Independent Monitor for Entry Clearance refusals with limited rights of appeal

Report to the Secretary of State

File sample: October 2007 to March 2008
Visits: April to September 2008

Immigration and Asylum Act 1999 Section 23,
amended by paragraph 27 of schedule 7 of
The Nationality, Immigration & Asylum Act 2002

September 2008

Home Office

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(Refusals without right of appeal)
Foreign & Commonwealth Office
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To The Secretary of State for Home Affairs

I normally say that it has been a "busy year" for the visa business and the period covered by this report is no different, though the causes are. In the past, a constant rise in visa applications meant that most attention was paid to managing the numbers. This time, visa applications are down and the busy year is about merging into a large organisation with all the uncertainty that brings, and changing the way visa applications are handled by clustering smaller offices into larger hubs. These changes make major demands on day to day practical management, and bring personal insecurity for staff. The visa services part of the UK Border Agency has done well to manage improvements in the quality of its work, though the context may explain why progress is slight and can be slow.

I do note that all of the UK Border Agency's "killer facts" are about control in the UK – deportations, toughening up action on illegal workers and their employers, securing borders. There have been few headlines about the benefits brought by the tourists, students and business visitors who formed the basis of my statutory remit. Most do not see themselves as "migrants" because they have every intention of returning home and I do think that more needs to be done to recognise how important they are to the UK; all the more so in globally difficult economic times.

L M Costelloe Baker MBA
September 2008

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INTRODUCTION

This section of the Report is for first time readers. It is a simple explanation of what a visa is and who decides whether a visa should be granted.

Who needs a visa?

1. A person who is neither a British citizen nor a Commonwealth citizen with the right of abode, nor a person who is entitled to enter or remain in the United Kingdom by virtue of the provisions of the 2006 European Economic Area Regulations, requires leave to enter the United Kingdom. Entry clearance takes the form of a visa (for visa nationals) or an entry certificate (for non visa nationals). These documents are taken as evidence of the holder's eligibility for entry into the United Kingdom and, accordingly, accepted as "entry clearances" within the meaning of the Immigration Act 1971. The UK Government decides which countries' citizens are, or are not, visa nationals.

Where do you get a visa?

2. The Immigration Rules say that an applicant for an entry clearance as a visitor must be outside the United Kingdom and Islands at the time of the application and must apply to a Post designated by the Secretary of State to accept applications for entry clearance for that purpose and from that category of applicant. A Post is a British Diplomatic Mission (Embassy or High Commission), British Consular Post, or the office of any person outside the United Kingdom and Islands who has been authorised by the Secretary of State to accept applications for entry clearance. Any other application must be made to the Post in the country or territory where the applicant is living which has been designated by the Secretary of State to accept applications for entry clearance for that purpose and from that category of applicant. Where there is no such Post the applicant must apply to the appropriate designated Post outside the country or territory where he is living. The Foreign and Commonwealth Office publishes a list of designated Posts.

3. An application for an entry clearance is not made until any fee required to be paid has been paid. The level of fees set is aimed at ensuring that entry clearance work is funded from applicants rather than by UK taxpayers and the fee is for the application process, and not for the visa.

Who issues visas?

4. UKvisas, a joint Foreign & Commonwealth Office and Home Office initiative, was merged into the UK Border Agency on 1 April 2008. The Secretary of State for Home Affairs then became accountable to Parliament on matters concerning the entry clearance operation overseas.

5. In mid 2008, the UK Border Agency International Group managed around 150 visa sections around the world in Embassies, High Commissions and Consulates. There are over 2,00 staff, of whom around 228 work in London. Visa sections around the world employ 537 (517 full-time equivalent) UK-based staff who go overseas on short term postings, and 1,399 (1,372 full time equivalent) locally engaged staff.

6. Entry Clearance Officers assess applications against The Immigration Rules made under section 3(2) of the Immigration Act 1971 and frequently amended. These Rules constitute a statement of practice, as laid before Parliament by the Home Secretary, to be followed in regulating entry into, and stay of persons in, the United Kingdom.

7. Entry Clearance Officers are often referred to as Visa Officers, a term more easily understood by the public. They spend most of their time issuing visas to genuine applicants who meet the requirements of the Immigration Rules.

THE INDEPENDENT MONITOR FOR ENTRY CLEARANCE REFUSALS

8. The role of the Independent Monitor for Entry Clearance Refusals without the Right of Appeal was set out in section 23 of the Immigration and Asylum Act 1999 and amended by paragraph 27 of schedule 7 of the Nationality, Immigration & Asylum Act 2002:

    (1) The Secretary of State must appoint a person to monitor, in such a manner as the Secretary of State may determine, refusals of entry clearance in cases where there is, as a result of section 90 or 91 of the Nationality, Immigration & Asylum Act 2002, no right of appeal.
    (2) But the Secretary of State may not appoint a member of his staff.
    (3) The monitor must make an annual report on the discharge of his functions to the Secretary of State.
    (4) The Secretary of State must lay a copy of any report made to him under subsection (3) before each House of Parliament.

9. Although the legislation and the Independent Monitor's formal title refer to "no right of appeal", all applicants have limited rights of appeal on human rights and race relations grounds. Parliament decides which categories of visa applicant should not have full rights of appeal; the UK Border Agency's role is to implement the laws set by Parliament and as interpreted by Government policies.

10. Applications within the Independent Monitor's remit through section 90 or 91 of the Nationality, Immigration & Asylum Act 2002 are:

Visitors

11. A visitor, other than a visit for the purpose of visiting a member of the applicant's family as set out in the Immigration Appeals (Family Visitor) Regulations 2003. Non-family visitors constitute just over half of all visa applicants. The term visitor may apply to someone coming to the United Kingdom for a private visit perhaps as a tourist or to see friends; someone who wishes to transact business; someone who arrives at one UK port or airport and needs to be in the UK for longer than 48 hours or to transfer to another port or airport to continue a longer journey, or someone coming to the UK for privately funded medical treatment.

12. From October 2007 to March 2008, the UK Border Agency received 508,420 adult visit visa applications where there are limited rights of appeal; issued 429,111 visas and refused 72,029 applications. The refusal rate was 14%, the same as the preceding six month period, though there were a third fewer applications.

13. The UK Border Agency recorded 570 child visit applications within the Independent Monitor's remit but as child visit applications are not recorded as either family visits or ordinary visits, figures for refusal rates are not adequately robust.

Student Visitors

14. A Student Visitor wishes to study in the UK for less than six months and does not intend to work or apply for an extension to their stay. This new category came in on 1 September 2007. From October 2007 to March 2008,

the UK Border Agency received 12,525 student visit visa applications; issued 10,286 visas and refused 2,022 applications, a refusal rate of 16%.

Short Term Students

15. A student who has been accepted on a course of study of not more than six months. The UK Border Agency said that from October 2007 to March 2008 it received 13,142 short term student visa applications, issued 6,182 visas and refused 6,974 applications, a refusal rate of 53%. It also said that it received 12,493 applications; issued 10,283 visas and refused 2,022, a refusal rate of 20%. I conclude that the data system for short term students is not robust enough to provide accurate information.

Prospective Students who have not been accepted on a course of study

16. Someone who intends to study in the UK but has not chosen or been accepted on a specific course. Applications can be refused under this category if the prospective student has been accepted on a course but the start date has passed by the time the application is made, or determined. The UK Border Agency does not keep sound data on this category of application.

Student dependants

17. A dependant of a student who has not been accepted on a course, or who wishes to study for six months or less. Some student dependents have full appeal rights, which depend on the reason for refusal. The UK Border Agency does not keep separate data on applications within my remit for Student Dependents. It looks as though there were 24 dependent applications refused from October 2007 to March 2008 where the principal application was for a Student Visitor visa.

Points Based System applications

18. The Secretary of State issued a Direction in 2007 confirming that applications handled under the Points Based System, rolling out in 2008 and 2009, starting with Highly Skilled Migrants in early 2008, fall within the Independent Monitor's remit.

Monitoring

19. My two year term of office started in April 2006 and was extended for a further year until April 2009; I am the fourth person to be appointed as Independent Monitor and the first to be appointed on a full time basis. The Independent Monitor's role is:

- to examine the quality of decision making, within the spirit of fairness and consistency, in certain cases where, as a result of legislation, there is a limited right of appeal: this includes cases determined under the Points Based System;

- to ensure that correct procedures are used to reach decisions;

I am required:

- to examine the quality of information available to applicants with a limited right of appeal;
- to examine the quality of the UK Border Agency's complaint procedures for applicants with a limited right of appeal;
- to spend 3 months each year visiting entry clearance posts overseas;
- to submit a twice-yearly report on the discharge of these functions to the Secretary of State, who will lay a copy of the Report before each House of Parliament.

I may make recommendations based on my findings. I cannot investigate individual complaints or overturn a decision not to issue a visa.

20. The UK Border Agency provides two members of staff - the Independent Monitor Liaison Team - to provide administrative support. I am particularly appreciative of its help in managing complicated travel arrangements and the administrative handling of the global file sample. I also record here my thanks for the help provided by a wide range of UK Border Agency staff who respond to my questions on policy, practice and statistics.

Independence demonstrated

21. I provide my office, though my official address is at the Foreign & Commonwealth Office. The UK Border Agency forwards my mail, unopened. I have full editorial control of my written reports. Many of the practical matters that ensure a smooth working relationship between Independent Monitor and the UK Border Agency are included in a formal Memorandum of Understanding.

22. My contract of appointment includes a condition (standard in contracts for civil servants but I am not a civil servant) that the Independent Monitor requires permission from the Foreign Secretary, via the UK Border Agency, to disclose information obtained in the course of my duties. I have, finally, convinced the UK Border Agency International Group that without criteria for providing advice to the Secretary of State, the condition is inappropriate for an independent statutory postholder.

Costs

23. The UK Border Agency has, at long last, been able to provide information on the costs of the Independent Monitor. As I provide my own office and office equipment, no office related overheads appear in the budget.

travel and subsistence, including Team Members	£64,193. 44
overseas Local Staff overtime (drivers)	£119. 77
IT for the Liaison Team and phone costs	£647. 58
printing for the Parliamentary Reports	£1,386. 50
catering at meetings	£95. 20
miscellaneous office expenditure	£248. 89
Liaison Team staff costs (without office overheads)	£75,621. 74
Independent Monitor Salary including employer's Pension and National Insurance	£136,509. 00
TOTAL April 2007 to March 2008	**£278,822. 12**

EVENTS: October 2007 to August 2008

The UK Border Agency

24. On 1 April 2008, a new organization was formed: the UK Border Agency, merging the Border and Immigration Authority, UKvisas and parts of Her Majesty's Revenue and Customs.

Hub and Spoke

25. From October 2007 to March 2008, as part of a major programme, 34 visa offices had decision making work transferred to larger centres. The UK Border Agency published a useful explanatory leaflet in August 2008.

Deception

26. From 29 February 2008, under Paragraph 320 (7A) of the Immigration Rules, an applicant must be refused entry clearance if false representations or documents are used, or material facts not disclosed, whether or not the false representations or documents are material to the application, and whether or not the deception is with the applicant's knowledge. Paragraph 320(7B), from 1 April, says that a visa application must (subject to exemptions) be refused if the applicant has used deception in a previous application within the past 10 years. On 1 July a mandatory immigration rule, 320(7C), listed categories of applicants exempted from 320(7B) for example children. Also on 1 July a discretionary immigration rule 320(11) allowed an applicant to be refused if they have contrived in a significant way to frustrate the intentions of the immigration rules.

Fees

27. The Immigration and Nationality (Cost Recovery Fees) (Amendment) Regulations 2008 and The Immigration and Nationality (Fees) (Amendment) Regulations 2008 provide the authority for levying most entry clearance fees overseas. On 1 April 2008, there was a £2 rise for a 6 month visit visa or student visit application to £65 and a £5 rise for the longer term visit visa applications. The cost of a student visa application stayed the same at £99. New fees were introduced for Tier 1 of the Points Based System: £600 for entrepreneurs, investors and general applicants and a Transitional fee of £200 for applicants who already held a Highly Skilled Migrant Programme letter.

