



An inspection of Tier 4 of the Points Based System (Students)

April – July 2012

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Independent Chief Inspector of Borders and Immigration

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Foreword from John Vine CBE QPM Independent Chief Inspector of Borders and Immigration



Tier 4 of the Points Based System (PBS), more commonly referred to as student visas, is an emotive area of immigration that attracts a high level of public interest. My inspection examined the quality and consistency of decision-making for Tier 4 applications, irrespective of whether the application was made in the UK or overseas. I also looked at the management and licensing of sponsors by the Agency.

Overall, I found that decision quality on Tier 4 applications was good. I also noted that requests for a sponsorship licence were carefully considered before being granted. However, I had some concerns regarding the efficiency and effectiveness of the Sponsor Licensing and Management Units.

I could find no evidence that targets were in place to effectively manage notifications to the Agency from sponsors that students were, for example, not attending courses. At the time of inspection, a backlog of almost 153,000 such notifications had accumulated in the system without the necessary action being taken to deal with them. There is little point in requiring universities and colleges to notify the agency of such cases unless the Agency develops the willingness and capacity to identify, curtail the leave of, and remove students who are no longer complying with the terms of their entry clearance. This should be an ongoing priority rather than the subject of a one-off operation by the Agency.

I found that some significant improvements were being made to the structure and management of the work carried out by Compliance Officers. However, their lack of any powers to arrest meant they could take little or no action if they encountered someone who was in breach of immigration laws.

Following a number of recommendations in previous reports urging the Agency to analyse appeals against decisions, I was pleased to find evidence that this was starting to happen. The Agency had commissioned a project to examine the whole appeals process, in order to improve service delivery in general.

While the findings of this report are generally positive, yet again I have to highlight the Agency's failure to implement recommendations made in previous reports. The need to improve customer service and consistency of approach on an agency-wide basis, and the lack of a published target for deciding sponsor applications or responding to sponsor correspondence were examples of this.

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

John Vine CBE QPM
Independent Chief Inspector of Borders and Immigration

1. Executive Summary

1. Tier 4 of the Points Based System (PBS) was introduced in 2008 to strengthen controls over the migration of students from outside the European Economic Area (EEA) to the UK. Strict rules govern what courses can be studied, the educational institutions that a migrant student can attend and the amount of time allowed to study. A Tier 4 visa can be issued overseas for new entrants into the UK, or existing migrant students can apply for an extension to their leave while in the UK. In 2010/2011, there were over 350,000 applications for Tier 4 visas made overseas. In addition, there were over 137,000 applications to extend existing visas in the UK. At the time of the inspection, there were approximately 2,100 educational institutions registered as Tier 4 sponsors.
2. The inspection examined how efficiently and effectively the Agency had implemented government policy in relation to decision-making for Tier 4 applications. We examined decision-making in two overseas posts, New Delhi and Beijing, as well as the Temporary Migration Unit (TMU) in Sheffield, which processes applications for visa extensions. We also examined the management and licensing arrangements for sponsors, also handled by the Temporary Migration Unit in Sheffield. The main areas of the inspection focused on:
 - whether policy and guidance was being applied effectively and consistently;
 - the quality of decision-making; and
 - the performance of UKBA International Operations & Visas in respect of the ‘customer commitments’ it has published on its website
3. Generally, we found that the quality of decision-making was good. Decision-making in all three locations was underpinned by quality control procedures, and we found evidence that these processes were being used effectively. We also found good practice in Sheffield and New Delhi in the recording of caseworking notes, with comprehensive notes being recorded for actions taken on cases. However, we were concerned that the Temporary Migration Unit in Sheffield was not achieving its own quality performance indicator targets. This resulted in a higher than expected number of applications with an incorrect decision being made.

Decision-making in all three locations was underpinned by quality control procedures
4. We found differing performance across the three locations regarding the timeliness of decisions. Beijing consistently met its targets and, despite poor performance last year, New Delhi had made significant improvements, resulting in achievement of its targets. In Sheffield, we found that the performance measure was only being calculated from when the agency input the data onto its IT caseworking system, not from when it received the application. As a result, the reporting mechanism was not transparent and did not give a true reflection of performance.
5. We also found inconsistencies of approach in the three locations that we inspected. One example of this was where the Beijing Visa Section was interviewing applicants to test their intention and credibility. The use of interviews to test English Language ability had been sanctioned by the Agency in response to the identification of a risk of imposters posing as applicants. However, Beijing was operating its own local practice of testing credibility. The Immigration Rules did not allow for applications to be refused on the basis of a lack of applicants’ credibility, so the Visa Section was asking sponsors to withdraw sponsorship in order that a refusal within the rules could be used. While

this was done with the best of intentions to protect the border, this practice was not in our view strictly within the spirit of Tier 4.

6. Verification of documents was being carried out effectively in all locations. Our file sample showed that the Agency failed to conduct verification checks in less than 1% of the files we sampled. There were also good relationships between decision-making staff and intelligence units (Sheffield) and RALON (overseas). We also saw good use of a bespoke system in Beijing for identifying risks with applications. We felt that its continued use in the advent of ICW should be assessed by the Agency.
7. There was good practice in the effective use of standardised refusal notice templates in all three locations. We found good explanations of the reasons why points under the PBS scheme had not been awarded. However, we also found that in Beijing, the layout of the template had the potential to cause confusion for applicants whose first language is not English. We also found inconsistencies in the level of information provided in the letter notifying the result of Administrative Reviews. Applicants were not always provided with a full explanation of the review and the reasons for a decision.
8. We noted a robust process for assessing applications for Highly Trusted Status, the new benchmark for Tier 4 sponsorship. There was also good practice with the Agency taking a pragmatic approach to some decisions and all refusals being subject to a review by a Senior Manager. However, while the process assessed all factors, we found that decision-making was onerous and could take a long time. This, coupled with a lack of published performance standards, resulted in some sponsorship decisions taking over 6 months. We also found the Agency needed to improve its customer service, as we found examples of correspondence seeking progress updates which had not been responded to.

