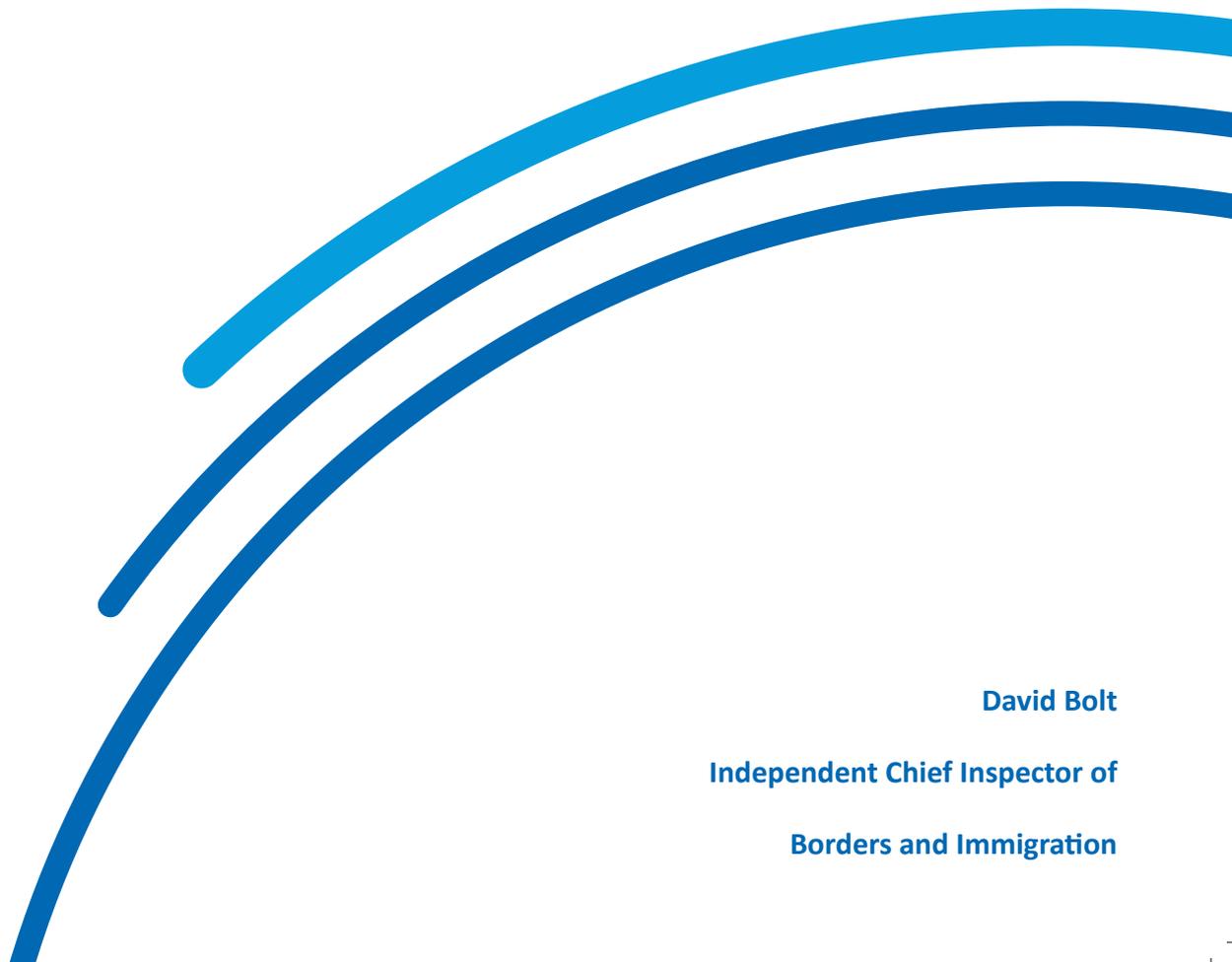




# A re-inspection of the Administrative Review process

January to March 2017



David Bolt

Independent Chief Inspector of  
Borders and Immigration



# **A re-inspection of the Administrative Review process**

**January to March 2017**

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

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# Contents

Foreword	2
1. The re-inspection	3
2. Background	5
3. Findings and conclusions	7
Annex A: 'An inspection of the Administrative Review processes introduced following the 2014 Immigration Act' (September – December 2015): Recommendations and Home Office responses.	24
Annex B: Role and remit of the Independent Chief Inspector	31

# Foreword

The Immigration Act 2014 ('the 2014 Act') replaced the right of appeal to the Immigration and Asylum Tribunal for certain types of immigration decision with an internal Home Office administrative review (AR) process. The Home Office explained that this was in order to provide "a proportionate and less costly mechanism for resolving case working errors".<sup>1</sup>

During the passage of the 2014 Immigration Bill, some MPs and peers argued that an internal process would not be an effective replacement for an appeal to a judge. To meet these concerns, section 16 of the 2014 Act required the Home Secretary to commission a report from the Independent Chief Inspector of Borders and Immigration that addressed:

- the effectiveness of AR in identifying case working errors
- the effectiveness of AR in correcting case working errors
- the independence of persons conducting AR (in terms of their separation from the original decision maker).

My inspection report was published on 26 May 2016. In addition to the section 16 points, it examined customer service standards, consistency across different Home Office directorates, organisational learning and cost savings.

The inspection found the effectiveness of ARs in identifying and correcting case working errors, and in communicating decisions to applicants needed to improve significantly. On the independence of the reviewer, the Home Office had created a separate, dedicated team for in-country applications, but overseas and 'at the border' ARs were being reviewed locally, making separation harder to evidence.

The report made 14 recommendations, grouped under four headings: AR applications; consideration of ARs; quality assurance; learning. The Home Office accepted 13, and partially accepted one.

This re-inspection examined progress in implementing the recommendations. It found that the handling of in-country ARs had improved considerably, but progress with overseas and 'at the border' ARs had been slower. Six recommendations could be considered completely 'closed'. However, the Home Office was not yet able to demonstrate that it had delivered an efficient, effective and cost-saving replacement for the previous appeals mechanisms. This was made more difficult because ARs are split across three business areas, and the Home Office should consider appointing a senior responsible owner for the overall system of ARs to ensure consistency and benefits realisation.

This report was sent to the Home Secretary on 23 May 2017.

**D J Bolt**

**Independent Chief Inspector of Borders and Immigration**

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<sup>1</sup> Immigration Bill Factsheet: Appeals (clauses 11-13) dated December 2013. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/262789/Factsheet\\_05\\_-\\_Appeals.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/262789/Factsheet_05_-_Appeals.pdf)

# 1. The re-inspection

- 1.1 'An inspection of the Administrative Review processes introduced following the 2014 Immigration Act' (September – December 2015) made 14 recommendations, of which 13 were accepted and one partially accepted. This re-inspection looked at the Home Office's progress in implementing each of these recommendations.
- 1.2 The re-inspection paid particular attention to the three 'tests' set out in section 16 of the Immigration Act 2014 ('the 2014 Act'): the effectiveness of identifying case working errors; the effectiveness of correcting them; and, the independence of the reviewer. It also considered customer service standards, consistency across the Home Office directorates dealing with ARs, organisational learning and cost savings, all of which were within the scope of the original inspection.
- 1.3 The re-inspection team:
  - examined Home Office documentary evidence, including guidance
  - made a familiarisation visit to the Manchester UKVI AR 'hub' in Manchester
  - examined 175 ARs considered between 26 May and 26 December 2016, including:
    - 52 AR applications made in-country
    - 50 AR applications made overseas (considered at overseas Decision Making Centres (DMCs) or in Sheffield)
    - 25 AR applications made at the border
    - 48 AR applications rejected by the Home Office as invalid.<sup>2</sup>
  - between 23 March 2016 and 31 March 2016, interviewed staff and managers at:
    - the UKVI AR processing hub in Manchester, which deals with all AR requests submitted in respect of in-country decisions (onsite visit)
    - the UKVI International Casework and Quality assurance team (ICQAT) based in Croydon and Sheffield, which processes AR applications received from a selection of overseas DMCs (onsite visit)
    - four overseas Decision Making Centres (DMCs) dealing with AR applications submitted in respect of local visa decisions (by telephone)
    - London Heathrow Airport, where Border Force staff process AR requests submitted in respect of 'at the border' refusal decisions (onsite visit).

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<sup>2</sup> 50 in-country and 50 invalid AR applications were originally requested, but two invalid cases were found to be in scope in-country cases, so were sampled in that batch instead.