Visit visa changes

28. In June 2008, the Government published its response to the Visitors Consultation. It plans, over the next eighteen months, to create three visitor categories:

- A tourist route, with leave to remain of six months for visa and non-visa nationals;
- A category for business and special visitors;
- A new sponsored family visitor category, with a system of licensed sponsors.

I have already drawn attention to the problem of referring to non-family visitors as Tourists. The current Application Form shows that many people who wish to visit friends cross out the Tourist Section and try to fill in the Family section where the questions are more appropriate. The UK Border Agency acted on my comments and a revised Application Form due in the autumn includes a Visiting Friends category. According to my file sample, Visiting Friends accounts for over a third of non family, non business visits.

The UK Border Agency Inspectorate

29. The Chief Inspector took up this new post in July 2008. His statutory duties include inspecting and reporting on the provision of information, practice and procedure in making decisions, and the handling of complaints, so there is a comfortable fit with the Independent Monitor's remit. The Chief Inspector's remit includes decisions to issue visas and mandatory refusals which, at present, are not subject to external scrutiny, in addition to the broader UK based side of the Agency's work.

30. Discussions are underway on how best to incorporate the Independent Monitor's role into the Inspectorate once my term of appointment ends in April 2009. My view is that it would be tidier to abolish the statutory Independent Monitor role by repealing the relevant legislation as there is a complete overlap of duties.

31. I note that the UK Border Agency International Group Visa Services Directorate (more of a mouthful than the short and snappy UKvisas) is anxious not to lose the detailed feedback that I provide, and also a sharp focus on the overseas component of a very busy business. These could, I think, be achieved by working co-operatively with the Chief Inspector and the Visa Services Directorate has shown it can do that in its healthy approach to external scrutiny in recent years.

VISITS

The Independent Monitor is expected to spend at least three months each year on operational visits to Posts examining the way they handle applications within the Monitor's remit. My visits focus on the information that is available to applicants, the quality of decision making, and how Posts handle complaints and post decision correspondence.

The Independent Monitor team

32. For the past year I have invited pairs of visa staff, nominated on the basis of excellent performance, to assist me on my visits to larger Posts. The UK Border Agency undertook a feedback exercise to see if the venture had been as successful for participants and their nominators as it had been for me. Responses were very favourable and I shall be working with a further series of nominees until my appointment ends.

33. Those who had been nominated valued seeing how other visa offices worked. They noted the usefulness of being on the outside looking in. They enjoyed working with someone who challenged and expected high standards. I was struck by how many commented that they had learnt how to conduct structured reviews, assessing cases against 10 simple criteria, and the value of evidence based decision making. Line managers found that my team members brought back techniques that were useful, had a wider knowledge of the business and were better able to gather and collate information.

34. Interestingly, the smaller visa offices, where I had visited on my own, did not like the idea of me bringing team members. The larger visa teams where I had worked with team members thought that worked well; the sole adverse comment was about me using an Entry Clearance Officer to help me review the work of Entry Clearance Officers, though I provide the feedback. In fact I have found the speed and expertise of good Entry Clearance Officers to be some of the key benefits for me.

35. From April to September 2008, I visited 4 Posts and examined 445 files in cases with limited appeal rights of which 354 were refusals within my remit. If I find problems with cases not within my remit, I do not report formally on them but draw the matter to the UK Border Agency's attention, whose response has always been positive. Issues covered have included lengthy interview waiting times for Working Holiday Makers and problems with Student Visitor visas.

Istanbul : April

36. From December 2007, Istanbul handles all decisions on applications made in Turkey other than applications from diplomats, and also takes in applications from Tel Aviv. In 2006-07, the overall refusal rate was 5.7%, rising to 6.3% from April 2007 to February 2008. I found that non-family visit visa applications (excluding children whose applications cannot be counted separately) for January to March 2008 had a refusal rate of 5.7%, Short Term Students 13%, and Student Visitors 11%.

37. Website information was inaccurate and there had been problems getting Foreign & Commonwealth Office colleagues to act promptly on requests to amend website information. The UK Border Agency agreed that the faulty information be changed without delay and that the underlying difficulty must be resolved.

38. At the well maintained Worldbridge Visa Application Centre, all notices were matched by translations and all material had the new UK Border Agency logo. Information leaflets were in a rack out of direct sight and I recommended that the rack be placed in the waiting area in the new Application Centre so that applicants could help themselves. I was concerned to see uncorrected copies of the visit visa leaflet which had been withdrawn after my visit to Copenhagen in September 2007 because it is misleading about being able to study as a visitor.

39. There was a 40% error rate in data entry on appeal rights on the casework system and it was hard to obtain an adequate sample. I reviewed 32 files where visas had been refused, in March 2008, with information on limited appeal rights. Compared with the last global file sample, using a 10 point quality scale, Refusal Notices scored an overall 88%, placing Istanbul in the Good band (global average = 83%, regional average = 80%). I was pleased to see that Refusal Notices were more balanced than the global average, with positive points in 34% compared with 17% globally. 24% of Refusal Notices included comment on verified information and I noted that such enquiries are recorded on a formal form with adequate detail. In a group of cases, there had been imaginative use of an internet search engine to confirm that musicians were booked to perform in the UK, thus needing Work Permits, rather than the photo shoot that had been claimed. I have raised concerns about risk assessment work being integrated across the visa business as a whole. In Istanbul, I found the Risk Assessment team to be fully part of the visa section, working hard to be evidence based and understanding the need to support with firm facts the guidance they offer.

40. Istanbul had been recovering from a serious backlog in decision making which, I was told, was caused by the introduction of biometric data capture in December and 3 public holidays. Whilst managers have to make decisions on how best to use resources in such circumstances, I found that cases refused with limited appeal rights were not treated fairly or equitably. Applications were reviewed on arrival and those that were going to be refused were put in a queue, whereas successful applications had the decision straightaway. Many of the March 2008 decisions that I looked at related to applications made in December and January and in some cases maladministration caused by unreasonable delay had caused real inconvenience, such as an application to marry in the UK where the decision to refuse was two months after the intended wedding day. In my view, if there have to be delays, they should be applied evenly to applications.

41. Istanbul scored Poor for website information, though Good for onsite information, Good for the quality of Refusal Notices and Fair overall for complaint handling. My overall assessment is that performance was **Fair.** I found the team to be open minded and responsive and thought that with the worst of the queues behind them, they could start to focus on quality.

Accra: May

42. In financial year 2007-08, Accra received 37,447 UK applications, a decrease of 13.8% over the previous year, continuing a sustained downward trend from

around 82,000 in 2003-4. Excluding children, 36.1% of applications were for non-family visits. In 2007-08, the overall refusal rate was 52%. I found that visit visa applications (excluding children) for February to April 2008 had a refusal rate of 33% and non-settlement applications had an overall refusal rate of 43%.

43. Given my previous comments about out of date and misleading information, I was concerned to note that the British High Commission website said,

> ***Can somebody else apply for a visa for me overseas?*** *Yes, someone else can submit your application at a UK visa office overseas . . . .*

Applicants must now apply in person in order to provide fingerprint data so this out of date information could cause significant inconvenience to those who may have travelled some distance, perhaps from neighbouring countries. There was reference to a Visa Application Centre that had been closed. There was a link to the Sector Based Scheme for low skilled workers, and only after a wearying chase through various websites, did the enquirer learn that it is not available other than to Romanians and Bulgarians. I recommended that the High Commission website was updated immediately. In contrast the website of VFS, the commercial partner, was simple to navigate with clear and accurate information.

44. At the VFS Visa Application Centre, I noted that Accra had not corrected information about required passport validity in response to UKvisas' November 2007 direction: this was put right immediately. (I had drawn attention to the fact that the Immigration Rules do not require a passport to have 6 months validity). At the British High Commission, there was a full set of visa information leaflets in a well designed rack in a very pleasant waiting room. Once again, I was concerned to see copies of the recently issued uncorrected visit visa leaflet. I thought that the information poster on the availability of an interpreter was excellent, as was the notice about courteous conduct. I reviewed 4 months' pre-application correspondence that could not be linked to a later application, noting good quality accurate replies by support staff.

45. I reviewed 101 files where visas had been refused, in March 2008, on applications within my remit. Refusal Notices scored an overall 75%, placing Accra in the Fair band (global average = 83%, regional average = 87%). In common with many visa offices, Refusal Notices suffered from lengthy and hard to understand standard paragraphs, some of which repeated or contradicted comments in other standard paragraphs; the impression was of muddle with topics dotted around in no coherent order. I asked the team to develop simple and plain English versions of routine paragraphs and that each one should have applicant specific evidence added. I recommended that Entry Clearance Officers should read through each completed Refusal Notice to prevent the bitty, repetitive, contradictory, lack of flow that gave such a poor impression.

46. Ghana's legal systems and stability have allowed a co-operative referral programme between the UK and Ghanaian bodies, aimed at deterring fraudulent documents in visa applications. If the visa section suspects that a key document is not genuine, it is referred to the appropriate Ghanaian body which may prosecute the applicant. Since 2004, applications supported by fraudulent documents have reduced from 30-40% to an estimated 8%, with 5% detected and an assumed margin of error of 3%. The visa section's data was confirmed by figures provided to me by the Ghana Police and the Ghana Immigration Service.

47. A strong emphasis on control and deterrence brought the risk of the visa system appearing repressive, focusing solely on poor quality applicants; this is

inappropriate in a thriving nation with excellent relationships with the UK. With apparent long term success for the referral programme, the visa section realised the need for balance. It had drawn up a marketing plan to increase confidence in and embarked on a programme of customer service initiatives aimed at attracting good applicants. "Customer Service" as a whole is not within my remit, though elements of it, such as the provision of information and complaint handling, are. Nevertheless, providing good customer service is a vital component of fair decision making. I commended the Accra visa team for initiatives such as actively promoting business and tourist visas to a targeted proportion of the market and noted that the plan built on very good working relationships with colleagues in UK Trade and Investment and the British Council. The Business Express programme should help genuine young employees who, if sponsored by an approved employer, can be treated as relatively low risk. Careful monitoring of compliance in the early stages will increase confidence on both sides.

48. Accra offered higher levels of customer service than most of the places I visit. It met the Public Service Agreement turnround times yet offered a welcome, relaxed, flexibility and accessibility. Applicants can call in to the High Commission with queries; if requested to attend they can turn up on a day that suits them; the waiting room is one of the nicest that I have seen and was redesigned when the VAC opened and applicant numbers dropped. All these points suggest that applicants' needs are understood.

49. I rated Accra Fair for its website information, though Good for information provision generally. Accra has a sound reputation and the visa team was disappointed by its score of only Fair for Refusal Notice quality. When the significant problems came to light during the week, it was a team member who commented that in pushing forward innovation and project work it had lost sight of the basics. Although my complaint handling assessment revealed some problems, the approach and quality of responses merited a Good rating. I thought Accra's relatively recent marketing and customer focus was excellent. My overall assessment was that performance in Accra was **Good**.

New Delhi: June

50. New Delhi had become the Hub Post for applications made in Kolkata and Kathmandu. For New Delhi applications the overall refusal rate was 27.6% and that had fallen since April to 20.7%. In Kolkata the overall refusal rate was 3.9% and no figure was provided for more recent cases. In Kathmandu the overall refusal rate was 32.4% and since moving decision making to New Delhi the refusal rate had risen to 53%. Overall, I found that visit visa applications combined (excluding children) for March to May 2008 had a refusal rate of 11. 3% and non-settlement applications had an overall refusal rate of 17.3 %.

51. In advance of my visit, I drew attention to information on the VFS website which referred to "our" work permit and Points Based systems. I have repeatedly commented that commercial partners should not provide information in a way that might suggest that they make the rules. My recommended changes were made immediately and, overall, I found the VFS website simple to navigate with clear and accurate information and I noted regular monitoring specifically aimed at Points Based System information.

52. The VFS Visa Application Centre was of a good standard, smart, well laid out and with an upmarket impression. I liked the biometric DVD, which was unstuffy - presenting advance information in this way smoothes and speeds the process. Applicants thought VAC staff were good and welcoming. They liked the token system for the various queues and I noted that the overall wait without an appointment was 60-90 minutes. Although I made some minor recommendations - the notice board on interview waiting times, consistency of information with the helpline - I thought that the overall performance was excellent.