We noted a robust process for assessing applications for Highly Trusted Status, the new benchmark for Tier 4 sponsorship

9. The Agency had no targets in place for responding to notifications made using the Sponsor Management System. As a result, notifications of changes to circumstances of students, details of students failing to enrol or attend classes, or curtailment of sponsorship were not being acted upon. Over 150,000 notifications had accumulated and were awaiting action, meaning that potentially thousands of students had retained leave to remain when they should not have done so. This was a significant failure. However, in May 2012 the Agency had reviewed all notifications and introduced a new operation, 'Operation Mayapple' to identify and remove people who had overstayed beyond the term of their visa. Operation Rosehip, running as part of Operation Mayapple, specifically targeted any students who should no longer have been in the UK.
10. The introduction of this operation resulted in some additional challenges for the Agency. We found that there were insufficient resources to manage all of the notifications and deal with all other business activities at the same time. Resources were being moved across various functions in Temporary Migration where demand was highest.

Over 150,000 notifications had accumulated and were awaiting action

11. Significant improvements were being made to the Compliance Officer network. These officers conduct visits to sponsors, either in the form of initial visits on new applications or in response to concerns raised through intelligence or investigations. New structures were being introduced to formalise training and also standardisation of reporting. We found that this was improving the quality of information being received and assisting the Agency to defend legal challenges where a sponsor licence had been refused, revoked or suspended.

12. We also found a resourcing issue with the Compliance Officer network. Tasking of visits came from the Temporary Migration Unit in Sheffield but these officers were actually line managed as part of the Agency's regional structure in Local Immigration Teams. Conflicting priorities could impact on the Officer's ability to conduct a visit in a timely manner. The Agency was considering its options in this regard, with a view to centralising the management structure.
13. We did not find any particular trends in relation to complaints. The time taken to conclude applications sent as a batch had been highlighted as a concern by stakeholders. We found evidence that these applications and customer service concerns were being managed, following the redeployment of this function from Croydon to Sheffield. We also found that complaints processes for applicants were established in each location, and that complaints targets were being achieved. However, we found that not all complaints regarding sponsorship were being recorded correctly.
14. We found a need for improvement regarding complaints made against the Agency's commercial partners in the UK. A new project is underway to enable the Post Office, working as a commercial partner, to record the biometric data of applicants. We found that complaints against the commercial partner were not recognised by the Agency as a complaint. All complaints made by applicants, regardless of which part of a process they relate to, should be recorded and managed by the Agency.
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- We found a need for improvement regarding complaints made against the Agency's commercial partners in the UK*
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15. All decisions on Tier 4 applications were made on a case-by-case basis, using the evidence to support the application. We also found that staff had received relevant training in Equality & Diversity. They had also received training in Safeguarding Children and had a good awareness of the need to safeguard children.
16. In Beijing, we found good practice where an agent registration scheme was in place to ensure that agents representing Tier 4 applications from children complied with certain obligations. Conversely, in the UK, the project involving the Post Office had not taken into account the potential impact on children and the Agency had not ensured that Post Office staff had been trained to the same standards as Agency staff.
17. We examined the Tier 4 policy guidance, in particular the frequency of changes and the impact this had on all parties involved with Tier 4 of PBS. We received feedback from stakeholders that the rate of change was too high. We found that for the Agency, the rate of change and some delays in dealing with applications meant that caseworkers could be working to three different sets of Immigration Rules at one time. We acknowledge that the changes were intended to reduce the scope to exploit Tier 4 as a route into the UK for purposes other than study; however, there is now a need for a period of stability. Future changes should also be planned and implemented more effectively.
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- We noted that the Agency had tasked a project team to evaluate its performance on appeals and examine areas for improvement*
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18. We also considered the potential consequences of tightening the Tier 4 rules. We found a potential risk of non-genuine students opting to apply for Student (Visitor) visas instead of Tier 4. Student (Visitor) visas are not subject to the same stringent rules that are applied to Tier 4. In early 2012, for the first time since the introduction of Tier 4, a greater number of Student (Visitor) visas than Tier 4 visas were issued. The Agency needs to be alert to this to ensure that this route is not exploited in the future.

19. We also considered the level of allowed appeals in Tier 4 cases. Appeals are only available for applications made in-country, for example to extend an existing visa. Delays in receiving results of appeals back in Sheffield meant that the Agency was unable to challenge tribunal decisions because they received the results out of time. These delays were internal to the Agency. However, we noted that the Agency had tasked a project team to evaluate its performance on appeals and examine areas for improvement. We considered this to be a positive step by the Agency.
20. Judicial Reviews were also considered as part of the inspection. Judicial Reviews are initiated by sponsors if they have had an application refused or their licence revoked or suspended. We found that the Agency had used the results of previous Judicial Reviews to learn and improve processes. We saw improvements in the training of Compliance Officers, the reporting structure and the collection of evidence. This ensured that any defence to a Judicial Review was robust.

