality.

Operating Mandate checks

- 6.1 UKVI introduced its Operating Mandate on 1 November 2014. The Operating Mandate set out the checks that caseworkers were required to complete when considering an individual's right to enter or remain in the UK. In the case of Tier 4 curtailment considerations, these checks included:
- Police National Computer (PNC);
 - Home Office Warnings Index (WI);²⁶
 - Case Information Database (CID) check for 'Special Conditions';
 - Case Reference System CRS.²⁷
- 6.2 When the Curtailment Team inputted a case onto CID, WI and PNC checks were automatically requested from the Warnings Index Control Unit (WICU) for them to conduct PNC and WI checks. WICU also updated CID records with the results of these checks. CID and CRS checks were undertaken by the Curtailment Team caseworker who was responsible for inputting the case on CID, and who was also required to update CID with the results.
- 6.3 PNC and WI checks had been carried out in all cases in our file sample. However, there were instances where some mandatory checks had not been recorded on CID and we were therefore unable to assure ourselves that all required checks had been carried out in all cases. For example, none of the sampled cases had CID notes specifying whether the caseworker had checked that a Special Conditions check had produced no markers.

The decision-making process

- 6.4 A curtailment consideration resulted in one of four outcomes:
- i. No further action (NFA), used where:
 - the student's leave had been refused/withdrawn;
 - the student's leave had already been curtailed or cancelled for any other reason;
 - the student had been granted Indefinite Leave to Remain (ILR) or been naturalised as a British citizen;
 - the student had been served with removal papers or had been removed from the UK.

These cases were not recorded on CID and a caseworker would mark a case on the spreadsheet as 'NFA'.

- ii. Curtailment of leave with immediate effect, used where:
 - the student had failed to enrol on their course of study;

²⁶ A database of names of individuals with a previous history of immigration offences and those of interest to detection staff, police or other government agencies.

²⁷ The Case Reference System (CRS) is used by Entry Clearance Officers (ECOs) to record their decisions on visa applications made overseas.

- Tier 4 leave had been obtained by deception;
 - the sponsor’s licence had been revoked and the student had been knowingly involved in the reason for revocation.
- iii. Curtailment to 60 days,²⁸ used where:
- the student had been excluded or had withdrawn from their course of study;
 - sponsorship had been withdrawn by the sponsor;
 - the student’s studies had ended early or were to end before the end date recorded on the CAS.
- iv. Curtailment not pursued (CNP), used where:
- the student’s leave had expired at the time of the curtailment consideration;
 - the student had less than 60 days leave remaining at the time of the curtailment consideration;
 - the student had been granted leave in another capacity (e.g. a work visa);
 - the student had transferred to a new sponsor.

Caseworkers had a target of completing 25 curtailment case considerations per day.

Quality and accuracy of decision-making

- 6.5 We sampled 100 Tier 4 curtailment considerations completed between 1 October 2014 and 31 March 2015, split equally between those where leave was curtailed and those where it was not curtailed. We examined whether:
- Immigration Rules and Home Office guidance had been applied correctly;
 - decisions had been made using all available information;
 - decisions had been made in a timely manner;
 - the caseworker had recorded the reasons for decision in full;
 - curtailment letters were factually correct and clearly set out the reasons for curtailment;
 - the correct period of grace was given to students whose leave had been curtailed, to allow them either to depart the UK or to apply for further leave to remain;
 - CID notes contained a full audit trail of the handling of the case; and
 - monitoring and quality assurance of workflow and decision-making were in place.
- 6.6 Based on the Immigration Rules and Home Office guidance, curtailment was justified in 49 of the 50 curtailed cases in our file sample. In the remaining case leave was curtailed incorrectly as the caseworker had not considered information recorded on CRS.²⁹ This information indicated that the SMS notification on which the caseworker based the curtailment related to an out-of-date Confirmation of Acceptance for Studies (CAS). The Home Office acknowledged that the decision to curtail was incorrect and agreed to reinstate the student’s leave to remain.

²⁸ In order for a caseworker to curtail leave to 60 days, the migrant must have at least 60 days extant leave on their visa. If fewer than 60 days remain, the outcome must be ‘curtailment not pursued’ (CNP), unless the migrant has deployed deception to obtain their Tier 4 leave, in which case curtailment with immediate effect applies.

²⁹ The system used by Entry Clearance Officers overseas for Entry Clearance applications.

Use of Immigration Rules and guidance

- 6.7 The Immigration Rules specify the circumstances that may lead to leave being curtailed. In the cases that we sampled, leave was curtailed under one of the following Rules:³⁰
- Paragraph 323A(ii)(1): *'leave may be curtailed if the migrant fails to commence studying with the sponsor'*;
 - Paragraph 323A(ii)(2): *'the sponsor has excluded or withdrawn the migrant, or the migrant has withdrawn, from the course of studies'*; and
 - Paragraph 323A (ii) (2A): *'the migrant's course of study has ceased, or will cease, before the end date recorded on the Certificate of Sponsorship Checking Service'*.³¹
- 6.8 While we assessed that UKVI was correct to curtail leave in 49 of the 50 cases in our sample, in ten of these the caseworker cited the wrong Immigration Rule. In these ten cases, the students had failed to enrol on their courses and the caseworker should therefore have cited paragraph 323A(ii)(1), but cited another Rule in error. One of these cases is described at Figure 7:

Figure 7: Citing of the incorrect Immigration Rule.