53. I reviewed 137 files where visas had been refused, in April 2008, on applications within my remit. Compared with the most recent global file sample, Refusal Notices scored an overall 86.1%, placing New Delhi in the Good band (global average = 83.7%, regional average = 77.9%). Including Points Based System cases, where there was no global comparator, the score fell to 85.4%. All child visit applications correctly mentioned Immigration Rule 46A. New Delhi scored a comparatively good 93% for Refusal Notices being in accord with the evidence provided. In two cases, the error was sufficiently serious to consider that judgement was compromised and I recommended that the cases were reconsidered afresh. This recommendation was accepted and acted on immediately. 96% of the Refusal Notice had the correct information on appeal rights and the visa team re-issued Refusal Notices in the cases that did not.

54. Against this generally positive picture, I had serious concerns about the common practice of copying the text of a husband's Refusal Notice into that of an accompanying wife, adding *I am not otherwise satisfied that you meet the requirements of the Immigration Rules.* The wife's application should be considered in full, on its own merits and Entry Clearance Officers must justify why other requirements are not apparently met. There is no provision for "joint" applications, merely applications that are linked, and whilst New Delhi's practice is one step better than joint Refusal Notices, it is neither adequate nor fair.

55. I reviewed a separate file sample of cases handled under the new Points Based System which was introduced in India on 1 April 2008. Demand had been lower than expected with 38 applications to the end of May and I looked at all 15 cases where the application had been refused. Whilst the sample size may be small, there were matters that needed immediate attention, for example, 20% of Refusal Notices were factually inaccurate even after review by an Entry Clearance Manager. Entry Clearance Officers considered that they had had adequate training, so the problem was a more basic one of carelessness. I also saw painstakingly careful Refusal Notices which set out complicated calculations on funds. There was a problem with applicants' understanding of the funding requirements and the UK Border Agency noted that the guidance relating to maintenance funds was being improved. It now has been so that the requirement for £2,800 (+dependents) on <u>each</u> day of a 3 month period <u>immediately</u> preceding the application is clear. I liked the India wide visa section conference calls to discuss this new method of assessment and commended it as good practice as the Points Based System rolls out.

56. I rated New Delhi Good for its website information and for information provision generally. Refusal Notices, other than for Highly Skilled Migrants, also scored Good and better attention to evidence will move the score up. Performance for Points Based System cases was Fair with some glaringly obvious mistakes that had escaped managerial overview. This was a vital area to get right, and very quickly, if the impressive pre-launch publicity was not to be wasted. Post

decision correspondence, on a limited sample, was Excellent. My overall assessment was that performance in New Delhi was **Good**.

Abuja: July

57. The UK Border Agency asked me to lead a small team on a visit to Abuja in order to develop a monitoring system to assess integrity. I used and demonstrated my normal monitoring techniques. Given the subject matter, the report has not been published but I can confirm that a principal theme was that securing integrity starts with leadership at the highest level and includes what goes into waste bins.

Moscow: September

58. Applicants in the Russian Federation must complete an on-line form using the visa4UK system and then attend in person a Visa Application Centre (VAC) run by UK Border Agency's commercial partner VFS Global where they deliver a signed copy of the Form, pay the application fee and provide biometric data. Decision making for Ekaterinburg cases was transferred to Moscow in May. There are now five VACs in the Russian Federation and discussions are underway on sharing premises with other nationalities to improve accessibility in such a huge geographic area.

59. In financial year 2007-08, Moscow received 120,245 UK applications, a decrease of 6.2% over the previous year. From April to July 2008, demand fell by 7.4% compared with the same period last year. Excluding children, 73.4% of applications were for non-family visits. Ekatinerinburg received 8,671 UK applications, a decrease of 37.6% over the previous year. Excluding children, 57.2% of applications were for non-family visits.

60. In 2007-08 the overall Moscow refusal rate was 5.5% and in Ekaterinburg it was 8.7%. From June to August 2008 I found that visit visa applications (excluding children) had a refusal rate of 3.9%, Student Visitors 6.7%, and Short Term Students 34.1%. Tier 1 of the Points Based System had a refusal rate of 6% based on 16 decisions.

61. UK Border Agency's business process changes toward making visa decisions on paper evidence and clustering decision making, means that fewer applicants will be interviewed in person. In my file sample, which mostly covered visitors and short term students, we noted that 5% had been interviewed, around half the global percentage. One of my team members looked at interview practice and found that, overall, it was working well. Entry Clearance Officers have to obtain permission to call an applicant in for interview, but there were no written guidelines setting out the criteria used. The system is explained to new staff during induction training and mentoring and whilst I found that Officers apply local guidance they could not say clearly what it was. Entry Clearance Managers could explain the circumstances under which they would authorise an interview: only if the information sought could not have been provided on paper and only if it will enable an Entry Clearance Officer to make a decision that can't be made with the papers provided. I recommended that simple criteria are set out more formally as written policy.

62. There is a strong UK market for short term English courses for Russian speakers and there are two visa types which may apply. If an applicant applies for and is granted a Student visa, they may work part time along with their studies and they can apply in the UK to extend their visa to continue a longer course of education. The Student Visitor visa category was introduced in September 2007 and successful applicants cannot work and may not apply for an extension. The application fees are different: £65 for Student Visit and £99 for Student.

63. If an applicant intends to work and intends to progress to further or higher education it is vital that they apply for and are considered under the Student Immigration Rules. I thought advance information was especially poor. The VFS website had no specific information about Student Visitors and I recommended that a FAQ is added addressing the Short Term Student versus Student Visitor quandary. The VFS homepage takes you to the UKvisas web site where there is a further link to the UK Border Agency website entitled '*Student Visitor visa: details and flow chart'*. This website guidance contains irrelevant information directed more to UK based applicants and is confusing rather than useful. I recommended that the UK Border Agency provides accurate and accessible information.

64. In a sample of 59 student cases covering a 3 week period in August 2008, we found that a quarter of applicants had completed a Student application form and all but two changed their mind at the VAC to a Student Visitor application. I noted that in July, an Entry Clearance Manager reminded VAC staff of the differences but I found that VAC staff knowledge was still patchy. I was pleased to see that Entry Clearance Officers had correctly assessed all applications against the category that had been chosen by the applicant, whether the application was granted or not. I am, however, concerned that applicants have a poor understanding of the Student Visit v Student rules and are at risk of changing the application category at the last minute without really understanding the consequences.

65. In the general file sample of 87 cases, Moscow scored 90.8%, placing them in the Fair band (the bandings changed in August) and well above the global average. There was very good use of verified evidence with the best verification reports that I have seen. I thought that the Risk Assessment Unit had got into its stride and its role was well integrated into Entry Clearance Officers' day to day work. In particular, I was pleased to see that it is currently focusing on child pornography and attempts to traffic people, including children, to the UK given an evidence base to confirm these areas are of concern.

66. In summary, I rated Moscow Good for information provision generally though Poor for Student Visit applications. I thought its User Panel was a very good way of understanding applicants' perceptions and spreading visa information in a difficult market. Refusal Notices and decision quality scored Fair under the new tougher targets. I was satisfied that steps were being taken to improve complaint handling. My overall assessment was that performance in Moscow is **Good.**

Monitoring visit Reports

67. I prepare Reports immediately after a visit with detailed findings and recommendations for the UK Border Agency to address. I send the Reports to the Chief Executive of the UK Border Agency, the Director of the UK Border

Agency International Group and to the relevant High Commissioner or Ambassador. The UK Border Agency publishes the Report and its response on its website[1] and my key findings are also included in this Report.

68. The Independent Monitor Liaison Team supervises a follow-up programme and there has been a strong emphasis on that for the past six months. We are concerned to find that a number of recommendations that have been accepted have not been implemented and shall, therefore, continue to obtain evidence of compliance.

Key findings

69. **Information:** I see the same problems on my visits and many Posts do not seem to realise that recommendations I make and which are accepted should apply globally. British Government websites contain inaccurate and sometimes very misleading information. Posts and Visa Application Centres have been slow to correct information on passport validity. Inaccurate leaflets that were withdrawn were re-issued without amendment.

70. **Data accuracy:** Whichever way I instruct a file sample, I find significant data entry errors. Whilst VAC and visa office support staff might be responsible for entering basic data, only Entry Clearance Officers are trained to assess the type of application and the appeal rights that follow. They are, therefore, responsible for making sure that the case management system is a fully accurate record.

71. **Refusal Notices:** Entry Clearance Officers need to read Refusal Notices, preferably on paper and not just on screen, to see if they make sense, remove errors and repetition, and check for overall quality.

72. **Correspondence:** There is little consistency in the way contacts from applicants, their sponsors and their agents, is assessed, recorded or replied to, whether as enquiries before an application or in correspondence after the decision has been made.

73. **Compliance:** While most Posts welcome feedback and the opportunity to put things right, follow up by the Liaison Team has revealed unacceptable delay, inertia, or positive non-compliance with some visit recommendations as well as those that have been accepted in my Parliamentary Reports.

[1] www. ukvisas. gov. uk

INFORMATION FOR APPLICANTS

Information is important for all applicants, but especially so for those who do not have a full right of appeal. Good pre-application information gives them the best possible chance of choosing the right category, completing the application form accurately and enclosing relevant supporting documents. Competent local advice is not always available and without accessible, understandable, consistent and accurate information, applicants with limited rights of appeal can run into problems and may need to pay a further fee to make a second application.

74. There is a critical difference between information and advice: information applies to everyone and advice is personally tailored. I note that the UK Border Agency International Group's business priorities refers to one of its aims as providing *advice*, rather than *information,* yet I understood that there was a long standing policy decision that staff should provide information but not offer advice. **I recommend** that the UK Border Agency clarifies its position.

75. The UK Border Agency International Group Visa Services Directorate is currently undertaking an ambitious and commendable customer survey on information services. In the meantime, I note major improvements to the main UKvisas website[2], progress in improving the consistency of commercial partners' websites and a back to basics review of the paper information leaflets. The UK Border Agency keeps me informed of developments and welcomes my comments.

76. I continue to be concerned that information provided by commercial partners can give the impression that they are more than administrative handlers. Despite this being corrected in a number of settings when I point it out, misinformation still occurs in others;

case study

A routine letter on VFS headed paper, asks an applicant to attend the British High Commission in Jakarta. It refers to *our* interview slots and *we* may not be able to interview you if you are late, and *we* will try to reach a decision, giving the impression that VFS will be interviewing and deciding.

Appeal rights

77. In the past, I have found a small percentage of Refusal Notices contained incorrect information in cases with limited appeal rights in that they said there was *no right of appeal*. I am pleased to report that there were no such cases in the file sample I have assessed.

[2] www. ukvisas. gov. uk

Family visits and Long Term Students

78. The problem with inaccurate information remains in Refusal Notices which give information on limited appeal rights when it should have been on full appeal rights because the applicant wished to visit a qualifying family member[3] or study for more than six months. These cases are included in the files provided to me because the Refusal Notice provided inaccurate information and/or the case was not recorded properly.

79. The UK Border Agency issued guidance on qualifying family visits in May 2006 and the information error rate fell to 4.2%. It has now risen over three reporting periods and in this sample 5.5% of the cases provided were not within my remit because the application carried a full right of appeal. I am surprised by the rise in incorrect appeal information because the new Visa Application Form, issued in October 2007, asks specifically if the applicant intends to visit a member of their immediate family making it easier for Entry Clearance Officers to understand whether a visit qualifies for full appeal rights. From this file sample, I note lack of understanding that where an applicant wishes to visit the UK for privately funded medical treatment or to marry then if they have a qualifying family member in the UK whom they intend to see, they have full appeal rights.

case studies

Getting it right in Bucharest: *You want to visit your boyfriend. Whilst you describe him as your unmarried partner on the application form, you have no evidence that you have ever lived together to enable him to qualify as a family member. You have also described him as a boyfriend when applying today. I am not satisfied that he can be considered a member of your immediate family and your application does not, therefore, attract full rights of appeal.* This showed care in assessing the evidence and the explanation would be helpful to the applicant.

Getting it wrong in Geneva: The applicant wished to visit the UK to sit an examination and confirmed that he would stay with a friend. He also stated on the application form that he had a brother in the UK and provided the brother's address and contact details. As this was a visit visa application, then in the absence of confirmation that no contact is intended, this was a qualifying family visit and all the more so as the brother's contact details had been provided. The UK Border Agency accepted my recommendation to re-issue the Refusal Notice with correct information on appeal rights.