2. Summary of Recommendations

We recommend that the UK Border Agency:

1. introduces and publishes a service standard for making decisions on sponsorship applications.
2. urgently addresses the volume of ‘incorrect or fatally flawed’ in-country decisions and ensures that quality control processes are formalised across all locations.
3. takes all necessary steps to ensure that resources are effectively allocated to deliver its obligations in respect of:
 - sponsorship decision-making and notifications on the Sponsor Management System;
 - the identification of students who have failed to comply with the obligations of their leave and whose leave should be curtailed;
 - locating and removing students whose leave has been curtailed.
4. protects children and vulnerable people by ensuring that all commercial partners who interact with these people:
 - are trained to the same standard as Agency staff in the relevant safeguarding functions; and
 - have robust mechanisms in place to report any concerns about individuals to the Agency.
5. monitors the impact of tighter rules on the Tier 4 route and any impacts on other entry routes, to mitigate against attempted abuse by those who are not genuine students.
6. ensures that all complaints, including those relating to sponsorship and the Agency’s commercial partners, are recorded, monitored and analysed consistently to achieve performance improvement.

3. The Inspection

- 3.1 The role of the Independent Chief Inspector of the UK Border Agency was established by the UK Borders Act 2007 to examine and report on the efficiency and effectiveness of the UK Border Agency. In 2009, the Independent Chief Inspector's remit was extended to include customs functions and contractors.
- 3.2 On 20 February 2012, the Home Secretary announced that Border Force would split from the Agency from 1 March 2012, to become a separate operational command within the Home Office. The Home Secretary confirmed that this change would not affect the Chief Inspector's statutory responsibilities and that he would continue to be responsible for inspecting the operations of both the Agency and the new Border Force. On 22 March 2012, the Independent Chief Inspector of the UK Border Agency's title changed to become the Independent Chief Inspector of Borders and Immigration. His statutory responsibilities remain the same.
- 3.3 The Chief Inspector is independent of the UK Border Agency and the Border Force, and reports directly to the Home Secretary.
- 3.4 The Independent Chief Inspector's inspection criteria¹ (set out in Appendix 1) were used to assess the efficiency and effectiveness of how the Agency manages applications and sponsorship under Tier 4 of the Points Based System (PBS), under the themes of:
- Operational Delivery;
 - Safeguarding Individuals; and
 - Continuous Improvement.

Purpose and aim

- 3.5 The purpose of the inspection was 'To inspect the UK Border Agency (UKBA) visa and licensing operations to assess the efficiency and effectiveness of the management and processing of Tier 4 student applications and management of licensed sponsors.'

Background

- 3.6 The UK Border Agency is divided into three business areas:
- International Operations and Visas;
 - Immigration and Settlement; and
 - Enforcement & Crime

These three core operational areas are supported by three cross-cutting areas:

- Strategy and Intelligence;

¹ All criteria of the Independent Chief Inspector of the UK Border Agency can be found at <http://icinspector.independent.gov.uk/wp-content/uploads/2010/03/Inspection-Criteria.pdf>

- Resources and Organisational Development; and
- Operations.

The two business areas that we focused on for this inspection of Tier 4 of PBS were International Operations & Visas and Immigration & Settlement Group, both of which process applications for visas under Tier 4 of PBS. Immigration & Settlement Group also processes applications for sponsorship, a requirement within Tier 4 of PBS. At the time of the inspection, these groups were called International Group and Immigration respectively, however, for the purpose of this report, we have referred to them under their new titles throughout the report.

- 3.7 International Operations & Visas delivers the wider overseas remit of the UK Border Agency, including the visa issuing service, and is fundamental to achieving the Agency's strategic objectives listed below:
- to protect the border and national interests of the UK;
 - to tackle border tax fraud, smuggling and immigration crime; and
 - to implement fast and fair decisions.
- 3.8 International Operations & Visas has approximately 2,300 staff in 136 countries around the world, working to deliver the Government's objective of facilitating trade and travel that benefits the UK and preventing travel which does not. To manage its work overseas, International Operations & Visas has structured its visa work into six regional locations:
- Africa;
 - Americas;
 - Asia Pacific;
 - Gulf, Iran and Pakistan;
 - EuroMed; and
 - South Asia.
- 3.9 International Operations & Visas processes Tier 4 applications in visa sections based across the world in each of the above regions.
- 3.10 At the time of the inspection, Immigration & Settlement Group (formerly known as Immigration Group) also operated a regional structure but was based in the UK. There were six regions: London & South East; East & West Midlands; North West; North East, Yorkshire & Humber; Wales & South West; and Scotland & Northern Ireland.
- 3.11 The North East, Yorkshire and Humber region included the Temporary Migration Unit, which is responsible for all in-country applications under Tier 4 of PBS, for example, applications from applicants with existing leave who are seeking an extension. The Temporary Migration Unit is also responsible for the management and licensing of sponsors for Tier 4 PBS.
- 3.12 In 2006, following public consultation, the Government published proposals to modernise and strengthen the immigration system by bringing in PBS, comprising 5 tiers:
- Tier 1 – highly skilled individuals who contribute to growth and productivity;
 - Tier 2 – skilled workers with a job offer to fill gaps in the UK labour force, e.g. nursing;
 - Tier 3 – low-skilled workers to fill specific temporary labour shortages (this Tier is not currently in use);
 - Tier 4 – students;

- Tier 5 – Youth Mobility and temporary workers: people coming to the UK to satisfy primarily non-economic objectives.

