



THE GOVERNMENT REPLY TO THE FIFTH
REPORT FROM THE HOME AFFAIRS COMMITTEE
SESSION 2005-06 HC 775

Immigration Control

**Presented to Parliament by the Secretary of State
for the Home Department
by Command of Her Majesty
September 2006**



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THE GOVERNMENT REPLY TO THE FIFTH REPORT FROM THE HOME AFFAIRS COMMITTEE SESSION 2005-06

Immigration Control

Introduction

As the Home Secretary made clear when he presented the IND Review “Fair, effective, transparent and trusted: Rebuilding confidence in our immigration system” to the House on 25 July 2006, we welcome the Home Affairs Committee report on “Immigration Control” as a thoughtful and constructive contribution to the debate on how best to reform the Immigration and Nationality Directorate to provide the service that Parliament and the public is entitled to expect.

There is a good measure of agreement between the IND Review report and the Home Affairs Committee report in identifying the key challenges which IND needs to address, and this provides an excellent basis for drawing on the contribution of the Home Affairs Committee’s work as we move forward with our work to reform IND.

It is worth highlighting some key areas of common analysis:

- Dealing with overstayers. Your report states that illegal migration is increasingly fuelled by those who enter the country legally but who overstay, and that a major test of Government’s new approach will be the extent to which it has recognised the importance of this change. The IND Review report sets four new strategic objectives for the organisation. The first of these includes “ensuring we know who leaves so that we can take action against those who break the rules”, and is backed up by a commitment to “immediately extend exit controls in stages based on risk, identify who overstays, and count everyone in and out by 2014”. The third objective is to “ensure and enforce compliance with our immigration laws, removing the most harmful people first, and denying the privileges of Britain to those here illegally” and is backed up by a commitment to a cross-government enforcement strategy to shut down access to benefits and services and tackle illegal working.
- Tackling illegal working. Your report states that employment of illegal workers should be one of the main targets for action against illegal migrants. Tackling tax and national insurance evasion as well as ensuring employers comply with their legal obligations as employers would reduce the financial advantages of employing illegal workers and thus one of the drivers for illegal migration. In the IND Review, the Government sets out its plans for firm action in this area including: ensuring employers know their responsibilities and have robust systems; developing more efficient support mechanisms to help employers check eligibility; in step, penalising rogue employers with fines, and seizing assets of persistent offenders; working with Crimestoppers so people can identify rogue employers; actively considering further sanctions against serious offenders; and a cross government enforcement strategy.
- Securing the benefits of migration. Your report identified the need to facilitate travel for tourists, family members, students, business people and workers who meet labour needs is essential to national interests. The IND Review sets a new strategic objective: “we will boost Britain’s economy by bringing the right skills here from around the world, and ensure Britain is easy to visit legally”.

- Weighing up the arguments on migration. Your report identified a role for a single body to weigh up diverse and sometimes conflicting considerations of the need for migrant labour, the economic benefits and drawbacks as well as the social advantages and stresses of migration, and recommended the establishment of a Cabinet Committee. Whilst there is already an “Asylum and Migration” Cabinet Committee, the IND Review also identified the need for a new approach in this area. It set out the Government’s plans to consult on establishing a new Migration Advisory Committee, composed of independent experts and key stakeholders, which would publish recommendations to Government on where in the economy migration should sensibly fill skills gaps. We believe this could inject an informed and non-partisan view on the way migration should be managed to the benefits of the country as a whole.
- A step change in enforcement activity. Your report states that current enforcement efforts are inadequate, that it is not clear that enforcement is based on harm reduction, that enforcement activity is not keeping pace with new decisions and that the first priority should be to align the decision making and removal systems. The IND Review contains a commitment to double our enforcement and compliance resource by 2009/10, and our new strategic objective on enforcing compliance with our immigration laws states specifically we will remove the most harmful first. The New Asylum Model aligns decision making and removal, and the Review contains a commitment to transform the asylum system by granting or removing 90% of new asylum applicants within 6 months by 2011. The Review also sets out our plans to expand exit controls and move to the point where we can identify all overstayers and take action against them, paving the way for much more enforcement of our managed migration system.
- Decision quality. A theme running through your report is the need to improve the quality of decision making. The IND Review sets out change programmes to overhaul the legal framework and guidance to staff, our processes, leadership and management, performance management, IT including the introduction of a new enterprise casework system, and customer service.
- Accountability. Your report states that the single biggest management challenge is to create clear lines of responsibility and accountability at every level and you recommend the establishment of an Independent Immigration Inspectorate. The IND Review recognises the challenges in this area, and the change programmes it sets out include developing strong leadership and management at all levels, and strengthening performance management and improving accountability. Agency status for IND will be based on a clear framework for delivery and performance management to improve accountability. The Review set out the Government’s plans to consult on a new single immigration regulator to give a transparent, independent and consistent perspective on IND as a whole, which we identified as a “real opportunity to drive continuous improvement”.

We recognise that there are areas where the Committee and the Government take different views or do not fully agree, and this response sets out the Government’s position where that is the case. But we are encouraged that the IND Review and the Home Affairs Committee came to broadly similar conclusions on many of the key challenges facing our immigration system, and will draw on the Committee’s helpful analysis as we work to transform IND.

Response to specific conclusions and recommendations made by the Home Affairs Committee

The HAC's conclusions and recommendations are addressed in turn, giving the number of the paragraph in the Committee's report. The Committee's recommendations are shown in bold below.

1. The Committee recognises that modern patterns of migration pose particular challenges for the Government. We believe that facilitating travel for tourists, family members, students, businesspeople and workers who meet labour needs that cannot otherwise be met is essential to our national interests. The Immigration and Nationality Directorate and UKvisas must offer these people a high level of service and cannot simply be organisations designed to exclude people from the country. At the same time, we share the public expectation that the Government must minimise the number of those able to abuse the immigration system. (Paragraph 55)

The recent review of IND, 'Rebuilding Confidence in our Immigration System' reiterated the need to offer a high level of service to our citizens and customers and inspire a culture of public services, passion and pride amongst our staff. Through new strategic objectives we have reiterated our focus on strengthening our borders and enforce compliance with our laws to meet public expectations, whilst at the same time boosting the UK economy. These objectives will underpin the design and implementation work that will shortly be starting following the publication of the IND Review.

2. Any system of immigration control must tackle illegal migration effectively, otherwise public confidence in the system is undermined, resentment and mistrust abound and exploitation is inevitable. (Paragraph 72)

One of the four new strategic objectives which we have set for IND following the review is to enforce compliance with our immigration laws, removing the most harmful people first and denying the privileges of Britain to those here illegally. The vast majority of migrants abide by the rules and make a positive contribution to the UK. For those who break our rules, we intend to enforce the rules more firmly. We are working to ensure that we clarify where the risks arise, and prioritise our activities accordingly. We will substantially expand our work to enforce our immigration laws, including removing those who are not entitled to be here, and to encourage and ensure compliance with those laws throughout the immigration system. A variety of identity technologies will help us to establish the true identity of people found to be here illegally, and will help us to re-document and remove them. Changes planned in IND to achieve these aims include doubling our enforcement and compliance resource by 2009/10; removing the people who pose the greatest risk first, including foreign national prisoners; requiring evidence of nationality during contact with the criminal justice system; linking criminality more clearly to deportation; removing in-country rights of appeal; and streamlining procedures and otherwise remove barriers to deportation and removal for foreign national prisoners; penalising rogue employers who employ illegal workers; working across government to shut down fraudulent access to benefits; and making immigration a truly cross-government issue with shared targets.

3. Although the numbers are inevitably uncertain, it is quite clear that a substantial proportion of illegal migration arises from those who originally entered the country legitimately and legally but who subsequently failed to comply with their leave. They may have been refused the right to remain or simply overstayed. As the immigration system aims, rightly, to facilitate legal migration for ever greater numbers of travellers, it is inevitable that illegal migration will continue to be fuelled by those who become illegal once in

the country. This represents one of the more fundamental changes to the purpose of the immigration system in the twenty-first century. The focus can no longer remain so heavily weighted towards initial entry and border control. While these controls must be sustained and indeed improved, far greater effort will in future have to go into the enforcement of the Immigration Rules within the UK. A major test of the Government's new approach to the IND will be the extent to which it has recognised the importance and implication of this change. (Paragraph 73)

The Government has recognised the importance of tracking who enters and who leaves the UK, and doing much more to ensure compliance with our immigration laws within the United Kingdom. This is reflected in the new strategic objectives set out in the IND Review. The first objective stresses the need to ensure we know who leaves the UK so we can take action against those who break the rules. The fourth objective on ensuring and enforcing compliance with our immigration laws stresses the need both to remove those who are not entitled to be here, starting with the most harmful, and denying the privileges of Britain to those here illegally.

IND has recognised the need to build on the existing delivery of our enforcement and removals, detention and criminal casework teams. We have created a new senior management post and have seconded Stuart Hyde, from the West Midlands Police, to sit on the IND Board and focus on enforcement and compliance issues. Stuart will bring a wealth of relevant operational and strategic experience to strengthen operations in the areas described.

Additional changes planned in IND include an increased focus on risk and intelligence; both of these will be underpinned with better organisational, process and technology capabilities in order to improve the enforcement of our Immigration Rules. The use of better information capture, coupled with a risk-based approach to remove the most harmful people, will enable a more efficient and effective result for our enforcement and compliance resources.

Controls overseas

4. We recommend that the Government should look again at the constitution of UKvisas with a view to unifying the terms and conditions of all its staff. More fundamentally, it may also wish to consider whether it is in the best interests of an effective and comprehensive system of immigration control for the overseas operation to be separate from the IND. (Paragraph 81)

We agree that UKvisas should continue to work extremely closely with IND, as work is taken forward on IND's transition to executive agency status. We are already integrating processes through the Border Management Programme and across the overseas network. UKvisas' status and structure is now being reviewed in light of the recently published IND Review, so that we can ensure our institutional structure continues to deliver effective, efficient and comprehensive immigration control and, at the same time, presents a coherent face to our customers. There are several possible ways of achieving this. The issues – including staff terms and conditions and ensuring that we have enough high-quality staff – are highly complex and UKvisas will be looking closely at these options and their implications with the Home Office and the FCO over the next two months, for a decision later in the year.

5. UKvisas' budgets should be much more transparent if it is to demonstrate clearly that the operation is self-financing. In the light of growing numbers of applications, there should be more flexibility over the accommodation budget. (Paragraph 84)

We agree that greater financial transparency and flexibility in respect of UKvisas would be beneficial, particularly as the number of visa applications continues to increase. UKvisas will be discussing this point with the Home Office and the FCO as the position in relation to the agency proposals for IND, as set out in the recently published IND Review, becomes clearer.

6. The number of visa applications looks set to continue rising. UKvisas should not place a heavy reliance on the use of temporary staff to meet this demand. As we state throughout this report, the quality of initial decisions has an impact on the entire immigration system. Measures that lower the cost of front-line staff at the expense of quality are not likely to be cost-effective. (Paragraph 89)

We agree that staffing is a crucial quality issue. UKvisas is currently reviewing its recruitment processes to ensure that as their operations expand to meet increasing demand, they are able to recruit from a wider pool of available staff. In the meantime, UKvisas undertakes an annual bidding exercise for additional long-term staff at all posts. Temporary staff are used to provide seasonal relief at peak periods, but where a post identifies a need for a large number of temporary staff, they are encouraged to replace these with additional permanent members of staff. UKvisas has recently negotiated an agreement with the Foreign and Commonwealth Office, whereby Directors of Visa Services (DVSSs) may deploy staff flexibly within their regions for short periods. This should also help to further reduce reliance on short-term staff. In addition, much work has been undertaken to enhance the quality of initial decision-making, both in EC training and at posts (see paragraph 12 below).

7. Outsourcing the collection of visa applications seems to be of great benefit to both applicants and visa sections, and its expansion should be supported as long as close links can be maintained with visa sections. (Paragraph 94)

We are pleased that the Committee recognises the merits of outsourcing the collection of visa applications. To consolidate this approach, UKvisas are currently undertaking a public procurement process to award long-term contracts on a regional basis. This will establish a sound commercial and legal basis on which to develop, globally, strong working partnerships with visa sections that will support the future development of UKvisas. This will also support and facilitate the global rollout of the Biometric Visa Programme, which begins in late Summer 2006 with delivery by the end of 2007, as set out in the recently published IND Review.

8. A comprehensive network of application centres, approved travel agents and couriers should be put in place for collecting visa applications and providing information to applicants, with appropriate measures for preventing fraud and abuse such as requiring applicants to collect their passports in person. Once this is done, we can see no overriding reason why paper-based applications should not be dealt with by country-specific teams in regional processing centres or even in the UK. In principle this could reduce problems of high staff turnover and raise the quality of decision-making whilst reducing the cost of the operation, though interviewing would clearly still have to be done at posts. We recommend that UKvisas should conduct a full feasibility study of this proposal at the earliest possible opportunity. (Paragraph 97)

We agree that the regional processing of visa applications offers significant advantages and benefits. UKvisas have already begun scoping work to identify the feasibility of how a “hub and spoke” model could best be achieved. The active engagement of Commercial Partners is fundamental to this. As a result, UKvisas’ current procurement process includes a reference to our intention to

explore this model and those selected will be expected to work with UKvisas to deliver services that will support “hub and spoke” in the future. The contracts with Commercial Partners will also require high levels of security and integrity to prevent fraud and abuse.

9. Entry Clearance Officers have specific expectations of the documents needed to support an application. These are not set out in the Immigration Rules nor explained in guidance for applicants. Where there are specific requirements in practice, this should be made clear in the Immigration Rules and in guidance for applicants. Security might be improved by changing the list of required documents from time to time. (Paragraph 104)

We will look at this issue further in the course of the programme of work to simplify the legislation, rules and guidance under the first change programme identified in the IND Review. In that work we will have to consider the appropriate balance between prescription in the rules and allowing caseworkers to exercise discretion to come to the right decision.

10. Measures that improve the quality of advice to applicants will improve the quality of initial decisions and reduce the demand on the appeals system. The Government is already considering whether or how to regulate overseas advisers. This cannot simply be an extension of the scheme for regulating UK advisers. We recommend that it either encourages UK-based advisers to operate overseas, or establishes an agent accreditation scheme for local immigration advisers. (Paragraph 113)

We agree that improvements to the quality of information and advice offered to visa applicants are key to decision-making quality and appeals. IND, UKvisas and the Office of the Immigration Services Commissioner (OISC) are jointly considering the development of an accreditation scheme for overseas advisers. Such a scheme could not be an extension of the statutory OISC scheme for regulating UK advisers, but would, almost certainly have to be a voluntary scheme. A key aim of such a scheme would be to improve the skills of overseas advisers resulting in better quality applications being submitted to entry clearance-issuing posts, which will assist in the quality of ECO decision-making. We are also looking at whether and how a scheme could bear down on attempts to abuse our immigration system mainly in the light of our experience of attempts to misuse the ECAA route of entry to the UK.

11. It is clearly beneficial to everyone to invest in getting decisions correct at the initial stage. Refusing applications which should have been allowed is not good customer service, can have significant consequences for applicants and their family and friends, and can lead to increased costs further down the system (from complaints, appeals or fresh applications). On the other hand, allowing applications which should have been refused weakens the control and public confidence in it and may increase the risk of overstaying and other forms of illegal migration. (Paragraph 114)

We endorse this conclusion and are pleased that the Committee recognises the difficult balance that UKvisas staff face in ensuring good customer service whilst maintaining a control robust against abuse of the immigration control. 81% of the 2.5 million visa applicants seen at posts overseas get the visa they want; however, UKvisas also ensures the tightest possible control by enhancing forgery detection and improving IT and rolling out intelligence-led risk assessment units in Posts.

12. During our visits we were consistently impressed by the care and diligence with which entry clearance staff worked, despite often difficult conditions, rising numbers of applications and increasing levels of forgery and fraud. However, we felt that they were not always in a position to be able to make good decisions. (Paragraph 120)

We are pleased that the Committee recognises the good work done by entry clearance staff in difficult conditions. UKvisas have been working hard to improve the quality of initial decision-making with a range of measures including:

- enhanced training for entry clearance officers and managers;
- mentoring and other support for new officers at posts;
- monitoring of visa issues and refusals within 24 hours;
- enhancing support for the Directors of Visa Services overseas by implementing a network of Regional Operations Managers who play a key role in delivering decision quality and consistency to medium and smaller posts;
- rolling out a network of Risk Assessment Units globally, with the twin aims of enhancing further the entry clearance decision-making process by developing an intelligence-led control overseas and identifying and tackling organised visa abuse;
- a programme of Operational Reviews, which include an assessment of the quality of decision-making of a sample of visa applications; and
- an enhanced role of the Independent Monitor, who analyses a sample of non-appealable decisions from Posts and makes regular reports to Parliament with recommendations on improving decision quality.

13. The clearer and more specific the Immigration Rules, and the more closely they deal with realities presented by applicants, the easier it will be for caseworkers to make a correct decision which is unambiguously in accordance with those Rules and fair both to applicants and to the interests of the UK. At the moment it is very difficult for them to do so. The Immigration Rules should therefore be consolidated and redrafted to provide a clear, comprehensive and realistic framework for decisions. (Paragraph 123)

We support this recommendation. One of the seven programmes for change set out in the IND Review report is to reform and simplify the Immigration laws, rules and guidance. Work is currently underway to improve the accuracy of the existing guidance notes used by staff.

14. It must also be recognised that there will always be questions of judgment over what weight to give pieces of evidence, as well as situations which are not precisely covered by the rules. ECOs must be supported with enough training, guidance and experience to exercise their judgment where this is required. (Paragraph 124)

We support this recommendation, as the exercise of judgment is key in assessing applications. ECO and ECM courses include a variety of scenarios of “borderline” or “difficult” cases which highlight the need for careful or sensitive handling, and instructions are given on proper referral procedures – with referrals made either to ECMs or to the ECO Support Section in UKvisas headquarters in London – for guidance in appropriate cases. On induction courses, as part of the enhanced assessment techniques, ECOs need to demonstrate that they have justified their decision with full regard to all available evidence, both oral and written. Further support is available to all ECOs on arrival at post.

15. If ECOs’ decisions are to withstand challenge, ECOs must be better trained on how to evaluate both oral and written evidence, and how to express the grounds for their decision in a defensible way. (Paragraph 125)

We endorse this recommendation. ECO courses run by UKvisas now contain separate assessment procedures for evaluating decisions made on papers and by interview – these highlight the key areas for consideration and show whether or not the delegate has considered these properly. UKvisas is also about to roll out a new programme of regional refresher training from Sept 2006 and the inclusion of quality decision making and defensible refusal notices will feature highly in much of this training.

16. Although we can see the advantage of the proposed Points Based System in allowing applicants to work out much more accurately their chances of success, it must be recognised that an element of individual judgment will always be required. This will also be true of the many decisions on categories not covered by the Points Based System. Therefore there will be a continued need for well-trained, experienced, well-supported ECOs with good local knowledge. We reiterate our concern that under-investment in frontline staff is unlikely to be cost-effective across the system as a whole. (Paragraph 127)

The Points-Based System will offer applicants the opportunity to self-assess before making – and paying for – a formal application. ECOs will be required to verify that the applicant is entitled to the points they claimed in their self-assessment before granting entry clearance. UKvisas will use a combination of risk assessment, checking and document verification to help assess applications. Posts will have a critical role to play in ensuring that the verification procedures are robust. ECOs' local contacts and knowledge (in terms of patterns of attempted abuse, fraud and forgery) will be an invaluable part of this process. UKvisas is working closely with IND to develop a comprehensive training package for all their staff for the rollout of the Points-Based System. UKvisas is also looking at new ways to ensure that staff are provided with the support that they need after rollout.