The student:

- failed to enrol on his course.

The sponsor:

- sent an SMS notification informing UKVI that the individual had not enrolled.

UKVI:

- curtailed the student's leave under paragraph 323A (a) (ii) (2) of the Immigration Rules, which states that *'the sponsor has excluded or withdrawn the migrant, or the migrant has withdrawn, from the course of studies'*;
- sent a decision letter to the student informing them that their leave had been curtailed to 60 days.

Independent Chief Inspector's comments:

- The decision to curtail leave was justified, but the correct Immigration Rule was Paragraph 323A (ii) (1) because the student had failed *'to commence studying with the sponsor'*.
- According to Home Office guidance (see below), leave should have been curtailed with immediate effect, not curtailed to 60 days.

'Wrap-up' periods

- 6.9 When a student completed a study course earlier than expected, their leave should be curtailed under Paragraph 323A (ii) (2A) of the Immigration Rules. Under Home Office guidance, caseworkers should allow the student a period of grace, known as a 'wrap-up period', starting from the date when study was completed. The wrap-up period could not extend the student's leave beyond its original expiry date, and its length was dependent upon the length of the course – see Figure 8.

30 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/422941/20150406_Immigration_Rules_-_Part_9_final_v4.pdf

31 Certificate of Sponsorship Checking Service is an electronic database holding details of sponsorship of students by licensed sponsors

Figure 8: Home Office guidance on length of 'wrap-up' periods.

Length of course	'Wrap-up' period from date course completed
12 months or more	4 months
Between 6 and 12 months	2 months
Less than 6 months (pre-session ³² course)	1 month
Less than 6 months (non pre-session course)	7 days
Postgraduate doctor or dentist	1 month

6.10 Of the ten cases in our file sample curtailed under the wrong Immigration Rule, five were where caseworkers had failed to curtail leave under Paragraph 323A (ii) (2A) when the student had completed their study course earlier than expected. In three of these five cases, due to the time taken to deal with the SMS notification, the full wrap-up period indicated in the guidance could not be applied because this would have extended leave beyond the period originally granted. In the other two cases, the SMS notification did not include the last date of the students' studies, and UKVI did not request this information, so the guidance on wrap-up periods could not be applied. From our onsite focus groups, we found that AO and EO caseworkers had little understanding of the guidance on wrap-up periods when a student finished their study course earlier than expected.

Decision letters

6.11 17 of the 50 curtailment decision letters we sampled contained factual errors. These included:

- incorrect reasons for curtailment;
- inaccurate representation of the Rules; and
- inaccurate representation of the SMS notification.

6.12 Curtailment letters were not tailored to individual circumstances and were generated using a standard template. This meant that a student who had complied with the Immigration Rules, whose leave was being curtailed because they had completed their studies earlier than expected received an almost identical letter to a student who had withdrawn from a course but had not departed from the UK in breach of their leave to remain. Both, for example, warned of the serious consequences for the student of overstaying their period of leave. Figure 9 is a typical example of the former.

³² A pre-session course is one that prepares a student for their intended course of study, and usually involves supplementary English language tuition or instruction in the British Education system.

Figure 9: Curtailment letter sent to compliant student.

The student:

- entered the UK on a Tier 4 visa to study for a Master of Philosophy (MPhil) degree at Oxford University.

UKVI:

- was notified by the university via SMS that the student had completed their course earlier than expected;
- sent the student a curtailment letter which informed them that their leave had been curtailed to 60 days. The letter referred to the consequences of breaking the Immigration Rules, including that:
 - overstaying by more than 90 days could lead to future visa applications being refused; and
 - breaching the Immigration Rules could result in a ban on re-entry to the UK of up to 10 years.

Independent Chief Inspector's comment:

At the time of the curtailment decision, to UKVI's knowledge the student had complied with all the conditions of their visa, and UKVI had no information to suggest they would not comply with the curtailment decision. The wording of the letter took no account of this.

- 6.13 Staff in the Curtailment Team told us that the general tone of curtailment letters sent to students who had complied with the Immigration Rules was 'harsh' and 'tarred them with the same brush as non-compliant students'. Managers informed us that work was underway to introduce two versions of the curtailment letter: one version for compliant individuals and another for non-compliant individuals.

Timeliness of decision-making

- 6.14 In our 2012 Tier 4 inspection, we found there were no target times for dealing with SMS notifications and that they were dealt with only when resources permitted. The then UK Border Agency (UKBA) accepted our recommendation that it should 'take all necessary steps to ensure that resources were effectively allocated to deliver its obligations in respect of the handling of notifications on the Sponsor Management System'.³³ Since the publication of our earlier report, the Home Office had established a dedicated team and had taken steps to deal with the accumulation of outstanding SMS notifications we had highlighted. As of June 2014, there were 7,237 outstanding Tier 4 SMS notifications, as against 152,793 in March 2012, a reduction of c. 95%.
- 6.15 At the time of the current inspection, UKVI did not have published service standards for curtailment considerations. Instead, the Curtailment Team worked to an internal target of deciding all cases within 90 days of receipt of the SMS notification.
- 6.16 The Home Office required licensed sponsors to submit SMS notifications within ten days of any changes in a student's circumstances. Forty-two of the 74 licensed sponsors who responded to our online survey pointed to the inconsistency between this ten-day deadline and the absence of any Home Office service standard for considering notifications. The sponsors' four representative bodies also raised this issue with us.
- 6.17 Figure 10 shows the average (median) number of days taken to input an SMS notification onto CID,³⁴ and the time taken from then to consideration of the curtailment case in the 100 files we sampled.