Tier 4

- 3.13 Under Tier 4 of the PBS, an applicant is required to meet a defined points threshold if they are to be successful in their application. The current threshold is 40 points. They must also prove that they have sufficient proficiency in the English Language. In order to secure points, they must provide a Confirmation of Acceptance for Studies, known as a CAS, from their sponsor, and must also provide evidence that they can support themselves financially, known as maintenance. Points are awarded as follows;
- Valid CAS – 30 Points
 - Maintenance – 10 points.
- 3.14 The CAS must show all the details of their course, which must be a course that leads to an approved qualification.² It must also detail any costs that the applicant will incur, for example any course fees or accommodation costs. If any of these fees have been paid, this must also be shown on the CAS.
- 3.15 In relation to maintenance, the applicant must be able to show that they have sufficient funds to pay the course fees for the first year and also to support themselves for a pre-determined period. The level of funds required varies, depending on where the applicant is studying. For example, in inner London, the applicant must show that they have £1000 per month, while in outer London and the rest of the UK, the requirement is £800 per month.
- 3.16 The number of months for which an applicant must show the required funds is dependent on whether they are a new applicant or whether they already have an established presence in UK. An example of someone with an established presence in the UK is a student who is already in the UK on a Tier 4 visa and is applying for an extension. A new student must show they can support themselves for 9 months, whereas a student with an established presence only has to show funds for two months.
- 3.17 In addition to the CAS and maintenance requirements to secure points, the applicant must also show that they are proficient in the English Language. Whilst there are no extra points for this requirement, the proof of proficiency must be shown on the CAS. Failure to show this on the CAS will render the CAS as invalid. English Language proficiency must be at level B1 or B2 of the Common European Framework of References for Languages (CEFR)³ depending on the level of course being studied. Proficiency is either tested using one of the Secure English Language Test (SELT) providers,⁴ or certain Tier 4 sponsors can assess potential students themselves.
- 3.18 There are two ways in which an application can be made for a Tier 4 visa:
- entering the UK as a new international student, which means that Entry Clearance must be obtained from the designated visa post for the applicant's home country or their current country of residence;
 - extending an existing Tier 4 entry clearance – an applicant can apply 'in-country' by applying by post to the Temporary Migration Unit based in Sheffield or by making an appointment at a Public Enquiry Office (PEO)⁵ to make the application in person.

² The definition of an approved qualification is contained within Paragraph 120 (cb) of Appendix A of the Immigration Rules – <http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/appendixa/>

³ <http://www.cefr.org>

⁴ <http://www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/new-approved-english-tests.pdf>

⁵ PEOs provide a same-day service for a range of in-country visa applications, including marriage and civil partnership applications, to applications made under PBS.

3.19 The costs of applications at the time of our inspection were;

- New applications made outside the UK – £289
- In-country applications by post – £394
- In-country applications in person – £716.

Tier 4 Sponsorship

3.20 Any University, Higher Education Institution, Further Education College, English Language or Independent School must apply to become a sponsor if they want to enrol students from outside the European Economic Area (EEA) under Tier 4. This applies to both publicly and privately funded institutions. All Tier 4 applicants must be sponsored by a sponsor who has been licensed by the Agency and who is on the Agency’s sponsor register.

3.21 All licensed sponsors are given a rating by the Agency, depending on their status and their level of compliance with the Agency’s sponsor guidance. At the time of the inspection, the highest rating was known as Highly Trusted Status (HTS). All sponsors must achieve HTS; however, if they are new sponsors, they are initially awarded a rating known as A-Rating for the first twelve months to ensure they can comply with all requirements of the guidance. After 12 months, they must then apply for HTS. Failure to apply for HTS after the initial 12 month period will result in the licence being revoked.

3.22 In addition to HTS and A-rating, some current sponsors are still B-rated under the policy and guidance that was in place before September 2011. Also, there are a number of Tier 4 legacy sponsors who either chose not to apply for educational oversight under the new arrangements or who applied and failed to meet the standard. Both B-rated and legacy sponsors cannot recruit any new students, but existing students are able to complete their studies providing the sponsor’s licence does not expire.

Figure 1: Tier 4 Sponsor Ratings, including number of each rating

Sponsor Rating	Definition	Number of Sponsors with this rating
Highly Trusted Status (HTS)	Designed to ensure that all education providers are taking their obligations on immigration compliance seriously. It recognises sponsors who show a good history of compliance with their sponsor duties and whose students comply with the terms of their visa or permission to stay in the UK. HTS was introduced on 9 October 2011.	1,417
A-Rated	Reserved for new licence holders as a transitional rating before being able to apply for HTS. After 12 months sponsors must apply for HTS and must meet all of the criteria the Agency has set out for Highly Trusted Sponsors.	552
B-Rated	Prior to 5 September 2011, sponsors could be downgraded from A rated to B rated if they did not meet all the conditions or were subject to an action plan due to failings in their sponsorship. B-Rated sponsors will be re-rated to A-rating when the conditions of the plan have been met. They will need to have kept A-rating for 6 months before they can apply for HTS.	33

Legacy	This rating is for sponsors who did not try to meet the requirements for educational oversight when new guidelines were published, or who tried and failed. It is also given to sponsors who applied for HTS and failed to score the required number of points. The Agency describes this scenario as a 'near miss'. If the sponsor applies a second time and scores another near miss, they revert to legacy status. Legacy sponsors cannot sponsor new students but their existing students can continue with their studies.	116
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- 3.23 When a sponsor has obtained a licence, the Agency determines the number of CASs which that sponsor can assign, based on an estimate made by the sponsor on the number they expect to assign in a 12-month period. In order to ensure that sponsors do not recruit more students than they can teach, the Agency will also consider how many students the sponsor can reasonably teach, to ensure that the number of CASs allocated does not exceed capacity. Each time a sponsor assigns a CAS, they pay a fee to the Agency. Once a sponsor has used up their allocation of CASs, they can apply for additional CASs, but the total number for the year must not exceed 50% of the total student body. If a sponsor does not apply for additional CASs, they cannot recruit additional Tier 4 students during the 12 month period.
- 3.24 The cost of making a sponsor application at the time of our inspection was £500 for a sponsor who wants to sponsor Tier 4 students only. In some cases, a sponsor may want to sponsor applicants applying under different Tiers of PBS as well as Tier 4. In these cases, the fee is different depending on the size of the organisation and which other Tiers they want their licence to support. In addition to the fee for the application, a sponsor is charged £13 for each CAS it issues.