17. The current role of the Independent Immigration Race Monitor is very limited, and yet both the IND and UKvisas are subject to a duty to promote good race relations. Race monitoring must cover all aspects of the immigration system if statutory duties are to be met. (Paragraph 128)

The Race Monitor performs a statutory role which is laid down in the Race Relations Act 1976 section 19E as inserted by the Race Relations Amendment) Act 2000:

‘19E. - (1) The Secretary of State shall appoint a person who is not a member of his staff to act as a monitor.

(2) Before appointing any such person, the Secretary of State shall consult the Commission.

(3) The person so appointed shall monitor, in such manner as the Secretary of State may determine-

(a) the likely effect on the operation of the exception in section 19D of any relevant authorisation relating to the carrying out of immigration and nationality functions which has been given by a Minister of the Crown acting personally; and

(b) the operation of that exception in relation to acts which have been done by a person acting in accordance with such an authorisation.

(4) The monitor shall make an annual report on the discharge of his functions to the Secretary of State.

(5) The Secretary of State shall lay a copy of any report made to him under subsection (4) before each House of Parliament.

(6) The Secretary of State shall pay to the monitor such fees and allowances (if any) as he may determine.

(7) In this section “immigration and nationality functions” and “relevant authorisation” have the meanings given to them in section 19D.’

The Home Office accepts that current role of the Race Monitor is limited, but this arises from the statutory basis of the Monitor’s functions which restricts him or her to monitoring the likely effects and the operation of authorisations under section 19D of the Act.

The Home Office has been giving consideration to widening the scope of the Race Monitor’s functions, to provide IND with broader comments and advice on race matters within the Department. The question of how IND’s compliance with its race equality duties is best monitored in the future will be picked up in the consultation on the single regulator proposed in the IND Review.

However the Home Office does not accept that its fulfilment of statutory duties depends on the Race Monitor’s covering all aspects of the immigration system. IND has since 2002 had in place a Race Equality Scheme, which was extensively reviewed and revised in 2005, and has in place a system for monitoring compliance with the Scheme in each Directorate and for all IND Directors to satisfy themselves as to such compliance and signing a certificate to confirm it on a yearly basis. And it has a comprehensive system for ensuring the diversity training of all staff members.

As concerns race equality in entry clearance, UKvisas attaches great importance to its obligations and responsibilities under the Race Relations Act and managers overseas ensure that staff from the UK are informed and knowledgeable about local customs. Activities range from structured mentoring and sessions on local issues, orientation visits and field trips; to welcome packs with information on life in a particular country; language lessons; and meetings with local tourist organisations and education providers.

18. We recommend that training for visa staff should be extended and improved. Training in the UK must pay more attention to evaluating evidence, questioning applicants at interview and writing reasoned refusal notices. Posts should follow the good examples set by Accra and Islamabad particularly regarding training in local conditions and culture. We have proposed above that paper-based decisions could be made in regional centres or in the UK, but all staff would still need appropriate training and local knowledge. The use of temporary staff must be kept to a minimum. (Paragraph 134)

UKvisas has significantly enhanced its training courses for entry clearance officers (ECOs), including undertaking work on performance measurement on courses in July 2006. Delegates now receive ongoing written feedback on assessed work, which includes quality of refusal writing and decision-making, in addition to interviewing techniques. Where there are specific further developmental needs in these areas, these can now be more effectively highlighted and addressed. Best Practice recommends that all Posts put in place an induction package, which should include guidance on local conditions and culture, and most posts provide such programmes, as described in the response to recommendation 12 above.

19. UKvisas should ensure that the ratio of managers to ECOs is high enough to allow them effectively to carry out all the quality control checks and reviews required of them. (Paragraph 135)

We endorse this recommendation. The manager/staff ratio has a clear link to quality. In support of the quality agenda, UKvisas is currently planning a move to regional “hub and spoke” operations over the next three to five years to improve efficiency, quality, resilience and synergies with other parts of the immigration business. On a local level, posts were invited to bid for additional entry clearance managers (ECMs) in the last annual staff bidding round for this purpose. Where bids fell short, they were increased by the centre. UKvisas will continue to monitor the ratio in this year’s bidding round.

20. We support the intention underlying the recent measures to improve the quality of decision-making overseas, but urgent consideration should be given to assessing whether quality is indeed improving as a result. The savings resulting from investment in good initial decision-making should also be assessed. (Paragraph 136)

We are pleased to note the support of the Committee in respect of the measures implemented by UKvisas to improve the quality of decision-making in posts overseas. The next phase of this work is to assess actual improvement of quality and, to this end, UKvisas has recently taken on additional staff to conduct an analysis of one thousand recent appeal cases. In addition, Home Office Presenting Officers’ feedback forms have provided further management information, which has been analysed and passed back to posts for consideration. Planning is now underway for Regional Operations Managers to undertake spot checks of files, and the new Independent Monitor, who has already visited several posts in Africa, will provide regular feedback on quality issues. UKvisas’ Balanced Scorecard contains specific reference to the Independent Monitor’s feedback and tough targets will be set to ensure decision-making quality improves throughout the year.

21. All unsuccessful applicants should be given the opportunity for an internal review of the decision, to which they could submit any further evidence. There should be clear rules and procedures on how such reviews should be carried out, and reviews should be available for appealable as well as non-appealable refusals as they would reduce the likelihood of going to appeal. We believe that the Government should assess the feasibility of a “minded to refuse” stage for both overseas and in-country applications. (Paragraph 140)

The Government agrees that internal reviews of all refusal decisions are desirable as this underpins the quality of ECO decisions, reduces complaints and promotes greater public confidence in the system. UKvisas is working on improvements to the quality of entry clearance guidance and information to help applicants provide all relevant supporting evidence at the earliest opportunity. In addition, a more robust ECM review of refusal decisions, to be conducted before refusal notices are served, and upon receipt of an appeal, is being assessed for implementation.

On “Minded to Refuse”, the Government believes that for immigration applications, the focus of effort should be on simplifying the legislative framework and making the application criteria more objective and transparent. Under the Points Based System, there will be provision for applicants to complete a full self-assessment before applying and it will be clear what documentary or other evidence is required in support of an application. In this way, the onus will rightly remain on the applicant to produce all the relevant information at the outset in support of operating a fast, high quality and consistent decision-making process.

The Government will keep under review the potential merits of a “minded to refuse” stage. We are considering whether to include this within the scope of the programme to simplify the legislation, rules and guidance.

22. The UK has a much tighter target for speed of visa decisions than most other countries. Turnaround times for applications to Australia and Germany, for example, are seven or fourteen days, whereas those who want to go to the United States often have to wait for months. The degree of contrast between the UK and other countries surprised us. Whilst it is right to take pride in the speed of decision-making, there is evidence that this is happening at the expense of quality. (Paragraph 143)

UKvisas has faced unprecedented demand increase over recent years (55% increase in visa applications over four years, to 2005/6). 2.5 million visa applications were submitted in 2005/06 and UKvisas is committed to providing both effective control and good service despite the pressures of demand. 90% of straightforward applications are processed within 24 hours – a service matched by none of our overseas competitors. At the same time, UKvisas also ensures as tight a control as possible, and refused half a million visa applications in 2005/06. We believe that speed and efficiency is important, but agree that it is not the only measure of performance. We recognise that we need to continue to improve the quality of decision-making. A programme of work is underway, as described in paragraph 12 above. In addition, UKvisas is producing a Balanced Scorecard, which examines performance across the full range of their business, including control strength, speed of delivery and quality of decision-making. Metrics and tough targets are being developed to ensure a more balanced approach for the future, and performance is being monitored closely.

23. Targets must allow more time to make decisions and to justify them robustly. Seven minutes is not enough, in our view, even for apparently straightforward applications. (Paragraph 149)

UKvisas will be reviewing targets in the context of the FCO/Treasury review of the PSA performance framework later this year and the continuing development of UKvisas' Balanced Scorecard. In the meantime, a detailed review of visa application processing times is being undertaken, across a representative cross-section of Posts, which will help UKvisas to set appropriate productivity benchmarks for decision-making by front-line staff. At posts, the RAUs will assist in prioritising applications to enable ECOs to concentrate on more problematic cases whilst identifying categories of cases that are less likely to be subject to abuse.

24. There should be greater recognition of the circumstances in which interviews are appropriate, and targets should allow for more interviewing than currently takes place. (Paragraph 150)

While interviews are a valuable tool to help ECOs reach decisions, they are not the only one, nor always the most appropriate. The Government intends to introduce a system of structured decision making in line with the Points-Based System, enabling more systematic risk-assessment of individual applications and enabling efforts to be targeted where they are most needed. This could include interviewing of cases where greater scrutiny is required, allowing applicants to respond to the ECO's concerns, to resolve discrepancies.

25. Current global targets for speed of processing visas are inappropriate, unhelpful, unrealistic and uncompetitive. We recommend that UKvisas sets more generous maximum targets and then works with individual posts to determine local targets that are appropriate to the local situation and security risks and the demands of good customer service. Posts should be given adequate resources to meet realistic yet challenging targets. (Paragraph 153)

While we believe that a fast service is important, we agree that UKvisas' current PSA targets, set globally, need a thorough reassessment at all levels. Posts have been fully consulted during the formulation of the new Balanced Scorecard approach and they will also be consulted during the work on the next PSA framework, ensuring that local circumstances are adequately reflected in the setting of any new targets, including the time an application arrives at and leaves a post's commercial partners, so as to ensure that targets are more directly related to customer experience. Posts will be asked to review staffing levels and to bid for extra resources if necessary in the light of new targets set.

26. One step which must be taken to enable individuals to be tracked through the system is to introduce a single reference number for each individual which is used to identify them in visa applications, in-country applications, appeals and enforcement. Once this is in place, the Government should investigate the possibility of ensuring that it can be transferred into other databases including those for the police, the prison and probation systems and the Department for Work and Pensions. (Paragraph 156)

On 19 July 2006 the Minister for Immigration, Citizenship and Nationality (Mr Liam Byrne) updated the House on developments for a unique personal identifier. He stated that "the Home Secretary identified that there is today no unique identifier to link individuals who come in contact with the asylum and immigration and criminal justice systems. We have therefore commenced development of a comprehensive approach to identity management across all Home Office areas and will finalise a strategic action plan by the end of September 2006".

The Government wants to maximise benefits from improving identity management as an enabler for better service delivery across the public and private sectors. The Leader of the House chairs a new Ministerial Committee on Identity Management. The Private Public Forum on Identity Management, chaired by Sir James Crosby who was appointed by the Chancellor of the Exchequer, will establish best practice, explore the future of identity management technologies and how they can be used by both the private and public sectors.

Sir David Varney is leading a transformation review of public services, which is looking at opportunities for optimising use of existing identity management assets as well as considering the role wider data sharing may have in improving frontline services.

27. The next version of the UKvisas caseworking system should run automatic checks against all fields in an application which would alert ECOs to possible fraud. Meanwhile staff should be given enough time to carry out systematically those checks which are possible with the current database, and managers should monitor this carefully. (Paragraph 159)

We agree that it is of paramount importance that checks against current data bases should be carried out. Warnings Index checks are carried out on all visa applications and further checks are conducted if appropriate on a risk assessed basis.

Further work is being undertaken on the UKvisas Caseworking System. The next versions of the system will, over the next few years, build on the automation of biometric checks (being delivered this year) by similarly automating biographic checks against UK based eBorders systems. This will remove the responsibility and technicalities of Identity searching away from the issuing post and placing it where ID expertise is held – within a multi-agency ID management environment in the UK.

The potential for fraud within the application environment will be lessened by the introduction of more audit information, ensuring that every event that takes place within the lifespan of an entry clearance application is recorded against a specific user at a specific date and time. This will permit better analysis of data, so as to pick out cases that do not fall into the norms of application issue.

28. We encourage UKvisas to continue efforts to work more closely with other authorities, including the police, so that the best possible information on visa applicants is available to them when making a decision. (Paragraph 160)

The Government strongly endorses this recommendation. UKvisas works closely with a range of other authorities, including, for the Biometric Visa Programme alone, the Immigration and Nationality Directorate, the Metropolitan Police Directorate of Forensic Services, the Serious Organised Crime Agency and the Police Information Technology Organisation, with the aim of ensuring that visa decisions are taken in the light of all relevant intelligence. In addition, officers on attachment from other parts of government have started work in UKvisas, including, following the implementation of the Service Level Agreement between UKvisas and the National Document and Forgery Unit (NDFU), an NDFU attaché, and attaches from Work Permits (UK) and IND's Intelligence Services.

29. We consider risk assessment work to be a potentially valuable approach which could help ensure resources are targeted at those applications where forgery or fraud are most likely. The Government must ensure that Risk Assessment Units' findings are clearly and comprehensively recorded and disseminated, and used to re-deploy staff to areas of greatest risk. The effectiveness of these measures in discovering forgery and fraud must be monitored. (Paragraph 165)

We are pleased that the Committee recognises the value of risk assessment work. The role of the Risk Assessment Units (RAUs) is to enhance ECO decision making and combat organised abuse of the visa system. UKvisas has established a dedicated RAU Operations Section in their headquarters, with responsibility for improving co-ordination of RAU output. This will include a review of the existing systems, to develop standardised templates, which provide clear and consistent information across the network, enabling staff to focus on higher risk applications. UKvisas is also developing further measures for forgery and fraud detection.

30. In every country where there is sufficient confidence in the criminal justice system, fraud and forgery in visa applications must be reported to the local police. (Paragraph 168)

UKvisas has seen success in Ghana, where identity abuse is a significant problem. The post in Accra has worked hard to forge links with the Ghanaian Police and now enjoys an excellent relationship with a specially formed visa squad whose assistance with the arrest programme has been invaluable. The initiative coincided with a publicity campaign, which warned applicants of the consequences of presenting forged documents. As a result, the percentage of visa applications supported by forged documents fell from over 40% in July 2004 to below 10% at present. UKvisas is now exploring the possibility of establishing working partnerships with other local law enforcement agencies, taking into account wider considerations in respect of local criminal justice systems and legislation, Data Protection Act and Human Rights Act issues.

31. Suspension of visa applications produces inconvenience and frustration for genuine applicants, possibly results in some applicants trying another route instead, and leads to backlogs when the category is re-opened. This is not acceptable. Where high levels of forgery or fraud are detected in a particular category such as the Working Holidaymakers scheme, UKvisas and the Home Office must consider whether such provisions should be modified or removed. Where this is not appropriate, applications should be handled by a specialist team whilst investigations are carried out. (Paragraph 170)

The suspension of visa operations will only be considered when acute operational difficulties render this necessary, such as when there is an unexpected rise in the number of applicants across the board or in a particular category and this adversely affects the ability of an overseas post to meet its Public Service Agreement targets. There may be other instances where handling applications by specialist teams would be desirable. In other cases, specialist training or filtering applications through the UKvisas risk assessment process will be the appropriate response.

32. The fingerprinting of visa applicants has the potential to play an important role in an effective immigration control. However, we are concerned about the way the biometric visas programme is being implemented, given that it is an expensive project without a specific cost-benefit analysis and it is not fully integrated into other IT developments such as e-Borders. Its impact must be properly assessed to ensure that the expenditure is commensurate with the benefits it brings. (Paragraph 177)

We do not agree that the UKvisas Biometrics Programme is not fully integrated into other IT developments. In March this year the Programme was reviewed by the Office of Government Commerce, which concluded that the programme was well positioned to deliver on time and within budget. The Programme's Strategic Outline Business Case, endorsed by the Home Office's Group Investment Board (GIB) on 31 March 2006, included an outline cost benefit analysis. This will be refined and submitted to the GIB as part of the Programme's Full Business Case in November.

The Biometrics Programme, more than any other identity management programme, has sought to align work in this area with e-borders and Border Control. The programme has taken a lead in identifying how it will integrate with borders and border control management, and in identifying the wider benefits of the programme to the immigration control. UKvisas is playing a key part in the recently established Border Identity Management project, which is working to prioritise the various streams of biometric identity management work within the Home Office. UKvisas has representatives on all key stakeholder identity management boards, including the e-borders programme board and the Border Transformation Programme. The former Business Change Manager from e-borders is now working in UKvisas to ensure the e-borders programme (including its planning and strategy) is fully integrated with UKvisas' IT and Biometrics programmes.

33. If fingerprinting visa applicants is to be truly effective, in the future applicants' fingerprints must be checked against police fingerprint databases before a visa is issued, and fingerprints should also taken on arrival and departure and checked against the immigration record. (Paragraph 178)

UKvisas' Biometrics Programme is in detailed discussions with the Police Information Technology Organisation to develop the necessary technical solutions to provide checks against Police fingerprint records prior to the issue of a visa. UKvisas is focussed on the assurance and integrity of the visa decision and issue of the visa.

34. We endorse the recommendations of the National Audit Office and Public Accounts Committee on the entry clearance operation and are encouraged by the steps already taken to implement some of them, but have been unable to chart progress on them all. (Paragraph 182)

UKvisas has recently changed its management structure into a Programme and Project Management approach, monitored by a weekly, monthly and quarterly system of Business Improvement Boards. The recommendations of the National Audit Office, the Public Accounts Committee and this present Committee have been allocated to new or existing projects, with regular, monthly monitoring of progress.

Border controls

35. ‘Exporting the border’ effectively cuts down on the numbers of people travelling undocumented to the UK. We recommend that the use of Airline Liaison Officers should be expanded, and that consideration is given to how to deal with people who are stopped from travelling but may have protection needs. We repeat the call by our predecessors for the Government to be active in seeking to assist refugees in or near to their countries of origin, as well as to expand its policy for assisting refugees through UNHCR. (Paragraph 193)

The Airline Liaison Officer network has been integral in exporting the UK border and has made a significant contribution to preventing or disrupting the carriage of inadequately documented passengers to the United Kingdom.

Working with airlines and an international network of liaison officers from other countries the ALO network has been involved in denying boarding to over 30,000 passengers per year. The preventative benefits of the ALO network is evident from the achievement of an overall 42% reduction in the number of inadequately documented arrivals (IDAs) arriving from ALO locations.

Since April 2005, the network has been expanded from 30 officers operating at 25 locations to 49 officers at 31 locations with greater regional coverage. The network is supported by a response team.

Long term ALO deployments are in place at locations where there is a significant and long term risk from IDA traffic in both source and transit countries. The established ALO network provides a solid base from which more rapid and short term solutions can be deployed in high risk regions across the World.

Our strategy is to increase short term and flexible deployments to counter immediate and short term displacement risks. This involves a more flexible and rapid approach by deploying a range of solutions to counter specific threats.

We strongly believe in the importance of protecting refugees in or near their regions of origin. These areas often host large numbers of refugees and it is right to offer our support. Such support may also enable them to find solutions at an early stage without having to risk their lives fleeing further afield. In addition to the annual donation to UNHCR provided by the UK through the Department for International Development, The Home Office has committed funds of over £1.7m on regional protection, refugee reintegration and resettlement projects in regions of origin. In addition, the UK’s own resettlement programme is continuing to develop, and is on target to bring 500 refugees to the UK this year. We are committed to expanding the programme in future.