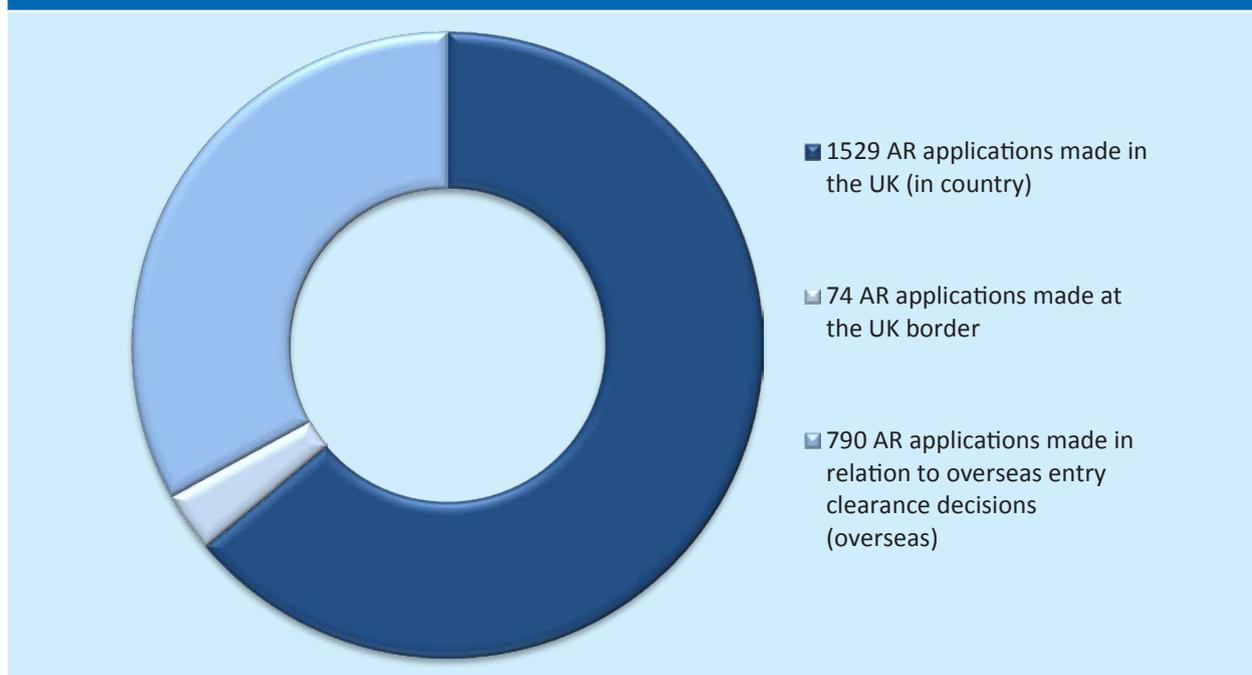
1.4 The sampling of AR applications focused on:

- the quality of decisions
- audit trails of decisions and actions on the electronic record systems
- whether full reconsiderations were being conducted
- whether caseworkers were taking into account all of the applicant's concerns
- the independence of the AR decision maker from the initial decision maker.

## 2. Background

- 2.1 An administrative review (AR) scrutinises an eligible decision to determine whether the decision was the result of a case working error, as defined within Appendix AR of the Immigration Rules.<sup>3</sup> AR2.11 and AR2.12 provide technical definitions of all case working errors. They include misapplication of rules, policy or guidance and incorrect calculation of the period or conditions of leave.
- 2.2 Between 1 October and 31 December 2016 the Home Office received a total of 2,393 AR applications. These were received across three business areas as detailed in Figure 1. The outcomes of ARs decided within the same period are detailed in Figure 2.

**Figure 1: AR applications received between 1 October and 31 December 2016 by business area**



**Figure 2: Outcomes of ARs decided between 1 October and 31 December 2016**

Business area	Outcome of AR		
	Decision overturned	Decision upheld	AR rejected as invalid
In-country	52	883	98
'At the border'	5	34	13
Overseas	165	616	N/K <sup>4</sup>

<sup>3</sup> <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-ar-administrative-review>.

<sup>4</sup> It is not possible to show numbers of AR applications submitted overseas and rejected as invalid as the Home Office does not retain central statistics.

- 2.3 The AR process is designed primarily to provide access to redress for those whose application for leave to enter or remain in the UK has been refused. However, individuals who have been granted leave in-country<sup>5</sup> may also apply for AR if they consider that the period of their leave, or the conditions attached to it, have been calculated incorrectly.
- 2.4 Prior to the 2014 Act, a system of AR already existed for refusal of entry clearance applications made overseas under the Points Based System (PBS).<sup>6</sup> This took the form of reviews by Entry Clearance Managers (ECMs) of decisions made by Entry Clearance Officers (ECOs). The 2014 Act widened the scope of AR to include decisions made in-country and 'at the border'.
- 2.5 The original inspection reported data for AR decisions for the period 1 April to 30 September 2015. This showed that the percentage of successful ARs, those where the refusal or cancellation decision was 'overturned' was 8% for in-country (191 out of 2,369), 22% for 'at the border' (21 out of 96), and 21% for overseas (102 out of 487).
- 2.6 The data from Figures 1 and 2 are not directly comparable, but the 'overturn' percentages for in-country (3.4%) and 'at the border' (6.8%) are noticeably lower. The original report drew attention to the fact that at 8% the in-country 'overturn' rate was already much lower than might have been expected "in light of the Home Office's own assessment in July 2013 of the extent of caseworking errors in Managed Migration cases that had been lost at appeal." However, it found no evidence that the upheld/overturn rates had been questioned.

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<sup>5</sup> Within the UK.

<sup>6</sup> The PBS was introduced in 2008. Most applications from non-EEA migrants are made under the PBS, which is divided into 'tiers': Tier 1 (entrepreneurs and investors), Tier 2 (skilled workers), Tier 4 (students) and Tier 5 (temporary workers).

## 3. Findings and conclusions

### Recommendation 1

- 3.1 Under Paragraph 34R of the Immigration Rules,<sup>7</sup> an applicant who has been refused leave to enter or leave to remain within an application category that attracts an administrative review (AR) has, dependent on location, a time limit of 7, 14 or 28 days from the date a decision has been ‘served’ to submit an AR request. Appendix SN of the Rules sets out when any refusal decisions are deemed to have been served (that is, received by the applicant).
- 3.2 The original inspection found that decision notices did not sufficiently advise applicants of the Rules regarding the deemed date of receipt, nor that applicants may be required to prove, when requested, that their decision notice was received on a later date. Instead decision notices simply stated: “You must apply for administrative review within x days of receiving the decision.”
- 3.3 This led to Recommendation 1, which the Home Office accepted.

**The Home Office should make it clear to applicants in published guidance and on the online application form that the deadline for applying for an AR is calculated from the deemed date of receipt of the eligible immigration decision unless the applicant can demonstrate they received this on a later date.**

### Re-inspection findings

- 3.4 Inspectors found that the most recent AR guidance (updated in April 2016) provided full details to applicants to explain the time limits and set out clearly when an application is deemed to have been received. The guidance also specified that, in instances when the date of receipt is being challenged, the onus is on the applicant to provide evidence: “If the migrant claims they received the in-UK or overseas decision on a later date, it is their responsibility to show when it was actually received.”<sup>8</sup>
- 3.5 After examining the sample ARs from all three business areas (applications made in-country, ‘at the border’ and overseas) and speaking to staff involved receiving and validating applications, inspectors were satisfied that the original notice of refusal gave sufficient information to applicants about how to submit an AR request.

### Conclusion

- 3.6 The revised guidance published in April 2016 has addressed the concerns raised in Recommendation 1. **Recommendation 1 is now closed.**

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<sup>7</sup> <https://www.gov.uk/guidance/immigration-rules/immigration-rules-index>.

<sup>8</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/606699/Admin-review-guidance-v8\\_0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606699/Admin-review-guidance-v8_0.pdf).

## Recommendation 2

- 3.7 The original inspection identified inconsistencies in how caseworkers assessed and applied Paragraph 34R of the Immigration Rules in relation to out of time AR applications.
- 3.8 This led to Recommendation 2, which the Home Office accepted.

**Ensure caseworkers take all reasonable steps to check the actual date of receipt of the eligible decision before rejecting applications on the basis that they are out of time.**

## Re-inspection findings

### Applications made in-country and 'at the border'

- 3.9 Inspectors found that Home Office staff validating applications were aware of the requirement to ensure that dates were calculated correctly, and routinely used services such as Royal Mail 'Track and Trace' to confirm delivery dates. Of the 48 AR applications deemed invalid that inspectors examined, 21 had been invalidated for being 'out of time'. Inspectors found that this was incorrect in one of the 21 cases.

### Applications made overseas

- 3.10 Decision notices for overseas entry clearance applications are collected in person from the relevant overseas Visa Application Centre (VAC). As a result, it was not possible for caseworkers to use a postal tracking service to monitor when a refusal notice was received by the applicant.
- 3.11 In the 50 overseas ARs examined for this re-inspection, inspectors identified one in which the applicant submitted the AR application out of time. In this instance, the overseas Decision Making Centre (DMC) accepted the mitigating circumstances put forward by the applicant. Despite being out of time, the AR application was validated and processed. Inspectors found no instances of overseas DMCs rejecting applications incorrectly as out of time.