³³ <http://icinspector.independent.gov.uk/wp-content/uploads/2012/11/12-11-15-ICI-Tier-4-UKBA-Response.pdf>

³⁴ The count for the number of days began once the Curtailment Team received the spreadsheet from PRAU, which was typically 1 week after the SMS form was submitted by the sponsor.

Figure 10: Average (median) time taken from receipt of SMS notification by the Curtailment Team to consideration of curtailment for 100 sample cases decided between 1 October 2014 and 31 March 2015.

Average (median) number of days taken to input an SMS notification onto CID	79 Days
Average (median) number of days from date case was input onto CID and consideration of the curtailment	33 Days
TOTAL elapsed time - average (median)	112 Days

- 6.18 Managers told us that the reason why the average time between receipt of the SMS notification by the Curtailment Team and inputting it on to CID was 79 days was that in 2014 priority had been given to dealing with curtailments arising from a major intelligence-led operation³⁵ conducted by UKVI in conjunction with Immigration Enforcement. They also told us that they expected curtailment consideration to take place quickly once the results of mandatory checks were received and were unable to explain the average of 33 days in our sample.³⁶
- 6.19 Senior managers informed us of a pilot that had been initiated with Her Majesty's Passport Office (HMPO). In this pilot, which commenced in August 2015, HMPO staff would consider Tier 4 curtailment cases during autumn months when a spike in SMS notifications was expected due to the commencement of the new academic year. The pilot was intended to highlight the benefits of joint working between UKVI and HMPO, and the aim was to allow UKVI to reduce the number of curtailment cases awaiting decision. Senior managers hoped to introduce more ambitious targets for curtailment considerations if the pilot achieved its objectives. If successful, the intention was to put in place a reciprocal arrangement where UKVI and HMPO would assist each other in periods of peak demand.

Timeliness of decision-making in 'curtailment not pursued' (CNP) cases

- 6.20 In 27 of the 50 cases in our file sample, the decision not to pursue curtailment was taken because either the student's leave had expired or the student had fewer than 60 days leave remaining at the time of the curtailment consideration. In three of the 27 cases, the individual's leave had expired before the sponsor submitted an SMS notification to UKVI. In the other 24 cases, the individuals had varying periods of leave remaining. Figure 11 gives a breakdown of the leave remaining for these 24 cases:

Figure 11: Leave remaining when the SMS notification was received by the Curtailment Team in 24 CNP sample cases.

Leave remaining when SMS notification was received by the Curtailment Team	Number of cases
0-60 days	3
61-90 days	7
91-120 days	3
121-150 days	5
151+	6
Total	24

35 Operation Agantuk (which commenced in February 2014 targeted the systematic abuse of the Tier 4 entry clearance route after Educational Testing Services (ETS) was suspended as a provider of English language tests for immigration purposes after tests taken at some of its centres were found to have been taken by proxy sitters.

36 On 18 December 2015, the Home Office informed us that "Prior to undertaking action on a notification, the curtailment team must consider a number of other factors which can impact on whether any action can indeed be taken. For example, if the migrant has an existing outstanding application or there are local alerts on the system, the curtailment case must be put on hold to await the outcome of these."

Service of curtailment decisions

6.21 Home Office guidance stated that a curtailment decision must be served to the applicant in the following order of preference:

- *to their UK address;*
- *by email if there is no postal address;*
- *to an overseas address if there is no UK address; and*
- *to file if none of the above is available.*³⁷

6.22 The method used in the 50 curtailed cases in our sample is shown at Figure 12.

Figure 12: Method of decision service.

To UK address	9
To overseas address	1
By email	23
To file	17

6.23 In our focus groups, caseworkers informed us that before serving a decision to file, if there was no address on CID they would always check CRS and, if unsuccessful, they would contact the sponsor to see if they held any address for the individual.

6.24 When a curtailment decision notice is served to file, it either:

- *ends the case, if applicable;*
- *ends the person's leave, if leave was curtailed with immediate effect; or*
- *starts the 60-day period during which the migrant must apply to regularise their stay or depart, for decisions to curtail leave to 60 days.*³⁸

6.25 Managers informed us that if Quality Assurance (QA) checks by Executive Officers (EOs) identified that a caseworker had served a decision to file when a postal or email address was available 100% of the caseworker's decisions would be subject to quality assurance until the EO was satisfied that the caseworker was serving correctly to file. If a caseworker incorrectly served a decision to file on more than one occasion, they would be subject to formal performance management procedures for poor performance.³⁹

6.26 In all of the 17 cases in our file sample that were served to file, we found a postal or personal email address, or both, on CRS. In one of these cases, the sponsor had been asked for and had provided contact details for the applicant, which were then not used. On 18 December 2015, we were informed by the Home Office that they were unable to serve these 17 decisions via email or to an overseas address as leave in these cases was curtailed with a full in-country right of appeal.

Informing licensed sponsors of curtailment decisions

6.27 In our online survey, and through their representative bodies, licensed sponsors expressed frustration that they were not informed by the Home Office whether an SMS notification resulted in curtailment or not.