36. Despite the success of recent measures in detecting people attempting to enter the UK illegally through Calais, the port is a continuing focus of attention for those seeking to evade the UK's border controls. All aspects of port security in Calais must therefore be kept under constant review and strengthened wherever necessary, and the accuracy and application of new detection technology must continue to be improved. (Paragraph 198)

Whilst the responsibility for the security of the Port of Calais is a matter for the French authorities, the Committee can be assured that IND continues to liaise with the French authorities to ensure that all aspects of port security are kept under regular review. We have an agreement in place with the French authorities through which they are committed to upgrading the Calais port perimeter fence (this has been substantially achieved, significantly improving security). A limited amount of work is still to be completed as part of the port reconfiguration. In addition the French authorities continue to install CCTV cameras, deploy patrols at regular intervals around the port and undertake X-ray checking of passengers and their baggage. There is regular dialogue between IND and the French authorities to resolve any differences and identify appropriate action to overcome mutual problems.

The introduction of New Detection Technology has significantly strengthened our border control by providing a further barrier to illegal immigration from Northern France. The provision of equipment including new and updated technology is constantly under review.

Heartbeat detectors, which were referred to in the report, are only one part of a range of equipment used by IND. Other equipment includes scanners, passive millimetre wave machines, carbon dioxide probes and search dogs. IND also undertakes manual searches. The most appropriate search technique and equipment is employed to suit the circumstances of a particular port or type of traffic.

Operation and effectiveness of detection technology by port operators is monitored carefully and regular meetings are held to encourage the port to use the most effective equipment.

The HAC has expressed concerns that "increasing the numbers of private contractors working for the IS will weaken border security". Current action is aimed at ensuring this does not happen. All search and escort staff employed by the private contractor will be subject to approved and appropriate training. Contracted staff will also be subject to both UK and French government security checks including criminal record checks and individual authorisation by the Secretary of State.

37. Statistics must be kept on Immigration Officers' decisions on people subject to race discrimination authorisations, in particular to determine refusal rates by port. Appropriate action must be taken by managers if it is found that these people are treated more sceptically than other passengers. (Paragraph 205)

The proposal to record and monitor the decisions made by Immigration Officers regarding the passengers who are subject to race discrimination authorisations is welcomed. However, a process of discussion and review is required to establish who will monitor the statistics produced and what form this procedure will take. This issue has been the subject of a number of competing recommendations from different regulatory bodies. We would welcome a single approach and see it as a good example for any proposed consultation in respect of a wider IND regulatory body. In addition, the question as to how the figures will be permanently recorded and fed back to staff will also need to be addressed. The

timing and the scale of such proposals will need to be carefully considered against the current demands on port resources.

If the proposed monitoring of Immigration Officer's decision making in relation to those passengers who are subject to the race discrimination authorisations reveals that these nationalities are treated to a disproportionate level of scepticism then this would clearly constitute a training and policy issue.

After considering the report it is clear that the issue of authorisations and their subsequent communication is one that needs to be looked at closely. Ministerial authorisations are of great assistance to ports in highlighting identifiable trends practised by specific nationalities in their attempts to circumvent the requirements set by the Immigration Rules and enforced by Immigration Officers at ports. However, although the evidence used to obtain these authorisations is valid and justifiable there are indications, highlighted in the Fourth Report of Independent Race Monitor 2005/6 (1), that the application of these exemptions is not being communicated to Immigration Officers consistently at all locations. Without an understanding of how the authorisations should be applied, there is a risk that Immigration Officers are failing to understand that these authorisations constitute a licence to initiate further enquiries where it is necessary and not an instruction to discard the policy of considering each application on its own merits. If this is found to be the case then the current communication of the reasoning behind the Ministerial authorisation will need to be reviewed with specific attention being paid to staff training.

38. In view of the difficulties in carrying out checks at port, the Government should continue to develop methods of ensuring that travellers to the UK are checked before departure. Whilst carriers have a role to play in this, the Government should explore the implications of requiring all non-EEA nationals to get visas before any trip to the UK, looking at Australia's practice as an example and bearing in mind the need for tourists and business visitors to be able to travel to the UK without unnecessary inconvenience. (Paragraph 207)

'Exporting the Border' is key IND priority. This is reflected in the new strategic objectives set out in the review of IND 'Rebuilding Confidence in our Immigration System'. The Review states that we must decide who we will allow to come here before they travel, using intelligence and risk-assessment to target people, routes and places posing the greatest threat of harm.

We intend to take a risk-based approach, targeting first those non-EEA, non-visa nationals who present the greatest threat. Some of this group are likely to require the pre-entry scrutiny of a full visa regime; but there will also be large numbers of other non-EEA nationals who pose minimal immigration risk and for whom the traditional visa scrutiny is not an appropriate or efficient method of screening for relatively low numbers of criminal offenders. In order to meet our security objectives for this group, but also mindful of the need, as the Committee recognises, to operate a light and welcoming touch, we will be looking to ensure we can make fast and effective security checks on other countries' securely issued travel documents or alternatively through voluntary enrolment in our own biometric programmes such as Iris, which also provide significant benefits to the traveller.

Against all this background we have committed in the IND review to ensuring that by April 2009, through e-Borders, we will have exported the border by implementing phase 1 of the authority to carry scheme and capturing and analysing pre arrival data from the e Borders programme on 100m passenger movements. We will also require all high-risk groups to have unique secure ID before they are allowed to travel by 2011.

Immigration decisions taken in the UK

39. The IND should look carefully at the categories of application it accepts at each of the Public Enquiry Offices and ensure that these are the categories most fitted to an accelerated process. (Paragraph 214)

We will keep under review the types of application that are dealt with in the PEOs to ensure these are appropriate to the premium service offered. The intention through the IND Review is transformation into a service delivery organisation, and the PEOs play a vital role in delivering an open, accessible and professional service for customers that we are keen to enhance.

40. Consideration should be given to introducing a network of immigration application centres in the UK, perhaps using Post Offices which already check passport applications. This would provide a local service checking that applicants have filled in forms correctly and submitted the right documents, and would also remove some of the administrative burden from the IND. Applicants could be charged a fee for using this service to cover the costs. (Paragraph 215)

We recognise that getting applications forms filled in correctly with all the right documents attached is crucial to meeting our service obligations and we are looking at a variety of ways to ensure that we achieve this.

Although not via the Post Office, IND already has an arrangement with many Local Authorities regarding Nationality applications, which is working well. This is known as the Nationality Checking Service and currently there are 57 Local Authorities trained, 40 offering the service and 3 more with go live dates. This scheme is regulated by OISC and in May this year we received 2,122 out of the 11,057 Nationality applications submitted from this service.

In terms of offering this service for other applications a prerequisite is the need to simplify the current range of application forms and advice available. We are currently working on this and regard this as essential in developing the points based system.

Further developments also have to work alongside the schemes we already run whereby we receive the application forms and supporting documents from sponsors (employers/universities) as opposed to individuals. A good example of this is the highly regarded student batch scheme. This scheme accounts for about 8% of total student applications and enables us to provide a customer focused approach that benefits everyone involved.

As we develop and implement the regional structure and services for IND set out in the IND Review, we will examine further the opportunities this presents for the provision of local services around the UK.

41. We believe that both IND caseworkers and ECOs should be regulated to a standard equivalent to that for advisers who do publicly-funded immigration work. This would ensure not only that they are competent to begin with but also that their competence is maintained. (Paragraph 217)

It is clearly essential that all caseworkers and ECOs are properly trained and competent to perform their duties to the highest standards. Both IND and UKvisas are determined to continue to improve the quality of training provided to new staff and to sustain the skills of existing staff. As part of that programme of work, both organisations are examining ways in which formal accreditation of casework training might be achieved.

The IND Review identifies a range of further measures to strengthen the efficiency and quality of the casework operation. These include simplifying the current legal framework, simplifying and standardising processes to focus on

making correct decisions when cases are initially considered and introducing a Points Based System with more objective criteria for those coming here to work or study. We will also be consulting on a new single immigration regulator to help drive continuous improvement and provide an independent assessment of IND and its services. We will consider as part of that work the role such a regulator might have in relation to caseworkers and their competencies.

42. We recommend that the IND should ensure that a team of managers is given the task of focussing on quality of decision-making in all areas of casework. It should gather information which can be used to gauge quality, assess the impact of targets, and use this information to develop training, mentoring and oversight of caseworkers. The quality control measures already in place in UKvisas, asylum casework and Work Permits (UK) may provide useful examples. (Paragraph 218)

We already have this system in place for in-country non-asylum caseworkers as well as the parts of IND identified in the report. We have a team of Chief Caseworkers, led by a Deputy Director Head of Casework Quality (Grade 6), who are responsible for identifying and meeting casework training needs, clarifying operational policy, writing instructions, and introducing measures to improve casework quality. Each area of casework is supported by Senior Caseworkers who identify caseworker needs, train and mentor staff, conduct sampling exercises and maintain records, and advise on borderline or complex cases.

There is a sampling programme for each workstream to measure the accuracy of decisions and process and these statistics are collated and reported in the same way as the Work Permits information. In addition there is a monthly written report produced by the central quality team in General Group (based in Sheffield) which itemises quality issues that have arisen and what is being done to address them. We intend to review the quality programme in light of the HAC report and the IND Review. This will include review of the sampling programme to improve objectivity and feedback arrangements.

43. A meaningful internal review is likely to be cheaper and quicker for both sides than letting a refusal go to appeal. A strategy should be developed for when and how internal reviews of refusals take place. This should cover those undertaken following a request from an applicant as well as those undertaken as part of quality sampling. Statistics must be kept of the outcome of all these reviews. (Paragraph 219)

The Government agrees that, where possible, internal review is preferable to a formal appeal. Under the Points Based System, where appeal rights are removed from those seeking entry clearance, they will be replaced by an effective internal administrative review process which is being developed now. We will ensure that the administrative review will provide applicants with a swift and effective remedy where a factual error has been made. Management Information requirements are part of the Points, Identity and Documentation programme, which will include keeping statistics on the Administrative Review process.

The administrative nature of the existing work permit schemes means that there has never been a formal avenue of appeal for unsuccessful applicants. The internal review process has been operated instead. Those work permit schemes will be abolished under the Points Based System and those seeking to remain in the UK for employment, including in categories that would not be covered by the work permit schemes at present, will have to apply for further leave to remain as is currently the case for other immigration applicants and in future a points based assessment will be made of the application. In this context we are considering the use of internal review as a quick and effective means of reviewing decisions where the issues involved are about how points have been

allocated to particular qualifying criteria. No final proposals have yet been brought forward.

Other considerations to take into account are whether additional fees should be levied for reviews and at what point the evidence provided in support of an application has changed so much that it would be more appropriate for a fresh application to be made with payment of the associated fee.

In addition, where the applicant still has a right of appeal against the immigration decision involved we are considering whether an internal review will create an additional stage and therefore contribute to delay. It is possible that in these circumstances a more appropriate course will be for the applicant to lodge their appeal setting out specific grounds for believing the decision to be wrong. At that point a system of Case Management Review, similar to that in place for asylum cases, could be used, so as to ensure cases did not go through the substantive appeal process where that was not called for. We will consider with the Asylum and Immigration Tribunal the scope for operating this.

Statistics will be maintained on the outcome of internal reviews and case management reviews if operated, as well as the outcome of the quality sampling systems now in place across managed migration casework.

44. We recommend that IND managers monitor caseworkers' decisions under the same-day service carefully, and compare these decisions with those on postal applications in the same categories to see if the tight time targets make a difference to outcomes. (Paragraph 222)

Decisions in the Public Enquiry Offices are subject to the same quality sampling and quality review processes as are applied to postal applications (see response to recommendation 42), and PEO has a dedicated Chief Caseworker with a remit to improve the overall quality of decisions.

Casework timescales in PEO have recently been reviewed, and the target number of decisions expected from counter caseworkers has been reduced. Our aim is to ensure applicants receive the correct decision, taken following all the required procedures, and delivered in a professional efficient way.

PEO staff consider only straightforward applications at the counter, which allows sufficient time for staff to make the necessary detailed checks within the target timescales. Applications that are complex or require extended consideration are not processed under the same day service and are retained to enable further enquiries as needed, with decision notification taking place at a later date.

45. To avoid applications disappearing into 'black holes', the IND must introduce targets which cover the speed of processing all postal applications yet which take into account the need for rigorous checks. (Paragraph 223)

In-country casework managers regularly review lists of outstanding cases to track down cases which appear to be undecided, in order to reduce the number of old cases in the system. The internal driver (apart from wishing to deliver a timely service to applicants) is the focus on work-in-progress (WIP) in the management reporting system. Both the size and age of the WIP in Managed Migration workstreams is reported and reviewed by senior managers. A difficulty arises where cases need to be referred for special consideration by other parts of the business, where there can be resource pressures or priorities which delay case resolution. This balancing requirement for specialised attention can conflict with a 100% target.

46. It seems to us that the IND recognises there is a problem with management, but is not entirely clear where the problem lies or what to do about it. We recommend that an outside body assess the management structures in the IND to determine how many managers are needed, and at what level, to provide an adequate level of support and control for the number of caseworkers. It should also look at whether managers have the right competencies and priorities. (Paragraph 229)

The IND Review recognised that the organisation needs to strengthen its leadership and management and set out proposals for a change programme to address them. In working to implement the IND Review, the steps we will take include a review of the organisation, staffing numbers, and roles and responsibilities for all key roles, and then the design and implementation of solutions as required. The team completing this work will include experienced professionals (from outside of IND) who have the required skills and experience.

47. The use of specialist teams of IND caseworkers who can develop expertise in particular types of application should be extended further. (Paragraph 231)

We have to strike a balance between specialism and having sufficient flexibility to deliver the full range of casework decisions in timely fashion. As a result team roles and structures are kept under regular review. As the HAC has noted, this has led us recently to concentrate more types of work in particular teams. The introduction of a points based system will simplify the application routes for work and study and give more scope to concentrate resource on the more difficult types of applications.

48. Case managers should be assigned to immigration applications on a limited trial basis, to take charge of each application all the way through the system. Following the trial the case manager model should be assessed in both immigration and asylum cases. (Paragraph 232)

The case manager approach for asylum applicants is designed to ensure that there is strong end-to-end management through the system. This is particularly important for asylum cases which tend to be more complex, often involving an appeal, and where IND may also be providing accommodation and other support. A similar approach may well be helpful in some immigration cases, particularly those where applicants have been refused further leave to remain and where there may also be a need for closer management than at present of the appeal and removal processes. In the light of the further roll-out of the New Asylum Model, we will consider applying a case manager approach to certain immigration applicants initially on a trial basis as recommended by the Committee. The creation of the new IND regional structure announced in the IND Review will help to ensure that lessons learned from the use of case managers for asylum are applied to other categories if case where appropriate.

49. The IND must develop ways of integrating both overseas and in-country caseworkers' experience into policy development, by improving the way their managers gather and pass on information from them, and by encouraging policy teams to seek caseworkers' ideas or include caseworkers in those teams. (Paragraph 234)

IND recognises the benefits of engaging all parts of the business in the development of policy and the particular contribution which overseas and in-country teams can make in providing feedback on how individual proposals may contribute to improved systems and service standards. Policy proposals are routinely tested with in-country and overseas caseworker teams. For example caseworker teams come together as user groups to trial new procedures and guidance when immigration rules are amended, and overseas posts and

caseworkers test new procedures prior to their implementation, as in the case of the introduction of the Points Based System: overseas and in-country teams are the cornerstone of a Points Based System Testing strategy, undertaking managed trials of key features of the announced policy (e.g. new points attributes).

Collaborative ways of working are increasingly built into the structure of key projects; the bringing together of the Biometrics ID requirements project and the Points Based System under a single, coordinated programme, comprised of operations, operational policy, strategic policy and programme design teams, is a recent example of IND building in cross-organisational governance structures that enable individual parts of the business to interact and work collectively towards common goals.

The recently announced IND Review – Fair, effective, transparent and trusted: Rebuilding confidence in our immigration system, Home Office, July 2006 – was an examination of the entire immigration system from the perspective of the frontline. The objectives IND set as a result of this review, to deliver what it needs in terms of the laws, systems and is necessary for effective delivery, are based on a consultation involving immigration offices, caseworkers and operational and policy managers and external stakeholders. Recommendations made include those to make IND a more powerful agency, able to address the needs and concerns of its customers, partners and staff. The Review made an explicit commitment to continue to consult people who work in IND and UKvisas, and with key UK and international stakeholders and partners, to support implementation of the commitments made.

50. Public confidence in immigration control demands the highest levels of integrity from those operating it. Managers in both the IND and UKvisas must take an active role in ensuring that their staff are not acting corruptly or improperly, and they must be supported in this by investigating teams who are equipped to spot potential areas of weakness and patterns of decision-making which could indicate a problem. (Paragraph 238)

We welcome this recommendation. The IND review re-emphasised that we expect the highest standards of integrity and behaviour from our staff, and will make this one of the cornerstones of the new organisation. We recognise fully that managers in the business have a very important part to play in ensuring that their staff are not acting corruptly or improperly.

UKvisas and IND each have a dedicated unit of trained and accredited counter fraud specialists who work closely with managers to ensure that processes and procedures are in place to minimize the risk of staff abusing their position in public office. Allegations of abuse are fully investigated, often in co-operation with the police. Both the IND investigations unit and the UKvisas unit work closely with the Risk Assessment Units and each other to build up intelligence packages and share information.

Staff and managers in IND and UKvisas are well aware the need to refer suspicions to the appropriate investigations team but we recognise that there is a need to do more to proactively prevent and detect abuse and we are strengthening our capability to combat fraud and corruption.

To spot potential weakness in the operations overseas, proactive visits are carried out and recommendations on where the operation might be tightened up are passed back to Posts. The IND investigations unit has recently established a team specifically to work more closely with managers, business units and Security Liaison Officers to help build an anti-corruption culture and to raise the level awareness of the potential for abuse and the possible indicators. IND has also invested in data mining technology to analyse patterns of decision making in order to spot and investigate anomalies at an early stage.

Students

51. We recognise that the vast majority of overseas students complete their courses and abide by the conditions of their leave. But at the same time there are concerns that the student visa route is open to abuse by people who are not genuine students. The immigration system clearly has to tackle this if public confidence in the student visa route is to be maintained. (Paragraph 242)

Overseas students bring in significant benefits to the UK, including making a contribution of some £5 billion a year to our economy, strengthening our international ties and supporting university research. We are aware of the critical importance of maintaining an effective immigration control for students and have implemented a number of measures to reduce the potential for abuse and increase public confidence, including the roll-out of additional Risk Assessment Units at overseas posts. The introduction of the Points-Based System will further increase the robustness of our controls whilst easing the immigration process for genuine students.

52. Entry clearance posts must allow enough time for ECOs to conduct proper checks on student applications. However, it should also be the responsibility of the Department for Education and Skills to ensure that there is a secure system of issuing offers which is not open to fraud. (Paragraph 248)

UKvisas' current PSA targets allow 15 days for further checks to be made in respect of all non-settlement applications requiring further examination, enquiries or interview. We consider this to be sufficient time for ECOs to conduct additional necessary checks on student applications, if required. Under the Points Based System, points will not be awarded unless supporting evidence can be independently verified. We are working on guidance for ECOs relating to verification of documents in order to ensure that the correct checks are done on supporting evidence before visas are issued. These checks may vary from post to post, and will take into account local knowledge and circumstances, including information co-ordinated by Risk Assessment Units. The time needed to undertake these checks will be monitored closely, with a view to amending the PSA targets if required.

Many of those recruiting international students are of course independent bodies and systems for secure offers must be for them to administer. The Government encourages all educational institutions to adopt secure systems and recruit responsibly in order to mitigate abuse of the student route and is consulting as to what responsibilities sponsors will have under the PBS.