## Conclusion

- 3.12 Clarifications in policy and revised training have led to improvements in dates for receipt of decision and eligibility to apply for an AR being calculated correctly. **Recommendation 2 is now closed.**

## Recommendation 3

- 3.13 At the time of the original inspection, it was found that there was significant scope to improve record keeping in terms of invalid AR applications, including correspondence with applicants. In many cases, neither the electronic notes nor the notices of invalidity sent to applicants set out clearly the reasons for rejection, including failure to record reference to the deemed date of receipt where this was used to decide that the application was out of time.
- 3.14 This led to Recommendation 3, which the Home Office accepted.

Ensure that CID<sup>9</sup> notes and AR invalidity notices state clearly why an AR application was determined to be invalid.

## Re-Inspection Findings

### Applications made in-country and 'at the border'

- 3.15 AR caseworkers of all grades told inspectors that they understood the importance of recording accurate electronic notes. However, of the 48 AR applications deemed invalid examined by inspectors, ten in-country applications had inadequate notes recording actions and the rationale for decisions. Inspectors identified no issues relating to invalid 'at the border' applications.

### Applications made overseas

- 3.16 Staff were aware of the requirement to record reason(s) for rejecting an AR application as invalid. In the 50 overseas ARs examined for this re-inspection, inspectors identified five applications that were invalid. Four of these applications had been rejected and electronic casework systems and customer correspondence accurately recorded the reasons. One had been incorrectly validated and considered. As detailed at Figure 2, the Home Office does not collate centrally the number of AR applications submitted overseas and rejected as invalid.

## Conclusion

- 3.17 AR caseworkers understood the importance of making accurate notes on electronic systems when rejecting AR applications as invalid. However, the file sample indicated that in a significant number of cases the notes made by staff validating in-country AR applications were inadequate. Therefore, **Recommendation 3 remains open for the in-country AR work area. Recommendation 3 can be closed for 'at the border' and overseas ARs**, but neither area should take this as a signal to relax.

## Recommendation 4

- 3.18 The AR fee may be waived if an applicant is able to demonstrate that, as a result of exceptional circumstances, they are unable to pay the fee. The guidance states:

“You must consider applications for fee waivers due to exceptional circumstances on a case by case basis and on their own individual merits... If the claim did not meet the high threshold for a fee waiver, you must advise the migrant that the request for a fee waiver has been refused and invite them to pay the fee within 7 working days of the day of the request. If the migrant fails to pay the fee by the end of this period, you must reject the application for non-payment of the fee.”

- 3.19 The original inspection discovered that the Home Office had difficulty in applying the guidance because of the way the online system worked. Where applications did not qualify for a fee waiver and were rejected for non-payment, applicants were advised to make a fresh application within the number of days remaining from the original 14 days allowed (not counting the time elapsed between submission of the application and rejection).

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<sup>9</sup> The Home Office's Case Information Database.

3.20 These issues led to Recommendation 4, which the Home Office accepted.

**Where the applicant failed to qualify for a fee waiver, ensure the invalidity notice informs them they may reapply with the fee within seven days.**

## Re-inspection findings

### Applications made in-country and 'at the border'

3.21 Inspectors found no issues relating to fee waiver rejections, and no instances of an applicant being given incorrect information relating to fee waivers, either in the sample files or during the onsite phase of the re-inspection. Staff told inspectors that they would always provide the applicant with the opportunity to pay the fee if a fee waiver was not appropriate, and a senior caseworker (Executive Officer) was always involved in the decision making and quality assurance process for those cases.

### Applications made overseas

3.22 No fee is payable in relation to AR applications submitted overseas, so this recommendation did not apply.

## Conclusion

3.23 Inspectors saw no evidence that the issues identified in the original report were still occurring, and steps had been taken to ensure that applicants were aware of their rights with regard to fee waivers. Consequently, **Recommendation 4 is now closed.**

## Recommendation 5

3.24 At the time of the original inspection, the majority of staff in the in-country AR team had no previous experience of PBS casework and limited experience of immigration casework. While staff and managers considered their training to have been adequate, sampling of cases indicated considerable scope to improve their understanding of relevant Immigration Rules, guidance and practice.

3.25 Border Force training on ARs consisted of a presentation lasting for up to three hours. At the time of the original inspection, not all staff who carried out ARs had received the training, and those who had considered it inadequate as it had focused on legislation and policy rather than dealing with the practical aspects of reviewing cancellation decisions. Staff new to dealing with ARs relied on the Border Force 'Operations Manual', which they found useful, and consulted their colleagues. However, the 'Operations Manual' did not include guidance on completing electronic records, and staff had fed this back.

3.26 Inspectors had also found that neither the training nor the manual addressed whether AR reviewers should carry out their own verification checks or should limit their considerations to the information available to the original decision maker. This led to inconsistency, with some reviewers carrying out verification checks and others not.

3.27 Recommendation 5 addressed the training of AR reviewers. It was accepted by the Home Office.

**Provide training for AR reviewers that is consistent with the training provided to original decision-makers.**

## Re-inspection findings

### Applications made in-country

- 3.28 Since the original inspection, managers at the United Kingdom Visas and Immigration (UKVI) Manchester AR 'hub' had invested a significant amount of effort into staff training. Inspectors found that, while initial decision makers and AR decision makers do not receive identical training packages, the latter are trained to an appropriate level to enable AR consideration. In addition to initial training packages, regular workshops and training events help them to develop their skills. Inspectors found that a thorough and consistent performance management process was in place to identify staff who needed further development or support. Caseworkers told inspectors that they felt that adequate training was given to fulfil their roles, and when needed they were able to seek assistance from more experienced colleagues. Of the 52 in-country ARs examined by inspectors, 47 were found to be in line with guidance, which supported the view that most staff had received sufficient training.

### Applications made 'at the border'

- 3.29 Border Force AR decision makers are all Higher Officers involved in the daily operational control of ports of entry, and inspectors found that AR decision makers were familiar with policy and guidance and trained to an equivalent level to initial decision makers. Inspectors met with Border Force Operational Policy managers and reviewed existing AR policy, and were satisfied that the existing policy was comprehensive and regularly maintained. Inspectors also interviewed AR decision makers at Heathrow Airport and found that staff were satisfied that they had been provided sufficient training to conduct an AR consideration. This was reflected in the outcomes of sampling where, of the 25 'at the border' ARs examined by inspectors, 21 were conducted in line with policy and guidance.

### Applications made overseas

- 3.30 Recommendation 5 did not relate to AR applications submitted in relation to entry clearance decisions, where they were handled by fully-trained Entry Clearance Managers.

## Conclusion

- 3.31 Staff in the two areas identified in the original recommendation felt that they had received consistent training, and inspectors found that regular workshops and retraining sessions were being delivered. More should be done to ensure sharing of best practice across the business areas, and all three business areas were examining how this could be done as a formal process. Although not all AR decision makers were trained to the same level as the original decision maker, inspectors found that they possessed sufficient knowledge to undertake their roles effectively and efficiently, as demonstrated by the level of decision-making accuracy. As a result, **Recommendation 5 is closed.**

## Recommendation 6

- 3.32 UKVI created a separate, dedicated team in Manchester to process all ARs of immigration decisions made in the UK. UKVI had planned to staff the team with Executive Officer caseworkers, mirroring the grade of the bulk of initial decision makers. However, at the time of the original inspection, the team was comprised largely of Administrative Officers, the majority of whom had little or no experience or knowledge of immigration casework and limited training, which did not include, for example, how to assess an applicant’s credibility. This approach increased the risk that errors would not be identified and corrected, and may be compounded.
- 3.33 Recommendation 6 focused on the staffing and structure of the Manchester AR Team. It was accepted by the Home Office.

**In light of its performance to date, revisit the structure, grading and staffing (in terms of knowledge and experience) of the AR Team in Manchester to ensure its effectiveness in identifying and correcting case working errors.**

## Re-inspection findings

- 3.34 After publication of the inspection report, UKVI undertook a full review of the Manchester ‘hub’ staffing requirements. As a result, the team structure was changed and, at the time of re-inspection, there were 47 staff at the following grades.

Grade	Numbers
Grade 5 (Senior Civil Servant)	1
Grade 6	1
Grade 7	2
Senior Executive Officer	2
Higher Executive Office	4
Executive Officer	21
Administrative Officer	16
<b>Total</b>	<b>47</b>

- 3.35 A team of Administrative Officers now deals with initial receipt and validation of applications, and undertakes some straightforward case work. This team is managed by an Executive Officer, who quality assures the work and monitors performance. The majority of AR decisions are made by Executive Officer caseworkers, who are managed by a Higher Executive Officer. Senior Executive Officers then monitor team performance and manage the process, ensuring that case working functions are as efficient and effective as possible.
- 3.36 Performance is managed on an individual basis using UKVI’s QATRO system,<sup>10</sup> with outcomes of quality assurance discussed at a weekly board meeting and covering recent trends and specific or individual concerns. AR caseworkers are kept informed of performance via team briefings and

<sup>10</sup> QATRO is an internal Home Office quality assurance and feedback tool, which assigns a Decision Quality (DQ) score to monitor staff performance.

weekly catch up meetings. Inspectors observed the process and found it to be an effective way of identifying development needs and emerging issues.