The Application Process

- 3.25 The application process differed slightly depending on where the application was made. Figure 2 sets out the application process for applications made in-country and overseas.

Figure 2: Application Process for Tier 4 (Student) Visas		
	In-Country applications made in Sheffield	Applications made overseas
1	Applicants can choose to download and complete a paper form or complete an online version of the form which they can print and submit. Once completed, the applicant submits the form to the Agency's commercial partner for payment to be taken (for online applications the payment is taken online). The application and supporting documents are then sent to Temporary Migration for input and consideration.	Applicants complete an online application form, pay the relevant fee and book an appointment to have their biometrics taken.
2	Applicants visit a Post Office to submit their biometric ⁶ information.	Applicants attend a Visa Application Centre ⁷ to submit their biometrics and their supporting documents.

6 Biometric Data includes personal data such as name, address, date and place of birth, etc. but also includes fingerprints.

7 Visa application centres in New Delhi and Beijing are run by the Agency's commercial partner, VFS Global.

3	On receipt of biometric information, caseworking staff at the Temporary Migration Unit make the decision to grant or refuse the application.	The application form and supporting documents are sent to the Visa Section.
4	A biometric residence permit is produced when a case is granted, or if the case is refused, a refusal notice is printed. These are returned to the applicant with the original documents that were used to support the application.	The decision to grant or refuse the visa is made by an Entry Clearance Officer (ECO).
5.		The visa vignette or refusal notice is printed and sent to the applicant together with the original supporting documents.

Scope

- 3.26 The scope of this inspection was to inspect the UK Border Agency (UKBA) visa and licensing operations to assess the efficiency and effectiveness of the management and processing of Tier 4 student applications and the licensing and management of sponsors.
- 3.27 We assessed the quality and consistency of decision-making, while also determining the quality of the service provided and the management of customer correspondence. We compared performance from two overseas posts and the Temporary Migration Unit at Sheffield.
- 3.28 The inspection assessed performance against the strategic goals and performance targets set by the UKBA International Operations & Visas and Immigration & Settlement Group. The inspection considered:
- whether policy and guidance was being applied effectively;
 - the quality of decision-making and consistency of approach;
 - the performance of UKBA International Group in respect of the ‘customer commitments’ it has published on its website;⁸
 - the performance against UKBA Immigration & Settlement Group targets for Sponsorship and Tier 4 Case work.
- 3.29 The inspection focused on three sites: Sheffield as the main Temporary Migration Unit in the UK, and also two overseas posts; New Delhi and Beijing. We chose the Visa Section in New Delhi because the performance was representative of performance of other posts in the South Asia region and we considered that it would therefore provide a good benchmark for that region. The performance in Beijing was representative of other high-volume posts within the Asia-Pacific region. Therefore, as both posts were significant markets for Tier 4 visas, Beijing and New Delhi provided a good opportunity to assess and compare why two different regions were delivering different performance levels on Tier 4 applications.

We assessed the quality and consistency of decision-making, while also determining the quality of the service provided and the management of customer correspondence

⁸ <http://www.ukba.homeoffice.gov.uk/aboutus/service/>

Sheffield

3.30 The Temporary Migration Unit, which deals with all in-country applications made under the PBS, is based in Sheffield. The areas that we inspected in Sheffield were:

- Tier 4 In-Country Caseworking teams – these teams process applications made under Tier 4 of PBS. This includes applications to extend existing Tier 4 visas but also applicants who may be switching⁹ from another Immigration category into Tier 4;
- Sponsor Licensing Unit – this unit is responsible for processing applications for sponsorship licences and administering the number of CASs assigned to each sponsor;
- Sponsor Management Unit – this unit is responsible for ensuring that all sponsors fulfil their obligations under their sponsor licence, for example, monitoring student attendance. The unit co-ordinates visits to sponsors before and after a licence has been issued and takes action where a breach of sponsor requirements has occurred. The unit also manages litigation action taken by sponsors against the Agency, for example, when a licence has been revoked.

New Delhi, India

3.31 At the time of the inspection, the Visa Section in New Delhi, which is part of the South Asia region of International Operations & Visas, was receiving in excess of 30,000 applications for Tier 4 visas each year and was ranked 4th overall in terms of the volume of Tier 4 applications the Agency received in both 2010/11 and 2011/12. It also had a relatively high refusal rate, 53% in 2010/11 and 42% in 2011/12.

Beijing, China

3.32 At the time of the inspection, the Visa Section in Beijing (which is part of the Asia-Pacific region) was also receiving large volumes of applications made under Tier 4. In 2010/11 it ranked 3rd of all of the Agency visa posts, with over 34,000 applications. In contrast to the Visa Section in New Delhi, the Visa Section in Beijing had a low refusal rate for Tier 4 applications, with 11% of applications being refused in 2010/11 and only 3% in 2011/12.