37 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/473804/Curtailment_v15_0.pdf

38 Guidance to caseworkers on the Home Office intranet.

39 We were informed by the Home Office on 18 December 2015: "A caseworker would be subject to 100% casework checks prior to performance management measures being instigated."

SMS was a one-way communication tool and could not be used to feed back outcomes. However, we were told that the Home Office was developing a new system (Integrated Platform Technology) and the aspiration was for this system to allow outcomes to be fed back to licensed sponsors.

- 6.28 Some managers told us that, in their view, informing sponsors of the outcomes of curtailment considerations could breach the Data Protection Act, particularly where they were no longer sponsoring the student. Other managers thought it was both lawful and fair to inform sponsors that a student's leave had been curtailed.

Quality assurance of decisions

- 6.29 In October 2014, UKVI implemented a new decision quality framework (DQF) to improve decision quality through a quality assurance (QA) programme. The stated benefits of DQF included:

- *'clarity around decision quality expectations from caseworkers, and a formal process for delivery of feedback to caseworkers;*
- *the opportunity to identify and review performance in a structured manner, and better identification of any training and/or development needs; and*
- *ensuring that decisions made nationally were consistent, fair and of high quality, bringing an assurance that quality was measurably improving.*⁴⁰

- 6.30 EO managers in the Curtailment Team had a QA target to sample at random 2% of all decisions prior to the decision letter being served. Curtailment decisions were assured against a standard framework, which included checking that the caseworker had:

- completed Operating Mandate and security checks, and had taken appropriate action where necessary;
- inputted case details correctly onto CID;
- drafted the decision letter without spelling or grammatical errors; and
- followed outstanding leave application processes⁴¹ correctly.

- 6.31 Decisions that had been quality assured were scored on a 'QR' scale against the number and severity of errors:

QR1 – Perfect

QR1F – Slight amendments

QR2 – Correct decisions, but more severe errors made

QR3 – Severe error, such as an incorrect decision or an operating mandate breach.

- 6.32 EO managers recorded QA activity locally, but not on CID. As a result, we were unable to inspect QA activity in relation to our file sample. Local records for the period covered by our sample (1 October 2014 to 31 March 2015) showed the number of cases that had been subject to QA – see Figure 13.

40 Excerpt from the Home Office intranet.

41 For example, if the student is awaiting a decision on an in-time application, or exercising a right of appeal against the refusal of such an application.

Figure 13: Number of cases subject to QA between 1 October 2014 and 31 March 2015.

Month	Decisions made	Cases subject to QA	% of cases subject to QA
October	3367	10	0.3%
November	3396	108	3.2%
December	6729	64	0.9%
January	4567	61	1.3%
February	6491	408	6.3%
March	8930	554	6.2%
Total	33480	1205	3.6%

- 6.33 The table shows that EO managers failed to meet the 2% dip sample target in three out of these six months.
- 6.34 In our AO focus groups, we were told that although AOs received feedback on their decisions where they had been quality assured, they did not understand how the decisions had been assessed.

Conclusions

- 6.35 By creating a dedicated Curtailment Team in January 2013, UKVI had made significant progress in reducing the large volume of outstanding SMS notifications that had built up by 2012, and at the time of the inspection was largely on top of the intake of new notifications.
- 6.36 However, it was still taking the Curtailment Team too long to progress individual SMS notifications to the point where curtailment was considered, one consequence of which was that decisions to curtail leave to 60 days became curtailment not pursued (CNP) decisions by default, as there were fewer than 60 days leave remaining when the case was considered.
- 6.37 The internal Home Office target of 90 days from receipt of the SMS notification to consideration of the curtailment case was out of step with the 10-day deadline by which licensed sponsors had to submit a notification. In any event, based on file sampling, the 90-day target was frequently missed. Whatever timescale the Home Office judges to be appropriate and achievable, it would improve sponsors' confidence in the system if this were a published service standard rather than an internal target. Sponsors would also welcome feedback on curtailment decisions, and while the means to provide this easily might not exist, the Home Office should as a minimum clarify for managers and staff whether this is permitted under the Data Protection Act (DPA).
- 6.38 Based on the files sampled, caseworkers were consistent and thorough in carrying out checks of the Police National Computer (PNC) and the Home Office Warnings Index (WI) as required by the UKVI Operating Mandate, and the evidential threshold set in Home Office guidance for curtailing leave was met in 49 of the 50 curtailed cases.
- 6.39 The decision quality framework (DQF) introduced by UKVI in October 2014 had the potential to enhance performance, by setting clear expectations of caseworkers and through monitoring and measuring. Although an average of 2% of Curtailment Team decisions was quality assured over a six-month period, the 2% target was not reached consistently month by month, and so the process was not operating as intended. Based on file sampling, the areas where the assurance regime, whether using the DQF or other management checks, needed to focus were: completion of all Operating Mandate checks (PNC and WI checks were being carried out and recorded, but other mandatory checks e.g. CRS were not); use and recording of the correct Immigration Rule when deciding to curtail leave (decisions to curtail were correct, but the wrong Rule was cited); and periods of grace ('wrap-up' periods) not being understood and therefore being misapplied.