- 3.37 However, the re-inspection identified a new issue that impacts on the Manchester AR Team's capacity and productivity, and means that some question marks over its new structure remain.
- 3.38 In addition to processing applications that meet the AR eligibility criteria, the volumes of which are already high, inspectors found that Manchester also deals with ARs submitted by individuals who have been granted UK leave but have found data errors in their Biometric Residence Permit (BRP).<sup>11</sup> As stated at Paragraph 2.1, the Immigration Rules define which types of data errors can be rectified via an AR and limits such errors to miscalculations of leave. Errors relating to personal data such as name and date of birth cannot be rectified via an AR, and instead the Home Office provides an alternative means to rectify them.<sup>12</sup>
- 3.39 Staff in Manchester demonstrated varying levels of knowledge about any alternative method for an applicant to rectify errors in personal data. They told inspectors that around half of the cases the AR 'hub' reviewed related to BRP errors, although these were relatively quick to resolve.
- 3.40 While four of the 52 AR applications examined for this re-inspection raised BRP errors, none were personal data issues. All four met the eligibility criteria for an AR, and all were dealt with in line with policy and guidance.

## Conclusion

- 3.41 UKVI had reviewed the structure of the Manchester AR Team and had made changes that answer the original concerns, which focused on knowledge and experience, therefore **Recommendation 6 is considered closed**. The Home Office needs to consider, however, if having the Manchester AR Team respond to BRP errors is the most efficient and effective use of UKVI resources without making further efforts to reduce them at source.

## Recommendation 7

- 3.42 At the time of the original inspection, UKVI had not created a "separate, dedicated team" to deal with ARs in respect of entry clearance refusals made overseas. Most ARs were completed by an Entry Clearance Manager (equivalent to a Higher Executive Officer), based at the DMC where the original refusal decision had been made. As such, there was a lack of obvious separation of the reviewer and original decision maker, and it was difficult to demonstrate that overseas AR reviews were truly independent.
- 3.43 Similarly, 'at the border' ARs did not have a "separate, dedicated team". ARs were completed by a Border Force Higher Officer (equivalent to Higher Executive Officer). Border Force tried to ensure that AR reviewers were not involved in authorising the original cancellation of leave decision, or in the line management chain of the original decision maker. But, this was hard to achieve, especially at smaller ports.
- 3.44 Recommendation 7 was made as the result of the overseas and 'at the border' findings in relation to separation and independence. It was accepted by the Home Office.

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<sup>11</sup> A Biometric Residence Permit is provided to foreign nationals with leave to remain in the UK. It confirms their identity, right to study or work (if any) and access to public funds (if any).

<sup>12</sup> <https://www.gov.uk/biometric-residence-permits/report-problem>.

**Produce a revised statement about the processes for overseas and ‘at the border’ ARs explaining how independence and separation from the original decision-maker are ensured where there is no “separate, dedicated team of reviewers”.**

## Re-inspection findings

### Applications made overseas

- 3.45 In its response to Recommendation 7, the Home Office stated that it would establish an International Casework and Quality Assurance Team (ICQAT) in the UK to conduct all future ARs relating to overseas visa application decisions, and that “from September 2016, all administrative reviews of Entry Clearance decisions are scheduled to be undertaken by ICQAT”.
- 3.46 By the end of the re-inspection evidence gathering stage (end of March 2017), this work had not been completed. Inspectors found that the majority of AR considerations were still being carried out by the originating overseas DMC. However, based on the overseas ARs examined for this re-inspection, UKVI was compliant with Home Office guidance that a different person to the initial decision maker carried out the AR in all cases.
- 3.47 While the implementation timescale had slipped, inspectors noted that work was underway to rectify this. UKVI senior managers said that all remaining AR considerations would be conducted by ICQAT by the end of April 2017, and this would contribute to assuring demonstrable independence.
- 3.48 In order to provide assurance that the AR consideration process is independent, the guidance<sup>13</sup> specifies “a full reconsideration of the decision” when an overseas AR request is received. Inspectors found that this was not happening. Having sampled decisions and interviewed AR decision makers from five DMCs, inspectors considered that the current process for conducting ARs on applications made overseas did not constitute the required full reconsideration. Some overseas Entry Clearance Managers acknowledged that there were times when AR reviewers reviewed only the points raised explicitly by the applicant.
- 3.49 UKVI document retention policy does not require all supporting documentation to be retained with an entry clearance application, only those documents “relevant to the original decision”. In practice, this means that only documents relating to grounds given for refusal are retained. In the absence of all of the supporting documents originally supplied, it is difficult to see how AR reviewers are able to carry out a “full reconsideration”.
- 3.50 In the absence of copies of supporting documents, comprehensive Home Office records would go some of the way towards enabling a “full reconsideration”, but these have been found to be deficient in many previous inspections. A contemporaneous inspection of entry clearance operations at the Croydon and Istanbul<sup>14</sup> DMCs also looked at the quality of case notes and refusal notices, as well as with document retention.

### Applications made ‘at the border’

- 3.51 The Border Force Operational Policy team maintained a central policy on how ARs should be managed. This set out: “The BFHO who made the initial decision to refuse must not be involved in the AR or anyone in their line management chain. The BFHO undertaking the AR must not

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<sup>13</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/606699/Admin-review-guidance-v8\\_0.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606699/Admin-review-guidance-v8_0.pdf).

<sup>14</sup> An inspection of entry clearance processing operations in Croydon and Istanbul - awaiting publication.

be the same officer who authorised the decision or the line manager of the officer who took the decision. Any BFSO who is involved in the process (for example, to agree to overturn the decision) must not be the line manager of the BFHO who authorised the decision.”

- 3.52 Through observations and discussions with staff, inspectors were confident that the policy was being followed, but there was little written evidence or audit trail. There was also some inconsistency between Border Force regions. Border Force North had issued a note requiring a special minute to be added to AR cases indicating who should not be involved, which was an effective way of creating an audit trail in relation to separation and independence. However, Heathrow Airport, which received more AR requests than any other Border Force region,<sup>15</sup> had no system in place to evidence separation and independence.

### Applications made in-country

- 3.53 Given that UKVI had created the separate, dedicated AR Team in Manchester, Recommendation 7 was not directed at in-country AR applications. However, file sampling for the re-inspection identified multiple instances where, rather than making a decision on the AR, the in-country AR Team referred a case back to the initial decision maker to reconsider the application. These AR applications had been marked as invalid when they were not, and were subsequently rejected.
- 3.54 AR Team managers explained that this process had been an interim measure to ensure AR applications were considered in a timely manner, pending policy advice on what should be done in situations where a referral back to the initial decision maker was required. While this practice had the effect of resolving the AR process, there was an additional impact on the time taken for the applicant to receive a new outcome, often resulting in delay. Managers accepted that the process had not been correct, and this practice had ceased in February 2017. Inspectors were satisfied that this was the case, and that the process had been intended only as a temporary measure.<sup>16</sup>

### Conclusion

- 3.55 **Recommendation 7 remains open in relation to overseas ARs.** To close it, UKVI needs not only to complete and evaluate the structural changes it committed to making, but also to demonstrate that its document retention, case notes and refusal notices are good enough to enable a “full reconsideration” of the entry clearance applications for which ARs are requested.
- 3.56 Creating a separate, dedicated AR Team would enable Border Force to demonstrate clear separation and independence of the AR reviewer from the initial decision maker. In order for the present arrangements (where ‘at the border’ ARs are carried out at the port or airport where the initial decision was made), to satisfy the separation and independence ‘test’, Border Force operational policy and practice must be clearly documented and fully auditable, with all regions operating to the same processes and standards. Subject to this caveat, **Recommendation 7 may be closed for ‘at the border’ ARs.**

### Recommendations 8 and 9

- 3.57 The original inspection found that the notes on electronic case working systems did not provide adequate explanation or reasoning as to why in-country, overseas and ‘at the border’ AR applications succeeded or failed.

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<sup>15</sup> Heathrow is a Border Force region in its own right.

<sup>16</sup> This practice took place from May 2016 to early February 2017.

- 3.58 Inspectors identified multiple occasions where issues raised by the AR applicant had not been adequately investigated or addressed by the reviewer. In many cases, it was not clear from case notes or AR decision notices exactly what point(s) the applicant had raised. Reviewers justified their decisions with broad statements that did not fully take into account the specific and detailed reasons provided by the applicant. These findings led to Recommendation 8, which the Home Office accepted.

**Ensure that all AR reviewers address all substantive issues raised by the applicant and that CID (or CRS)<sup>17</sup> notes and decision notices accurately reflect this.**

- 3.59 The original inspection also highlighted a linked issue: were AR reviewers required to correct all the errors they found or only those identified by the AR applicant? This led to Recommendation 9, which the Home Office partially accepted.