Methodology

3.33 The on-site phase of the inspection took place between 30 April 2012 and 20 July 2012 with on-site visits being made during the following periods;

- Sheffield – a two week period between 30 April and 11 May inclusive;
- New Delhi – 24 May to 30 May inclusive;
- Beijing – 16 July to 20 July inclusive.

3.34 A range of methods were used during the inspection, including:

- File Sampling – we sampled a total of 432 applications from Sheffield, New Delhi and Beijing, including cases where visas were granted, refused and where an application had been made for an Administrative Review to be carried out on the visa decision.
- We also interviewed and held focus groups with Agency staff and managers in each location:
 - Sheffield – 27 interviews and 20 focus groups, covering caseworking teams and Sponsorship Management and Licensing teams. We also observed the PEO caseworkers. We observed a visit by a Compliance Officer in Essex;

⁹ Switching is a term used to describe applicants who have an existing visa in one PBS category but who apply for an extension in another PBS category.

- New Delhi – 8 interviews, 5 focus groups, 6 stakeholder interviews; observed pre-assessment, decision-making, document verification, complaints and the interview process. We also visited the Visa Application Centre;
 - Beijing – 8 interviews, 6 focus groups, 4 stakeholder interviews, observed pre-assessment, decision-making, document verification and the interview process. We also visited the Visa Application Centre.
- 3.35 For our file sampling, we conducted an initial file sample in London and followed this up with sampling when we were on-site. For our initial file sampling, we requested a list of file reference numbers for all Tier 4 applications that had been decided between 1 August 2011 and 31 October 2011 in Sheffield, New Delhi and Beijing. From the lists provided by the Agency, we then used random number generators to select relevant files for sampling.
- 3.36 The following numbers and categories of files were requested for the initial sampling:
- Sheffield – 50 grants and 50 refusals;
 - New Delhi & Beijing – 40 grants and 40 refusals from each Visa Section.
- 3.37 Applications made overseas do not have a right of appeal against the decision; therefore, the only recourse an applicant has is to write to the post to request that the case be reviewed by an Entry Clearance Manager (ECM). This review is known as an Administrative Review. We therefore sampled 40 Administrative Review cases, 20 each from the Visa Sections in New Delhi and Beijing.
- 3.38 For the on-site sampling that we conducted, we requested more up-to-date files to provide an up-to-date picture of decision-making. This also allowed us to compare decision-making performance across both samples. Therefore, the following dates were used:
- Sheffield – 9 April 2012 to 7 May 2012
 - New Delhi – 20 April 2012 to 17 May 2012
 - Beijing – 21 May 2012 to 19 June 2012
- 3.39 In all three locations, we requested an additional 50 files made up of 25 grant cases and 25 refusals. Administrative Review files were not sampled on-site in the overseas locations because of the recent dates of the decisions we sampled. Insufficient time had elapsed for recent decisions to have been subject to an Administrative Review.
- 3.40 We also gathered feedback from the education sector in the UK through interviews and a survey questionnaire. We met with organisations representative of both the public and private educational sectors, including Imperial College London, London School of Economics, UK Council for International Student Affairs (UKCISA) and we attended a conference for International Student Advisors, hosted by UKCISA.
- 3.41 In addition, we analysed documentary evidence, including statistics and policy documents supplied to us by the Agency. At the end of July, following our final on-site stage of the inspection, we provided feedback on emerging findings to the Agency.
- 3.42 The inspection identified six recommendations for improvement on Tier 4 of the PBS. A full summary of recommendations is provided on page 10 of this report.

4. Inspection findings – Operational Delivery

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

Decision-making

- 4.1 This section provides detailed results and analysis of the files we examined as part of the inspection. The following table, Figure 3, shows the actual number of files we sampled against the numbers that we had requested;

Figure 3: No. of files requested and sampled in each location

Location	Sample	Grants		Refusals	
		Requested	Sampled	Requested	Sampled
Sheffield	Initial	50	(44)	50	(44)
	On-Site	25	25	25	(22)
New Delhi	Initial	40	40	40	40
	On-Site	25	25	25	25
Beijing	Initial	40	40	40	40
	On-Site	25	25	25	25
Total		205	199	205	196

*Note: Figures in brackets indicate where the number of files received was less than the number we requested.

- 4.2 As can be seen in the table, not all files requested could be sampled by Inspectors. For the Sheffield cases, not all files were received in time for the initial sampling. The Agency had already sent files to storage and was unable to locate and deliver some of the files requested in time for the sampling.
- 4.3 Three refusal cases and three Administrative Review cases were not sampled because they were out of scope for the inspection due to being Tier 4 dependent¹⁰ cases. In total, we sampled 432 of the 450 cases we requested.

¹⁰ Tier 4 dependent cases are those where the applicants are applying to join a main Tier 4 applicant. They were not part of this inspection.