80. From the current file sample, I returned 37 cases to the UK Border Agency where I found that the applicant had not been advised of full appeal rights and it accepted all of my recommendations to provide a fresh Refusal Notice with accurate information, along with an apology. In 7 further cases, I thought that there was no need for action.

81. I note with concern that the Liaison team is still, six months later, chasing up some Posts - Chisinau, Jerusalem, Dubai, Vienna - for confirmation that they have complied with accepted recommendations from my previous Reports. In contrast,

[3] The Immigration Appeals (Family Visitor) Regulations 2003

Bridgetown confirmed that staff had been re-familiarised with appeal rights to make sure the errors did not happen again, a more positive response with lasting benefits.

82. I continue to find that information on appeal rights is patchy and inconsistent. For example, the Asylum and Immigration Tribunal website says *For appeals against an entry clearance officer's decision, you need to use the appeal Form AIT 2 which is issued to you by the embassy or British High Commission when your application is refused*. This is not, given UK Border Agency policy, correct as the Form is not issued at the same time as the decision to refuse when appeal rights are limited. **I recommend** that the Secretary of State asks the Asylum and Immigration Tribunal to amend its information accordingly.

Information for Entry Clearance Officers

83. I have been very critical of the advice, guidance and direction systems that busy Entry Clearance Officers must rely on in a complex business. Progress continues though, and all in the right direction. The flow of AECIPs[4], many of which were badly written and many of which were soon followed by a correction, has been replaced by Operating Instructions which are approved at senior management level. Given a worrying level of knowing non-compliance with some AECIPs which, to put it bluntly, lacked authority given the poor quality and muddle, the name change should make it clear that front line staff are expected to comply. Tight headquarters' oversight should also reduce overload and contradiction.

84. I note too that there is a major project underway to tidy and update Entry Clearance Guidance which is easily available to both visa staff and the public on the www.ukvisas.gov.uk website.

[4] All Entry Clearance Issuing Posts

FILE SAMPLE FOR OCTOBER 2007 to MARCH 2008

The Independent Monitor is directed to prepare two Reports each year for the Secretary of State to lay before Parliament. In addition to commenting on information and complaint handling for applications within my remit, I assess a global sample of cases that have been refused under the legislation that governs the Independent Monitor.

Sample basis

85. I directed the UK Border Agency to generate a sample of applications refused with limited rights of appeal under Sections 90 and 91 of the Nationality Immigration and Asylum Act 2002 and decisions made from 1 October 2007 to 31 March 2008.

- There should be a computer generated randomised selection of 0.75% of the cases determined within the sample period.
- There should be a further randomised selection to provide at least 2 files per Post for each of 2 quarterly slices. *This weighting allows for an adequate assessment of smaller Posts which might otherwise be required to provide only one file*.
- The deadline for receipt should be 2 months and Posts should provide an explanation if files miss the deadline. *95% of Posts sent the files by the deadline compared with 90% for the previous sample*.
- Files should be numbered with the UK Border Agency's reference number in addition to a Post specific numbering system and, if there are two numbering systems, the Entry Clearance Manager must confirm that the files provided are those requested. *Tripoli sent a batch of files that bore no relation to the files requested, without explanation. The Liaison team followed this up effectively*.
- Posts should enclose files that are closely linked with the selected file, for example other family members intending to travel at the same time, previous or subsequent applications whether refused or issued. *Most did*.
- Entry Clearance Managers should provide an explanatory note for any file substituted. In order to maintain the integrity of the sample, if a file is substituted for any reason, I require the previous within remit file. The UK Border Agency also asked Posts to send files that had been replaced so that they can be checked.
- I find brief translation notes helpful for documents that are not in English. *Most Posts provided notes and I appreciate the time they spent doing that.*

Substituted files

86. In my last report, I noted that a high proportion (18%) of sample files had been substituted before being sent to me. The liaison team checked the case records of these files and from the database it looked as though 21 files should have been provided, being cases within my remit. The UK Border Agency accepted my recommendation that these files should be provided. We found that in almost half of the cases, the reason for not providing the file first time round was that it could not be found. This is not acceptable as the files clearly could be traced with a little more effort.

87. I found that the profile of the files provided late was very similar to the sample as a whole. One case had incorrect appeal information and I asked that the Refusal

Notice be re-issued with the correct information for a qualifying family visitor. There had been data entry errors in 22% of the files. Overall, 94% of the Refusal Notices were lawful and reasonable. The Liaison Team and I did ask for a small number of files that had been provided first time round and regret any inconvenience caused. Overall, however, this exercise was a useful one in securing the integrity of the file sample.

88. This year, the proportion of files that were replaced before dispatch fell to 9.3%. That is still, however, a high error rate:

- 6.1% were **errors in data entry** in that the cases had not been recorded accurately on the case management system.

- 1.8% (up from 1.0%) of the sample files could not be found - that is **administrative error**. All of the files requested from Colombo went missing and the UK Border Agency is investigating the circumstances. A senior manager provided replacement files that matched the sample directions and extracted as much information as possible from the case management database for the missing files. I could see from that that the missing files were little different from the ones provided – adequate but not good quality.

- 1.6% (down from 4.7%) of the sample were cases that had had full appeal rights notified correctly - that is both **data entry error** and **managerial error** as the files are supposed to be checked by an Entry Clearance Manager before dispatch.

- 1.2% of the cases provided were not within my remit for other reasons. Given the precise and limited nature of my remit I accept that such errors will happen. Many people think that all limited appeal right cases are within my remit, but there are categories that are not, including mandatory refusals.

89. According to the casework database a 1% sample of files within my remit would be 778 files. The sampling method I use provides a fully representative sample and has resulted in me examining 860 files of which 822 were within my remit or had been given wrong information on appeal rights and 776 were within my remit – adequately close to the 1% I think.

The UK Border Agency's overall performance

90. The UK Border Agency's performance tracking system, the Balanced Scorecard, includes the Independent Monitor's assessments in its complex matrix of measurements covering Controls, Competitiveness, Costs, and Capabilities. Regrettably, there have been repeated problems in copying the data I provide into the Scorecard so it cannot be relied on. The relevant team has now given an appropriate undertaking.

91. One of the problems appears to be that I classed Posts as either better or worse than a global average and the average moved with each file sample. It seems that the Scorecard, and maybe wider understanding, works better with a fixed target so I have agreed a stretching target of 95% of Refusal Notices being lawful, reasonable and having correct information about rights of appeal. A score of under 85% is Poor.

92. Assessing the UK Border Agency's performance overall, in 85.6% of the 822 cases, the Refusal Notices were lawful, reasonable and provided correct information about rights of appeal. This figure includes cases that are not within my remit but were included in the sample having been given inaccurate information on appeal rights. Performance falls into the **Fair** band by a small margin and is a move in the right direction compared with 83.7% in the last file sample.

93. Regional ratings:

Africa	88%	FAIR
Americas	87%	FAIR
Euromed+ Russian Federation+ Commonwealth of Independent States	83%	POOR
Pacific	82%	POOR
South Asia Gulf	84%	POOR

The regional ratings are not directly comparable with my last review as that was based on the former regional divisions. I do note, however, that there were three scores of 80% or below last time and the lowest score this time is 82%, once again a move in the right direction.

94. I can provide Post specific scores when the sample size is large enough to be robust:

Abuja	85%	FAIR
Accra	71%	POOR
Islamabad	88%	FAIR
Lagos	94%	FAIR
Mumbai	83%	POOR
Moscow	93%	FAIR
New Delhi	84%	POOR

and also where I have assessed all of the files in the six month period, rather than a sample:

Damascus	50%	POOR
Mexico	60%	POOR
Reykjavik	71%	POOR
Suva	50%	POOR

Cases within the Independent Monitor's remit

95. Putting the cases that have full rights of appeal to one side, I have assessed in detail 776 cases within my remit as either **reasonable**, or faulty in the use of **judgement,** the use of **evidence,** the **Immigration Rules** or suffering from **significant maladministration**.

Reasonable

96. A reasonable Refusal Notice is one which is in accord with the Immigration Rules *and* the decision is not perverse *and* it is based, even loosely, on the evidence *and* there is correct information on appeal rights. In this sample, 91.2% of Refusal

Notices were reasonable, up very slightly from 91% in my last global sample. This performance falls comfortably into the **Fair** band and is heading slowly upwards. Lagos is the only larger Post which, at 94.7%, almost reaches the **Good** band.

Immigration Rules

97. In the file sample 3.2% of Refusal Notices referred to the wrong Rule and thus the application had been considered against an incorrect set of requirements. There was, I am pleased to report, a marked reduction in the failure to consider child visit applications against the child visit Rule. The oddest reason for refusal that I came across, however, was *Immigration Rule 41 (viii) requires that you are not under the age of 18. You are under the age of 18 and I therefore refuse your application*. I recommended that this case was reconsidered properly under IR 41 (i) to (vii) and the child visitor Rule 46A. The UK Border Agency agreed. I also referred back for reconsideration a case where the business visit applicant had been refused a visa for a 6 week training course on the grounds that *the Immigration Rules restricted such visits to 4 weeks*. The UK Border Agency confirmed that no such restriction existed.

98. The Rule that caused most difficulty this time was the difference between Student Visitors and Short Term Students. I looked carefully to see which fee had been paid as well as which box had been ticked on the Application Form. For cases that are being refused, the wrong Rule is a mistake with few consequences. I ask the UK Border Agency to watch out for applicants whose visas have been issued and who are working or who wish to extend their stay in the UK to see if they applied as Short Term Students but were wrongly assessed under the Student Visitor Rules, which allow neither work nor extension.

Evidence

99. For me to register concern about the use of **evidence**, the Entry Clearance Officer has to set out reasons that fly in the face of the evidence provided, or have made a decision that took no notice of material evidence obtained at interview or in supporting documents. 4.9% of the sample cases had significant errors with facts.

case study

A Student application in Seoul was refused because the college she had been accepted at was not, according to the Entry Clearance Officer, on the Register of approved educational establishments. I found that the college was on the Register. I would normally recommend that the Refusal Notice was corrected and re-issued, but I noted that the applicant had re-applied. In the second application she complained about the mistake, confirming that the college is on the Register, but this was not referred to in the second Refusal Notice.
I thought that issuing a corrected Notice at this stage would probably cause confusion, but it is important to acknowledge a material error. UK Border Agency accepted my recommendation for Seoul to write to the applicant to confirm that it made an error in the first Refusal Notice, with a suitable apology for that and for failing to comment in the second Refusal Notice after the applicant had drawn attention to the error.

100. Including detail from the Visa Application Form is a sound way of convincing someone that their application has been read thoroughly and carefully. There has been a marked improvement in the way Entry Clearance Officers handle evidence. In this sample, 98% of the Refusal Notices contained applicant specific evidence rather than just standard paragraphs that could be directed to anyone. When specific evidence is teased out and linked with a specific Immigration Rule, a Refusal Notice reaches the Excellent standard.

case study

The applicant in Ekaterinburg wanted to attend a six month sandwich course of 6 weeks tuition followed by on the job training in horticulture. The Refusal Notice recorded that the course was aimed at foreign students.
The Entry Clearance Officer could not see how the course fitted into the applicant's 4th year at University studying economics: Immigration Rule 57 ii and iv.
He noted that the course required English at intermediate level, but the applicant had not provided any evidence to confirm that standard. He noted a letter stating that English was part of the University studies, but that the University credit book did not confirm current English study. He was not satisfied that the applicant would be able to follow the proposed course: Immigration Rule 57 ii.
He noted the cost of the course, and that fees after the first 6 weeks would be deducted from earnings. He estimated that before that the applicant would need around £1,200, but the applicant had not provided any evidence that these funds would be available, so he was not satisfied that the applicant would be able to maintain and accommodate himself: Immigration Rule 57 vi.