Recommendations

The Home Office should:

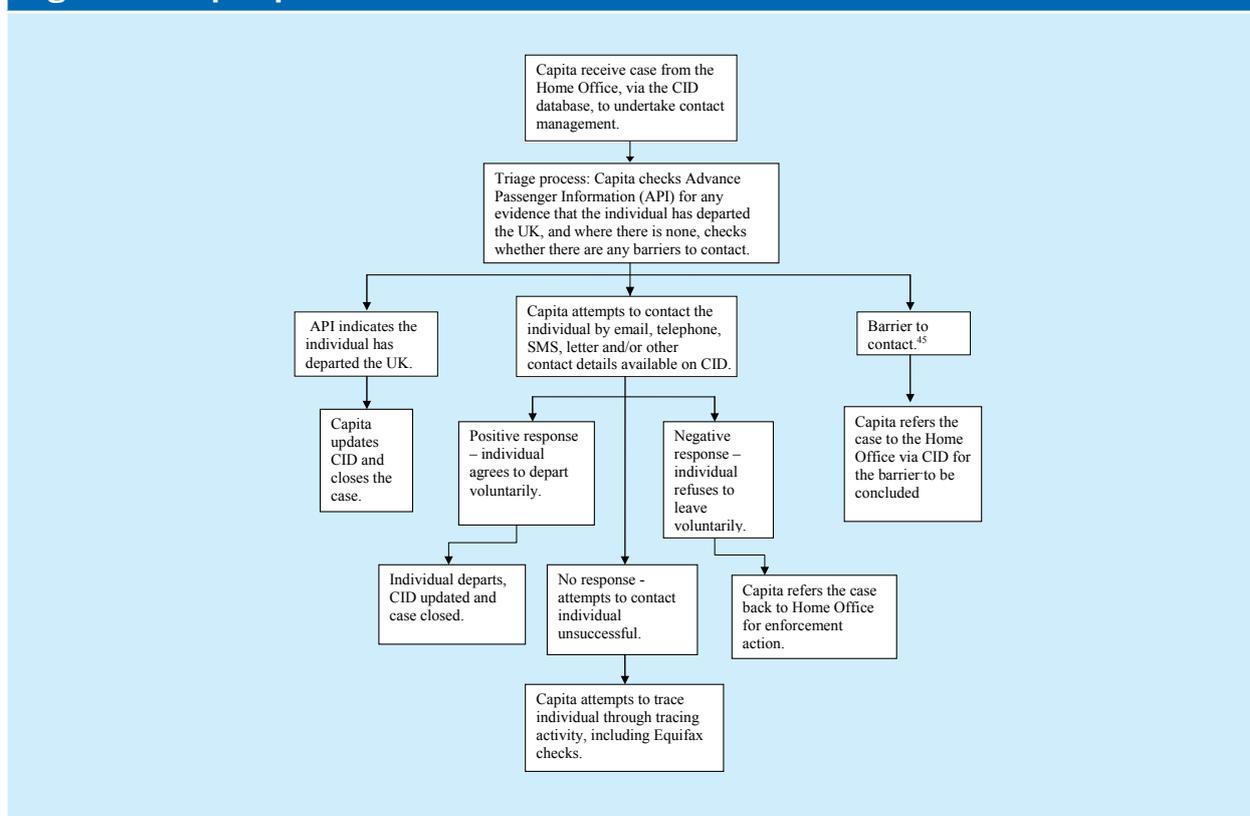
3. Ensure that the assurance regime for Tier 4 curtailment covers the correct application by caseworkers of all relevant Immigration Rules and Home Office guidance (including the UKVI Operating Mandate), and that it informs the training and individual feedback provided to caseworkers;
4. Publish service standards for the curtailment consideration process that:
 - take account of the 10-day deadline imposed on licensed sponsors for the submission of SMS notifications; and
 - drive the efficient use of resources.

7. Actions Following the Curtailment Consideration

The process

- 7.1 Once their leave had been curtailed, if a student remained in the UK beyond the curtailment date the Home Office deemed them to be an overstayer⁴² and they entered the Migration Refusal Pool (MRP). The MRP consisted of cases where a negative decision⁴³ had been recorded on CID and the Home Office was unable to satisfy itself that the individual had left the UK or had obtained a grant of leave to remain by an alternative route, for example, as the family member of an EEA national exercising treaty rights in the UK or following a successful human rights claim.
- 7.2 Since October 2012, part of the management of MRP cases had been outsourced. Capita plc⁴⁴ had been awarded the contract to assist with the contact management of all cases in the MRP. Contact management involved contacting migrants who had no legal right to remain in the UK to encourage them to leave voluntarily. Where individuals were identified as having left, this included updating and closing the CID record.
- 7.3 The diagram at Figure 14 details the contact management process for cases transferred to Capita.

Figure 14: Capita process flowchart.



42 An 'overstayer' is a migrant who remains in the UK beyond the expiry date of their leave to enter or remain.

43 (For example, a refusal of a further leave to remain application, or a breach of visa conditions by overstaying)

44 Capita plc is a private sector organisation. <http://www.capita.co.uk/>

45 Examples of a barrier to contact are: where the individual has an outstanding application for leave, a pending appeal, or where they are under 18 years of age.

File sample evidence

- 7.4 We examined our file sample of 100 cases where the decision had been to curtail leave, and 50 cases where it was decided not to curtail leave, to assess how efficiently and effectively the cases were handled after the decision was made. We looked at whether:
- API was checked by the Curtailment Team to determine if the migrant had departed the UK;
 - the Curtailment Team closed cases on CID where API indicated that the individual had left the UK;
 - processes for CNP cases were effective and efficient; and
 - curtailed cases were referred to Capita by the Curtailment Team without barriers to contact.