**Clarify guidance regarding the requirement for reviewers to correct all errors contained in the original decision (not just those identified by the applicant in their AR application), including carrying out further checks where they identify these were not done correctly by the caseworker who made the original decision.**

### Re-inspection findings

- 3.60 Despite the fact that recommendation 9 was only partially accepted, the Home Office issued revised guidance in April 2016 which clearly sets out that overseas and 'at the border' ARs should entail a full reconsideration, and that in-country ARs should address only the points raised by the applicant unless other errors are detected.<sup>18</sup> It also directs that, if an in-country AR reviewer identifies an issue not raised by the applicant, the AR caseworker should rectify it.

### Applications made in-country

- 3.61 Inspectors examined 52 in-country ARs to see if all of the issues raised by the applicant had been considered in each case. They had been in all 52. While onsite, inspectors were satisfied that procedures were in place, including quality assurance checks, to ensure that all the issues raised were addressed. While inspectors were satisfied that decisions were correct, in five of the 52 cases the electronic records that had been created did not clearly set out the reason(s) for the decision or the action(s) taken.
- 3.62 Among the 52 ARs, there were six where the reviewer had identified problems with the initial decision that had not been raised in the AR application. In five of these, the reviewer rectified the errors correctly. In the remaining case, the reviewer failed to comply with guidance. Inspectors identified another AR amongst the 52 where the caseworker did not detect errors in the initial decision which had not been raised by the AR applicant.

### Applications made overseas

- 3.63 In 17 of the 50 overseas ARs examined by inspectors, the AR application had not been retained. As a result, inspectors could not determine if all substantive issues raised by the applicant had been adequately addressed. In seven cases, the notes on the electronic case working system were insufficient to explain why the reviewer had decided to uphold or overturn the initial decision. In a further seven cases, while the outcome of the AR was recorded, the notes were insufficient to establish what action(s) had been taken and how the decision had been made.

<sup>17</sup> Central Reference System (CRS) is a case working system for visa applications.

<sup>18</sup> See the Home Office response to Recommendation 9 (at Annex A) for an explanation of the different treatment of in-country AR applications.

- 3.64 Inspectors identified the continued use of broad statements within AR decision notices of applications made overseas, such as: “You have not requested a review of this category therefore I am satisfied that the points awarded are correct”, without any detail to justify the decision. When interviewed, Entry Clearance Managers accepted that there were occasions when only the points raised by an applicant within the AR grounds were considered. The result of this practice means that AR decision makers were not correcting all errors in every instance or conducting the required “full reconsideration”.

### Applications made ‘at the border’

- 3.65 Inspectors examined 25 ‘at the border’ ARs to see if all of the issues raised by the applicant had been considered in each case. There were three where the reviewer had not considered all of the applicant’s issues and a further four where the notes made on the case working system failed to explain the reason(s) for the decision or the action(s) taken. In two other cases, the reviewer had identified issues with the initial decision that had not been raised in the AR application. One of these had been rectified correctly; however the other was not rectified in line with guidance as it failed to provide the applicant with a fresh decision notice or the opportunity to make an additional AR request.

### Conclusion

- 3.66 File sampling indicated that in-country AR reviewers were considering all of the issues raised by the AR applicant in all cases. However, because of poor record keeping, inspectors could not establish whether this was the case with all overseas and ‘at the border’ AR reviews. Although all three areas needed to improve their record keeping in respect of the reason(s) for AR decisions and the action(s) taken, inspectors were satisfied that **the specific issue covered by Recommendation 8 had been resolved by ‘in country’ and can be considered closed, but it remains open for ‘at the border’ and overseas ARs.**
- 3.67 Revised guidance had clarified when a full reconsideration was required and when not, and what reviewers were required to do about rectifying any errors they identified. Therefore, **Recommendation 9 is closed.** However, file sampling identified that full reconsiderations were still not being conducted for all the cases where they should have been, so quality assurance needs to improve to ensure compliance with the guidance.

### Recommendation 10

- 3.68 At the time of the original inspection, the average processing time for in-country AR applications was nine days and for ‘at the border’ applications six days, and all but one of the sample applications had been assessed within the processing target.
- 3.69 However, average processing time for overseas ARs was 17 days, and only 84% of ARs were processed within the 28 day target. Inspectors identified inconsistencies in how applications were prioritised, and were told that some overseas posts processed AR applications in strict order of receipt, while others prioritised applications from students where the start date for the course of study was imminent.
- 3.70 Stakeholders told inspectors that Tier 4 applicants were regularly deterred from applying for an AR because of the length of time it took for a decision and the fact that a fresh study visa application could not be made while an AR was pending.

- 3.71 Recommendation 10 was therefore aimed primarily at overseas AR applications. It was accepted by the Home Office.

**Consider the scope to prioritise the processing of ARs to meet the needs of the applicant in terms of timeliness (as in the case of some Tier 4 ARs).**

### Re-inspection findings

- 3.72 In response to Recommendation 10, the Home Office stated: “consideration will be given to the possibility of processing administrative reviews more quickly for certain cohorts of applicants. The ICI [Independent Chief Inspector] will be updated in the autumn with the outcome of this consideration.”
- 3.73 At the time of re-inspection, no update had been provided, and no evidence was found to show that the Home Office had given any formal consideration to the matter.
- 3.74 Inspectors examined performance against existing targets in the sample of 175 AR applications drawn from the three AR business areas. 16 ARs (10 in-country and six overseas) were not completed within the agreed 28 days. All of the 25 Border Force ARs examined were completed within the 28 days.
- 3.75 The re-inspection team spoke to a cross-section of managers from all three AR business areas. Staff told inspectors that local processes were in place to monitor AR deadlines and to prioritise work based on the proximity to the agreed 28 day processing target, with additional processes in place to prioritise applications based on other factors such as course deadlines during peak periods.

### Conclusion

- 3.76 The Home Office did not provide an update by autumn 2016 as promised, and the re-inspection found no evidence of a policy or formal process being in place to prioritise ARs, except where they risked breaching the Customer Service Standard. Therefore, **Recommendation 10 remains open.**

### Recommendation 11

- 3.77 The original inspection looked at quality assurance processes and found that in-country ARs were formally quality assured by senior caseworkers, overseen by a Quality Manager. Up to August 2015, there had been 100% quality assurance of AR decisions, as the AR Team was newly created. This had then been reduced to 50% for experienced reviewers. However, sampling found that of 79 cases sent for quality assurance 22 contained insufficient notes to demonstrate that the required assurance had taken place. Where an electronic note said that assurance had taken place, it did not record which aspects of the decision had been checked or the results of those checks.
- 3.78 The original inspection team was told that 10% of ‘at the border’ AR decisions were quality assured by a Border Force Senior Officer. Inspectors asked for the percentage of random sampling completed by each port, but were told that no central record was kept. There was no evidence, either from notes held centrally or at ports, that any of the 40 sample cases inspectors examined had been randomly selected for quality assurance.

- 3.79 The Home Office told the original inspection team that there was no set quality assurance process for overseas AR applications. There was no evidence that any of the ARs in the sample examined by inspectors had been quality assured. Some managers told inspectors that they did look at most AR decisions, but did not formally quality assure them or make any record of having looked at them.
- 3.80 These findings resulted in Recommendation 11, which the Home Office accepted.

**Put in place formal, robust Quality Assurance procedures for all ARs (including decisions regarding the validity of applications) that takes account of the grade and experience of the reviewer and the complexity of the original decision.**

## Re-inspection findings

### Applications made in-country

- 3.81 Inspectors found that the Manchester AR ‘hub’ had done a considerable amount of work on performance management and quality assurance since the original inspection. It had adopted the QATRO system used in other parts of UKVI to monitor and develop AR caseworker performance, which enabled prompt initiation of workshops or training where needed.
- 3.82 Inspectors sampled 52 applications made in-country. The outcomes showed that quality assurance had taken place in 39 (75%) applications, with the correct decision being made in 47 (90%).
- 3.83 The Manchester ‘hub’ had also recruited additional staff and now had 46 permanent staff and one agency staff member.<sup>19</sup> In comparison, at the time of the original inspection, there were 44 staff (of whom only 12 were permanent, with the remainder agency staff or fixed term appointments). There had also been a restructuring of the team by placing Executive Officer senior caseworkers in charge of teams of Administrative Officer caseworkers. A Higher Executive Officer had oversight of each team and Senior Executive Officers then managed them as a whole. Complex cases were escalated as needed through the management structure, a system that staff told inspectors worked well.

### Applications made overseas

- 3.84 In response to the initial recommendation, the Home Office explained that the ICQAT team would establish formal quality assurance processes. The re-inspection examined 50 overseas AR applications. The ARs had been carried out either at the originating DMC or in the UK by the ICQAT team. In none of 50 cases was there any evidence or audit trail to indicate that any quality assurance work had been done.
- 3.85 Despite there being no evidence of quality assurance activity in the AR sample, staff told inspectors that work was quality assured, and that it was based on the grade and experience of the reviewer. For example, recent decisions made by new recruits to ICQAT were subject to 100% reviews, with more experienced staff subject to fewer reviews, dependent on performance.
- 3.86 Inspectors were told that an electronic decision quality framework would be introduced “in the near future”, and that this tool would formalise the quality assurance process. While work was at an advanced stage and the marking framework had been agreed, UKVI could not provide any specific date as to when the tool would be operational and integrated into the existing IT platforms.