Poor judgement

101. The Independent Monitor's assessment is not the same as a review by an independent tribunal so I do not substitute my own judgement in the cases I look at. For me to record concern about use of **judgement,** the decision has to border on the perverse - a decision that no reasonably competent and fair Entry Clearance Officer would make. I found wholly unreasonable judgement in 1.2% of the assessed cases.

case studies

The applicant in Lagos wanted a visa to attend a one week expert conference: he had applied and been issued with an invitation. The single reason for refusal was that he had not paid the enrolment fee. Given the high visa refusal rate in Nigeria, I thought that he was probably being sensible in making sure he had a visa before paying the conference fee. As there were no other grounds for refusal the Entry Clearance Officer must have been satisfied that the applicant otherwise met the requirements of Immigration Rule 41.
UK Border Agency accepted my recommendation that the applicant be offered a free of charge visa application should he wish to attend a conference in the UK within the next year.

Tbilisi: Declining to speak English at interview is not a sound reason for refusal. At an event as important as an interview, it is prudent for applicants to use the language with which they are most comfortable and familiar and that is why they are given a choice. The applicant had studied English in his home country and no credit was given for that, though failing to do so is normally a reason for refusal. He explained that part of the UK teaching was in an outside environment, and he did, therefore explain how the course in the UK differed from studying with a tutor in Georgia. I also noted that the response to his complaint was inaccurate as he had been interviewed and the routine letter explained why applicants are not interviewed.
The UK Border Agency accepted my recommendation that the applicant is offered a free of charge application within the next 12 months, should he so wish, along with an apology for the poor quality of both the Refusal Notice and the response to his complaint.

Maladministration

102. Less than 1% of the file sample were cases where significant maladministration undermined the fairness of the decision. I normally recommend that the UK Border Agency reconsiders the cases or offers a free of charge application within a year, but sometimes an apology is the better solution.

case study

In Wellington, the main ground for refusal of a visit visa application as a wedding guest was that the wedding date had passed. The application was received on 15 October and the wedding day was 3 November so the applicant had applied in time. The delay had been caused by UKvisas, in that the decision was not made until December and the fact that the wedding date had passed should not, therefore, be a reason for refusal. I also noted that it was a cousin's wedding and should, have had information on full appeal rights as a qualifying family visit. Given the circumstances of this case, I did not recommend that the applicant was offered a free of charge application or that the Refusal Notice is re-issued because that might be confusing. UK Border Agency agreed to send a letter explaining the two mistakes, along with an apology.

Quality Pointers

In addition to the 5 key indicators that determine whether a decision and Refusal Notice is lawful and reasonable, I also assess 5 indicators relating to overall quality: does it look good, does it make sense, does it confirm that the Entry Clearance Officer has read all of the Application Form and supporting documents?

Appearance

103. Overall appearance has improved tremendously. Most Refusal Notices now look neat and tidy and few have typing or spelling errors. Although it makes reading the files less entertaining, I am pleased to report almost no ridiculous reasons

(though Birmingham is 101 miles from London, not the 250 miles claimed by one Entry Clearance Officer).

Deception

104. From 29 February 2008, under Paragraph 320 (7A) of the Immigration Rules, an applicant must be refused entry clearance if false representations or documents are used, or material facts not disclosed, whether or not the false representations or documents are material to the application, and whether or not the deception is with the applicant's knowledge. Rule 320 (7A) is a general ground for refusal which means that cases involving deception have to be established to a higher balance of probabilities than required for refusals under the category specific Immigration Rules. The responsibility lies with the Entry Clearance Officer to prove the alleged deception, and that is just as important when there are limited rights of appeal.

105. In the file sample, 7% of Refusal Notices in March 2008 cited 320(7A). Compliance has been patchy though: in Oslo, the ground for refusal was the failure to disclose previous immigration history. Not only was the Refusal Notice very poor because it did not make sense "*It was over 5 years between You have failed to explain this…*" there was no mention of the appropriate new Rule.

106. In contrast, there was a well handled case in Caracas. The Refusal Notice set out with specific detail that there had been **false documents and representations:** 1) other visas in the passport had been checked with the appropriate issuing Embassies which confirmed that they were forged. 2) The bank statements did not add up, and there was a transaction on 31 September, when there were only 30 days in September. 3) the employer's letter was a photocopy and had no contact details. There was a **failure to disclose material facts** : 1) checks had shown the applicant to have had 4 passports, not the 2 declared. 2) The applicant had failed to declare visa applications on 5 specific dates in the past. 3) biometric checks had shown that previous applications had been made using a different name and nationality (which was specified).

107. In New Delhi, I spent much of my feedback session with Entry Clearance Officers in a lively discussion on the use of judgement with regard to Immigration Rules relating to the use of deception. I used a real case where the applicant had failed to declare a previous visa refusal. At the start, there was an even split between Officers who thought that there had been deception and it should be included in the Refusal Notice - where it would result in a 10 year ban - and those who did not. By the end, there was a minority vote of just one. This type of case based discussion is vital to ensure consistency of judgement, especially when there are major changes to the Rules. The UK Border Agency accepted my recommendation to have policy and practice meetings, with officers not managers taking responsibilty for leading case related debates. It confirmed that dtraining sessions on the changes to Immigration Rule 320 and the introduction of the 10 year ban would be delivered worldwide and I hoped that the training included debate and discussion as well as direction.

Immigration Rules

108. Having accepted my recommendation that all Refusal Notices should set out the relevant Immigration Rules so that applicants can see and understand the basis for a decision, all the Notices I see now do that and I came very close to removing this indicator from my Quality Assessment. But, for the requirement to make

sense, it has to be the full Rule(s), and the most up to date version. In this file sample, half of the visit visa Refusal Notices had an out of date version of Immigration Rule 41, because Posts had carried on using the version that applied up to 31 August 2007 and some used an even older version. Many Posts, Jerusalem, Kiev, Kingston, and Stockholm for example, corrected their templates when the Student Visitor category came in, but others had not. I could not identify a regional pattern to explain the difference. **I recommend** that the UK Border Agency requires staff to ensure that the most up to date and complete version of the relevant Immigration Rules is used in all Refusal Notices.

109. Just over half of the sample cases had Refusal Notices where a specific Immigration Rule and subsection was linked to the evidence that supported the Entry Clearance Officer's conclusions. Others stated which Rules had been met (or not) in a block, followed by the supporting text. I am a strong supporter of the former method for two reasons: it makes the Officer consider each requirement and it explains to the applicant why a specific Rule has not been met.

110. Although I have recorded which Rule formed grounds for refusal when the subsection was clearly linked to evidence, the muddle over subsection numbering means my findings are not adequately robust. I have, however, noted a weakness in that some subsections are used as a catch all, such as 41(i*) not being a genuine visitor*, when there was firm evidence that other subsections had not been met.

case study

In Minsk, the contract provided by the business visit applicant clearly stated that she would be studying English as part of her training, and that she would be paid by the UK company at $3.75 per hour. The Refusal Notice recorded failure to comply with 41 (i) and (ii), but explained the failure was on the basis that a business visitor had to transact business directly related to employment abroad and receive a salary from abroad. Whilst all that was true and showed good attention to detail, the better Immigration Rule for refusal would have been 41(iii) – *does not intend to take employment in the UK* and also 41(v*) does not intend to undertake a course of study.*

Interviews: do they make a difference?

111. There are plenty of people in the visa business who think that it is hard, if not impossible, to make a decision without looking the applicant in the eye. I remind them that much of the research into job selection methods concludes that the interview is the weakest assessment tool, relying as it does on immediate impressions, hypothesis and subjectivity rather than hard, factual evidence. I am not aware of any formal research into whether interviewing visa applicants made a qualitative difference to decisions once UKvisas changed its business model towards on-papers decisions. In file sample I found that 11% of the applicants had been interviewed. Those 86 cases earned a lawful and reasonable score of 90. 8%, compared with 91. 3% for applications determined on paper - not enough difference from which to draw firm conclusions of significant difference.

Money: good and not good

112. Money, generally not having enough of it for maintenance, accommodation and travel, is the most used reason for refusal after the general ones about being a genuine visitor and leaving the UK at the end of a visit. Immigration Rule 41 (vi) *maintain and accommodate himself and any dependants adequately out of resources available to him without recourse to public funds or taking employment; or will, with any dependants, be maintained and accommodated adequately by relatives or friends; and* and vii) *can meet the cost of the return or onward journey* were linked to applicant specific evidence in 22% of the file sample cases.

113. There are still signs of financial evidence not being read carefully enough, for example noting an overdrawn account rather than the overdraft limit and thus what funds would be immediately available, or looking at a final balance rather than the history of the account.

case studies

Not good in Abuja: *Your bank account showed a closing balance of =£8,621, over 7 times your monthly salary. You have failed to provide any evidence or explanation as to the source of these funds and without satisfactory evidence I am not satisfied that this money is genuinely available to you. I am not satisfied that these bank statements provide an accurate or indeed current reflection of your financial circumstances*.
This is a common standard paragraph, but it was not relevant. The applicant was a professional man and the six months bank statements he provided showed a very healthy balance throughout the whole period, starting off with =£13,000 and rising and falling with a low of =£7,800 after Christmas. The UK Border Agency accepted my recommendation to offer the applicant a free of charge application should he wish to visit the UK in the next year.

Good in New Delhi: *You have said that your income is =£1058 a year. You have said that you plan to spend =£1,000, almost your entire annual income, on a 20 day holiday to the UK. You have not shown that you can spend this much on a holiday. You have =£600 available to you and I estimate that your airfare will cost at least =£352. I am not satisfied that you will be able to support yourself in the UK during your visit without working or using public funds*.

Period and purpose

114. In July, the UK Border Agency issued directions for an amended Refusal Notice template. I was concerned to note that the new version failed to include the period and purpose of the visa application. These two basic facts determine which Rule applies and the appropriate maintenance and accommodation requirements. My view is that they must be included right at the start of the Refusal Notice. Fortunately, the UK Border Agency agreed and amended the guidance. I also drew attention to the need to consider child visit applications under Immigration Rule 41 as well as the child specific IR46A, as the guidance

suggested that Immigration Rule 41 was to be removed from child visit Refusal Notices.

115. In the file sample, 3% of Refusal Notices made material errors in setting out this vital information and that creates a very poor impression. If Entry Clearance Officers do not have Period and Purpose firmly in their mind, then it is also easier to make mistakes in weighing and assessing evidence.

case studies

Poor in New Delhi, the Refusal Notice said that the applicant had not shown that he could spend £1,000 on a holiday to the UK. The application was for a business visit, with supporting papers from companies in India and the UK. The Refusal Notice would have been stronger had the ECO commented on whether the UK company letter was genuine: it was in poor English. As this was a stronger reason for refusal than available funds, it looked to me as though the Entry Clearance Officer had not read all the papers and used a routine reason for refusal that was applicable to a holiday and not a business visit.

Good in Moscow, the Refusal Notice said *You have applied to visit the UK for three weeks to accompany children to English classes*. The reason for refusal then flowed smoothly from that because the children's applications had been refused and so the purpose of the visit no longer applied.

Previous applications

116. I still dislike the standard paragraph which says *If you have an immigration history this may have been considered*. It's lazy – either the applicant has a history or not and either it has been taken into account or it has not. I note that some Posts have acted on my comments and with good effect.

case study

Jerusalem: *You failed to complete Sections 4.6 and 4.7 of the application form which ask about your children and section 6.3. 10 which ask whether you have family in the UK. You were previously refused entry clearance to the UK in 2005 and at the time your son was living in the UK. Your failure to answer the relevant questions leads me to doubt your intentions*.

117. There was evidence of an adverse biometric match in 0.6% of the sample cases. Caracas and Muscat handled these particularly well with detailed information in the Refusal Notices. I note that overall, up to June 2008, there has been a 1.3% detection rate of identity swaps[5], suggesting that there may be a higher incidence in applications with full appeal rights.

[5] The UK Border Agency "killer facts"

Verification

118. In the file sample, 12% of cases had formal evidence that checks had been made on documents or calls made to check claims such as employment. I continue to be concerned when checks appear as handwritten scribbles or on post-it notes. UKvisas reminded staff to keep verification evidence on file in limited appeal right cases so that anyone reviewing a refusal has access to all of the key information that informed the original refusal decision, once again removing unfair differences in policy. I am not yet satisfied that there is adequate record keeping, though a formal file note revealed a far more serious problem on one case.

case study

In a Pacific region Post, an Assistant recorded that when she had phoned the applicant's family she had denied being from the British Embassy when asked and pretended to be a former school friend. I asked the UK Border Agency if using deception to obtain information was acceptable. It was not.
I recommended that the matter was drawn to the attention of regional management for them to take appropriate measures. Was this common practice, and if so why it has been acceptable? Who authorised and approved it? What training was provided and by whom? What was the written guidance? Clearly the Assistant thought she was doing nothing wrong otherwise she would not have recorded the deception. If she acted without authorisation then why had the Entry Clearance Officer who read the file and the Entry Clearance Manager who reviewed the case not spotted the file note on using deception? UK Border Agency accepted my recommendation.