53. There should be an English-language requirement for all student entry clearance applications except those relating to English-language courses. It should refer to a recognised standard such as TOEFL or IELTS, and be graded according to the level of course applied for. (Paragraph 250)

We are currently formulating and testing our descriptors for all tiers of the Points-Based System. Applicants in Tier 4 points are likely to be awarded for a range of factors such as possessing a valid certificate of sponsorship, evidence of sufficient funds and, where appropriate, a record of previous immigration compliance. A student's language ability may also be a control factor, although we would also expect the sponsoring institution to test and verify the student's language ability as part of their decision to offer the student a place on the course. Our final decision on the content of the Points-Based tests will follow rigorous testing to ensure that the system is as robust and fair as possible.

54. The Managed Migration Intelligence Unit for student applications appears to be an ineffective response to a serious problem and working at an unsatisfactorily low level. We recommend that its resourcing, role and priorities be reviewed and amended so that it can tackle all the allegations made to it, in conjunction with other parts of IND and UKvisas intelligence services. (Paragraph 254)

A full review of the resourcing needed in the Managed Migration Intelligence Unit is underway, and additional staffing has already been agreed. Recruitment is underway. In addition we are recruiting account managers and compliance officers for the points based system so that we can create a robust sponsor register. MMIU works on the basis of overall IND priorities and closely in conjunction with INDIS and enforcement agencies. The IND review indicated we will expand enforcement, regulation and deterrence, and double enforcement and compliance resource. We are in discussions as to how best to direct more of this towards tackling abuse of the student route.

55. The Department for Education and Skills should recognise that it has the responsibility for ensuring that colleges attracting overseas students are genuine and offer an adequate standard of education. It should own and maintain an improved register of colleges on which both students and the immigration authorities can rely to provide a reliable and up-to-date guarantee of quality. (Paragraph 257)

The Department for Education and Skills (DfES) Register of Education Provider is a list of education and training providers which have met the conditions for entry to the Register, and are able to attract international students as a result. Entry on the Register means that an institution is providing education and training in line with the Immigration Rules. We know the creation of the Register has meant that some colleges have been unable to meet the requirements for entry, and so are no longer attracting international students. DfES continues to receive applications to join which are rejected. In this way inadequate colleges can no longer recruit international students. But both DfES and Home Office want to build on this improved situation. The Register will be replaced by a new register of providers under the Points-Based System. This list will have sponsorship at its heart, so that those recruiting international students will be obliged to comply with the new Immigration Rules, including the reporting of non-attendance and non-enrolment. In addition, all institutions will require independent verification of their educational bona fides such as public inspection or private accreditation before they will be entered on to the new register.

56. We welcome the proposals under the Points Based System to tie student visas to particular institutions and to require institutions to notify the IND if students do not attend a course. Having accurate information about the extent of non-attendance would help both to demystify the debate around abuse of student visas and also to target efforts to tackle the problem. However, there must be a straightforward way for students to notify the IND if they change course, and the IND must actively follow up any information it receives on individual students with enforcement activity wherever appropriate. (Paragraph 261)

The need to preserve flexibility was raised many times in our formal and informal consultations and we have responded to these concerns. The student visa will be linked to the institution rather than the course, which will offer students flexibility without compromising on the robustness of our control. Enforcement and compliance is vital to the success of the PBS and resources will be made available for this. Indeed, the recent IND review has announced a substantial increase in such resources and use of advanced technology (including e-Borders and identity cards) to facilitate effective enforcement. In addition, resources will be made available for compliance and account management

activity in relation to educational institutions, thus ensuring the integrity of the sponsor's register.

57. The Government should put particular emphasis on encouraging the education sector to develop partnerships between British institutions and those overseas, including through greater use of distance learning, and on setting up branches of British institutions overseas. These initiatives benefit both the British education sector and foreign students. (Paragraph 263)

We welcome the collaborative partnerships that UK Higher Education Institutions are developing with overseas institutions and acknowledge the value of the interchange between students and academics. There are an increasing number of British campuses overseas and more are in the pipeline. However, as autonomous institutions, it is for universities and colleges to decide whether or not to set up overseas campuses, or seek overseas involvement through collaborative partnerships.

Children

58. The Government should collect comprehensive statistics on the number of children who come to the UK in each category. (Paragraph 264)

The collection of statistics on the number of children who come to the UK was one of a number of recommendations made in a National Statistics quality review of the Home Office published series 'Control of Immigration statistics'. The recommendation specifically states that 'priority should be given to the development of more detailed statistics relating to children'. The Home Office has welcomed the report and the constructive recommendations made.

The Home Office intends to follow up these recommendations as fully as it can, subject to the resources it has available and other competing priorities.

59. We welcome the new Immigration Rules relating to children visiting the UK, but are concerned they do not impose any duties on other authorities to follow up the information gathered. Except in the case of children travelling to the UK with their parents or legal guardians, we recommend that children should not be granted entry clearance for any purpose until the information on the arrangements in place for them in the UK has been checked by social services and/or the police. (Paragraph 269)

Where immigration staff on arrival find any evidence which leads them to have concern for the welfare of a child, they will pass on details to the local authority concerned. If necessary they will make further inquiries before allowing a journey to continue but their scope for action in this area is subject to the constraints of their legal powers and the undesirability of detaining children for any length of time. For their part, local authorities already have a duty of care for any child in their area, and are equipped with a more comprehensive set of powers and resources.

We will consider very carefully the recommendation that police and social services checks in the case of children not travelling to the UK with their parents or legal guardians. While recognising the sensitivities involved, we would also need to take into account that fact that this would impose a very considerable increase in the existing checks, to be undertaken by social services and the police carried out prior to the issue of a child's visa. This would mean significant delays for this type of visa, even if there are no indications of welfare concerns. Such extended checks, with the extensive support required of other agencies and carrying with them inevitable delays, may as a result be difficult to justify in the face of the vast majority of normal applications where there is no evidence of any cause for concern about the child's welfare. A more effective approach would be to carry out checks where evidence suggests they might be necessary, rather than imposing a blanket requirement on all.

60. The Government must ensure that there are clear methods for assessing the effectiveness of new measures on unaccompanied children, and that these assessments focus on the safety of the children concerned. (Paragraph 275)

It is intended that the Rules relating to Child Visitors will be reviewed towards the end of September. At that time, the Rules will have been in operation for 6 months and at this stage we will consider if any changes are necessary to ensure they are working effectively and will of course focus on the safety of the children concerned. If necessary, guidance will be updated to ensure that ECOs are aware of the procedures to be followed where they have concerns about the children.

61. The Government must ensure that all the authorities concerned implement the recommendations of the report on Operation Paladin Child. In particular, social services must supply teams at ports to help identify and follow up all cases of concern, not just unaccompanied asylum-seeking children. (Paragraph 278)

The value of having teams of specially trained immigration service staff is that they can be contacted at any time, from any port, for advice when cases of concern involving children arise. This is an effective use of resources given the difficulty of knowing where and when such cases will arise.

The staffing of local authority teams at Ports will remain a matter of negotiation between IND and the authority concerned and can be determined with input from the Local Children's Safeguarding Boards. While the team's main focus is asylum-seeking children, since these have proved to be a group most likely to require local authority intervention, they also provide expertise and assistance with all vulnerable minors.

The aim of the team is to provide a professional social work service to vulnerable children. They will provide suitably qualified and experienced social work staff, managers and administrators cleared for work in safeguarding and promoting the welfare of vulnerable children from abroad to the standard required by the Protection of Children Act.

Twenty one of the twenty six recommendations contained in the report on Operation Paladin Child have either been fully implemented or are being progressed. The five outstanding recommendations were either not feasible in practice or sufficiently specific.

62. The Government must consider introducing a registration and approval system for private foster carers. It should then explore whether this would allow tighter immigration controls to be placed on children entering the country without their own parents. The Government should also provide support for communities where private fostering is common to develop their own ways of protecting privately fostered children. (Paragraph 284)

Provisions of the Children Act 2004 came into effect in July 2005, which amended the relevant sections of the Children Act 1989. The new Children (Private Arrangements for Fostering) Regulations 2004 also came into effect in July 2005. These provisions strengthened and enhanced the existing private fostering notification scheme.

The registration provisions of the Children Act 2004 expire in November 2008. The Government has promised that, at a suitable point during the lifetime of these registration provisions, it will publish a report on the impact of the new measures in the Act and the new Regulations, and the National Minimum Standards for private fostering.

The Children Act 1989 requires local authorities to satisfy themselves that the welfare of children who are privately fostered in their area is being satisfactorily safeguarded and promoted. To do this, a local authority must arrange for an officer to make an initial visit to assess and report on a proposed or existing private fostering arrangement. The authority must then arrange visits at regular intervals to make sure the arrangement is working. Local authorities already have powers to impose requirements on proposed or actual private foster carers. Where they do not comply with a requirement, the authority should consider whether it would be appropriate to impose a prohibition.

The provisions of the Children Act 2004 now require local authorities actively to promote awareness amongst their communities of the requirement to notify private fostering arrangements to the authority. The DfES has published guidance for authorities, "*Promoting Awareness of Private Fostering Arrangements*" on its website. The nature of local communities will vary considerably from one local authority area to another, and it is therefore appropriate that it should be for local authorities to promote awareness, and determine the most effective service response, at a local level.

63. We do not propose that the Government withdraw its reservation from the UN Convention on the Rights of the Child, but it should include the immigration authorities in the duty under the Children Act 2004 to safeguard and promote the welfare of children. (Paragraph 290)

The Government recognises the importance for IND to look after children who are subject to immigration control properly, and has previously considered proposals to impose the duty conferred by section 11 Children Act on IND. It decided not to impose this duty because it could impede the effective implementation of immigration policy. For example, the Government was concerned that if IND had this duty, it would be used by those whose entry or continued stay in the UK had been refused, as a means of frustrating their timely removal by providing additional grounds for challenging those decisions. The work of the Immigration Service in this respect currently forms part of an ongoing discussion with the Children's Commissioner.

Spouses

64. In view of the serious difficulties caused to some applicants by the requirement to return home to apply for permission as a spouse, we recommend that where the Foreign Office advises against all travel to a particular country, applications for leave as a spouse or unmarried partner from nationals of that country who are already living in the UK be decided in the UK with an interview. (Paragraph 300)

The "no switching" provision prevents anyone who has been given leave to enter the UK for 6 months or less from switching into marriage. This provision is an anti-abuse measure and we would not wish to weaken its effectiveness by introducing a new set of casework arrangements that offer scope for further abuse. The rules are designed to be objective and straightforward for both applicants and caseworkers.

A person who has not been granted leave for more than 6 months is expected to go home and apply to their normal entry clearance post in the proper manner. This allows proper checking of the application to confirm that the marriage is a genuine one. However, if the requirements of the Immigration Rules are not met but there are genuine reasons under Article 8 of the European Convention on Human Rights which would make removal inappropriate, discretionary leave outside the Immigration Rules may be granted. In such cases, it will not usually be necessary to conduct an interview in order to make a decision on the application.

65. The Asylum and Immigration Tribunal should make more use of its power to hold appeals in private, and if need be its rules should be amended to make it clear that forced marriage cases might be appropriate for this procedure. (Paragraph 308)

The Asylum and Immigration Tribunal's judiciary are very responsive to requests for hearings to be held in private and the Tribunal is certainly not aware of any request being refused and then subsequently challenged. The issue of forced marriages is one which the judiciary are very aware of, particularly in respect of the circumstances in which evidence is presented before it.

However, the current Procedure Rules provide a wide range of powers enabling the judiciary to direct the way in which a hearing shall be conducted. For example Rule 19(2)(c) provides for the exclusion of the appellant where the Tribunal believes there is a risk of violent and disorderly behaviour. In addition Rule 54(2)-(4) provides for the exclusion of some or all members of the public in a wider range of circumstances including protecting the private life of a party. The difficulty would be overcoming the suspicion if these hearings excluded close family members who in all probability have offered maintenance and accommodation and subsequent questioning of witnesses by the family as to the content of the session. This is made more difficult where the decision is subsequently served upon the appellant and made available to the family members.

When deciding the extent to which these powers are applied the Tribunal must be mindful that a key principle is that justice must be seen to be done, so under rule 54(1) "every hearing before the Tribunal must be held in public", subject to the provisions which follow.

The AIT is of the view that Rule 54(3)(b) of the current Procedure Rules already meets the Committee's concerns, and the rule as a whole properly sets out the tribunal's responsibilities in respect of its proceedings.

66. Forced marriage cases are now handled more sensitively than before, but better arrangements should be made for refusing spouses' visas or settlement applications on the basis of confidential information from a reluctant sponsor. The Government should consider further steps which might protect young British people from forced marriages, including interviewing all visa applicants for marriages which have been arranged at short notice. The Government might also consider encouraging visa applications for arranged marriages to be submitted before the British spouse leaves the UK. (Paragraph 311)

We are pleased that the Committee has recognised the work that has been put into the handling of forced marriage cases. We agree that more work needs to be done. We are currently undertaking research into the effect of increasing the minimum age for a sponsor and for a person to obtain entry clearance for the purpose of marriage and the findings should be available in February 2007.

The Committee's recommendations in respect of interviewing all spouse visa applicants for marriages, which have been arranged at short notice and encouraging visa applications for arranged marriages to be submitted before the British spouse leaves the UK, will be considered carefully. UKvisas and IND would wish to ensure that sponsors at risk were not placed in jeopardy, that genuine applicants were not delayed, and that the additional resources required for this work would be cost-effective. There are no easy answers to this difficult issue and the IND and UKvisas will continue their efforts to educate and work with communities both in the UK and abroad.

67. The Government should explore the feasibility of recovering the costs of providing support and safe accommodation for those victims of domestic violence who are subject to a public funds restriction. (Paragraph 314)

There have been several changes to the way the Immigration and Nationality Directorate (IND) handles cases that fall within the domestic violence provisions of the Immigration Rules and have no recourse to public funds. Applications from victims of domestic violence are now prioritised and, where the applicant is destitute, the usual fees are waived. Victims of domestic violence who are still subject to immigration control cannot access public funds until their application has been decided. However, victims can get access to housing-related support through the Supporting People arrangements.

Over the last two financial years the Home Office has provided £120,000 to Women's Aid to bolster its Last Resort Fund to help meet the living costs of a small number of cases in refuges that cannot be covered by the Supporting People arrangements. However this was only a temporary solution and over the last few months IND and other Government Departments have been working together to find long term solutions for those victims with no recourse to public funds.

The Home Office is aware of the acute problems faced by this group of women and has circulated guidance to local authorities asking them to consider the dynamics of domestic violence in their assessment of women who apply for assistance with insecure immigration status in fear of violence.

Follow up with local authorities suggests that they are taking positive steps to assess and support these women appropriately. We will also consider the Committee's recommendation to explore the feasibility of recovering costs of providing support and accommodation to victims of domestic violence.

68. The IND should re-examine its policy of not providing information to "third parties", with a view to providing information to sponsors (or their representatives) about the immigration status of people they have sponsored. This could provide welcome reassurance to those in fear of domestic violence. Once embarkation controls are in place, the IND will have much better information on whether or not a person has left the country. (Paragraph 315)

Disclosure of personal information about an IND applicant to anyone other than the data subject requires consideration of the Data Protection Act 1998, Human Rights Act 1998 and Common Law duty of Confidentiality. This means that any request for information about an applicant must be considered individually depending on the facts of the case. This rules out a blanket change in the IND policy of non-disclosure to all third parties generally. However, in future when the estranged spouse of an IND applicant, who has suffered domestic violence at the hands of the IND applicant, requests information about the applicant's whereabouts we will confirm whether or not the applicant is still in the UK if IND records contain that information.

69. The Government is right to take measures against sham or bogus marriages. The Bogus Marriage Task Force should be reconvened urgently to produce proposals which are non-discriminatory. Meanwhile all marriage applications should be assessed by specialist teams of caseworkers. (Paragraph 326)

We are pleased that the Committee recognises the action we have taken to tackle sham marriages. We regard the Certificate of Approval system as an important and successful policy response to adjust an entry route which was clearly being abused on a growing scale. The marriage taskforce continues to meet regularly with policy and operational colleagues to identify possible trends of abuse and implement proposals to prevent sham marriages.

In order to comply with the Judgments in the case of *Baiyai & Others v Secretary of State for the Home Department*, the Home Office has adapted the scheme and produced interim guidance which will be used to consider Certificate of Approval applications pending the outcome of the appeal. Meanwhile, efforts will be made to reduce the delay to applicants whose cases have been held up. In order to apply the provisions objectively and consistently applications are dealt with in a specific casework team, who receive relevant training. Caseworkers dealing with marriage applications generally who suspect a sham marriage can refer cases to a specialist team to conduct an interview.

Appeals

70. The lack of mutual confidence between front-line staff and Immigration Judges is very worrying. As a first step, each side must learn more about the other. We particularly encourage Immigration Judges to visit entry clearance posts, and recommend that all ECOs and IND caseworkers visit the AIT as part of their initial training. (Paragraph 335)

The Tribunal's judiciary are not persuaded that there is advantage to the Tribunal in encouraging Immigration Judges to visit entry clearance posts routinely. There is concern that the concept is not compatible with the independence of the judiciary, which must be maintained for the Tribunal to retain its credibility as an independent arbiter of asylum and immigration claims. To provide one party to the appeals process with insight into the judicial decision making process could undermine this long established and important concept.

There is no similar relationship with the appellant and it could well be argued that organised visits would be unbalanced. However, in recent years Immigration Judges have undertaken visits to a number of major entry clearance territories on an individual basis.

The President will be visiting the Post in Accra in October of this year to gain an insight into their work and of the local conditions. However, the President does not see that it is part of his role, or that of the Tribunal's wider judiciary, to promote the mutual trust and confidence of decision-makers.

The Government fully accepts the need to make high quality decisions and administer the appeal procedures so that Immigration Judges can have confidence in the quality of the casework they see. UKvisas has recently enhanced the training provided to ECOs and ECMs and continues to review the content. The UKvisas Training Unit works closely with AIT administrative staff, some of whom have presented sessions at induction courses and who help ensure that the course content is accurate and up-to-date. A further review of the courses will be undertaken later in 2006, when consideration will be given to the Committee's recommendation in respect of visits to the AIT.

IND caseworkers are encouraged to build links and obtain feedback from Presenting Officers, including accompanying officers at appeal hearings. With the recent transfer to caseworkers of responsibility for writing reasons for refusal letters the training and subsequent mentoring was designed in close liaison with the AIT. We will review what improvements are needed to caseworker training in light of both the HAC report, and the feedback from appeal decisions and presenting officers.

71. If these results of the National Audit Office analysis of reasons why entry clearance decisions are overturned on appeal are repeated throughout the entry clearance operation, they suggest that thousands of immigration refusals being allowed on appeal might be better dealt with at an earlier (and cheaper) stage in the process. (Paragraph 336)

We believe a wider sampling exercise would be required than that undertaken in the NAO report referenced if we are to place confidence in the applicability of the findings across the entire appeals system. Whilst the results provide an interesting illumination of some of the reasons for overturning a decision on appeal the sample represents less than 1% of the total volume of entry clearance appeals the Tribunal received during the financial year 2005-2006.

However, in broader policy terms, the Committee's comment in respect of resolving a dispute at the earliest stage within the process is consistent with Tribunals Service's development of effective systems for redress and dispute resolution. These are used increasingly across the wider justice system. They can potentially provide more efficient and effective remedies, at lower cost and with less pressure on users.

At this stage it is the Government's intention to keep under review the potential merits of a "minded to refuse" stage within the asylum and immigration decision making process, and we will consider whether to include this in the programme to simplify the legislation, rules and guidance.