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<sup>19</sup> See paragraph 3.34.

### Applications made 'at the border'

- 3.87 Inspectors found no evidence of quality assurance activity in the sample of 25 'at the border' AR applications; however inspectors acknowledged that they may not have been part of the 10% of files Border Force Senior Officers are required to check every quarter. During the onsite visit to London Heathrow Airport, which conducts the majority of 'at the border' AR applications, inspectors found that Heathrow managers had implemented a local policy which required AR decision makers to refer certain cases to a Senior Officer, for instance if a decision was being overturned. Border Force AR decision makers told inspectors that other informal discussions with senior officers took place, dependant on the case, however such processes were not formalised or recorded.
- 3.88 When interviewed by inspectors, decision makers were not in agreement as to what the quality assurance requirements were, with some staff indicating that 10% of AR decisions needed to be quality assured every month by Senior Officers (in line with Border Force's standard quality assurance framework), whilst others said that, in their experience, Senior Officers did not regularly quality assure the decisions and there was no set percentage assurance target.

### Conclusion

- 3.89 The work undertaken by the Manchester AR Team means that **Recommendation 11 can be considered closed for in-country ARs.**
- 3.90 **Recommendation 11 remains open for overseas and 'at the border' ARs.** Both UKVI (in respect of overseas ARs) and Border Force (in respect of 'at the border' ARs) need, as a matter of urgency, to document their quality assurances processes and to ensure that the quality assurance checks are completed and recorded formally.

### Recommendations 12, 13 and 14

- 3.91 The original inspection raised concerns at how the outcomes of ARs, quality assurance and litigation were captured and shared, and whether the Home Office was learning from these events in order to achieve continuous improvement.
- 3.92 Inspectors had seen no evidence of any analysis of AR outcomes, or that the quality assurance regime had improved the quality of outcomes, however Border Force advised that internal monitoring had not identified any issues that required action at a national level, so AR decision quality is now part of 'business as usual' assurance activity. Border Force ports and terminals did not routinely share AR outcomes. In the case of overseas ARs, there were some local initiatives to share information and provide feedback. Some overseas DMCs, for example, were identifying trends and feeding back to decision makers and their line managers. However, there was no evidence of any sharing of such information within the overseas network or with other business areas.
- 3.93 The original inspection found that the in-country AR team had established a feedback mechanism with the Home Office's Litigation Operations team. Litigation senior caseworkers were under instruction to feed back emerging issues and trends to the AR Team's Quality Manager. Formal feedback teleconferences between Litigation Operations and the AR team had been arranged and managers from Border Force and International Directorate had been invited to attend these meetings to discuss common themes and share best practice. However, it was unclear how this was working in practice or whether it had improved the quality of AR casework.

- 3.94 Inspectors identified inconsistencies in how litigation was recorded, and had concerns about the accuracy of records. They also noted that there were no central records were kept of Pre-Action Protocols (PAPs)<sup>20</sup> and Judicial Reviews challenging overseas or 'at the border' AR decisions.
- 3.95 These concerns resulted in Recommendations 12, 13 and 14, all relating to organisational learning, all of which the Home Office accepted

#### **Recommendation 12**

**Record and use the results of QA to improve the quality and consistency of AR outcomes by feeding back to reviewers and their managers.**

#### **Recommendation 13**

**Capture and feedback in a structured form to original decision-makers the learning from ARs where the reviewer has withdrawn the original decisions and/or amended the reasons.**

#### **Recommendation 14**

**Ensure that all data relevant to demonstrating how the AR system is functioning is captured and used to effect the continuous improvement of both ARs and original immigration decisions, including where Pre-Action Protocols (PAPs) or Judicial Reviews (JR) cases are conceded and why.**

### **Re-inspection findings**

#### **Applications made in-country**

- 3.96 Inspectors observed the quality assurance process and found that managers were using data obtained from QATRO to update processes and team structures. This meant that the AR Team was identifying trends and learning through improved and targeted quality assurance. The Manchester AR 'hub' received systematic feedback from litigation colleagues after cases had progressed to Judicial Review, using data to feed into management information. This was then used to inform developmental activity, such as in-house training workshops. Inspectors also identified that regular feedback was provided to initial decision makers via an auditable process, which was monitored and recorded by AR Team senior caseworkers.

#### **Applications made overseas**

- 3.97 The Home Office told inspectors of plans to consolidate the remaining overseas AR work and all post decision work streams (including litigation work) in the UK by the end of October 2017. It said that there would be significant changes to how feedback from AR outcomes, quality assurance and litigation would be provided to initial decision makers. This would include the introduction of an online Decision Quality Framework tool, allowing for efficient and properly recorded feedback to be given to caseworkers in a consistent manner.
- 3.98 At the time of the re-inspection, inspectors found that ICQAT had taken a number of steps to ensure that the learning from AR outcomes and quality assurance is recorded and shared. These

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20 A Pre-Action Protocol notification is a procedural step taken to help resolve a dispute before an applicant proceeds to request a full Judicial Review in relation to asylum, nationality and immigration cases.

included an internal review and monthly decision quality reports, and an exercise run between August and October 2016 to review overturned ARs and identify trends and learning points.

- 3.99 Since the original inspection, ICQAT compiled monthly feedback reports for individual DMCs which analysed AR decisions and quality assurance outcomes. Inspectors found that such reports highlighted trends and themes related to decision quality and rule interpretation with the aim of driving improvement in individual DMCs. There was no formal process in place across the overseas network for how such reports were used to improve decision quality or record changes to processes. Inspectors put this to ICQAT senior management who accepted the need to establish more effective feedback loops with overseas decision makers in order to secure improvements and greater consistency.
- 3.100 As of the end of March 2017, each DMC retained responsibility for dealing with actions resulting from litigation in relation to its own entry clearance decisions, such as responding to Pre-Action Protocol letters or dealing with work resulting from litigation. Inspectors found that there was no consistent process for sharing any lessons learned from litigation between each DMC and ICQAT.

### **Applications made 'at the border'**

- 3.101 At London Heathrow Airport, the Border Force quality assurance regime included having a nominated quality assurance lead at each terminal and a quarterly review of assurance work. Border Force senior management was generally satisfied that the existing processes were sufficient to assure decision quality; however, when inspectors queried if operational demands during peak periods impacted adversely on the ability to maintain quality assurance levels, it was conceded that there had been times when the required assurance levels had not been achieved.
- 3.102 Border Force officers told inspectors that they were satisfied with the levels of quality assurance checks and with how lessons learned were shared, however, inspectors found that the details of quality assurance activities and outcomes were not routinely recorded electronically or in port files. As a result, it was not possible to evidence that lessons from quality assurance were being identified and shared, either locally or across Border Force.
- 3.103 Inspectors found no agreed Border Force-wide approach to sharing lessons from litigation and ensuring continuous improvement at an organisational level. Inspectors visited Heathrow and found that whilst there were local processes in place to support sharing and learning, these were not consistent across each terminal.
- 3.104 At the time of re-inspection, Heathrow was in the process of moving responsibility for the AR function from individual terminals to a centralised casework team. This new team would process all AR applications received at Heathrow, and it was recognised by senior management that Border Force would need to develop an effective process for providing feedback and sharing lessons.

### **Conclusion**

- 3.105 The Manchester AR 'hub' had worked hard to ensure that the results from AR outcomes, quality assurance and litigation are used to further continuous improvement of in-country AR decisions and of initial decision making. A Grade 7 lead had been appointed and regular analysis, including of litigation results and AR outcomes, was taking place.

- 3.106 In contrast, the re-inspection identified significant gaps in how learning from overseas and ‘at the border’ ARs was currently being captured and shared. ICQAT had taken steps in the right direction, but the impact of these was unclear, and much depended on the transformation planned for late 2017. The move to creating a central AR team for Heathrow offers a potential solution for that region, given that most ‘at the border’ ARs relate to on entry refusals there. While the number of ‘at the border’ ARs remained small, Border Force needed to adopt an organisational approach rather than leaving learning to individual ports and regions.
- 3.107 Based on the re-inspection findings, **Recommendations 12 and 13 remain open for overseas and ‘at the border’ ARs, but can be closed for in-country ARs.**
- 3.108 All three areas responsible for considering ARs need to do more to capture data that demonstrates how the AR system is working for each category of AR. This includes the outcomes from Pre-Action Protocols and Judicial Reviews, as these provide a proxy measure for an effective AR process. The Home Office needs to do more to analyse why these are being conceded or lost, not just for the immediate learning, but to validate the introduction of the AR system. Given the scale of the changes introduced by the 2014 Act and the expectations set for ARs, not least in substantial cost savings, this data capture and evaluation should be co-ordinated departmentally and not left to the individual AR teams.
- 3.109 Based on the findings from the re-inspection, **Recommendation 14 remains open for the Home Office as a whole.**

# Annex A: ‘An inspection of the Administrative Review processes introduced following the 2014 Immigration Act’ (September – December 2015): Recommendations and Home Office responses.