Use of Advance Passenger Information (API) checks

- 7.5 Advance Passenger Information (API) captures details of who has arrived into and departed from the UK. Coverage varies between methods of travel, and is most comprehensive for arriving passengers on scheduled flights.⁴⁶
- 7.6 Managers in the Curtailment Team told us that an API check was completed in all cases where curtailment was considered, including in those cases where curtailment was not pursued. In our file sample, we found a record of the API check in 74 of the 100 curtailed cases, but none of the 50 CNP cases contained any record of an API check having been completed.
- 7.7 Of the 74 cases where the API check was recorded on CID, we identified 17 where either the API data showed that the individual had left the UK, or there was no API record of them ever having arrived. These cases had been referred to Capita instead of being closed on CID by the Curtailment Team.
- 7.8 AO caseworkers told us they did not use API data routinely to close cases on CID where API indicated that the individual had left the country. Managers told us that the Curtailment Team had previously closed such cases on CID, but had stopped doing so in November 2014 when this work was transferred to the Embarkation Team.
- 7.9 UKVI established the Embarkation Team in July 2015. It undertook actions on Curtailment Team cases, including closing cases on CID where API data indicated that the individual had left the UK.
- 7.10 Figure 14 is a typical example from our file sample where API data and CID indicated that the student had left the UK, but the case had not been closed on CID:

⁴⁶ As of 1st April 2015, the Home Office have also undertaken the verification of outbound passenger details on all scheduled commercial, air, sea and rail routes.

Figure 15: Case not closed despite API and other information indicating that the individual had left the UK.

The student:

- entered the UK to begin a study course, but did not enrol for their course.

The sponsor:

- submitted an SMS notification informing the Home Office that the student had not enrolled due to personal reasons;
- subsequently informed the Home Office that the individual had returned to their country of origin because their father was ill.

UKVI:

- conducted API checks which indicated the individual had left the UK;
- curtailed leave with immediate effect;
- passed the case to Capita, who attempted to locate the student by conducting checks to trace the student using their last known address. When these proved negative, and Capita handed the case back to Removals Core Casework (RCC) as a 'no trace';
- RCC allocated the case to the Migration Removals Pool (MRP).

Independent Chief Inspector's comments:

The Curtailment Team could have used API and the information from the sponsor to close the case, and by passing it instead to Capita created a chain of nugatory work.

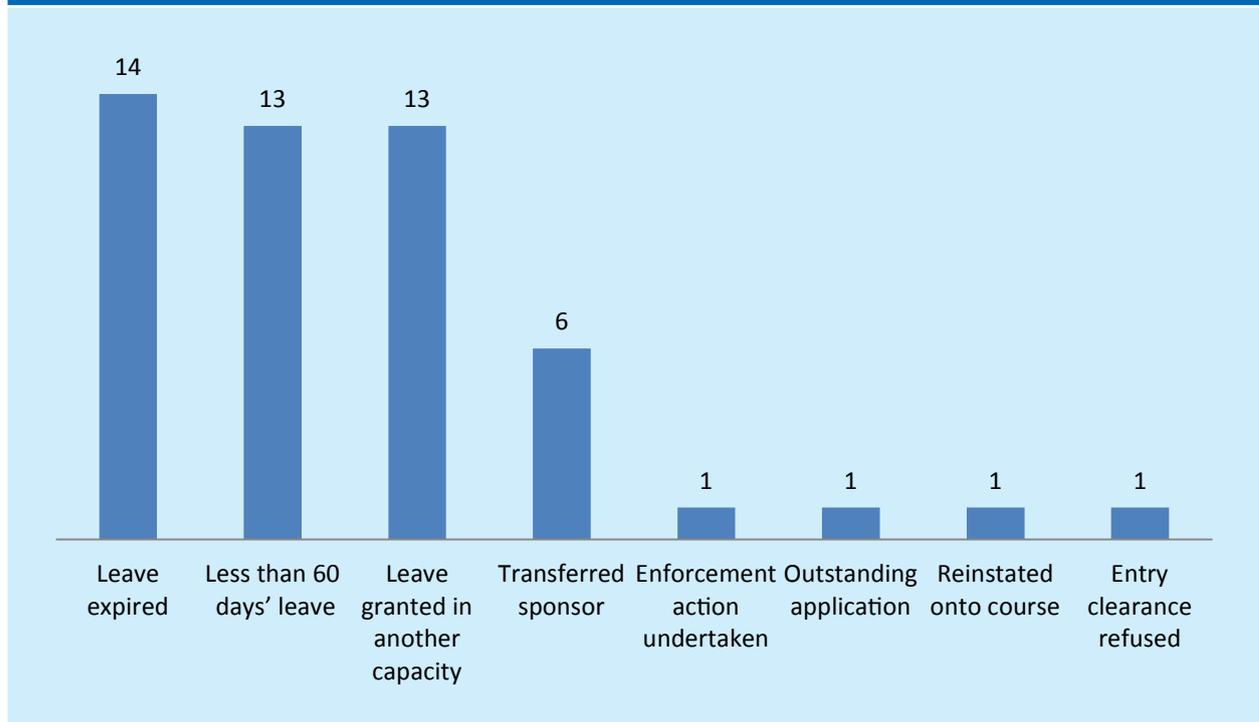
There was a further opportunity to close the case when it was handed back to RCC, but instead it was allocated to the MRP to no purpose.