Decision Quality

4.4 When conducting our file sample, we assessed the Agency’s performance at each inspected location against a number of decision quality indicators. The indicators used varied depending on whether the file was a case where a visa was granted or refused. The quality indicators we used were as follows:

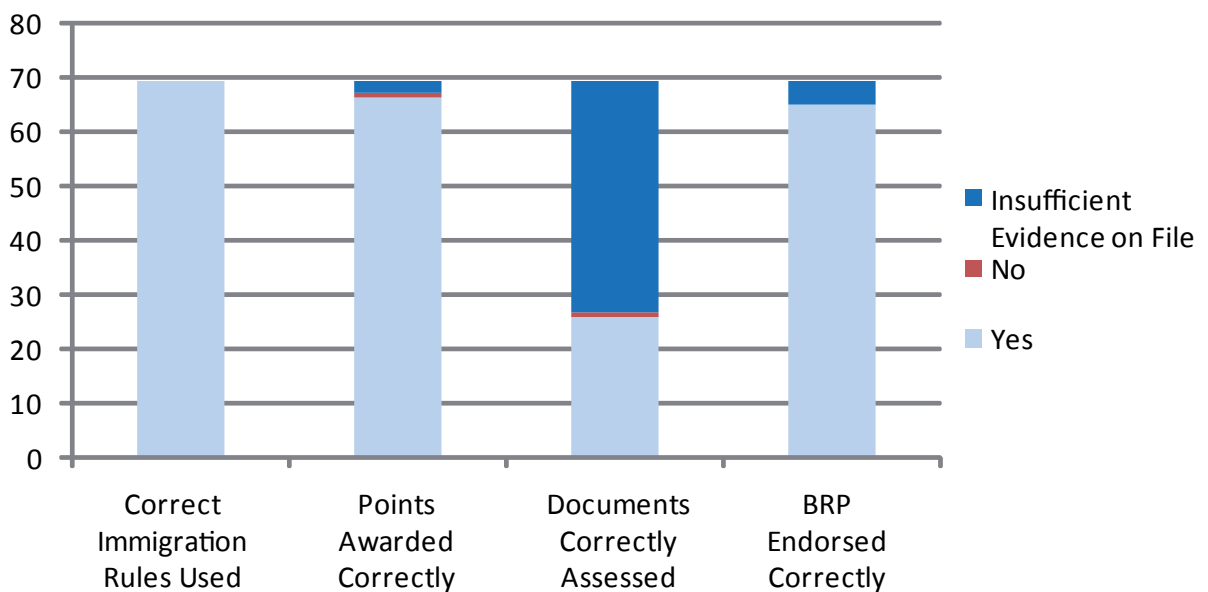
- Was the decision made against the correct Immigration Rules?
- Were the points awarded correctly and in line with the rules?
- Were all documents correctly assessed by caseworkers (Sheffield) or ECOs (New Delhi & Beijing)?
- Was the visa issued with the correct endorsement, or for in-country applications for extension, was the Biometric Residence Permit endorsed correctly?
- Was the period of validity correct on the Visa/Biometric Residence Permit?
- Did the refusal notice state the correct Immigration Rules? and
- Did the refusal notice give a satisfactory explanation of points awarded?

4.5 A full breakdown of the performance against the quality indicators and a comparison of each location is shown below.

Grant Cases

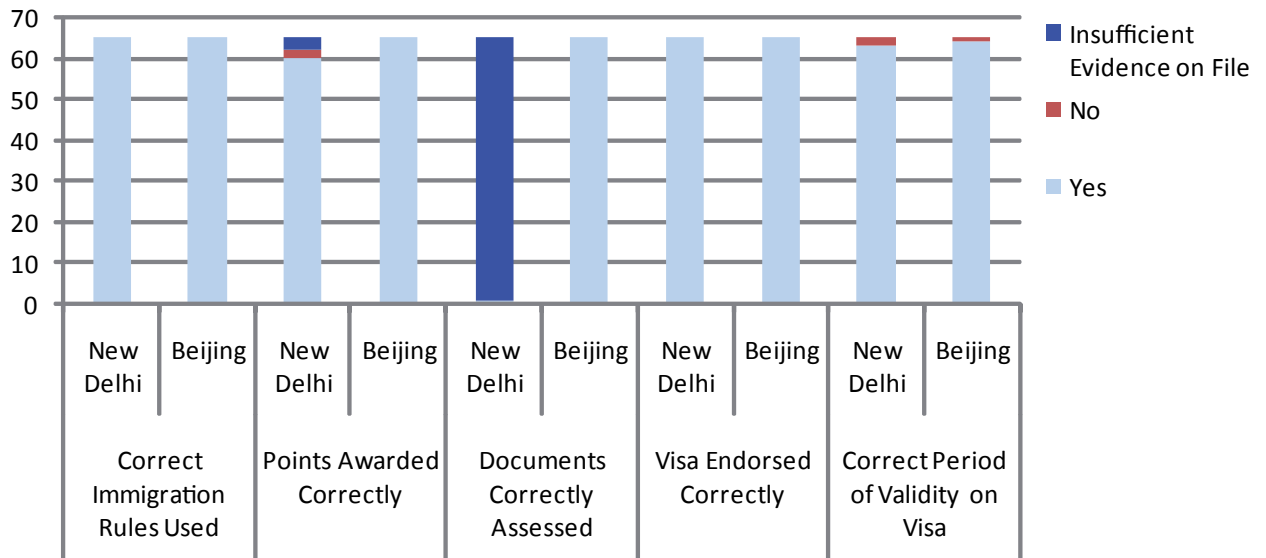
4.6 Figures 4 and 5 below show graphical representations of the quality of decisions made for applications where an extension to an existing visa was granted.

Figure 4: Tier 4 In-Country Grant Cases from Sheffield assessed against indicators of decision-making quality



*Note – BRP – Biometric Residence Permit

Figure 5: Tier 4 Grant Cases from New Delhi and Beijing assessed against indicators of decision-making quality



4.7 The overall quality of decision-making for grant cases was good. In all cases from each location, the correct Immigration Rules had been used. In Beijing, the points were awarded correctly and the documents were correctly assessed in each case. We also found that the visas had been endorsed correctly.