119. I also note that where verification checks confirm that the evidence provided by the application is genuine, that is rarely mentioned in the Refusal Notice. Confidence in fair decision making would increase if Notices said *We have checked with your employer and are satisfied that you are employed as claimed but . . . .*

BUSINESS MODEL CHANGES: HUB AND SPOKE

120. The UK Border Agency's programme to cluster decision making into larger centres is well underway and the International Group's August 2008 booklet is a useful summary of policy and progress. There is plenty in my own findings to support the move to larger centres, for example I obtained all of the cases within my remit from 4 smaller Posts and found performance to be well below the global average of 85.6%:

Damascus	50%
Mexico	60%
Reykjavik	71%
Suva	50%

121. This is not a criticism of commitment but, being realistic, the visa world is so complex with its avalanche of changing rules and guidance that it is genuinely difficult for a small Post with a part time Entry Clearance Officer and an even more part time Entry Clearance Manager to keep up. Larger centres are better able to fill gaps, more able to share good practice and can offer continuous training.

Understanding the context

122. What the Hub Posts cannot do is provide the rich understanding of country context that comes with Entry Clearance Officers living in the country and working on day to day basis with locally engaged support staff. Understanding and accepting that other races, nationalities and cultures are equal but different is one of the key competences for an Entry Clearance Officer. UKvisas merging into a UK focused organisation means that particular competence is all the more important. The Government response to the fifth Home Affairs Committee report (2006) said *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.*

123. I asked for regional reports on what activities are currently undertaken at each Post. Whilst the format and detail varied, I noted excellent responses from Africa and the Americas. The region that encompasses Europe, Mediterranean, Russian Federation and the Confederation of Independent States is a huge and disparate area and it did not provide a regional overview. Some of its constituent countries did not respond and others provided a simplistic response indicating that they did not appreciate the full meaning of the question, for example - *Race relations is not a problem; applicants all receive an equal service, irrespective of nationality or ethnicity.*

124. It was clear that many of the elements of induction programmes for overseas staff have been about living and working in a particular place. Adequate multi-cultural understanding can be harder if the visa office is a Hub Post handling applications from a wide range of other countries, but understanding the context of an

application helps to ensure fair decisions and cultural programmes, where they exist, need to be updated regularly.

case study

In Cairo, the Refusal Notice was for an Iraqi woman who had applied to visit the UK for a 10 day holiday. The Entry Clearance Officer confirmed that he was assessing the evidence provided against not only the UK's Immigration Rules, but also UNHCR reports dated November 2006 which indicated that there were 1,000,000 Iraqis resident in Egypt with more arriving each month. He thought that that gave a flavour of the pressures to leave homes and livelihoods in Iraq. He explained that in a six month period in 2007, the UK had found that 25% of Iraqis who were issued with UK visas applied to stay in the UK. He thought that was an indicator of the pressures not to leave the UK.
What was good about this account is that the Entry Clearance Officer did not say, *therefore I am not satisfied you are a genuine visitor*. It's an easy trap to fall into but fails to take into account that a significant majority of Iraqis in the study did not apply to remain in the UK and it fails to take into account the applicant's specific circumstances. The Entry Clearance Officer said very clearly that the information provided a context to the application and helped to establish the level of risk.

125. Without cultural understanding, Entry Clearance Officers can impose UK norms which may lead to very unfair decisions.

case study

I do not find it credible that your employer would not fund this trip (an academic conference) *for you*, was obviously written by someone who is used to their employer paying for professional development and training. Many people, including in the UK, pay for career enhancing opportunities as an investment in their future. The applicant re-applied with part sponsorship from his employer, to which the Entry Clearance Officer commented that it was *not credible that the employer would expect an employee to self fund a course* and he was, therefore, *satisfied that the offer of sponsorship was not genuine*.
The UK Border Agency accepted my recommendation to reconsider this case, apologise and offer a free of charge application within the next 12 months.

126. The report from the Americas region covered the type of activity which is necessary if the UK Border Agency is to run a major Hub programme successfully, for example:

- When New York took on work from spoke countries an Entry Clearance Officer from New York visited each spoke. They went out into the local community and spoke at length with nationals of the country to get an understanding of the quality of life, industry, traditions and general workings of the country. On return to New York they gave a presentation to the other staff on their experience.
- In Chicago, the visa team have a subscription to [a respected journal] to keep up to date with world affairs which affect patterns of migration.

127. A one-off event around the time of the spoking, as happened in New York and when Beijing took over applications from Ulaanbaatar, needs to be repeated at intervals to ensure that decision making staff remain familiar with the countries whose applications they will handle. That requires a rather different, though complementary, programme to the old style where the emphasis was on Entry Clearance Officers going to live and work in a foreign country. **I recommend** that the UK Border Agency asks my question again, making it clear that responses are not optional and that the issue is a vital part of making fair decisions given a new business model.

Benchmarking fair and reasonable

128. The UK Border Agency ought to have effective measures to check if there is an impact, adverse or positive, on decision quality when it changes the business model. I note that in its Hub and Spoke publication it recognises that there is an impact on refusal rates, such as Kathmadu where it rose from 32% to 53% after applications were handled by New Delhi, and in Buenos Aires where refusals leapt from 2% to 19% when handled in New York. The UK Border Agency needs to know why and whether the changes are that, as it suspects, control measures are tighter and more consistent or whether, as others will suspect, decisions are over cautious and lacking in contextual understanding.

129. I wanted to assess changes in refusal rates for the Hub and Spoke programme and asked for a table showing issue and refusal rates for spoked Posts for the period to the end of March 2008 at the hub, and the equivalent period in the 2006-07 year for cases within my remit. To my surprise, the UK Border Agency's response was that *comparison is not possible because after a post has been "spoked", all visa data relating to the post is recorded under the new hub post*. If that is correct, then it is a huge and unacceptable failure to record information which is fundamental to assessing if the Hub and Spoke programme is effective, given the aim to improve decision quality and consistency as well as reduce costs. **I recommend**, therefore, that spare fields in the casework record are used immediately to record where an application was lodged so that adequate comparisons can be made.

CHECKS, COMPLAINTS and EXTERNAL SCRUTINY

Compliance checks

130. Checking to see if a successful visa applicant returned to their home country after the visa period expired is a good way of obtaining decision quality feedback, After the 2007 global compliance exercise, I asked if there had been further compliance exercises involving non-family visitors, student visitors or short term students. If there had, I asked for a report on the methodology and outcomes. The UK Border Agency confirmed that there has been no global compliance work though compliance work with sponsors and business continues on a local basis. It did not provide the information I had asked for on methods and outcomes and has apologised for that omission. I shall be following that up.

Internal review

131. In my report on my visit to Lagos in March 2007, I recommended that Entry Clearance Managers should not have to review all refusal decisions on cases within my remit. Instead, there should be a more comprehensive basket of quality assurance measures to improve decision quality, including targeted sampling of Refusal Notices and decisions. UKvisas, rather nervously, agreed to run a pilot in ten visa Posts for a year and it has now found that fewer, but more thorough, reviews lead to improvements in refusal quality including improvements in the percentage of appeals being dismissed. The pilot will now be rolled out to all Posts in October with a further review in a year's time.

132. My main concern about a routine 100% review was that many Entry Clearance Managers did not conduct it with adequate thoroughness – some read a Refusal Notice on screen and clicked a button rather than ploughing through the paper evidence. 100% review did not differentiate between competent, experienced Entry Clearance Officers and brand new ones, or those whose performance was not up to standard. It was, I said, a touch insulting for good Officers to have all of their work checked by a supervisor, for that was what Managers became. The UK Border Agency directions give clear criteria for targeted reviews and emphasise that there is an absolute minimum percentage, both for an Officer and for a visa office. This will make Managers think about the performance of their staff and make risk related decisions about review schedules. I would like to think that the reviews will now be conducted carefully and properly, with Managers examining all of the paper evidence and assessing the decision and Refusal Notice against fixed criteria.

133. If the old style of Entry Clearance Manager review worked, then I would not see most of the problem cases that I do. The fact that Posts get a second chance to correct things when the file sample is sent to me, yet I still see problem cases, is more worrying. Only 26% of the bundles of files included a cover letter from an Entry Clearance Manager with evidence that they had reviewed the files that were to be sent to me. Half of the Managers did not write at all and 21% just sent a brief note listing the files. I am not sure which bothers me most, Posts where it is clear that an Assistant has been asked to pack the files and send them off without

a Manager looking at them, or Posts where the Manager writes to confirm s/he is content that the cases are perfect when they clearly are not.

134. Accra takes star prize this time for its preparation of the cases for me to review. Entry Clearance Managers there were deeply disappointed by my findings when I undertook a monitoring visit in April and I was delighted to see that the reaction has been so positive. There are lots of possible responses to a critical report – *unfair*, *what does it matter*, *who does she think she is* – but it was clear from the notes that accompanied the file sample that Managers in Accra had undertaken a thorough quality review and had acted on any problems they found. They had arranged for faulty Refusal Notices to be corrected and sent courteous covering letters explaining why the case had been looked at again.

135. I commend all those Posts who did the same and note that Entry Clearance Managers who do re-review the cases are often more critical than I, because I look for reasonable rather than perfect.

case study

In Lagos, a long term student application was refused in early December and the grounds included that the course start date had passed. This means that there are limited appeal rights. The applicant's representatives wrote to draw attention to an error because the applicant had included a letter confirming the start date as January; they thought that there was a full right of appeal. Lagos sent a meaningless routine response which failed to address the complaint. It was only when the file was selected for my sample that an Entry Clearance Manager spotted that a mistake had been made. The Refusal Notice was re-issued in June with information on full appeal rights. That, however, was incorrect because the course start date *had* passed by then and the Refusal Notice correctly included that as a ground for refusal.
I recommended that the applicant be offered a free of charge further application if he was still interested in studying in the UK, and that Lagos should apologise for its mistakes and poor response to the initial complaint. UK Border Agency agreed.

Complaints and post decision correspondence

For applicants without full rights of appeal, being able to make a complaint about inadequate service or an unreasonable decision is their main route of grievance.

136. I am pleased to note that the UK Border Agency International Group has recently issued new guidance on acknowledging correspondence. Normal public service standards say that an organisation should respond to correspondence within 20 working days, but that can be a full month if a bank holiday intervenes. Most private sector companies have far tighter targets so it is unsurprising that when two or three weeks have gone by, the writer writes again thinking their letter has been lost. I recommended that where a response was likely to take time, through workloads or the need to make enquiries, there should be an immediate acknowledgement giving an indication of when to expect the full response. I had also noted a tendency for the *within 20 days* target to be interpreted as *on day 20*.

The new policy says that a substantive reply to correspondence should always be sent as soon as possible; where resources allow, an acknowledgement should be sent to every piece of correspondence that cannot be answered within two working days, confirming that the matter is being investigated and by whom, and the anticipated reply date. Not only will this provide a better service, but it will reduce the number of chasing up letters and free up the resources used.

137. In my visit report on Islamabad last December, and repeated in my last Parliamentary Report of March 2008, I recommended that the UK Border Agency developed a performance measure to show whether a response to correspondence is adequate as well as being on time. There has been little progress on that to date and I note my concern that a good number of my complaint handling recommendations are sitting in a queue with deadlines being pushed back on a regular basis.

Complaints and consumer feedback at Posts

138. A year ago, UKvisas said that the quality of the data received by headquarters meant that it could not provide an accurate summary analysis of complaints handled overseas: it was working on improvements. Six months ago, it was still unable to provide the information but it had reviewed procedures, and was about to issue new instructions.