72. In over half of entry clearance appeals, the outcome appears to be not so much a judgment on the original decision as a completely new decision reached on the basis of different evidence. (Paragraph 338)

We can see how this may be perceived. The Tribunal's Judiciary are creatures of statute and as such must follow both the legislation and guiding case law. The principal statutory power regarding evidence in entry clearance appeals is found at s.85(5) of the Nationality, Immigration and Asylum Act 2002 (NIAA 2002). This provides that the Immigration Judge can consider fresh evidence should it relate to the circumstances appertaining at the date of the original decision.

The lead case in relation to the interpretation of s.85 (5) of the NIAA 2002 is *DR** [2005] UKIAT 38. This establishes that whether an appeal is on immigration or human rights grounds "*the adjudicator may consider only the circumstances appertaining at the time of the decision to refuse.*"

In *DR**, Mr. Justice Ouseley explains that post-decision evidence may be admissible if it relates to the circumstances obtaining at the date of decision, but not if it relates to some future eventuality which may or not have been '*reasonably foreseeable*' at the date of the decision.

Given that this interpretation is currently binding on the Tribunal, we believe the Committee's recommendation misrepresents the position. The Tribunal's own procedure rules provide a robust framework for controlling somewhat the admission of fresh evidence within appeal hearings, and in particular provides that all evidence taken into consideration is made available to the other party. Should an Immigration Judge over step the mark in relation to what new evidence can be considered under the current statutory provisions then it is open to the Respondent to challenge the decision by way of review under Section 103A of the 2004 Act.

73. Introducing a "minded to refuse" stage into the application process both overseas and in the UK might dramatically reduce the number of non-asylum appeals going to the AIT, by allowing applicants to present further evidence to the original decision-maker rather than to an Immigration Judge. (Paragraph 341)

The Government's view is that, whilst this recommendation may produce some benefits, the introduction of a formal review of the original decision would not lead to dramatic reductions in appeal volumes. We believe there needs to be a realistic appraisal of the benefits of such a process weighed against the financial implications and the risk of adding unnecessary layers within the end to end decision making process.

As we have stated elsewhere it is the Government's view that for immigration applications the focus of effort should be on simplifying the legislative framework and making the application criteria more objective and transparent. The implementation of the Points Based System will go far in introducing such a concept within the entry clearance application process, albeit without the right to appeal, should the decision not be in favour of the applicant.

As we said in response to recommendation 21, the view is that internal reviews of all refusal decisions are desirable as this will result in improvements to the quality of ECO decisions, reductions in complaints and greater public confidence in the system. UKvisas is working on improvements to the quality of entry clearance guidance and information to help applicants provide all relevant supporting evidence at the earliest opportunity. In addition, a more robust ECM review of refusal decisions, to be conducted before refusal notices are served, and upon receipt of an appeal, is being assessed for implementation. This is certainly consistent with the vision of the Tribunals Service that there should be opportunity for decision-makers to review their decisions, and seek alternative forms of dispute resolution, before recourse to a formal judicial process.

74. In a further one fifth of entry clearance appeals, it appears that the judge substituted his or her interpretation of the facts for that of the ECO. This can be a particular problem in the case of forgeries. We share the view that staff in posts are in a better position than the AIT to make judgments on forged documents, particularly if supported by specialist teams and appropriate equipment. (Paragraph 343)

The Government attaches considerable importance to the detection of forged and fraudulent documentation and UKvisas have engaged with the IND's National Document Forgery Unit to supply equipment and training to Risk Assessment Units and entry clearance personnel.

Entry Clearance Officers, Home Office Presenting Officers and the judiciary are obliged to follow the Tribunal's starred decision in *Ahmed (Documents unreliable and forged) Pakistan** [2002] UKIAT 00439. In this decision the Tribunal sets out the three principles, applicable to all appeal types, in relation to (alleged) forged and unreliable documentary evidence:

1. It is for an individual claimant to show that a document on which he seeks to rely can be relied on.
2. The decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round.
3. Only very rarely will there be the need to make an allegation of forgery or evidence strong enough to support it. The allegation should not be made without such evidence. Failure to establish the allegation on the balance of probabilities to the higher civil standard does not show that a document is reliable. The decision maker still needs to apply principles 1 and 2.

At the appeal stage the role of an Immigration Judge is to determine each appeal based on their own findings of fact and by applying the law as established to that particular claim. It is for the Respondent to provide specific evidence to Immigration Judges in relation to the authenticity or otherwise of each particular piece of evidence if making an allegation of forgery. If simply questioning reliability of documents this should be done in a particularised and effective manner taking into account the principles established in *Ahmed*.

75. If the decisions of ECOs and IND caseworkers are to withstand appeal, their refusal notices must show clearly and fully the reasons for the decision and the evidence on which the decision is based. This requires good training, involving lawyers to emphasise the legal standards required, and also good management. Managers must be more active in reviewing refusal decisions so that those which are not sufficiently substantiated can be either strengthened or conceded before any appeal. Managers should also look closely at the reasons why any refusal is overturned by the AIT and discuss each refusal with the caseworker to see what lessons can be learnt and disseminated more generally. (Paragraph 346)

The Government recognises the importance of the refusal notice and the need for careful explanations that stand up to scrutiny at appeal. The HAC's observations about good training, legal advice, active management and feedback to caseworkers are all matters on which we agree.

For in-country casework, responsibility for writing refusal letters shifted to Managed Migration caseworkers last year, and the transition was managed by a cross-cutting project involving all the relevant areas, including caseworkers. As well as creating a bank of 'standard paragraphs' to achieve consistency and legal accuracy, caseworkers received individual training and mentoring in how to construct letters relevant to the individual case. Since the system went live this training has been reinforced for caseworkers and managers, and all letters are individually checked by a more senior caseworker. Links have been established with Presenting Officer Units to follow through the eventual outcome at appeal. Through 2005/06 Deputy Directors in Croydon and Sheffield led reviews of reason for refusal letters, including the quality and robustness of the content as well as the processes being used, which resulted in much 'fine-tuning' of the work. We will continue to liaise actively with the presenting officers and to work on the robustness of the decisions and quality of the letters.

There are a number of cross-departmental initiatives to improve the quality of ECO decision-making. This includes 'quality assurance' feedback by Presenting Officers who provide impartial and professional criticism on the quality of refusal notices and appeal bundles. We have also arranged visits by Presenting Officers to Posts to enable Entry Clearance and Appeals Caseworkers to exchange information and experiences with the aim of strengthening refusal decisions and minimising the number of refusals which progress to appeal.

UKvisas' training courses now have a heavy emphasis on the quality of decision making and focussed on justifiable, properly structured and balanced refusal notices. ECMs are given a thorough overview of and practice in the importance of reviewing decisions. This will also be a key feature of regional refresher training from September 2006.

Although it is not planned to have lawyers involved in the sessions, UKvisas does quality check course material, particularly on appeals and the Human Rights Act, in the first instance with the UKvisas Decision Quality team and then through legal advisors as appropriate. In all courses, stress is laid on the fact that decisions have to be made within a legal framework.

76. We believe that the introduction of a "minded to refuse" stage, coupled with more robust internal reviews of refusals, should largely eliminate any real justification for the introduction of new evidence at (or just before) appeal in the great majority of cases. This would improve confidence in the appeals service throughout the immigration system. (Paragraph 347)

We agree that robust internal reviews of refusals would improve the appeals process and could have the benefit of removing some appeals brought unnecessarily. As we have commented elsewhere, however, we need to be

mindful of the balance between benefits to users that a formal review stage would bring weighed against the risk of adding unnecessary layers within the end to end process.

Internal reviews of all refusal decisions are desirable especially where this improves the quality of original decision making. We have explained elsewhere (paragraph 21) the improvements we intend to make in this area. Robust reviews of decisions prior to appeals being lodged is entirely consistent with the view outlined in the 2004 white paper *Transforming Public Services: Complaints, Redress and Tribunals* that there should be opportunity within systems for resolving disputes at source before seeking recourse to a formal judicial process.

However, at present the Government intends to keep under review the potential merits of a “minded to refuse” stage.

77. We recommend that the Home Office and the Department for Constitutional Affairs work with the AIT to develop a pilot exercise in the near future to assess the potential benefits of holding entry clearance appeals in major source countries abroad. (Paragraph 348)

This is an issue the government has considered previously. It has concluded that any minor benefit accrued from housing Immigration Judges in major entry clearance territories would be undermined by both the financial and logistical impacts together with the perceived loss to the Tribunal of its independence within the jurisdiction.

In terms of financial impacts there is likely to be a considerable cost to the UK taxpayer if we attempt to export the appeals process and its support systems across the globe. We would need to put in place the capacity to hear appeals in other countries. This would require the procurement of hearing rooms together with the provision of permanent accommodation for our staff and judiciary. This would be very costly in comparison with the economies of scale accrued from the current AIT hearing estate, especially in the wider context of the efficiencies expected from the creation of the Tribunals Service. An added argument relates to the number of Immigration Judges to be deployed to each territory to begin to hear the volume of appeals lodged on a weekly basis.

The Tribunal needs to be seen as the independent arbiter of asylum and immigration appeals. Locating Immigration Judges and Tribunal staff in entry clearance territories will undermine that independence, given the location and the proximity of entry clearance officials, in the eyes of Tribunal users and the wider public. If the Tribunal and its judiciary are viewed as less than independent from the initial decision making process then its users are more likely to seek alternative remedies through the higher courts which undermines the principle of a streamlined appeals process.

A key advantage of the single tier Tribunal for judiciary has been the development of a strong body of jurisprudence building on the specialist expertise of the Tribunal members. In addition the Tribunal believes a strong sense of collegiality amongst its members is an essential component of consistent and high quality decision making. Immigration Judges based in entry clearance territories will be at the extremes of the jurisdiction and would be unable to benefit from the advice of their colleagues and developments in a wider jurisprudential context.

Taken together the government remains of the view that placing Immigration Judges outside of the UK would provide no tangible benefits to the appeals process nor to the UK taxpayer in terms of the effective use of public money.

78. The AIT should introduce Case Management Reviews in non-asylum appeals as a matter of priority. These should help to prevent delays and adjournments in court and may even result in weak cases being dropped. (Paragraph 350)

The AIT's Review Report, which was published in April 2006, devoted a chapter to Case Management Reviews (CMR) and their function within the Asylum & Immigration Tribunal. The review contained seven recommendations aimed at maximising the benefit of CMR hearings to the Tribunal and its users following a lengthy consultation.

We have already begun the task of piloting a range of initiatives identified, including a Best Practice exercise to maximise benefits accrued; establishing CMR as a wider paper-based process; and piloting the wider application of CMR processes to non-asylum appeals.

79. The absence of electronic systems for notification of appeals and for subsequent communication about appeals undermines the efficiency of the appeals system. The requirement to send huge bundles of papers, which may play little or no part in the subsequent hearing, is a drain on staff time and resources. The implementation of electronic communications systems must be given a high priority. (Paragraph 353)

The Government agrees that the appeals system can be made more efficient through the use of electronic systems for the management of appeal notification and document handling. However, it is also incorrect that there is an absence of this type of electronic notification. For instance the Asylum & Immigration Tribunal and IND operate an automated data exchange in relation to asylum appeals which has proven over time to be effective in enabling both departments to manage the asylum appeal workload more effectively.

We are working together to implement automated data exchanges between the Tribunal and entry clearance posts. In addition we are currently piloting systems of electronic document handling for notifying and deciding preliminary issues. Over the course of the next year we intend to widen this to other appeal types together with more automated case progression between Tribunal and posts. In addition to the introduction of electronic systems the Tribunal is also exploring options with alternative courier services which we believe will improve value and deliver savings in the time taken to forward bundles to the Tribunal from the entry clearance posts.

However, these reforms need to be placed in the context of ensuring the right evidence and documents are available for Immigration Judges to make fair and correct decisions. There will always be some cases requiring traditional methods of document handling.

80. We support the AIT review report's conclusions on the amount and relevance of evidence and also call for an urgent review of whether there is any need for original papers to be available to the AIT. It may be suggested that this is necessary in cases where forgery has been alleged. However we have seen no evidence that the AIT has access to the necessary expertise to verify documents in entry clearance appeal cases. (Paragraph 355)

The AIT, under the lead of a Senior Immigration Judge, is currently reviewing material required in terms of documentary evidence in all types of appeals, but with particular emphasis on entry clearance cases.

We fully recognise the administrative benefits which could be achieved by reducing the circular flow of evidence and papers between the AIT, entry clearance posts abroad and the appellant and their representatives. The AIT is currently working very closely with both UKvisas and IND to identify effective

options for electronic handling of documents in entry clearance appeals between posts and the Tribunal.

The judiciary's starting point is the continuing need to see the best evidence available in order to make the fairest decision – and that is often the original documentation. The quality of such evidence is often very important and the provision of copies is of varying quality. However, we remain confident that much will be achieved over the coming months in respect of clarifying the circumstances in which original documentation is important to an appeal, and those in which it is not.

81. We were disappointed to find that the AIT does not provide the simple one-tier system that the Government set out to establish. For the reasons cited in this report, we do not have confidence that the AIT as it currently operates could satisfactorily fulfil that role. But the aim of a genuinely single-stage appeal system which effectively reviews first-instance decisions in one hearing and which is able to take into account human rights considerations must remain the right one. We urge the Government to keep the possibility of such a system under constant review. (Paragraph 361)

It is correct to say that the Government set out to introduce a simple single-tier system for deciding asylum and immigration appeals, through the introduction of a 'judicial ouster' whereby the Tribunal's decision would be final. However, Parliament legislated for a single-tier Tribunal with supervision of the Tribunal's decisions provided by the higher courts by way of review from the Tribunal.

The introduction of the 'filter mechanism' whereby Senior Immigration Judges of the Tribunal undertake the first review was to allow time for the new appeal processes to bed down in concert with the 2004 legal aid reforms. Once the number of applicants seeking onward review of the Tribunal's original decision have stabilised there is provision for the Lord Chancellor, following consultation with the Lord Chief Justice, to remove the filter provision providing a right of onward appeal to the higher courts in the first instance.

The system of review and reconsideration is kept under careful scrutiny by the Government and there are a number of recommendations published in the AIT review Report of April 2006 which are intended to further maximise the effectiveness of the current process. We will continue to monitor closely the effectiveness of the appeal structure and bring forward new proposals where we see the opportunity to do so.

82. The Government must ensure that Home Office Presenting Officers (HOPOS) attend every appeal that the IND or UKvisas wishes to defend. (Paragraph 364)

IND have a target to provide 100% representation at appeals and during the last financial year this was achieved in 98% of all cases. Inevitably, there will be times when an appeal will be unrepresented. Staff illness and late changes to the listing of cases are the most common reasons. We actively manage the Presenting Officer resource to minimise the number of unrepresented appeals. We are determined to improve performance to ensure that IND and UKvisas are represented at all appeals.

We have been working to increase the number of Home Office Presenting Officers and therefore the level of representation at appeal. An external recruitment campaign, a cross-government trawl, and an internal Home Office HEO Assessment Centre have all contributed to this and over the last three years we have recruited 254 Presenting Officers. Staffing levels in Presenting Officers Units are monitored regularly with Presenting Officer vacancies filled via a central recruitment process. The current external recruitment campaign will provide approximately 60 new Presenting Officers for the London region.

83. We are concerned that the Committee was given a misleading impression of the quality of representation in these sensitive cases of great public concern. (Paragraph 366)

There was no intention to mislead the Committee. The position is that cases of public concern are presented by experienced Presenting Officers, where the matter is particularly sensitive or high profile IND will instruct Treasury Solicitors.

84. It is hard to see how HOPOS can provide a robust defence if they have neither a full understanding of immigration and asylum law and practice nor practical advocacy skills, and might not stay in the job for long enough to build up these attributes. If the Government is serious about defending appeals, the quality and skills of HOPOS must be improved. They should be required to meet at least the same standards as appellants' representatives. (Paragraph 367)

IND are satisfied the training programme Presenting Officers receive is sufficient and allows them to develop the skills and knowledge required for the role. All Presenting Officers regardless of background and experience receive intensive internal classroom training, followed by a number of weeks being mentored by a dedicated experienced presenting officer, before being allowed to present cases alone. After presenting for an initial three months all officers then attend a three day tailored consolidation course. The training programme is continuously reviewed to ensure that topics covered are up to date taking into account feedback from Presenting Officers, managers and the AIT. All Presenting Officers have a personal development plan agreed by their team manager and further training is provided when necessary.

Presenting Officers are supported by having access to an extensive online library of caselaw, country information and legislation. Additionally there are libraries at the Presenting Officer Units containing the main sources of immigration law and practice. Presenting Officers also have access to advice from country officers specialising in particular countries, Senior Caseworkers and an Operational Policy team.

Home Office Presenting Officers are continually assessed by team managers through observation in court, feedback and reviews, which feed into their personal development plans. In addition a new quality framework for assessing HOPOs performance is to be implemented in the autumn. This will ensure greater consistency of standards for all presenting staff.

Presenting Officers are expected to remain in post for a minimum of two years, 64% of the current POs have been in post longer than two years.

85. We believe that it is essential that the work of HOPOs is organised so that they have enough time to prepare for appeals and can discuss cases with the ECO or IND caseworker wherever the basis of a decision may be unclear or clearly open to challenge. (Paragraph 371)

The importance of ensuring that Presenting Officers have sufficient time to prepare cases for court is accepted. We will continue to deploy what resources we have available as effectively as possible, with the aim of ensuring both the maximum level of representation in court and sufficient preparation time for Home Office Presenting Officers.

86. HOPOs should also be given the power to concede cases which they consider un-winnable. This would be another way in which court time could be saved. (Paragraph 373)

Presenting Officers do have the power to concede cases in circumstances where there is further and compelling evidence from the appellant. All decisions to concede an appeal or withdraw a decision are however subject to approval from a Presenting Officer Unit Senior Caseworker, Team Manager or Senior Presenting Officer.

87. To increase mutual understanding, we recommend that the current programme of HOPO attachments to posts overseas is extended to allow every HOPO to see at first hand how both ECOs and IND caseworkers work and to share their own knowledge and experience. (Paragraph 375)

Home Office Presenting Officer attachments to Posts overseas have proven to be very valuable. Earlier this year selected, experienced Presenting Officers visited nine key entry clearance posts for a period of 3 to 4 weeks. They assisted Entry Clearance Managers to design improved refusal notices, develop best practice processes for reviewing refusal decisions, and improve the quality of appeal bundles, with the aim of achieving sustainable decisions. The visits also provided Presenting Officers with a better understanding of the work undertaken by UKvisas. We are looking to expand this programme early in the New Year.

A Liaison Officer (LO) network whereby a nominated individual in each of the nine Presenting Officer Units in the UK is the contact point for queries from Presenting Officers and UKvisas/ECOs about entry clearance decisions is in the process of being finalised.

88. We were not in a position to determine the degree to which the quality of representation in immigration appeals has improved since regulation was introduced, but we suggest that one of the ways the Office of the Immigration Services Commissioner could do this is through spot checks on how representatives are performing in the AIT. (Paragraph 377)

Statute requires that regulated advisers are fit and competent. The OISC works to ensure that this requirement is met. As part of this the OISC has developed and is currently implementing a programme of competence assessment for all of its advisers.

The Commissioner has met with the President and other senior members of the AIT and has discussed with them the quality of advocacy. The AIT can, and is encouraged to complain to the OISC about advisers or others representing clients who give them concern.

Persons offering or giving advice while not regulated by the OISC or by one of the Designated Professional Bodies are committing a criminal offence. Since its establishment the OISC has taken a firm line on enforcement and has had a significant success in ensuring that rogue advisers are identified and prosecuted.