## **Recommendation 1**

Make it clear to applicants in published guidance and on the online application form that the deadline for applying for an AR is calculated from the deemed date of receipt of the eligible immigration decision unless the applicant can demonstrate they received this on a later date.

### **Home Office Response: Accepted**

Applicants who receive an eligible immigration decision are informed that they have 14 days to apply for an Administrative Review from the date that they receive their decision letter. This recommendation refers to the need to ensure it is clear to applicants that the deadline for applying for an Administrative Review is calculated from the deemed date of receipt of the eligible immigration decision, unless they can demonstrate the decision was received on a later date. The deemed date of receipt is two working days after the decision was despatched.

The on-line application form asks applicants whether they are submitting their application for Administrative Review within the deadline for applying or not – if the application is being submitted after the deadline applicants are given the opportunity to explain why.

The published guidance that caseworkers work to was updated on 7 April to make clear that, in the eventuality an apparently late application for Administrative Review is received, caseworkers must check on the Royal Mail’s Track and Trace system when the original decision was delivered. Where the Track and Trace service is unavailable the guidance notes that caseworkers must request evidence from the applicant about when they received the original decision.

## **Recommendation 2**

Ensure caseworkers take all reasonable steps to check the actual date of receipt of the eligible decision before rejecting applications on the basis that they are out of time.

### **Home Office response: Accepted**

In-country Administrative Review case-workers were previously, and in good faith, applying the guidance which stated, “If the eligible decision is sent by post to an address in the UK, it is regarded as having been received on the second working day after the day on which it was posted, unless there is evidence to prove it was received on a different date.” The guidance did not direct caseworkers to check the actual date on which the notice was received.

Following a review of the procedures for validating Administrative Review applications, amended processes and guidance have been introduced which instruct caseworkers to carry out appropriate checks before any application is rejected. These checks include monitoring the Royal Mail Track and Trace system where appropriate to determine the actual date of receipt of the eligible decision. Where the Track and Trace service is unavailable, guidance further notes that caseworkers must request evidence from the applicant about when they received the original decision.

### **Recommendation 3**

Ensure that CID notes and AR invalidity notices state clearly why an AR application was determined to be invalid.

#### **Home Office response: Accepted**

This recommendation refers to the need to ensure that in-country Administrative Review caseworkers provide clear reasoning, in both internal notes on the CID database and in decision notices served to applicants, when a case is rejected as invalid. Amended processes were introduced into the operation in November 2015 to make these requirements clear to caseworkers. Compliance with the requirements is assessed through quality assurance checks.

### **Recommendation 4**

Where the applicant failed to qualify for a fee waiver, ensure the invalidity notice informs them they may re-apply with the fee within seven days.

#### **Home Office response: Accepted**

In circumstances where applicants did not qualify for a fee waiver, the in-country Administrative Review team had previously rejected their application and e-mailed them to explain the reasons for this and to invite the submission of a fresh application along with the correct fee. This practice occurred because the online application process does not currently have the facility for an applicant who does not qualify for a fee waiver to make a separate, standalone payment to the Home Office. A workaround was therefore put in place under which the outstanding application was rejected and applicants were invited to resubmit their application along with the correct fee.

With effect from December 2015, amended processes have been implemented under which applicants who do not qualify for the fee waiver do not receive a rejection decision from the Home Office but instead are sent a letter which informs them that their current application remains outstanding but they must, within 7 days, submit a further application accompanied by the appropriate fee.

### **Recommendation 5**

Provide training for AR reviewers that is consistent with the training provided to original decision-makers.

#### **Home Office response: Accepted**

In April and May 2016, all current in-country Administrative Review caseworkers received additional training on Tiers 2, 4 and 5 of Points Based System casework. The training was delivered by UKVI Business Experts who work on these Tiers and was consistent with the training

that UKVI initial decision makers receive. The additional training included modules on assessing credibility, exercising judgment based on balance of probabilities and consideration of the general vacancy rule.

### **Recommendation 6**

In light of its performance to date, revisit the structure, grading and staffing (in terms of knowledge and experience) of the AR Team in Manchester to ensure its effectiveness in identifying and correcting case working errors.

#### **Home Office response: Accepted**

UK Visas and Immigration is restructuring the grade and expertise balance of the caseworkers working on in-country Administrative Review. Where previously all Administrative Review work was undertaken by Administrative Officer caseworkers, we are recruiting Executive Officer caseworkers who will be responsible for decision making on more complex cases. We are issuing guidance to caseworkers on the particular types of cases that are likely to fall into the 'complex' category.

As a result of this change, just under half of the case working resource for in-country reviews will be Executive Officers. The in-country management structure has also been strengthened to include a Chief Caseworker to oversee all quality assurance and we are doubling the number of senior caseworkers, who will also lead on assurance processes. Further information in relation to the enhanced assurance processes being put in place is detailed under Recommendation 11.

### **Recommendation 7**

Produce a revised statement about the processes for overseas and at the border AR explaining how independence and separation from the original decision-maker are ensured where there is no 'separate, dedicated team of reviewers'.

#### **Home Office response: Accepted**

As the report notes, a proportion of Administrative Reviews of Entry Clearance decisions are already considered by reviewers that are not connected to the original decision making area.

The Entry Clearance operation is establishing a centralised team, ICQAT, the International Casework and Quality Assurance Team, which is independent of the original decision making process. From September 2016 all Administrative Reviews of Entry Clearance decisions are scheduled to be undertaken by ICQAT. Full implementation of the transition of overseas Administrative Review work to ICQAT will fulfil the commitment to establishing a 'separate, dedicated team of reviewers' for reviews of Entry Clearance decisions.

The Home Office is pleased that the ICI found the Administrative Review process was working well at the border. Border Force aims to effect an open and transparent process for Administrative Review that is fair and quick for the applicant and at the same time ensures the most effective and efficient use of resources. Guidance to staff is clear that the Higher Officer undertaking the review must not have authorised the original decision or be the line manager of the officer who made the decision.

The report acknowledges that the separation of the original decision maker from the reviewer was clear at smaller ports. At Heathrow Terminal 4, which handles the largest number of

Administrative Reviews within Border Force, there is a dedicated team of Higher Officers who conduct Administrative Reviews in addition to other caseworking duties.

As Administrative Review has now been in place for over 12 months, Border Force will review processes to ensure they are as robust, open and independent as possible.

### **Recommendation 8**

Ensure that all AR reviewers address all substantive issues raised by the applicant and that CID (or CRS) notes and decision notices accurately reflect this.

#### **Home Office response: Accepted**

All in-country Administrative Review caseworkers have received additional training to ensure that all issues raised by applicants within their Administrative Review application are fully addressed in decision notices and that relevant information is also captured on CID database. To ensure compliance with this, decision quality assessment forms for the in-country operation have been amended to include assessment of caseworkers' entries on CID notes and assessment of whether the Decision Notice has covered all points raised by an applicant.

For Administrative Reviews of Entry Clearance decisions, the operating procedures for the new centralised team of reviewers will include the requirement to consider all substantive issues raised by the applicant and to record the outcome of that consideration in caseworking notes on the CRS system and in Decision Notices.

### **Recommendation 9**

Clarify guidance regarding the requirement for reviewers to correct all errors contained in the original decision (not just those identified by the applicant in their AR application), including carrying out further checks where they identify these were not done correctly by the caseworker who made the original decision.

#### **Home Office response: Partially accepted**

Administrative Reviews undertaken overseas and at the border encompass a full reconsideration of the refusal decision, whereas in-country reviews are essentially limited to specific points raised by the applicant in their application except where in the course of that review the caseworker identifies another error.

The ICI has recommended that the in-country review should also involve a full reconsideration of the original refusal decision and should not be limited to a focus on the specific points raised in the application for Administrative Review.

Immigration and Border Policy Directorate have amended guidance and training for in-country caseworkers to make clearer that where they identify an error in the course of their review they should correct it even if the applicant has not raised that point. However there are important differences between the circumstances of those using the Administrative Review process in-country compared to those using it overseas or at the border. The difference in approach is consistent with policy intent and there are sound reasons for maintaining it. A policy that required a full reconsideration in-country would place the onus on the Home Office to review the case in full as a matter of routine and there would be no incentive for the applicant to identify claimed errors.

It is in the interests of overseas applicants to specify their reasons for review and for this to be conducted as quickly as possible. However, this is not necessarily always the case with in-country applicants. If in-country applicants were not required to specify reasons for the review it could lead to abuse of the system as general requests for reconsideration without any specific reasons could be submitted in an attempt to delay departure from the UK. On account of this we consider it appropriate that reviews should focus on specific points that applicants have raised rather than extend to a full reconsideration of the previous refusal decision.