139. I asked Directors of Visa Services to provide a summary of complaints for the past six months: Africa responded quickly and comprehensively, indicating that senior management routinely knew what was going on, for example:

- "The West Africa region generally experiences a low volume of complaints about service standards. In the six months in question we received a total of 75 complaints of which 22 (30%) were found to be substantiated – in the same period we received 111,000 applications.
- The reasons for the complaints varied but a recurring theme was delays in processing times, inaccurate information given, and complaints about rudeness. It is worth noting that none of the complaints in the latter category were upheld completely though some elements relating to privacy were found to be substantiated.
- It is clear from those complaints that were upheld that some applications are subject to unacceptable delays and that information is not passed to applicants in a timely fashion in some of these cases. This is an area in which a number of changes have been made – staff are not now permitted to delay applications for open ended periods without managers' agreement. In Nigeria for example we will not now delay applications for the results of a check beyond five working days other than in exceptional circumstances. We will be rolling this out further.
- There have also been some instances where our commercial partners appear to have provided inaccurate information. All such cases are taken up with their management to ensure no reoccurrence and that any training needs are identified.
- Yaoundé consistently has a higher volume of complaints. This is being addressed urgently as a management issue. In some posts the volume of

applications is very low and therefore the receipt of just 1 or 2 complaints in a quarter has a disproportionate impact on percentages."

140. Whilst most regions provided summaries, the absence of a standard reporting system, and the failure of some Posts to respond, means that there is still no global understanding of common causes of upheld complaints or adequate regional comparisons. The Africa responses had all the elements of sound complaint handling such as numbers, proportions, topics, substantiated, actions, lessons learnt. South West Asia Pacific included thoughtful analysis and cultural comparisons. **I recommend** that the UK Border Agency requires regions to record and collate this information on a quarterly basis so that headquarters as well as regional managers understand and act on common causes of complaint as well as to each of the complaints made.

141. In **Istanbul** I was not satisfied that the Visa Application Centre kept adequate records of applicant feedback. Staff could not produce a formal or comprehensive record and there was uncertainty about recording complaints made by phone or in person. The UK Border Agency accepted the recommendation and said it would ensure that the monitoring of complaints was carried out consistently across the region. I looked at a small sample of the complaints recorded by the visa section and found that most had had appropriate replies. I asked for one case to be further reviewed because the response had focused solely on a complaint of rudeness and had failed to respond to the other issues raised, such as errors in information provided by the Visa Application Centre. I was pleased to note that the Director of Visa Services was finding increased expectations with regard to recording and responding to complaints to be a useful way of seeing what is going on in the business.

142. In **Accra** I found that 9% of cases I reviewed had post decision correspondence, twice the global average, and in 5% of cases the correspondence was a clear complaint relating to service, mostly of errors about evidence in the Refusal Notice. I examined a suitably detailed e-record of complaints and looked at a small sample in detail. I thought that the Entry Clearance Manager level responses to complaints were generally careful and thorough but I was concerned that some complaints about accuracy of evidence had had a routine response from an Assistant. I noted one serious written complaint without a reply and learnt that the response had been oral, when the disputed visa refusal had been overturned. I reminded staff that there should be an audit trail for all complaints, and responses must be recorded adequately – all the more so when a complaint has been upheld.

143. In **New Delhi**, I found that 5% of the cases I reviewed had post decision correspondence, none of which were complaints relating to service. I thought that the quality of the replies was excellent - prompt, courteous, specific, helpful, and with plenty of personal detail which showed the applicant that this was not a standard routine reply. I also noted a well maintained record of complaints.

144. In **Moscow**, I found that 4.7% of the cases within my remit had post decision correspondence. For some, there were excellent responses to complaints, thoughtful, comprehensive, well written, and also complaints that had had no response at all. The management team had already started to make much needed improvements to complaint handling. The need for good complaint handling has been thrown into sharp focus by the recent Immigration Rules relating to deception. In the past, if an Entry Clearance Officer alleged that a document was not genuine, the consequences were that the visit visa applicant missed their holiday or their business trip. Given Immigration Rule 320 (7B) the applicant will

now be banned from travelling to the UK for 10 years. Visa staff can make mistakes and there must be an especially robust process for reviewing cases where there is an allegation of deception. Applications with full appeal rights can challenge the allegation before an independent tribunal. Those with limited rights have recourse only to the complaints process and the slim chance of their case being selected by me for review. This case was in my sample:

> An applicant was refused because his company were not answering the phone so he was thought to have provided false information about employment. He complained saying that cannot have been true, but only received a telephone response from administrative support staff, and even that did not address the complaint. I asked for the case to be reviewed. Visa staff were able to contact the company and found that there had been an error by the visa office's document verification team. They agreed that subsequent correspondence was not handled to an acceptable standard. The decision to refuse the visa was overturned and the visa issued.

Complaints in the file sample

145. In November 2007, UKvisas accepted my recommendation that the assessment of a complaint relating to a decision should be done by someone who is a qualified decision maker so that issues which may undermine the fairness of the decision are not overlooked. In the sample files, 3.2% (up from 2.5%) contained post decision correspondence that constituted a service complaint, half of which drew attention to mistakes made in the Refusal Notice. Only 58% of responses included any application specific detail, the remainder being standard paragraphs many of which did not fit the applicant's circumstances. Whilst 40% of responses were officially from an Entry Clearance Manager, one in three "Manager" replies are simply their title on the end of a routine letter and I cannot be satisfied that the Manager has actually looked at the case and written the reply.

146. Many of the letters of complaint that have been completely unanswered are about mistakes with material evidence.

case study

> The applicant in Chennai applied for a transit visa and was refused because there was no evidence that she had a job to go to in her country of destination. She re-applied and wrote that two of her friends who had applied with her had had visas issued on the basis of original work permits and nursing council letters. She noted that the visa office had not returned her original work permit and approval and she asked for them back. On the second occasion her visa was issued, but there was no indication that her letter had been answered. This was a complaint that documents had been lost or overlooked, and it looked as though the complaint would have been upheld. In addition, the applicant should not have had to pay for a second application. I made no further recommendation on this case as the applicant's whereabouts may be unknown.

147. When a qualified decision maker looks at a complaint, the outcome can be very different.

case study

> In Lagos, grounds for refusal included doubt whether employment related documents were genuine. The applicant's solicitors wrote with detailed comments refuting the allegation. Visa staff sent a routine, non-specific response that paid no attention to the specific complaint. However, the file was further reviewed by an Entry Clearance Manager; checks confirmed that the employment was genuine and the visa was issued.

Complaints to Visa Customer Service

148. The UK Border Agency International Group says that it received 181 complaints at its London headquarters from October 2007 to March 2008. I note that in my March 2008 report on complaint handling I found significant under-recording of letters that were a complaint using UKvisas' definition. The International Group does not keep records of the type of visa application involved, who made the complaint (applicant sponsor, UK elected Member) or comprehensive information on outcomes. It should.

149. Refusal Notices are now sufficiently detailed to allow applicants to see where mistakes have been made and this is a huge improvement, but the UK Border Agency International Group must accept that it has to respond, and respond adequately, where mistakes are challenged. I have no sympathy with the view that it does not have the resources because that is the outdated and unacceptable argument that complaints are an optional extra and not an integral part of a high quality business. There is a stubborn history of lack of will, lack of interest, slow or no progress in acting on my recommendations even after they have been accepted. Let me spell out quite clearly why complaint handling is so important. It is part and parcel of providing an adequate public service. It allows an organisation to learn from feedback. It enables an organisation to make amends for its mistakes and provide adequate redress for applicants who cannot appeal when it makes real and material errors. The consequences of a mistake are now more serious than simply preventing a one-off holiday or business visit because a mistake related to deception can lead to an unfair 10 year ban on travelling to the UK.

Complaints to the Independent Monitor

150. Better information on the UKvisas website means that more people who write to me know that I cannot investigate a complaint or act as an appeal body. Two of average of three letters I receive a month from applicants, sponsors or agents are about cases within my remit. 62% contain complaints about the service received, for example failing to note evidence or taking five weeks to process an application. 23% complain about the decision to refuse a visa without making a service related complaint. For service complaints, I suggest that the writer refers a complaint to Visa Customer Services in London, especially if part of the complaint is that there has been no response to a complaint made to the overseas visa Post.

Appeals

151. In the file sample, 1.7% (up from 0.6%) of the cases included evidence that an applicant had lodged an appeal. Where there was an outcome, the Asylum and Immigration Tribunal had ruled that the appeal was not valid, though in one case it found no evidence to support a Human Rights Act ground but had upheld the Immigration Act grounds; the latter is currently under challenge as the application only had limited rights of appeal.

The Ombudsman

152. The Parliamentary and Health Service Ombudsman investigates complaints of maladministration. The Ombudsman does receive cases from complainants based overseas and who do not, therefore, have ready access to a MP. In practice, such complainants are normally referred to the Chair of the Public Administration Select Committee which has generally been willing to refer them on for the Ombudsman's consideration. The UK Border Agency says that during the six month period covered by this Report, no new complaints were made to the Ombudsman on visa applications within my remit. She concluded five investigations of which three complaints were upheld. The UK Border Agency accepted and has acted on my recommendation that complainants, if eligible, should be given information on their right to refer a complaint to the Ombudsman via their MP.

Judicial Review

153. The exercise of powers by public authorities, including Ministers and officials, is always open to challenge in the Courts by way of Judicial Review; the Courts do not assess the merits of the decision but rule upon its lawfulness. Where an applicant does not have full rights of appeal, s/he can seek to challenge the Entry Clearance Officer's decision through Judicial Review. When considering whether a body such as the UK Border Agency has been acting outwith the law, the Court will look at the relevant statutory provisions and the purpose of the statute. Public authorities must also act with reason and the Courts have defined unreasonableness as "conduct which no sensible authority acting with due appreciation of its responsibilities would have decided to adopt" so the Court would assess if a decision was "so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it." The Court would also look for consistency in the decision-making process.

154. Between October 2007 and March 2008, seven Judicial Reviews were raised in applications with limited appeal rights compared with fifteen in the preceding six months. Seven cases were concluded: in four the applicant was unsuccessful and one claim was abandoned. The remaining two settled by consent.

CONCLUSIONS

155. Overall, the theme of this report is improvement from some people, some Posts and some regions and progress, but slow progress, for the visa business as a whole. I find that understandable given the major programme of organisational, business model and legislative changes that it has managed in the past year.

156. I have identified a number of issues for the UK Border Agency International Group to address and summarise them under key headings:

- ensure that Entry Clearance Officers and Managers understand appeal rights;
- make a sustained and genuine commitment to improving complaint and correspondence handling;
- ensure global compliance with recommendations that have been accepted;
- promote consistency in decision making for the new Immigration Rules relating to deception;
- secure adequate decision quality evidence for the Hub and Spoke programme;
- ensure that decision making staff in Hub Posts, in the longer term, understand cultural, racial and economic indicators for the spoked Posts.

157. I do not directly represent the interests of visa applicants with limited appeal rights, but rather Parliament's interests in having a fair and balanced system. The need for fairness and balance is all the more important given the merger into a UK based organisation and the current emphasis on control. Over the next year, large groups of visa applicants will have full appeal rights removed when work and student categories move into the Points Based System. Many of the visa system's benchmarks are linked to comments, expectations and rulings by the Asylum and Immigration Tribunal and losing those as well as a Monitor with a sharp focus on the visa business means that the International Group needs to develop different ways of securing robust but constructive oversight.

L M Costelloe Baker
Independent Monitor

APPENDIX 1 : The relevant Immigration Rules

Visitors:

40. For the purpose of paragraphs 41-46 a visitor includes a person living and working outside the United Kingdom who comes to the United Kingdom to transact business (such as attending meetings and briefings, fact finding, negotiating or making contracts with United Kingdom businesses to buy or sell goods or services).

41. The requirements to be met by a person seeking leave to enter the United Kingdom as a visitor are that he:

(i) is genuinely seeking entry as a visitor for a limited period as stated by him, not exceeding 6 months; and
(ii) intends to leave the United Kingdom at the end of the period of the visit as stated by him; and
(iii) does not intend to take employment in the United Kingdom; and
(iv) does not intend to produce goods or provide services within the United Kingdom, including the selling of goods or services direct to members of the public; and
(v) does not intend to study; and
(vi) will maintain and accommodate himself and any dependants adequately out of resources available to him without recourse to public funds or taking employment; or will, with any dependants, be maintained and accommodated adequately by relatives or friends; and
(vii) can meet the cost of the return or onward journey. ; and
(viii) is not a child under the age of 18.