The OISC is currently working with the AIT at four sites in monitoring those representing clients and specifically to identify any prospective criminality. The OISC's aim continues to be to ensure that only those who are regulated and of sufficient competence appear before the AIT.

89. Legal aid changes have not resulted in fewer appeals, and any savings may be offset by the disadvantages of having unrepresented appellants. The Government must investigate other ways of discouraging unmeritorious appeals whilst encouraging those with merit. (Paragraph 380)

We recognise the Committee had concerns that recent changes to legal aid have not resulted in fewer appeals and any savings we have made are offset by the disadvantages of having unrepresented appellants in the appeal system.

The retrospective legal aid arrangements for onward appeals introduced in April 2005 were an integral part of the aim of achieving speed and efficiency within the appeals process under the new Asylum & Immigration Tribunal. They aim to combat abuse of the system and to avoid high volumes of publicly funded weak cases reaching the AIT and the High Court. This is imperative to achieve speed and efficiency and to ensure that public money and resources are targeted on genuine cases. Arrangements are in place to monitor the operation and impact of the scheme, and work will be taken forward over the next 12 months to make a detailed assessment on the impact of the scheme.

Later this year, the Legal Services Commission plans to pilot arrangements that will involve the front loading of legal advice and assistance in asylum cases. Under the pilot scheme the asylum interview will represent the last rather than the first opportunity for asylum claimants to clarify issues in dispute. To assist with this process and to ensure the reality of the shared duty to ascertain and evaluate all the relevant facts, the legal representative and the IND case owner will work together, jointly ensuring that, in the vast majority of cases, all factual issues are put into account and that the full case has been presented before the end of the interview. The legal representative will participate fully in the interview to facilitate this objective. If disputes remain at the end of the interview then a decision can still be made and, if refused, there may be an appeal to the Asylum and Immigration Tribunal in the normal way. In these circumstances the issues before the Immigration Judge will be more clearly focused.

We will be evaluating the success or otherwise of the pilot to see whether this approach should be rolled out for all asylum cases, and whether immigration cases could benefit from a similar approach to provision of publicly funded legal advice.

We need to make best use of limited resources by ensuring that only cases with merit are funded. Weak and unmeritorious cases are excluded through the merits test. The merits test for representation at the Tribunal has been in existence since representation at appeal and bail hearings was brought into the scope of legal aid in January 2000. Generally speaking for funding to be granted the prospects of success have to be moderate or better which is defined as clearly over 50%. However, in asylum cases, if the prospects of success and merits of the case are borderline or unclear, then funding can still be granted if the case has wider public interest or is of overwhelming importance to the applicant. Where a case has a poor prospect of success, the fact that making or pursuing an application or representations will in itself prolong a client's right to remain in the UK will not be treated as a sufficient benefit to continue with public funding.

It is inevitable that in any system of merits testing there will be applicants with poor cases who do not receive publicly funded representation. It is individuals who choose to exercise rights of appeal, and therefore there will be some level of unrepresented appellants in the appeals system as a result of the merits test being applied correctly.

90. Wherever possible, cases must not be listed for hearing until the bundle of documents has arrived. To provide a disincentive for delay, posts should be required to pay the costs resulting from avoidable delay. There would still need to be an absolute time limit in all cases, beyond which cases would have to be listed, with the Home Office presenting the case as best it can. (Paragraph 384)

The Government agrees that wherever possible all parties to an appeal before the AIT are given the best opportunity to place their evidence before an Immigration Judge and that the appeal be decided in a timely manner. At present the Tribunal notifies the parties to the appeal of the deadline for producing their evidence. Where this deadline is reached but no evidence has been received from

the Respondent a further reminder is sent to the relevant post together with a hearing date eight weeks from the original deadline for submitting the appeal bundle. The Tribunal believes this provides entry clearance posts with enough time to compile their appeal bundle and arrange for this to be placed before the Tribunal. We have to recognise that delaying the hearing indefinitely to the benefit of one party leads to a system unbalanced against the needs of the party bringing the appeal.

As has been indicated in earlier passages the AIT, UKvisas and IND are working closely to reform the entry clearance appeals process for all users. In particular we are exploring the use of electronic appeals notification and systems for document handling. Systems have been developed to provide information to Presenting Officers in those cases where the respondent's bundle has not been received 10 working days prior to the hearing. This provides time for further action to be taken to obtain the bundle. This system is expected to be agreed and in place by December 2006.

The Government sees little benefit in introducing cost sanctions against one party to an appeal where there is a delay in producing the appeal bundle. Any system of sanctions needs to be weighed against the financial and administrative resources available to manage such a system. We do not believe the introduction of costs sanctions will provide the UK taxpayer with value for money. Rather we believe that the reforms we are currently delivering will put in place a fairer and more streamlined entry clearance appeals process for the benefit of all users.

91. Although the main causes of the current backlog of immigration appeals were the change in the way appeals are lodged and the underestimate of the number of appeals still waiting to come into the system, the resulting problems indicate that the appeals system is quite unable to cope with a surge in demand. This is exacerbated by lack of communication which allows problems to develop in one area which then have an unfortunate effect elsewhere. (Paragraph 390)

The accrual of a backlog of appeals was symptomatic of a range of complex factors within the appeals system albeit the lodging arrangements for appeals, and increased volumes, were two very important factors. It is proper to acknowledge that the AIT did not attempt to unilaterally solve the problem rather than build a consensual solution. The Tribunal held discussions with stakeholder departments at an early stage to identify the key reasons for the build up of the backlog and to find solutions to the problem. These included restructuring the appeals processes for the benefit of all Tribunal users in addition to improving communication flows between departments through the sharing of key management information to more accurately predict trends in workflow.

Whilst we acknowledge that the AIT had difficulty in its early months, given the under estimation of new and old work in the appeals system, the response to the problem has to be measured against the capacity and resources available to the Tribunal to hear and decide the appeals in a timely fashion. We believe the AIT is now more prepared to predict flows in workload and to identify where best to deploy its resources to meet future surges in demand.

The AIT and UKvisas have developed a much closer working relationship since the commencement of the Tribunal, concentrating on building improved communication and working links across policy, operational and business planning functions. We are jointly progressing a range of reforms across the entry clearance appeals system which will reduce the waiting times for appellants and provide far greater control of the appeal workload for the benefit of the Tribunal and posts alike.

92. We recommend that a permanent group comprising representatives from the AIT, Immigration Judges, HOPOS, appellants' representatives and officials from UKvisas, the IND and the Department for Constitutional Affairs should be established to oversee the operation of the appeals system as a whole, to allow problems to be aired as soon as they develop and to assess solutions in terms of their impact across the system. (Paragraph 392)

The Government welcomes the recommendation that there should be a permanent group where all relevant stakeholders are involved. There is already an AIT Stakeholder group, chaired by the president of the AIT, which includes representatives from the AIT, appellants' representatives and officials from IND Home Office Presenting Officer Units and UKvisas. We will look to see whether the existing stakeholder group can be reformed to create a group which addresses the concerns of the Home Affairs Select Committee. The recently announced IND Review recognises that involvement of stakeholders and partners is essential to help us transform the immigration system. The Government remain committed to this principle.

93. There is a danger that removing appeal rights will result in dissatisfied applicants seeking judicial review instead. To reduce the likelihood of this, the Government must be in a position to show that initial decisions are high quality and that there is an effective avenue of internal review, before further appeal rights are removed. (Paragraph 397)

When section 4 of the Immigration, Asylum and Nationality Act 2006 is commenced certain categories of persons seeking entry clearance will lose their right of appeal. Commencement of section 4 will be done simultaneously with the roll out of the new points based system. The Home Office, together with UKvisas and external stakeholders, are putting a huge amount of effort into the design of the points based system to ensure that decisions on entry clearance are of the highest quality. The new points-based system will allow employers and those in educational institutions to take ownership of migration to this country. They, rather than just the Home Office alone, will be able to vet who comes into the UK according to the skills and talents of individuals they feel they need to enhance their sector.

The Government are committed to ensuring that, as appeal rights are removed from those seeking entry clearance, lost rights are replaced by an effective process of internal administrative review. If a person is refused, the entry clearance officer's notice will set out precisely why the decision has been made, referring back to the criteria for which points are awarded. When applying for administrative review, the applicant must set out which aspect of the decision, as justified in the refusal letter, was incorrect. Administrative review will provide applicants with a swift and effective remedy where a factual error has been made.

We will continue to monitor and evaluate the administrative review process following its introduction and one way in which this will be achieved is by working with the courts to assess the number of administrative review decisions where the applicant goes on to seek further remedy by way of judicial review.

UKvisas have undertaken a number of programmes of work to improve the quality of initial decision-making, as set out earlier in this response (recommendation 12). In addition to these, UKvisas have initiated plans to bring in Structured Decision-Making overseas for categories outside the points based system to support this improvement.

94. There is little doubt that those who are involved with the appeals process are working hard and diligently, often under trying circumstances. But in this chapter we have examined the evidential basis of decisions taken in the AIT, the quality of Home Office representation and the clear lack of mutual confidence between decision-makers in the IND and UKvisas and the AIT. Taken together we do not feel that the appeals process as it currently operates provides a sound basis for this vital part of the immigration system. (Paragraph 398)

The Government acknowledges that there were initial teething problems following commencement of the AIT in April 2005, particularly delays caused by the build up of a backlog of immigration appeals from April to October 2005. However, we have learned the lessons of this and consulted with stakeholders, other Government Departments, Members of Parliament and the legal professions to identify reforms which will improve the appeals system for the benefit of all its users.

The first stage of this was the AIT Review which was conducted over a period of nine months and which made a wide number of recommendations across the appeals system reflecting the concerns of key stakeholders.

The second stage has seen the Tribunal work closely with both IND and UKvisas to develop improved communication infrastructures across all overlapping business areas to best ensure the most effective management of the appeals system. As we have highlighted to the Committee the Tribunal is currently implementing a range of reforms across the entry clearance appeals system which will deliver real benefits in terms of swifter and fairer decision making for users and stakeholders alike.

We will continue to monitor closely the effectiveness of the current appeals structure but we firmly believe that this package of reforms and business improvements will meet the concerns of the Committee and will provide a fair and transparent system for those seeking to bring an appeal to the Tribunal.

Enforcing the controls

95. At present the lack of removals is felt to undermine the efforts made by thousands of people to ensure that the right people are allowed to enter or stay in the UK. (Paragraph 402)

96. Unless we make the heroic assumption that all those who are refused but not removed do leave the country of their own volition, it is clear that the current rate of removal is not even keeping up with the increase in the number of those not entitled to remain in the UK. (Paragraph 407)

The Department is committed to removing more failed asylum seekers per month than the number of failed asylum seekers arising from new intake that month, commonly referred to as tipping the balance. By achieving this, the numbers of failed asylum seekers within the UK will not increase but decrease. Provisional figures show that this target was met between February and June this year. We have met internal targets for the removals of non-asylum immigration offenders and have committed in the IND Review to double our enforcement and compliance resource.

97. The integrity of the entire immigration system depends on the effective enforcement of the Immigration Rules. Current enforcement efforts are clearly inadequate. The resources made available for enforcement activities should be determined by the scale of enforcement required, rather than the other way around. (Paragraph 411)

Mass migration poses challenges as never before for the UK, as for other advanced, industrialised countries. To deal with this, we have made great efforts over the last few years, to increase and develop our enforcement capability. This has resulted in immigration offenders being removed in greater numbers – we have increased removals of principal asylum applicants by 91% since 1997. In the publication ‘Rebuilding confidence in our immigration system’, we have pledged to ‘double our enforcement and compliance resource and expand our activity by 2009/10, and we will remove the people who pose the greatest risk first, including foreign national prisoners.’

In this report we have committed to:

1. Dealing with the most harmful:

- We will seek to limit obstacles to deportation and removal resulting from the European Convention on Human Rights (ECHR) through our intervention in the Dutch case before the European Court challenging the Chahal case. This currently prevents us taking account of the risk someone poses to our security and to the British public and balancing it against the risk of mistreatment if the person concerned is returned to their own country.
- We will step up our intensive work on memoranda of understanding and the use of personal assurances with other governments to ensure that it is possible to return those who threaten our security and society in accordance with our obligations under the ECHR. We are seeking to deport several individuals of national security concern. But we will also consult on making it easier to deport people under UK law, limiting as far as possible the ability to stop the deportation of those the Government considers it necessary to deport for reasons of national security.
- We will change the law to make deportation the presumption for foreign national prisoners and to make their appeals non-suspensive; we are immediately streamlining the immigration rules on deportation to remove requirements which go beyond the ECHR.
- We will seek to strengthen, extend, and, where appropriate, renegotiate prisoner transfers and will legislate to remove requirements for the consent of the prisoner.
- We are also working to maximise use of the early removal scheme, and will consider expanding it.

2. Removing obstacles to removal and speeding up the process:

- We will maintain pressure on other governments to redocument their nationals. In December 2005, 83 per cent of failed asylum seeker removals required the provision of new documents before removal, and seven of the top ten asylum intake countries required anyone we wanted to return to have a valid passport.
- We will work across government to develop country-specific strategies to make cooperation on redocumentation and return a key feature of our bilateral relations with countries of immigration concern, and we will monitor the impact of these strategies regularly.
- We will increase the profile of this work and give it further impetus through a new Special Envoy appointed by the Prime Minister.
- We will seek to introduce new protocols for judicial review and explore all possible routes to ensure that judicial review is not used abusively.

- We will extend non-suspensive appeals – where asylum and human rights applicants can only appeal from overseas – to more countries where we can make an assessment that there is no ‘general’ risk of persecution, and we will make more use of our powers on a case-by-case basis.
- We will reconsider the law on deportation and removal as part of a wider review to strengthen and streamline our immigration law, speeding up decisions and improving their consistency.

98. We regard the inability to identify and track individuals who are in breach of the Immigration Rules as a major weakness in the system. (Paragraph 413)

The vast majority of migrants abide by the rules and make a positive contribution to the UK. However we are determined to deal with those that seek to abuse the system. In the report ‘Rebuilding Confidence in our Immigration System’, details are given of our new objectives and on how we are going to achieve them. The first objective is that;

“We will strengthen our borders; use tougher checks abroad so that only those with permission can travel to the UK; and ensure that we know who leaves so that we can take action against those who break the rules.”

Some of the measures that we will be taking to ensure that people comply with the rules include:

- extend exit controls in stages based on risk, identify who overstays, and count everyone in and out, while avoiding delays to travellers, by 2014;
- We will ‘export our borders’, increasingly checking overseas people’s eligibility to come here before they travel;
- We will work with employer organisations to ensure that employers know their responsibilities and have robust systems in place to prevent the employment of illegal workers;
- We will penalise those that employ illegal workers
- Under the point based system, the introduction of sponsorship will mean that those who benefit from migration will need to take a greater responsibility for ensuring compliance of those students and workers they want to bring to the UK;
- We will also step up our efforts to deal with the barriers to removing failed asylum seekers and those that are here illegally.

99. It is difficult to reconcile the removal of vulnerable individuals or those with strong links in the UK with the principle of harm reduction set out by the IND. Whilst continuing action to remove people already living in the UK illegally will of course be necessary-not least to remove those who have entered the UK by clandestine routes-the first priority should be to align the removal system with the decision-making system. (Paragraph 420)

We gave a firm commitment in ‘Rebuilding confidence in our immigration system’, that we will double our enforcement and compliance resource. This includes introducing a new model for enforcement work. Closely aligning the removal system with the decision-making system, through closer contact management, is a central precept of the New Asylum Model we are introducing. In relation to non-asylum cases, we will continue to focus on tackling the infrastructure that supports irregular migration – opportunities for illegal working, organised immigration fraud and bogus colleges – alongside placing greater emphasis on ensuring that those refused leave to remain are aware that

they face the real prospect of removal if they fail to comply with the decision on their case.

But removal will not proceed where to do so would constitute disproportionate interference with the right to family life (Article 8 of the European Convention on Human Rights).

100. We welcome the commitment of the Home Office to act on our predecessors' recommendation that all asylum seekers should receive decisions on their applications or appeals in person. We believe that this approach should be progressively extended, as swiftly as possible, to all immigration decisions, so that failed applicants can be told about the possibility of appeal if available, how to organise their departure and any support available for this, and the consequences of breaching immigration control including the fact that this can be held against them in any subsequent application. (Paragraph 426)

We have in place a system whereby those who are subject to a reporting restriction receive their appeal determinations in person at reporting centres, unless doing so would cause us to exceed statutory time limits for service. It is a fundamental aspect of the New Asylum Model design that asylum decisions and appeal determinations are served in person by the case manager. Existing and planned processes to support this aim always include advice on voluntary departure options (including those with financial assistance), further appeal rights and the importance of continued compliance, although not all non-compliant behaviour – for example, failure to report as required – can be taken into account in reaching decisions on applications, particularly those for asylum.

101. It seems entirely sensible that the caseworker making a decision should be able to issue enforcement notices. This would be a natural outcome if cases were allocated to caseworkers who 'owned' them all the way through the system. (Paragraph 427)

Following amendments to legislation contained in the Immigration and Asylum Act 1999 which introduced administrative removal powers, a caseworker has the power to serve enforcement notices. This power is provided by the Immigration (leave to enter) order 2001 which allows for service of notices by officials of the Secretary of State when a person has made a claim for asylum or under the Human Rights Act.

102. Continued contact with failed immigration applicants must be improved, whether through their being required to report regularly to a reporting centre or police station, or through electronic monitoring. Reporting or monitoring conditions should however be imposed only for a limited time until the case is concluded by granting leave to remain or by the person leaving the country voluntarily or being removed. (Paragraph 431)

All applicants who are identified as living within reasonable travelling distance of a reporting centre are made subject to regular reporting conditions and may also be subject to a requirement to report by telephone under the voice recognition system or be electronically tagged. Work is planned to ensure that existing cases which are outside contact management arrangements will be brought into contact as soon as possible. We are opening a twelfth Reporting Centre in Loughborough in August 2006 to improve our reporting infrastructure and further centres will be opened in appropriate locations subject to suitable premises being available. The use of electronic monitoring is being expanded this year and is used as an alternative to reporting in person in areas where no facilities are available. Electronic Monitoring is normally focused on where risk of non-compliance is highest, towards the end of the asylum process, and like

all contact management restrictions, is in place only to support compliance until the case is resolved. Regular contact between applicant and caseowner is also an important feature of the New Asylum Model processes.

103. The Government must confirm that readmission agreements are being used to facilitate non-asylum as well as asylum removals. (Paragraph 435)

All UK Readmission Agreements set out the reciprocal obligations, as well as administrative and operational procedures to facilitate the return and transit of people who no longer have a legal basis to remain, this includes irregular migrants and failed asylum seekers. The Government views readmission agreements as a valuable element of the UK's overall approach towards progressing co-operation with source countries in order to tackle illegal immigration in its entirety.

104. Anyone who has had to be forcibly removed from the UK because they did not comply with a notice to leave the country, not just those who have been deported, should be banned from returning to the UK for a set period. The ban could be automatic, or there could be a presumption in favour of a ban or even simply the option of imposing one. The length of this ban or presumption should reflect the degree of abuse. A ban or the possibility of one would act as a disincentive to breach the Immigration Rules, would encourage voluntary departure on receipt of a notice to leave the UK because that would not result in a ban, and might help to address the “revolving door” phenomenon whereby people who have already been removed once or more return and are then removed again. (Paragraph 437)

The concept of an EU-wide ban is part of the measures contained in a Directive proposal on common standards for the return of illegally staying third country nationals currently under discussion in Brussels. In a recent Government response to the House of Lords Select Committee Report on European Union on the Directive proposal (Illegal Migrants: Proposal for a Common EU Returns Policy), the Government stated that we thought that Member States should have the flexibility to decide how long a ban should be, considering the different circumstances in each case. The Committee had stated that it believed that the re-entry ban should be imposed only on those persons who represent a serious risk or have been convicted of a serious crime.