#### **Recommendation 10**

Consider the scope to prioritise the processing of ARs to meet the needs of the applicant in terms of timeliness (as in the case of some Tier 4 AR).

#### **Home Office response: Accepted**

This recommendation relates to Administrative Reviews of Entry Clearance decisions. Consideration will be given to the possibility of processing Administrative Reviews more quickly for certain cohorts of applicants. The ICI will be updated in the autumn with the outcome of this consideration.

#### **Recommendation 11**

Put in place formal, robust QA procedures for all ARs (including decisions regarding the validity of applications) that take account of the grade and experience of the reviewer and the complexity of the original decision.

#### **Home Office response: Accepted**

As part of the restructuring of the in-country Administrative Review operation referred to in the response to Recommendation 11, the in-country quality assurance regime has also been reviewed. With effect from January 2016, a more formalised assurance process of assessing, against set criteria, a proportion of randomly selected decisions was introduced. With effect from April 2016, the results of decision quality assessments are being recorded on the electronic tool - QATRO – that is used as part of UK Visas and Immigration’s general decision quality framework. The results of this ‘first tier’ layer of internal assurance will be captured, and reviewed, as part of the general quality assurance framework within UKVI’s Complex Casework Directorate and the Directorate’s Chief Caseworker will have regular oversight of decision quality.

For Administrative Reviews of Entry Clearance decisions, ICQAT, the International Casework and Quality Assurance Team, will also establish formal quality assurance processes. ICQAT is being staffed by experienced Entry Clearance staff who will also receive appropriate training for their roles.

A second tier of quality assurance of in-country and overseas Administrative Review decisions will be undertaken by UKVI’s Quality Audit Team. The Audit Team, which is independent from the in-country and overseas operations, will assess a number of randomly selected review decisions.

As well as enhanced internal assurance of case review quality and the introduction of a second tier quality review from colleagues independent of the in-country and overseas Administrative Review teams, the ICI will conduct a further inspection to be scheduled for 2016/17 to offer assurance that the necessary improvements have taken place.

The Home Office will also give consideration to establishing an external quality assurance panel, which would consist of professional persons who are completely independent from the Home Office, and be given a remit to review a random, anonymised sample of Administrative Review decisions on a regular basis and feed back to UK Visas and Immigration and Border Force on the quality of the decisions made.

The Border Force assurance process for Administrative Reviews undertaken at the border was introduced on 1 October 2015. Senior officers are required to check a random sample of 10% of cases (or 10 if there are fewer than 100 cases or all if there are fewer than 10) for evidence that the review has been conducted by an independent Higher Officer, that the application has been decided in line with policy and guidance and that a decision has been made within the 28 days service target.

### **Recommendation 12**

Record and use the results of QA to improve the quality and consistency of AR outcomes by feeding back to reviewers and their managers.

#### **Home Office response: Accepted**

For Administrative Reviews of in-country decisions, the QATRO tool, which was trialled in January 2016 and then rolled out from April 2016, will be used to more easily capture feedback for individual caseworkers from Senior Caseworkers and to identify trends and common error themes to inform continuous improvement across the operation.

The structure of the in-country operation is being revised, with the Senior Caseworkers reporting directly to the Complex Casework Directorate Chief Caseworker who will provide governance over decision quality and help ensure that the results from quality assurance assessments are fed back to caseworkers.

For Administrative Reviews of Entry Clearance decisions, the International Casework and Quality Assurance Team is introducing formal quality assurance processes. These processes will include feedback mechanisms to both the staff who made the Administrative Review decision and also to the initial decision makers and their management teams. This will be done using a formal digital process and will allow management teams to interrogate databases for information based on themes, posts and individuals.

The report found that in all Border Force cases sampled the original decision to cancel leave was correctly maintained. The ICI also found that Border Force decision notices were generally of a good quality and correctly addressed the issues raised by the applicant.

### **Recommendation 13**

Capture and feedback in a structured form to original decision-makers the learning from AR where the reviewer has withdrawn the original decisions and/or amended the reasons.

#### **Home Office response: Accepted**

With regard to the in-country Administrative Review operation there is already a structured feedback process in place. As the ICI report notes, a monthly teleconference, chaired by the head of the Administrative Review team, takes place with senior representatives from UKVI

business areas responsible for decisions subject to Administrative Review. The purpose of the meeting is to feedback on errors in initial decision making that have been identified through the Administrative Review process and to ensure that appropriate actions are taken to improve the quality of initial decision making. The ICI report also notes feedback from managers in Temporary Migration that they believed that feedback from Administrative Review outcomes had improved quality.

For Administrative Reviews of Entry Clearance decisions, as noted in the response to Recommendation 12, the International Casework and Quality Assurance Team is introducing formal quality assurance processes. These processes will include feedback mechanisms to the initial decision makers, and to their management teams, which will include where the Administrative Review has identified errors in the original decision.

With regard to Administrative Reviews undertaken at the border, each Border Force region will submit a quarterly return to the Operational Assurance Directorate which will highlight remedial action taken where issues have been identified through the Administrative Review process.

#### **Recommendation 14**

Ensure that all data relevant to demonstrating how the AR system is functioning is captured and used to effect the continuous improvement of both ARs and original immigration decisions, including where Pre-Action Protocols (PAPs) or Judicial Review (JR) cases are conceded and why.

#### **Home Office response: Accepted**

With regard to the in-country Administrative Review operation, improved processes have been put in place to ensure that the results of litigation challenges to Administrative Review decisions are fed back to the in-country team. This includes highlighting cases where the Administrative Review decision is withdrawn as a result of a challenge raised in a Judicial Review or Pre-Action Protocol letter, identifying the reasons why the legal challenge was conceded and ensuring that any lessons to be learnt are acted upon. Similar to the monthly teleconference referred to in the response to Recommendation 13, which focus on feeding back on any lessons learned from errors in initial decisions, there is a fortnightly teleconference with UKVI colleagues in litigation operations that focuses on any cases where a legal challenge against the Administrative Review decision is conceded and provides a forum to discuss any trends and inform continuous improvement.

For Administrative Reviews of Entry Clearance decisions, the International Casework and Quality Assurance Team will collate data from a variety of sources to provide assurance to senior managers within UKVI that the Administrative Review mechanism is functioning correctly. This will include data from cases where a Pre-Action Protocol letter or a Judicial Review challenge has been received. Part of the remit of the ICQAT team will be to provide feedback to decision makers and to regional and headquarters management on individual case outcomes where appropriate and on any trends identified.

Border Force is looking to develop monthly data on the percentage of Administrative Review decisions which are upheld. Border Force intend to report this information in the monthly strategic performance report on Border Force operations.

# Annex B: Role and remit of the Independent Chief Inspector

The role of the Independent Chief Inspector of Borders and Immigration (until 2012, the Chief Inspector of the UK Border Agency) was established by the UK Borders Act 2007. Sections 48-56 of the UK Borders Act 2007 (as amended) provide the legislative framework for the inspection of the efficiency and effectiveness of the performance of functions relating to immigration, asylum, nationality and customs by the Home Secretary and by any person exercising such functions on her behalf.

The legislation empowers the Independent Chief Inspector to monitor, report on and make recommendations about all such functions. However, functions exercised at removal centres, short-term holding facilities and under escort arrangements are excepted insofar as these are subject to inspection by Her Majesty's Chief Inspector of Prisons or Her Majesty's Inspectors of Constabulary (and equivalents in Scotland and Northern Ireland).

The legislation directs the Independent Chief Inspector to consider and make recommendations about, in particular:

- consistency of approach
- the practice and performance of listed persons compared to other persons doing similar activities
- the procedure in making decisions
- the treatment of claimants and applicants
- certification under section 94 of the Nationality, Immigration and Asylum act 2002 (c. 41) (unfounded claim)
- the law about discrimination in the exercise of functions, including reliance on section 19D of the Race Relations Act 1976 (c. 74) (exception for immigration functions)
- the procedure in relation to the exercise of enforcement powers (including powers of arrest, entry, search and seizure)
- practice and procedure in relation to the prevention, detection and investigation of offences
- the procedure in relation to the conduct of criminal proceedings
- whether customs functions have been appropriately exercised by the Secretary of State and the Director of Border Revenue
- the provision of information
- the handling of complaints; and
- the content of information about conditions in countries outside the United Kingdom, which the Secretary of State compiles and makes available, for purposes connected with immigration and asylum, to immigration officers and other officials.
- In addition, the legislation enables the Secretary of State to request the Independent Chief Inspector to report to her in writing in relation to specified matters.
- The legislation requires the Independent Chief Inspector to report in writing to the Secretary

of State. The Secretary of State lays all reports before Parliament, which she has committed to do within eight weeks of receipt, subject to both Houses of Parliament being in session. Reports are published in full except for any material that the Secretary of State determines it is undesirable to publish for reasons of national security or where publication might jeopardise an individual's safety, in which case the legislation permits the Secretary of State to omit the relevant passages from the published report.

- As soon as a report has been laid in Parliament, it is published on the Inspectorate's website, together with the Home Office's response to the report and recommendations.

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