- 7.11 Of the 74 cases where an API check was recorded on CID, we identified five where there was no API record of the individual having travelled to the UK. All five had been passed to Capita for action.
- 7.12 Managers told us that in cases where there was no API record of the individual having travelled to the UK it was not possible for the Curtailment Team to curtail the visa *'as it had not been activated at the UK Border'*. Managers also informed us that these cases had to be passed back to the Entry Clearance Officer (ECO) who had issued the visa for them to cancel it. The Curtailment Team had responsibility for passing cases to ECOs for cancellation, but they told us that they had not referred any cases since May 2014.
- 7.13 We requested details of all cases sent to ECOs for visa cancellation for 2014/15, which the Curtailment Team provided. This showed that as at January 2015 there were 444 cases from 2014/15 that had not been referred to ECOs for cancellation.

Handling of 'curtailment not pursued' (CNP) cases

- 7.14 There were a total of 71,601 curtailment not pursued (CNP) decisions made in the 2013/14 and 2014/15 financial years. Figure 16 records the reasons why CNP decisions were taken in the 50 cases we sampled.

Figure 16: Reasons for CNP in sample 50 cases.



7.15 In 19 of the 27 CNP cases where the student's leave had expired or where fewer than 60 days' leave remained, there was no record on CID of any action having been taken since the decision not to curtail leave. In 13 of these cases we were unable to establish the individual's current immigration status based on the information recorded on CID.

7.16 AO and EO caseworkers informed us that once they had recorded their decision of CNP on CID, they were not required to take any further action. Managers told us that there was no process in place to progress CNP cases where leave had expired before the curtailment decision was made or where fewer than 60 days remained. This was because CNP was not deemed a 'negative decision', and therefore these cases did not enter the MRP to be dealt with in the same way as curtailed cases. No further action was taken in CNP cases unless the individual came to the attention of the Home Office through an application for further leave or an encounter with an ICE team.

7.17 At the time of our inspection, senior managers were planning at some point in 2016 to implement a process to monitor future CNP cases where leave had expired or fewer than 60 days remained. There were no plans to monitor and conclude historic CNP cases.

Barriers to contact cases

7.18 When a curtailed case was recorded on CID, it resulted in the case entering the migration refusal pool (MRP), from where it was retrieved by Capita to make contact with the individual in order to encourage them to depart voluntarily, regardless of whether curtailment was with immediate effect or to 60 days.

7.19 Capita was required to refer any cases that had a barrier to contact back to RCC. In our file sample of 100 curtailed cases we found 11 that had been sent to Capita with a barrier to contact in place. In nine of these 11 cases, leave had been curtailed to 60 days but this had not yet expired. As extant leave was a barrier to contact, Capita correctly passed these cases back to Removals Core Casework (RCC).

Enforcement action in curtailed cases

7.20 Enforcement action in relation to curtailed cases was considered by local ICE teams at their Tasking and Coordination Group (TCG). The decision to accept or reject a case for enforcement action

was taken by the TCG, with priority for completion dictated by a national priorities matrix which detailed different types of immigration cases⁴⁷ and their priority for enforcement action. A Chief Immigration Officer oversaw the tasking process and updated CID with the details of whether a case was accepted or rejected.

- 7.21 Managers told us that student cases which had been part of Operation Agantuk had been a high priority according to the prioritisation matrix and these cases had been dealt with. At the time of our inspection, student cases no longer featured on the matrix. We were told that ICE teams had no removal targets for student cases, even though managers and staff considered these to be comparatively straightforward removals as students generally held valid travel documents and had not been in the UK for long enough to have built up significant Article 8 rights.⁴⁸

Conclusions

- 7.22 Practice in relation to the closure of Tier 4 cases was inconsistent. If caseworkers are to rely on API data, with or without additional information, as confirmation of departure from the UK, or the absence of an API record of entry as confirmation that an individual in possession of a Tier 4 visa has not travelled to the UK, this should be applied consistently and all such cases closed. By passing cases that could have been closed on this basis to Capita for action, caseworkers were creating unnecessary work, including for Removals Core Casework (RCC) when Capita passed the case back to them as unworkable.
- 7.23 UKVI deemed curtailment of leave a ‘negative decision’. It resulted in the case entering the migration refusal pool (MRP), from where Capita retrieved it to encourage the individual to depart voluntarily and, if this did not work, the individual become liable for enforced removal. CNP decisions were not deemed ‘negative’, and no further action was taken in respect of them. This included cases where the individual had already overstayed their leave, or had a period of leave remaining that was less than their permitted period of grace (‘wrap-up’). In such cases the decision not to curtail leave was based on the fact that it would have no practical effect, rather than on the understanding that the individual had either departed or obtained further leave. As such, these cases should have been treated in the same way as cases where leave was curtailed.
- 7.24 Curtailed cases were being referred to Capita while still within the period of grace, with the result that Capita was, correctly but unhelpfully, bouncing them back to the Home Office (Removals Core Casework) because there was a ‘barrier to removal’. This was wasted effort for all parties.
- 7.25 There was no process in place to monitor CNP cases to ensure that individuals with no right to remain in the UK had departed voluntarily or, where necessary, had been identified for enforcement action. Between 1 April 2013 and 31 March 2015, the Home Office made 71,601 CNP decisions. Many of these individuals may have departed the UK or have been granted leave to remain on other grounds. However, the true position, including the number and whereabouts of those who have remained in the UK illegally, is not known.
- 7.26 Immigration Enforcement’s tasking process did not classify the removal of students whose leave had been curtailed as high priority. This was despite the Home Office having accepted a recommendation from a previous inspection⁴⁹ to take necessary steps to locate and remove students with curtailed leave, and the view of staff and managers that these individuals were generally easier to remove than many other migrants as they generally held valid travel documents and had not been in the UK for long enough to have built up significant Article 8 rights.⁵⁰