The fact that there is no re-entry ban on those who have been removed as illegal entrants or under Section 10 of the Asylum and Immigration Act 1999 does not mean that they are free to return. They would still have to apply for entry under the immigration rules.

105. The immigration system already rewards people with a good immigration history, by for instance offering them a fast-track visa application process. The Government should also make people aware of the consequences of illegal immigration, not only through better information for unsuccessful applicants but also through widespread advertisements, including in workplaces, colleges, benefits offices and hospitals. (Paragraph 439)

The Home Office's Communications Directorate is currently working very closely with Ministers, stakeholders and IND colleagues to develop proposals for how we can improve compliance through effective communications and publicity. Proposals being explored include marketing and media activity aimed at raising the general profile of robust local and national enforcement activity, targeting employers and academic institutions with information about how to comply with their responsibilities, and using stakeholders and community networks to cascade high-impact publicity about the consequences of failure to comply amongst failed asylum seekers and illegal migrants.

106. Voluntary returns schemes for those who have not sought asylum should be prominently referred to in refusal letters, with details of whom to contact for further information. (Paragraph 440)

We are currently working to develop ways in which information on the voluntary return programme for non asylum seekers can be provided, and prominently marketed to the target audience. Where possible we will identify ways in which this will be possible with refusal letters and other avenues of communication.

The International Organisation of Migration (IOM) advertise Assisted Voluntary Return (AVR) in a wide range of ethnic print and broadcast media and have also undertaken some mainstream advertising (mostly recent with a 4 week campaign on 6000 buses in November 2005 and a four week campaign in all London and regional variations of The Metro). The IOM seek to promote voluntary return with as many agencies as possible who deal with asylum seekers and illegal migrants, this has and continues to include the police, local authorities, religious institutions, cultural organisations, medical facilities, immigration lawyers, the voluntary sector and Non-Governmental Organisations (NGOs). IOM also work to engage the local Diaspora throughout the UK on AVR. To date we have not received any complaints about AVR advertising.

Our major stakeholder, the Refugee Council, do specific mail shots to community organisations on messages which we wish to be conveyed, for example a mailing was sent out recently to the Iraqi community and mailings are being prepared for Afghans and Zimbabweans. The Refugee Council are also about to launch a section on their web site specifically dealing with Voluntary Returns.

In addition we hold a range of forums with stakeholder organisations and community groups; for example twice yearly meetings are held with the Iraqi and Afghan communities and meetings are being proposed with Iranians and Somalis.

107. Under the system we envisage, failed applicants who promised to leave the UK voluntarily should continue to be allowed to do so, and their departure from the UK monitored. To do so efficiently will require the re-establishment of embarkation controls. (Paragraph 441)

The departure of those who leave the UK voluntarily under one of the AVR (Assisted Voluntary Return) programmes is already monitored. The AVR programmes are implemented on the Home Office's behalf by IOM (International Organization of Migration), IOM staff escort the returnees from checking through to airside and wait with the returnees at the departure gate.

108. We understand that the introduction of e-Borders will effectively mean the reintroduction of embarkation controls. We welcome this development and urge its swift and effective completion. However, the Government must also have a clear strategy for acting on the information collected. Firstly, it must be used in subsequent applications: even scanning the passport so that the database shows the person had left and on time would be immensely valuable to anyone deciding a subsequent application. Secondly, it must be used to identify those who entered the country legitimately but have overstayed their visa without attempting to regularise their position. (Paragraph 448)

The e-Borders programme aims to modernise and integrate the management of passenger information to expedite the movement of legitimate passengers while helping to safeguard the United Kingdom against serious and organised crime, terrorism and illegal immigration.

At present, the Programme is in the initial procurement stage. Contract award will be in Summer 2007, with significant operating capability planned for July 2008.

The e-Borders solution includes requirements for the capture and analysis of passenger data in advance for passengers arriving in and departing from the UK. An accurate audit trail of passenger movements will support a range of border control activities, including those specifically highlighted by the Committee; informing the consideration of future applications and monitoring a person's compliance with any time restrictions placed on his or her stay in the UK.

The Government accepts the need to ensure that clear strategies are in place to ensure the effective use of data captured under e-Borders arrangements. With this in mind, the information provisions in the Immigration, Asylum and Nationality Act 2006 build on existing data capture and sharing capabilities and pave the way for more comprehensive access to data and enhanced integrated working between the Police, the Immigration Service and HM Revenue and Customs, where the benefits of specified travel-related information can be maximised through the effective capture of data through a "single window" and the routine sharing and joint analysis of pooled information.

The provisions will facilitate the joint working required for e-Borders as well as for the 'Border Management Programme', a joint agency initiative to create more co-ordinated and effective joint working between the border agencies, including in the area of data capture and technology.

109. All information about possible overstayers, whether from database alerts, tip-offs from members of the public or information provided by police, registrars, tax authorities, local authorities, employers or colleges must be followed up with investigation and, if necessary, enforcement action. Data on following up this information must be gathered to measure the IND's effectiveness. (Paragraph 452)

For the past 6 years intelligence in support of enforcement work within IND has been subject to a clear process to evaluate and sanitise incoming material and assign rules to its dissemination. The impetus for this was the advent of the Human Rights legislation that potentially left IND open to civil proceedings if it could not be shown that sources of information were afforded protection against their details being released to those on whom they had informed.

This led to the establishment of ring-fenced intelligence resources to ensure that procedures conformed to specific requirements enshrined in the INDIS Manual of Standards for the Handling and Dissemination of Intelligence Material, which were themselves in line with the ACPO guidelines in respect of police intelligence structures.

All allegations of any intelligence value received in intelligence units are now recorded on Mycroft, IND's bespoke confidential intelligence IT system, and this information is developed into intelligence packages for enforcement action, priority being given to material concerning those targets identified in the business priorities of the Control Strategy.

In the 6 months to end May 2006 UKIS Enforcement & Removals teams undertook over 5,500 visits to targets or premises identified in such intelligence packages, and data concerning the results of these visits and the utility of the intelligence sources is routinely gathered both for management information and intelligence development purposes.

110. The employment of illegal workers should be one of the main targets for action against illegal migrants who are already living illegally in the UK. (Paragraph 453)

The Government is determined to tackle illegal migrant working and its harmful social effects. Our strategy includes strengthening enforcement capacity and activity, working in partnership with business to improve compliance and closer joint working between departments. The majority of operational resources have by necessity recently been focused on the removal of failed asylum seekers and the tipping the balance target. Operations to combat illegal working have primarily been restricted to those that support this aim. In the recently published Immigration and Nationality Directorate (IND) Review, we committed to doubling our enforcement and compliance resource by 2009/2010 to increase operational activity and removals, focusing on removing the people who pose the greatest risk first.

The measures introduced the Immigration, Asylum and Nationality Act 2006 build on the existing legal control on the prevention of illegal migrant working. The Act introduces a system of civil penalties for the less than diligent employers, and distinguishes them from the more serious cases where employers knowingly and deliberately employ illegal migrant workers by introducing a tough new offence of ‘knowingly’ employing an illegal migrant worker, which will carry a penalty of up to two years’ imprisonment. We are also introducing a continuing responsibility for employers of migrant workers to check their ongoing entitlement to work in the UK.

To assist in tackling illegal migrant working, the IND Review also announced plans to establish an active relationship with *Crimestoppers* to give people further opportunity to assist in identifying offending employers. Anyone with information about illegal migrant working can already contact their local UK Immigration Service enforcement office, or the Immigration and Nationality Enquiry Bureau on 0870 606 7766. Allegations of illegal migrant working received by the Immigration and Nationality Directorate are passed through UK Immigration Service intelligence structures for assessment and, where appropriate, directed to operational units for action. The Review also announced plans to penalise rogue employers who employ illegal workers by disbarring company officers who consent to or connive in knowingly employing illegal workers. No timetable has yet been confirmed for the introduction of this scheme, which will be subject to consultation with stakeholders.

Taken together, these measures are designed to encourage employers to comply with the legislation on the prevention of illegal migrant working. Increasing flexibility in the way in which employers may be penalised for the offence of employing of illegal migrant workers, whether deliberately or not, coupled with the increase in enforcement activity should mean employers are less likely to risk a sanction and/or their reputation because they have employed illegal workers. By making it more difficult for illegal workers to find employment in the UK we will thus reduce one of the biggest pull factors for illegal immigration to the UK.

111. Tackling tax and national insurance evasion should become a central feature of the drive against the employment of illegal labour, and the tax authorities must make much greater efforts to tackle these in the informal economy. Enforcement work on tax and national insurance should take place in conjunction with all the other legal measures available to tackle abuse in the informal labour market. As well as ensuring that employers complied with their legal obligations, it would reduce the financial advantages of employing illegal workers. (Paragraph 455)

The Government agrees that the use of illegal migrant workers distorts the labour market and that effective action should be taken against businesses evading tax by employing them. Her Majesty’s Revenue & Customs (HMRC) has a key role in disrupting the activity of such employers. The Government has established a Joint Workplace Enforcement Pilot which seeks to develop closer working

between departments responsible for enforcing workplace regulations and to exploit synergies in enforcement and compliance activity. HMRC is a key partner in these pilots.

Over the last four years, HMRC has steadily increased the resources it applies to tackling the compliance of labour providers who use illegal migrants. During 2005-06, 167 HMRC staff dedicated to improving compliance across all areas of labour provision recovered £38 million that had been evaded or paid late. In the last two years HMRC has identified 92 previously unregistered labour providers and taken action against them to recover underpaid tax and National Insurance.

HMRC will always act on reliable information about tax evasion and has specific arrangements for members of the Association of Labour Providers to report cases directly. HMRC also works closely with the Immigration and Nationality Directorate and where HMRC compliance teams come across information which indicates that migrant workers may be employed illegally, they pass that on.

112. We welcome the proposed “right to work” condition for people applying for National Insurance numbers (NINOs). We recommend that the Government also consider withdrawing NINOs from people who no longer have the right to work in the UK. (Paragraph 467)

The purpose of the NINO is to act as a unique reference number linking an individual and their National Insurance Contributions (NICs) record and as a reference number for DWP for Social Security benefits and HMRC for Tax Credits.

It would not be appropriate to withdraw NINOs from people who no longer have the right to work in the UK. The reasons for this include:

- Presenting a NINO by itself does not convey proof of the right to work, nor does it indicate the duration of a person’s right to work. Even with DWP’s new proof of right to work condition for NINO applicants it remains important that employers continue to fulfil their obligations under section 8 of the Asylum and Immigration Act 1996 and ensure that a prospective employee’s right to work remains valid.
- Over the course of their lifetime an individual may have a number of separate periods where they have the right to work. In order to retain an accurate record of their National Insurance contributions the details need to be retained under one number rather than issuing and withdrawing one number and then subsequently issuing another number.

113. There should be a single database which clearly shows a person’s immigration status and right to work and claim benefits. We note that the Government’s National Identity Register is intended to fulfil this function. Employment and access to services could be made conditional on a satisfactory check against such a database. (Paragraph 470)

The establishment of the National Identity Register (NIR) will provide a secure and reliable record of registerable facts about individuals in the United Kingdom.

The Government believes that illegal working provisions in the Immigration Asylum and Nationality Act 2006 provide a legal basis at some point in the future for the Government of the day to require employers to verify the content of an identity card with the NIR. Such a requirement would have to take into account the extent to which employers have access to card readers, and could only be introduced following extensive public consultation.

The IND Review announced that we will work with employer organisations to ensure that they know their responsibilities and have robust systems in place to prevent employing illegal workers. We have a project in place that is looking at the information requirements of employers to support the checks they need to undertake on the employee status. The project has already involved external stakeholders and is looking at providing further guidance through extending distribution of current publications and developing website accessibility.

We also understand that applicants to the Home Office may experience particular difficulties while they are waiting for their applications to be processed, and they do not have their key identity documents in their possession. We are therefore scoping how to provide further back up support to employers through the Employers' Helpline. The Employers' Helpline is currently running a small verification service pilot for employers to verify with the Home Office that a prospective employee has an outstanding application as claimed. The employer must provide the Employers' Helpline with the written permission of their prospective employee allowing the Home Office to undertake this check and provide the result of the check back to the employer.

This service is currently available for employers whose prospective employees have outstanding applications either as a non-EEA family member applying for a residence card, or where a person originally granted exceptional leave to enter or remain in the UK has now applied for indefinite leave to remain in the UK. We plan to further enhance the service offered by the Employers' Helpline. This enhancement will provide information to employers about the entitlement to work of existing employees or potential employees who have an application or appeal outstanding with the IND. The actual mechanism for providing the service is currently being devised. In formulating the process there will be continued engagement with key stakeholders to ensure that the proposed verification service meets the needs of employers.

114. Having considered the arguments for and against, we do not consider that an amnesty would be appropriate or helpful in the current situation. (Paragraph 479)

The Government has made clear that it has no plans for an amnesty for illegal immigrants.

Customer service

115. We acknowledge the conflicting pressures on the IND and UKvisas, but emphasise that the need to maintain the integrity of the immigration system must be balanced against the need to ensure a high-quality service to the millions of people whom we wish to be able to travel easily to the UK. (Paragraph 481)

Overall customer satisfaction with the services of IND Managed Migration UK is 92%. The independent survey completed last year also showed satisfaction with the time taken at 86% – the balance between the care taken to ensure that we make the right decision and the speed of service remains a critical one for the organisation.

It is in our interests to reduce the number of mistakes made on applications and the costs and delays caused when more information is needed. IND has taken steps to help customers ensure their application is completed correctly and reduce the number of times additional information is required or applications returned because there are errors or omissions. This has worked well and the successful Nationality checking service, run in conjunction with local authorities, will be expanded to other areas of our business. We believe this kind of partnership offers good value for customers and the business.

The quality of the immigration decision itself is of critical importance to the business. We continue to undertake rigorous checks on decisions, and ensure that data from appeals decisions and complaints is used to continue to improve process. A simpler and more cost effective system of reviewing decisions where there is a complaint is under review.

UKvisas is also developing a balanced scorecard approach, in a move away from the current emphasis on speed of service, to address a range of outcomes, including both control strength and customer service. UKvisas does however achieve and exceed its challenging PSA targets in the face of rising demand (for example, 90% of straightforward non-settlement cases decided within 24 hours). The National Audit Office's report of 2004 found that "in the large majority of cases, UKvisas is providing a high quality of service to applicants and sponsors," and, after conducting a survey of visa applicants – both successful and unsuccessful – found that 80% were satisfied with the quality of service they had received.

116. The calculation of visa fees and in-country fees should be aligned at least in terms of what costs are taken into account and the impact assessment which accompanies them. If the levels of fees are to remain so different, the Government must be able to provide a clear and valid justification. (Paragraph 491)

The Government plans to consult in the autumn on a more comprehensive charging regime for services, reflecting the costs to the UK taxpayer while recognising the economic benefits of travel and migration. This will encompass in-country and off-shore fees.

117. There is an unacceptable level of delay in the IND's immigration casework, which leads to tens of thousands of complaints every year to both the IND itself and Members of Parliament. The IND must address this problem at its source by investing in initial decision-making and instilling a culture which does not allow cases to disappear into 'black holes'. (Paragraph 494)

We receive and record around 13,000 complaints per year, the bulk of which relate to casework delays. It is acknowledged that delays in decision making do lead to customers approaching MPs. The IND review also details how we will tackle delays.

In line with the overall Home Office Reform Action Plan, we will radically overhaul IND's processes to create consistency across the business by simplifying and standardising, and to focus our efforts on making correct decisions when cases are initially considered. We will for example, separate our simple from complex cases and produce clearer, simpler instructions for caseworkers to improve the speed and quality of our decision making.

In addition the Managed Migration Directorate is committed to improving the level of customer satisfaction with all of the services it provides, particularly in the area of case-working.

We have put in place a rolling customer satisfaction programme to regularly monitor how satisfied customers are with Managed Migration service delivery.

We are also engaging with staff as part of the above programme to build on their expertise around the customer.

Direct customer feedback has enabled Managed Migration to develop a new complaints management programme with clear complaint escalation and management oversight (see 120 below).

118. We do not believe it to be appropriate that Members of Parliament have become an integral part of the immigration system upon which even representatives rely to make progress with a case. UKvisas, the IND and the AIT must improve their systems for handling inquiries and complaints so that applicants and representatives do not need to short-circuit the system by going through their MPs. (Paragraph 498)

We strongly agree with this recommendation. As the Home Secretary said in response to a question from Kate Hoey MP when he launched the IND Review, ‘sometimes the sheer level of intervention, where people may not always be as discriminating as she is about which cases to raise, and the sheer amount of work that is need to reopen a case every time a Member of Parliament writes, is something that we should consider in fairness to the staff who have to deal with these matters.’ (House of Commons Hansard Debates for 25 July 2006 col 750)

We fully accept, however, that a large number of the letters sent by Members of Parliament, either to Ministers or direct to senior IND officials, arise from IND’s failure to answer earlier correspondence from applicants or their representatives. This is clearly unsustainable and we are determined to address it. A public correspondence project is scheduled to begin in October. This will run for around 12-18 months with the objective of putting in place improved systems for monitoring and responding to letters from applicants and their representatives so that IND can meet its target of answering correspondence within 20 working days. A central team will handle and respond to the correspondence to start with a view to gradually rolling this back to the operational teams if feasible.

IND recognises the concerns raised relating to the need to improve its complaint handling process. These concerns have been identified internally as well as by the Complaints Audit Committee. These are being addressed through the complaints handling programme which aims to overhaul the system within the next 18 months. (see 120 below)

UKvisas also recognises the importance of effective procedures for handling enquiries and complaints. The UKvisas Visa Customer Services section deals directly with many MPs and their constituency offices to offer help and advice on the visa process. New arrangements for the consistent handling of complaints in visa sections overseas are being implemented, and UKVisas’ new Independent Monitor has been asked to review progress in this area and to make further recommendations.

The Asylum & Immigration Tribunal places great emphasis on having effective customer service processes in place. We have actively sought the views of Tribunal users and MPs to improve our services through a number of user and parliamentary forums. This has resulted in the Tribunal making changes to our appeal forms and guidance and receiving queries from appellants and representatives electronically. Since January of this year the AIT has operated a helpdesk for MPs and their constituency offices providing a 24 hour response to queries on the progress and status of appeals.

The Asylum and Immigration Tribunal has met with similar teams in UKvisas and IND with the intention of establishing a regular customer service forum for the asylum and immigration system sharing best practice.

119. The frustration caused to applicants by being unable to find out the progress on their applications leads to large numbers of complaints, and is unacceptable. The Government should carry out a review of the information given to applicants and their representatives on the progress of their cases, with a view to providing as much information as possible, even to telephone callers. A system which would let all applicants track the progress of their case online would enormously reduce the number of enquiries and complaints. (Paragraph 505)

Access to information and ability to track the progress of applications is a significant area of investment for IND. Clearly publicised service standards and turn around times also help to give a clear indication to applicants of the time that their application may take. Understandably it is frustrating to applicants who are facing delays but the sometimes complex nature of our casework will mean that some applications will continue to be dealt with on an exceptional basis. We will continue to review the nature of the information that we provide to customers in tandem with work on other areas.