Child visitors

46A The requirements to be met by a person seeking leave to enter the United Kingdom as a child visitor are that he:

(i) meets the requirements of paragraph 41 (i)-(vii); and
(ii) is under the age of 18; and
(iii) can demonstrate that suitable arrangements have been made for his travel to, and reception and care in the United Kingdom; and
(iv) has a parent or guardian in his home country or country of habitual residence who is responsible for his care; and
(v) if a visa national:
    (a) holds a valid United Kingdom entry clearance for entry as an accompanied child visitor and is travelling in the company of the adult identified on his entry clearance, who is on the same occasion being admitted to the United Kingdom; or
    (b) holds a valid United Kingdom entry clearance for entry as an unaccompanied child visitor.

Visitors in transit:

47. The requirements to be met by a person (not being a member of the crew of a ship, aircraft, hovercraft, hydrofoil or train) seeking leave to enter the United Kingdom as a visitor in transit to another country are that he:

(i) is in transit to a country outside the common travel area; and
(ii) has both the means and the intention of proceeding at once to another country; and
(iii) is assured of entry there; and
(iv) intends and is able to leave the United Kingdom within 48 hours.

Private medical treatment:

51. The requirements to be met by a person seeking to enter or remain for private medical treatment are that he:

(i) meets the requirements set out in paragraph 41 (iii)-(vii) for entry as a visitor; and
(ii) in the case of a person suffering from a communicable disease, has satisfied the Medical Inspector that there is no danger to public health; and
(iii) can show, if required to do so, that any proposed course of treatment is of finite duration; and
(iv) intends to leave the United Kingdom at the end of his treatment; and
(v) can produce satisfactory evidence, if required to do so, of:
    (a) the medical condition requiring consultation or treatment; and

(b) satisfactory arrangements for the necessary consultation or treatment at his own expense; and
(c) the estimated costs of such consultation or treatment; and
(d) the likely duration of his visit; and
(e) sufficient funds available to him in the United Kingdom to meet the estimated costs and his undertaking to do so.

Visitors for marriage:

56D. The requirements to be met by a person seeking leave to enter the United Kingdom as a visitor for marriage or civil partnership are that he:

(i) meets the requirements set out in paragraph 41 for entry as a visitor; and
(ii) can show that he intends to give notice of marriage or civil partnership, or marry or form a civil partnership, in the United Kingdom within the period for which entry is sought; and
(iii) can produce satisfactory evidence, if required to do so, of the arrangements for giving notice of marriage or civil partnership, or for his wedding or civil partnership ceremony to take place, in the United Kingdom during the period for which entry is sought; and
(iv) holds a valid United Kingdom entry clearance for entry in this capacity.

Student Visitors:

56K. The requirements to be met by a person seeking leave to enter the United Kingdom as a student visitor are that they:

(i) are genuinely seeking entry as a student visitor for a limited period as stated by them, not exceeding six months; and
(ii) have been accepted on a course of study which is to be provided by an organisation which is included on the Register of Education and Training Providers; and
(iii) intend to leave the United Kingdom at the end of their visit as stated by them; and
(iv) do not intend to take employment in the United Kingdom; and
(v) do not intend to engage in business, produce goods or provide services within the United Kingdom, including the selling of goods or services direct to members of the public; and
(vi) do not intend to study at a maintained school; and
(vii) will maintain and accommodate themselves and any dependants adequately out of resources available to them, without recourse to public funds or taking employment; or will, with any dependants, be maintained and accommodated adequately by relatives or friends; and
(viii) can meet the cost of the return or onward journey; and
(ix) are not a child under the age of 18.

Students:

57. The requirements to be met by a person seeking leave to enter the United Kingdom as a student are that he:

(i) has been accepted for a course of study which is to be provided by an organisation which is included on the Department for Education and Skills' Register of Education and Training Providers, and is at either:
    a) a publicly funded institution of further or higher education; or
    b) a bona fide private education institution which maintains satisfactory records of enrolment and attendance; or
    c) an independent fee paying school outside the maintained sector; and
(ii) is able and intends to follow either:
    a) a weekday full time course involving attendance at a single institution for a recognised full time degree course at a publicly funded institution of further or higher education; or
    b) minimum of 15 hours organised daytime study per week of a single subject, or directly related subjects; or
    c) a full time course of study at an independent fee paying school; and
(iii) if under the age of 16 years is enrolled at an independent fee paying school on a full time course of studies which meets the requirements of the Education Act 1944; and
(iv) intends to leave the United Kingdom at the end of his studies; and
(v) does not intend to engage in business or to take employment, except part time or vacation work undertaken with the consent of the Secretary of State for Employment; and

(vi) is able to meet the costs of his course and accommodation and the maintenance of himself and any dependants without taking employment or engaging in business or having recourse to public funds.

The spouse, civil partner or child of a student or prospective student

76. The requirements to be met by a person seeking leave to enter or remain in the United Kingdom as the spouse or civil partner of a student or a prospective student are that: (i) the applicant is married to or the civil partner of a person admitted to or allowed to remain in the United Kingdom under paragraphs 57-75 or 82-87.
79. The requirements to be met by a person seeking leave to enter or remain in the United Kingdom as the child of a student or prospective student are that he: (i) is the child of a parent admitted to or allowed to remain in the United Kingdom as a student or prospective student under paragraphs 57-75 or 82-87.

Highly skilled migrants

245C. To qualify for entry clearance as a Tier 1 (General) Migrant), an applicant must meet the requirements listed below.
(a)The applicant must not fall for refusal under the general grounds for refusal.
(b) The applicant must have a minimum of 75 points under *paragraphs 1 to 31 of Appendix A.*
(c) The applicant must have 10 points under Appendix B.
(d) The applicant must have 10 points under Appendix C.

245J To qualifty for entry clearance as a Tier 1 (Entrepreneur) Migrant, an applicant must meet the requirements listed below.
(a) The applicant must not fall for refusal under the general grounds for refusal.
(b) The applicant must have a minimum of 75 points under paragraphs 32 to 41 of Appendix A.
(c) The applicant must have a minimum of 10 points under Appendix B.
(d) The applicant must have a minimum of 10 points under Appendix C.

245Q. Requirements for entry clearance as a Tier 1 (Investor) Migrant, an applicant must meet the requirements listed below.
(a) The applicant must not fall for refusal under the general grounds for refusal.
(b) The applicant must have a minimum of 75 points under paragraphs 42 to 50 of Appendix A.

245X. Requirements for entry clearance as a Tier 1 (Post-Study Work) Migrant, an applicant must meet the requirements listed below.
(a) The applicant must not fall for refusal under the general grounds for refusal.
(b) The applicant must not previously have been granted entry clearance or leave to remain as a Tier 1 (Post-Study Work) Migrant.
(c) The applicant must have a minimum of 75 points under paragraphs 51 to 58 of Appendix A.
(d) The applicant must have a minimum of 10 points under Appendix B.
(e) The applicant must have a minimum of 10 points under Appendix C.

Appendix A covers educational achievements, Appendix B covers English language ability and Appendix C covers available funds.

General Grounds most relevant to Entry Clearance Officers overseas

320. In addition to the grounds of refusal of entry clearance or leave to enter set out in Parts 2-8 of these Rules, and subject to paragraph 321 below, the following grounds for the refusal of entry clearance or leave to enter apply:
(1) the fact that entry is being sought for a purpose not covered by these Rules;
(2) the fact that the person seeking entry to the United Kingdom is currently the subject of a deportation order;
(3) failure by the person seeking entry to the United Kingdom to produce to the Immigration Officer a valid national passport or other document satisfactorily establishing his identity and nationality;
(6) where the Secretary of State has personally directed that the exclusion of a person from the United Kingdom is conducive to the public good;
(7) save in relation to a person settled in the United Kingdom or where the Immigration Officer is satisfied that there are strong compassionate reasons justifying admission, confirmation from the

Medical Inspector that, for medical reasons, it is undesirable to admit a person seeking leave to enter the United Kingdom.
(7A) where false representations have been made or false documents have been submitted (whether or not material to the application, and whether or not to the applicant's knowledge), or material facts have not been disclosed, in relation to the application.
(7B) *subject to paragraph 320(7C),* where the applicant has previously breached the UK's immigration laws by:

(a) Overstaying;
(b) breaching a condition attached to his leave;
(c) being an Illegal Entrant;
(d) using Deception in an application for entry clearance, leave to enter or remain (whether successful or not);

unless the applicant:

(i) Overstayed for 28 days or less and left the UK voluntarily, not at the expense (directly or indirectly) of the Secretary of State;
(ii) used Deception in an application for entry clearance more than 10 years ago;
(iii) left the UK voluntarily, not at the expense (directly or indirectly) of the Secretary of State, more than 12 months ago;
(iv) left the UK voluntarily, at the expense (directly or indirectly) of the Secretary of State, more than 5 years ago, or
(v) was removed or deported from the UK more than 10 years ago.
Where more than one breach of the UK's immigration laws has occurred, only the breach which leads to the longest period of absence from the UK will be relevant under this paragraph.

(7C) Paragraph 320(7B) shall not apply in the following circumstances:
(a) where the applicant is applying as:

(i) a spouse, civil partner or unmarried or same-sex partner under paragraphs 281 or 295A,
(ii) a fiancé(e) or proposed civil partner under paragraph 290,
(iii) a parent, grandparent or other dependent relative under paragraph 317,
(iv) a person exercising rights of access to a child under paragraph 246, or
(v) a spouse, civil partner, unmarried or same-sex partner of a refugee or person with Humanitarian Protection under paragraphs 352A, 352AA, 352FA or 352FD; or

(b) where the individual was under the age of 18 at the time of his most recent breach of the UK's immigration laws.

Grounds on which entry clearance or leave to enter the United Kingdom should normally be refused

(8A) where the person seeking leave is outside the United Kingdom, failure by him to supply any information, documents, copy documents or medical report requested by an Immigration Officer;
(10) production by the person seeking leave to enter the United Kingdom of a national passport or travel document issued by a territorial entity or authority which is not recognised by Her Majesty's Government as a state or is not dealt with as a government by them, or which does not accept valid United Kingdom passports for the purpose of its own immigration control; or a *passport or travel document which does not comply with international passport practice;*
(11) where the applicant has previously contrived in a significant way to frustrate the intentions of these Rules.
(13) failure, except by a person eligible for admission to the United Kingdom for settlement or a spouse or civil partner eligible for admission under paragraph 282, to satisfy the Immigration Officer that he will be admitted to another country after a stay in the United Kingdom;
(14) refusal by a sponsor of a person seeking leave to enter the United Kingdom to give, if requested to do so, an undertaking in writing to be responsible for that person's maintenance and accommodation for the period of any leave granted;
(15) whether or not to the holder's knowledge, the making of false representations or the failure to disclose any material fact for the purpose of obtaining an immigration employment document;
(16) failure, in the case of a child under the age of 18 years seeking leave to enter the United Kingdom otherwise than in conjunction with an application made by his parent(s) or legal guardian to provide the Immigration Officer, if required to do so, with written consent to the application from his parent(s) or legal guardian; save that the requirement as to written consent does not apply in the case of a child seeking admission to the United Kingdom as an asylum seeker;
(17) save in relation to a person settled in the United Kingdom, refusal to undergo a medical examination when required to do so by the Immigration Officer;
(18) save where the Immigration Officer is satisfied that admission would be justified for strong compassionate reasons, conviction in any country including the United Kingdom of an offence

which, if committed in the United Kingdom, is punishable with imprisonment for a term of 12 months or any greater punishment or, if committed outside the United Kingdom, would be so punishable if the conduct constituting the offence had occurred in the United Kingdom;
(19) where, from information available to the Immigration Officer, it seems right to refuse leave to enter on the ground that exclusion from the United Kingdom is conducive to the public good; if, for example, in the light of the character, conduct or associations of the person seeking leave to enter it is undesirable to give him leave to enter;
(20) failure by a person seeking entry into the United Kingdom to comply with a requirement relating to the provision of physical data to which he is subject by regulations made under section 126 of the Nationality, Immigration and Asylum Act 2002.