47 For example: failed asylum seekers, sham marriage cases, bogus students or illegal workers.

48 Article 8 of the European Convention on Human Rights provides a right to respect for one’s ‘private and family life, his home and his correspondence’, subject to certain restrictions that are ‘in accordance with law’ and ‘necessary in a democratic society’.

49 ‘An Inspection of Tier 4 of the Points-based System (Students)’ was published on 29 November 2012 and can be accessed at: <http://icinspector.independent.gov.uk/inspections/inspection-reports/2012-inspection-reports/>

50 Article 8 of the European Convention on Human Rights provides a right to respect for one’s “private and family life, his home and his correspondence”, subject to certain restrictions that are “in accordance with law” and “necessary in a democratic society”.

Recommendations

The Home Office should:

5. Issue clear instructions to caseworkers in relation to the closing of cases, and the referral of cases to issuing Entry Clearance Officers for cancellation, based on Advance Passenger Information (API) indicating that a Tier 4 student has departed the UK, or the absence of an API record of an individual in possession of a Tier 4 visa having entered the UK, and ensure that these instructions are followed consistently.
6. Treat cases that attract a 'curtailment not pursued' (CNP) decision because the individual is an overstayer, or has a period of leave remaining that is shorter than their permitted period of grace and curtailment would have no practical effect, in the same way as curtailed cases.
7. Take the necessary steps to identify and locate those individuals amongst the c.71,000 CNP cases decided between 1 April 2013 and 31 March 2015 who have remained in the UK illegally, with a view to effecting their removal.
8. Review the flow of cases referred to Capita to eliminate cases bouncing back as unworkable, including those that should have been closed based on Advance Passenger Information (API) and those curtailed cases where the period of grace has not expired when referred.
9. Review whether the priority currently given to Tier 4 curtailed cases within the Immigration Enforcement national prioritisation matrix is appropriate.

Appendix 1: Role and Remit of the Chief Inspector

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 and report on the efficiency and effectiveness of the Agency. In 2009, the Independent Chief Inspector's remit was extended to include customs functions and contractors.

On 26 April 2009, the Independent Chief Inspector was also appointed to the statutory role of independent Monitor for Entry Clearance Refusals without the Right of Appeal as set out in Section 23 of the Immigration and Asylum Act 1999, as amended by Section 4(2) of the Immigration, Asylum and Nationality Act 2006.

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.

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 Home Office and the Border Force, and reports directly to the Home Secretary.

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. Under the new arrangements, the department UK Visas and Immigration (UKVI) was introduced under the direction of a Director General.

Appendix 2: Inspection Framework and Core Criteria

The criteria used in this inspection were taken from the Independent Chief Inspector's Core Inspection Criteria. These are shown in Figure 17.

Figure 17: Inspection criteria used.

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.

Safeguarding individuals

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

Continuous Improvement

9. The implementation of policies and processes should support the efficient and effective delivery of border and immigration functions.
10. Risks to operational delivery should be identified, monitored and mitigated.

Appendix 3: List of Participants in the Online Survey⁵¹

- Aberystwyth University
- Aston University
- Bell Educational Services Ltd
- Birmingham City University
- Bournemouth University
- Cardiff Metropolitan University
- Cardiff University
- CATS College
- David Game College
- De Montfort University
- DLD College London
- Durham University
- Falmouth University
- Glyndwr University
- Grwp Llandrillo Menai
- Imperial College London
- Leeds Beckett University
- Leeds City College
- Liverpool John Moores University
- London Business School
- London School of Economics and Political Science (LSE)
- London School of Hygiene & Tropical Medicine
- Loughborough University
- Newcastle University
- Nottingham Trent University
- Plymouth University
- Royal Academy of Music
- Royal Conservatoire of Scotland
- SOAS, University of London
- Staffordshire University
- Teesside University
- The University of Central Lancashire

⁵¹ Five institutions submitted more than one response.

- The University of Edinburgh
- University College London
- University of Aberdeen
- University of Bath
- University of Bradford
- University of Cambridge
- University of Chester
- University of Derby
- University of Exeter
- University of Glasgow
- University of Huddersfield
- University of Hull
- University of Kent
- University of Leeds
- University of Lincoln
- University of Liverpool
- University of Manchester
- University of Nottingham
- University of Oxford
- University of Portsmouth
- University of Reading
- University of Salford
- University of Sheffield
- University of St Andrews
- University of Stirling
- University of Sunderland
- University of the Highlands and Islands
- University of Ulster
- University of Wales Trinity Saint David
- University of Warwick
- University of West of Scotland
- University of Winchester
- University of Wolverhampton
- Varndean College
- York St John University

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Lead Inspector: **Shahzad Arrain**

Inspectors: **Jason Roberts**

Dr Anna Marslen-Wilson

Robert Dixon

Inspection Support: **Stephanie Turner**