120. Whilst we welcome the extension of the IND Complaints Audit Committee’s role to cover the huge number of “operational complaints”, we call for the Government to implement a single immigration complaints system, covering both the IND and UKvisas, with a variety of channels of complaint and a variety of methods for dealing with those complaints, ranging from informal resolution to intensive investigation. We particularly emphasise the need for the organisation and individuals within it to learn from substantiated complaints. (Paragraph 515)

As referred to in our response to paragraph 118, IND has initiated a complaints handling programme which addresses concerns raised not only by the CAC but also following an internal review, a Home Office Auditors review and is in line with Cabinet Office guidelines. This programme includes the following:

- A new approach to defining and categorising complaints to take proper account of their weight and impact
- New, streamlined processes for handling and responding to complaints
- A pilot project on informal resolution of complaints
- New comprehensive guidance to staff on complaints handling
- A new database to capture and monitor all complaints and to allow us to analyse trends and patterns and feed them back to the business to promote service improvement.

As a prelude to the overall IND programme the Managed Migration Directorate has reviewed the way in which operational complaints are managed with the introduction on 1st September of a new complaints management system with single complaint contact points at key areas of the business and clear escalation procedures with management oversight. The single contact points will completely restructure complaints management across Managed Migration by delivering a uniform handling system with clear, consistent and effective handling processes and reporting mechanisms to provide the right Management Information to inform service improvements. This system has been designed to slot into the new IND complaints handling programme when it becomes operational.

Furthermore, UKvisas are enhancing feedback mechanisms with monthly analysis of complaints, as well as seeking accreditation from the Chartermark Programme.

We have noted the recommendation to implement a single immigration complaints system covering IND and UKvisas.

Deportation of foreign national prisoners

121. We endorse the Government’s moves to reduce the foreign national prisoner population at source through tackling drug trafficking in partnership with other countries. Given the difficulties with repatriation of prisoners, the early removals scheme should be given priority and re-documentation efforts redoubled. (Paragraph 521)

The Government regards close working with source and transit countries of class A drugs being trafficked to the UK as an essential part of reducing the supply and impact of those drugs on the UK.

As part of the ongoing work to improve IND's performance in dealing with foreign national prisoners, priority is being given to maximising the use of the early removals scheme as well as improving the documentation of prisoners.

In particular an increase in case working capacity will enable prisoners to be considered at an earlier stage, enabling cases to be completed and the prisoners removed at the earliest date of release in line with the aims of the Early Removal Scheme. In terms of re-documentation, applications will be initiated as soon as the need for the document has been identified and in line with when Embassies will allow for this process to commence. Where there have been difficulties these matters have been raised with the International Delivery Directorate who are taking matters forward directly with the respective Embassy or High Commission.

In order to improve performance in this area we are also currently increasing the number of immigration service staff conducting surgeries in prisons, to improve the early identification and documentation of foreign national prisoners who are eligible for ERS. We are also reviewing the messages given to prisoners so that they are aware of the benefits of co-operating with early removal and the consequences of failing to co-operate with the re-documentation process.

122. Although a criminal court can recommend deportation when it is sentencing a foreign national, the decision to deport always rests with the Home Office regardless of whether or not there is a court recommendation. We do not see the benefit of court recommendations for deportation, and recommend that they should be abolished. All deportations should be considered by the Home Office solely on the grounds of whether deportation is conducive to the public good. (Paragraph 532)

123. We support the proposal to create a presumption in favour of deportation of foreign nationals who are serious criminals. In practice there will be those for whom deportation is inappropriate, for example those whose offences may only just cross the threshold of seriousness but who have lived otherwise law-abiding lives in this country for a long time and who have an established family in the United Kingdom. But the principle should be established that in all such cases the offender should have to make their case as to why they should not be deported. (Paragraph 535)

We agree with Recommendation 123 that there should be a presumption of deportation. Our intention to create such a presumption is set out in the report "Rebuilding confidence in our immigration system". In bringing forward legislation to create a presumption of deportation we will be looking more widely at the statutory framework underpinning the deportation process to make the system clearer, easier to operate and swifter. We will be considering the position of court recommended deportations in the context of this revised statutory framework. Our starting position, however, is to agree with Recommendation 122 that there will be no need for the current system of court recommended deportations under the new framework as it will provide clear criteria for what criminality will trigger deportation action.

Lessons to be learnt

124. We are very glad to see that the IND is being reviewed in its wider Home Office context, and emphasise the need for the review to take into account the recommendations of this report. (Paragraph 538)

The Home Secretary recognised the contribution of the Home Affairs Committee report when he presented the outcome of the IND review to Parliament. Following the publication of the IND Review document, a team has been commissioned to design and implement the solutions set out in the Review document. The Review team will be taking the recommendations of this report into account and we will also work closely with the Home Office Reform Programme to ensure work is coordinated with them.

125. We believe that the failures of management seen in the IND's handling of foreign national prisoners, when senior management failed to make it clear upon whom and at what level the responsibility lay for identifying and acting upon problems as they arose, highlight a problem that may exist in many parts of the organisation. The failure of the enforcement and removal operation to meet the needs of an effective immigration system, the failure to develop a complaints system capable of improving the quality of customer service and the absence of effective feedback mechanisms from AIT decisions to ECOs are all examples of hard work being undermined by a failure to take responsibility for the performance of the system as a whole. (Paragraph 541)

The IND Review recognised that IND needs to change to become an organisation committed to high standards of operational delivery where individual accountabilities are clear but also where everyone feels responsible for the overall performance of the service as well as their own tasks. The change programmes on delivering a strong framework for delivery and accountability and on developing strong leadership and management at all levels will address this issue.

Work already planned to help improve the management of the system as a whole includes a new regional structure for IND, a new performance management framework, changes to existing processes, and new management information.

126. The biggest single management challenge for the immigration authorities is to create clear lines of responsibility and accountability and to establish a culture at each level where staff are required to feel a responsibility for the overall performance of the system as well as for their own tasks. Without such a profound cultural change, individual targets or performance measures are unlikely to produce the required results. (Paragraph 543)

We agree with the Committee's findings. This is reflected in the IND Review Report, and in particular the proposals for a change programme to develop strong leadership and management at all levels. A programme of work has been commissioned to establish a culture that addresses these issues. We will be setting clearer standards for what we expect in our managers and leaders and review our people against these expectations. We will also put in place clear lines of accountability and responsibility. Performance management will be modified as necessary to ensure it is based on a combination of personal and team objectives. To better drive performance, we will be simplifying the appraisal system and link everyone's objectives more clearly, and with consequences, to organisational aims. We will also be looking for better ways of linking pay and rewards to roles and challenges, as part of creating a unified, high-performance business. This will enable IND to bring in highly skilled staff and to reward people flexibly for the contribution they make to the business. We will also ensure that managers have the tools to deal with staff who do not, or choose not to, contribute towards the organisation's overall goals.

127. Fragmentation and lack of communication is a systemic problem not just within the IND but within the entire immigration system which ought, ideally, to work as a whole. It is not only computer databases which should be encouraged to talk to each other but people, at all levels in all the immigration authorities. (Paragraph 548)

We recognise the Committee's concerns. The need for better coordination and communication will be a key focus of IND as it moves forward following the publication of the IND Review. Planned changes include new processes, changes to IT systems, organisation designs and roles and responsibilities. Implicit within this is the need for closer links with other parts of Government, including UKvisas, FCO, DCA amongst others.

128. The various challenges of working across Government provide one incentive for having a Cabinet Committee which can take overall responsibilities for the whole of the Government's efforts to run an effective immigration system. The evidence received in our inquiry on the need for migrant labour, and the economic benefits and drawbacks as well as the social advantages and stresses of migration, also highlighted the disadvantages accruing from the absence of any place within Government with overall responsibility for weighing up these factors-which are sometimes in tension with each other-and for determining the overall migration strategy for the UK. It is generally believed that the Home Office exercises this function but in our view it is not in a position do so effectively. We therefore recommend that a Cabinet Committee with representatives from all relevant Departments should be established with overall responsibility for all aspects of immigration policy. (Paragraph 561)

The IND Review set out the Government's intention to consider establishing a new Migration Advisory Committee, composed of independent experts and other key stakeholders, which could publish recommendations to Government on where in the economy migration should sensibly fill skills gaps. The aim would be to inject an informed and non-partisan view on the way in which migration ought to be managed for the benefit of the country as a whole.

There is already a Ministerial Committee of the Cabinet on Asylum and Migration (AM), which is tasked with considering the impacts of migration and co-ordinating and overseeing delivery of the Government's policies on asylum and migration.

129. There is a serious problem with the way immigration statistics are compiled, presented and used to evaluate and improve performance. The Government must conduct or commission a thorough investigation, based on the ongoing work of the review of immigration statistics, to determine which statistics are needed to produce a meaningful picture of the effectiveness of the immigration system as a whole. The IND's statistics must be not only up-to-date and accurate but also capable of providing information about whether targets are being met and about how people move from one stage of immigration control to another. (Paragraph 570)

We agree that management information could be improved and the work planned following the publication of the IND Review and Home Office Reform Action plan is expected to include an overhaul of how IND collects, analyses, and uses management information across IND and beyond.

130. We have seen four different ways in which targets have had unintended impacts on other parts of the immigration system: (1) major political targets on asylum meant other work may have been sidelined or even deliberately manipulated; (2) targets were set for only one part of a system without consideration of the effect elsewhere; (3) targets on speed had a negative impact on quality; and (4) targets were being met without having any impact on the underlying objective. (Paragraph 572)

IND reviews its targets annually as an integral part of its planning cycle. For the last year, IND has used a high level balanced scorecard which forms the basis for high level reporting across the business, and is reviewing the current structure of the scorecard in light of the IND Review. IND is also developing a suite of new targets which reflect the range and balance of its responsibilities.

131. There is no doubt that the achievement of successive asylum targets has been a notable success of the IND, and the criticism we make in this report should not detract from that. It is difficult to avoid the conclusion, however, that the existence of and single-minded focus on the asylum target contributed to an environment in which the foreign prisoner problem was not recognised early enough. (Paragraph 579)

Considerable attention has been given to the higher level asylum objectives but the emphasis on the asylum targets should not detract from our responsibilities and obligations to ensure that sufficient resources were available to prevent and deal with the foreign national prisoners issue. Action is being taken to improve arrangements for deporting foreign national prisoners, as outlined in the Home Secretary's statement of 23 May (Hansard Col 78 WS) and Liam Byrne's progress report on 19 July (Hansard Col 29 WS). In addition, IND has increased staff numbers in a new unit dedicated to working with HM Prison Service to ensure that foreign national prisoners are not released from prison without being considered for deportation.

132. The setting of individual targets must take into account their likely effect on the performance of the organisation as a whole. (Paragraph 584)

We agree the committee's recommendation. IND are currently considering whether continuing a scorecard approach is the most effective way of delivering the business. Regardless of the decision regarding the continued use scorecard IND are developing a suite of new targets which reflect the range and balance of IND's responsibilities.

133. As we have emphasised throughout the report, targets which focus only on speed must be balanced with those which emphasise quality. (Paragraph 587)

We agree with the Committees recommendation and will take it into account during the planned overhaul of IND's management information.

134. Written instructions, targets and performance indicators are certainly important but they must be very carefully set and monitored so that they deal with real issues of concern over immigration and do not have negative impacts on other parts of the system. (Paragraph 589)

We agree with the Committees recommendation and will take it into account during the planned overhaul of IND's management information.

135. Caseworkers rely heavily on guidance throughout the immigration system, and yet there is such a mass of documents in so many different series that it is very difficult for them to find the correct, up-to-date and most authoritative information. All immigration guidance must be consistent and coherent across the various relevant authorities, and each section must always have a clear owner at a senior level who has approved it and checked it with owners of other sections. (Paragraph 593)

The IND Review identified the need for seven programmes of change to transform the organisation. The first of these is to strengthen and simplify IND's complex legislative framework. The first stage will be an early Bill to provide new powers, including on foreign national prisoners. But the second deeper stage of reform will be a fundamental overhaul to reform and simplify the immigration laws, rules and guidance to staff. This is a major commitment to review and streamline the entire framework within which caseworkers and operational staff operate, to ensure they have the powers that they need, and that they have correct, up-to date and authoritative guidance to equip them better to do their job and to drive up quality. In addition, with a particular focus on Foreign National Prisoners (FNPs), the Home Secretary's 8 point action plan included specific action to look at the consistency of guidance across the end to end system for FNPS.

More broadly, work has already started in tackling this issue; the need to succeed in this area is recognised by senior management in IND. The Directorate's Guidance and Instruction Project is responsible for taking forward the recommendations made by Ken Sutton in his 2004 report into the handling of the European Community Accession Agreements (ECAA) cases by IND, which exposed wider concerns about how guidance and instructions for caseworkers and operational staff were approved and used.

One of the recommendations set out in Ken Sutton's report was that all instructions should be approved at Director level before they were issued. This has been implemented for new instructions with additional action being undertaken to put in place processes for deleting, removing or approving older instructions where the appropriate level of sign off was not obtained at the time they were produced.

The Sutton Report also recommended the development of a framework to provide consistency to the management of instructions. The Guidance and Instruction Project has developed this and is due to publish an updated framework for IND staff, which sets out standards for instructions to ensure they are:

- accurate;
- concise;
- regularly reviewed to ensure currency;
- consistent with policy, process and legislation;
- dated and version controlled to make it clearer how recent the instruction is; and
- communicated clearly so that staff are aware of changes and new information.

Compliance with this Framework will be mandatory and monitored through a regular risk analysis process, and assured by an internal audit team. In those areas which are identified as having caseworker instructions which are not of an appropriate standard, the relevant Director has an obligation to produce and implement an action plan, which will be monitored by the project team to improve these instructions.

Looking to the future, it is vital that new instructions are available to caseworkers through their computers. Our work in this area, therefore, also includes work to identify the most appropriate way of achieving this. Particular focus is being given to delivering this facility for the New Asylum Model and the Points Based System.

136. Given the stream of reports and recommendations relating to immigration which appear every year, a clear method for keeping track of the Government's progress in responding to each of them is essential. Annual checklists should be published showing what progress has been made across Government on recommendations from independent monitors, audit committees, the National Audit Office, Select Committees and other official reports. (Paragraph 598)

The IND Review set out plans for a change programme to create a strong framework for delivery and accountability. This includes a proposal to consult on a single regulator which would simplify the existing fragmented inspection and regulation regime and give an independent and consistent perspective on the performance of IND as a whole. As part of that consultation we will invite views on how IND should report on progress in responding to recommendations of the regulator. In addition, as we move towards agency status for IND, we will look in greater detail at arrangements for ensuring clear accountability to Parliament and the public. The Government is fully committed to the principle of improved transparency and accountability for IND, and we will look further at how best to deliver this in the context of the change programme on delivery and accountability. The Action Plan to reform the Home Office published in July set out plans for an annual audit of progress. This audit will include the Immigration and Nationality Directorate. Details of the process have yet to be decided fully.

137. We recommend that the Government establish an Independent Immigration Inspectorate with oversight of every stage of immigration control: overseas, at the border, in-country, enforcement (including detention) and appeals. It should be looking for high-quality decisions, active management, clear lines of responsibility and of reporting, easy communication within and across authorities, meaningful statistics, effective and non-distorting targets, excellent customer service and promotion of good race relations. The Inspectorate must be independent, properly resourced and with the authority to make recommendations to which the Government has to respond. (Paragraph 603)

We agree with the Committee's recommendation and the IND Review report sets out the Government's plans to consult on the creation of a single independent regulator.

Conclusions

138. In our report we have identified a number of structural and operational failures, ranging from the local to the systemic, in the Government's overall response to the challenges posed by the worldwide phenomenon of increased migration, both legal and illegal. In our view it is a failure of successive Governments that these flaws have been allowed to persist, and their continued existence has exacerbated the problems the Government now faces. But we have also identified measures which the Government should take to address these failures. If the Government adopts these suggestions and builds on some undoubted areas of good practice and innovations-and uses properly the skills and experience of dedicated staff throughout the existing immigration system-many of the problems may be overcome. (Paragraph 604)

As set out in the IND Review, the UK Government is at the heart of responding to the challenges of global migration. We have developed new approaches to border security; we have made world-leading reductions in asylum intake; we have reached the ‘tipping point’ of returning more unfounded asylum applicants than are arriving; and we have achieved substantial reductions in waiting times for managed migration and an increase in customer satisfaction. Applications for asylum are at round a quarter of their peak level, and compare favourably with other European countries. Removals of principal asylum applicants increased by 91 per cent from 1997 to 2005. Eight per cent of asylum cases are now dealt with in two months; in 1997 it took an average of 22 months to decide claims. We have cut illegal migration through the Channel ports through juxtaposed controls and co-operation with our French and Belgian Partners. We have legislated to introduce identity cards for foreign nationals staying in this country and for British citizens. We have introduced new technology to store biographic and biometric data. All asylum applicants are now routinely fingerprinted to prevent multiple applications. We have taken new powers to tackle these challenges.

Much of this change has been delivered in spite of old, inefficient caseworking systems and processes designed for a different age, and a complex legal framework onto which successive urgent reforms have been grafted. As patterns of migration evolve further, so IND’s systems need to respond differently.

The majority of the Committee’s recommendations have been reflected in the recently published IND Review, and will form part of a major programme of transformational change. The programme will be implemented alongside day-to-day business, with strong overall leadership and co-ordination from the top. It will create a clear distinction between change and ‘business as usual’ to aid implementation and guide staff as to what they are expected to do first. The programme will bring together the best staff within IND and make use of external staff where their skills are required. The programme reports directly to the Director General and the IND Board. We expect to fully consult with the people who work in IND and UKvisas, and with key stakeholders and partners throughout the United Kingdom and around the world to ensure we capitalise on the good practice, skills and experience that exists in the operation today.

139. There is little doubt that the great majority of those who are in employed in the immigration system are working hard and diligently, often under trying circumstances. But the biggest single management challenge for the IND is to create clear lines of responsibility and accountability and to establish a culture at each level where staff are required to feel a responsibility for the overall performance of the system as well as for their own tasks in it. Without such a profound cultural change, individual measures are unlikely to produce the required results. [Paragraph 605]

The IND Review recognised that people in IND have shown that they can deliver major changes, and also that they are ambitious but deeply frustrated by processes and systems that stop them delivering the service they aspire to. The Review also recognised in a number of ways that we need to reform the organisation to ensure that IND is accountable and that lines of responsibility are clear. The third change programme set out in the Review, to develop strong leadership and management at all levels will address this issue, and the Review report contains a clear commitment (paragraph 3.18) to put in place clear lines of accountability and responsibility. In addition, the second change programme in the review is to create a strong framework for delivery and accountability. The Review set out that IND needs to transform itself into a service delivery organisation that is clear about its role, its relationship with the wider Home Office, UKVisas and other government departments and the way its performance is judged by the public, and above all that it needs to become an organisation

where individual accountabilities are clear but also where everyone -from senior managers to front line staff – feel responsible for the overall performance of the service as well as their own tasks. The new single immigration regulator on which we propose to consult would give a complete and consistent perspective on the performance of IND as a whole, and help drive improvement including in the area of ensuring clear accountability. Agency status for IND will also improve accountability and trust because we will establish a clear framework for delivery and performance management.

We will be setting clearer standards for what we expect in our managers and leaders and review our people against these expectations. Performance management will be modified as necessary to ensure it is based on a combination of personal and team objectives. To better drive performance, we will be simplifying the appraisal system and link everyone’s objectives more clearly, and with consequences, to organisational aims. We will also be looking for better ways of linking pay and rewards to roles and challenges, as part of creating a unified, high-performance business. This will enable IND to bring in highly skilled staff and to reward people flexibly for the contribution they make to the business. We will also ensure that managers have the tools to deal with staff who do not, or choose not to, contribute towards the organisation’s overall goals.



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