4.8 In comparison, we were not able to determine whether documents had been assessed correctly in the majority of cases from Sheffield and New Delhi, because there was insufficient evidence retained on the files. This was the case in 61% of files that we sampled in Sheffield and in New Delhi it was 98%. Failure to retain sufficient evidence on the file to support decisions meant that there was a lack of audit trail on the file. An audit trail is required if the decision is ever reviewed.

In all cases from each location, the correct Immigration Rules had been used

4.9 In February 2011, the Agency published a new instruction to all international posts as a result of a recommendation from our report on the Guangzhou Visa Section.¹¹ The instruction states that;

'Entry Clearance Officers (and Entry Clearance Managers) should ensure that only documents specifically required are retained. This should include copies of supporting documents that are directly relevant to the decision and documents addressed to the visa section. If it is not possible to retain such documents (for reasons such as lack of secure storage space) they should be clearly referenced in issue notes/refusal notices.'

In New Delhi, the notes on the IT Caseworking system contained references to the documents and in some cases a comprehensive outline of how the decision was made, for example the level of funds provided and a conversion to pounds sterling. However, without the copies of the supporting documentation, the audit trail was insufficient and we were unable to determine the accuracy of the decisions that were made. The Agency must ensure that all Operational Instructions issued in relation to caseworking are complied with.

¹¹ An inspection of the Visa section in Guangzhou – published 16 December 2010 – <http://icinspector.independent.gov.uk/wp-content/uploads/2010/03/An-inspection-of-the-visa-section-in-Guangzhou.pdf>

- 4.10 In Sheffield, we disagreed with the awarding of points in one case and in New Delhi, we disagreed with the awarding of points in two cases. In all cases, the Agency agreed with our findings.
- 4.11 For the case in Sheffield, the Agency agreed to provide feedback to the caseworker. In respect of the cases from New Delhi, there was a case where the applicant had submitted exam certificates in a different name to their passport. A note on the CAS stated that the sponsor had seen additional documents showing the correct name and the Agency had accepted this. The sponsor subsequently withdrew the CAS, so the points awarded should no longer have applied. The Agency agreed with our findings and stated that the visa should not have been issued. The Agency attempted to make contact with the applicant and circulated their details so the applicant would be intercepted at the port if they travelled to the UK. The applicant was intercepted at the port and the issue of the CAS was clarified. A new CAS was issued and the visa was valid.
- 4.12 Regarding the endorsement on visa and Biometric Permits, 6% (4 cases) in Sheffield had insufficient evidence on file to determine the accuracy of the permits. In New Delhi, two cases showed an incorrect period on the visa and one visa in Beijing also contained an inaccurate period. The Agency accepted that errors had been made on all three cases when we raised the errors with them.

Refusal Cases

- 4.13 Figures 6 and 7 below show graphical representations of performance against the quality indicators for refusal cases in each location.

Figure 6: Tier 4 In-Country Refusal Cases from Sheffield assessed against indicators of decision-making quality

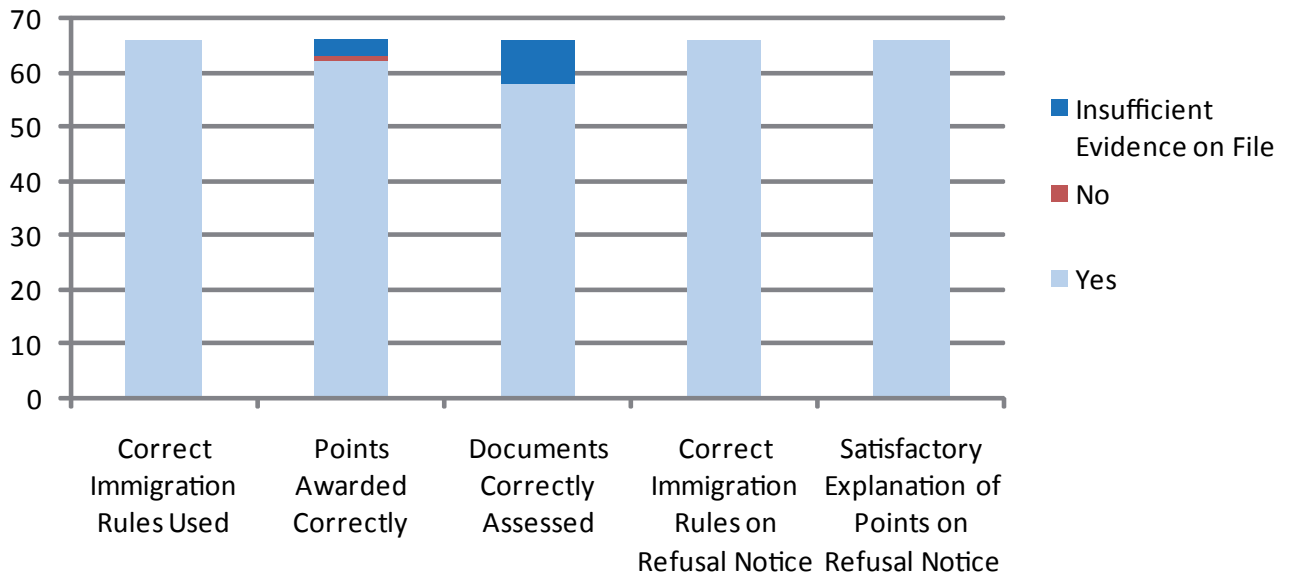
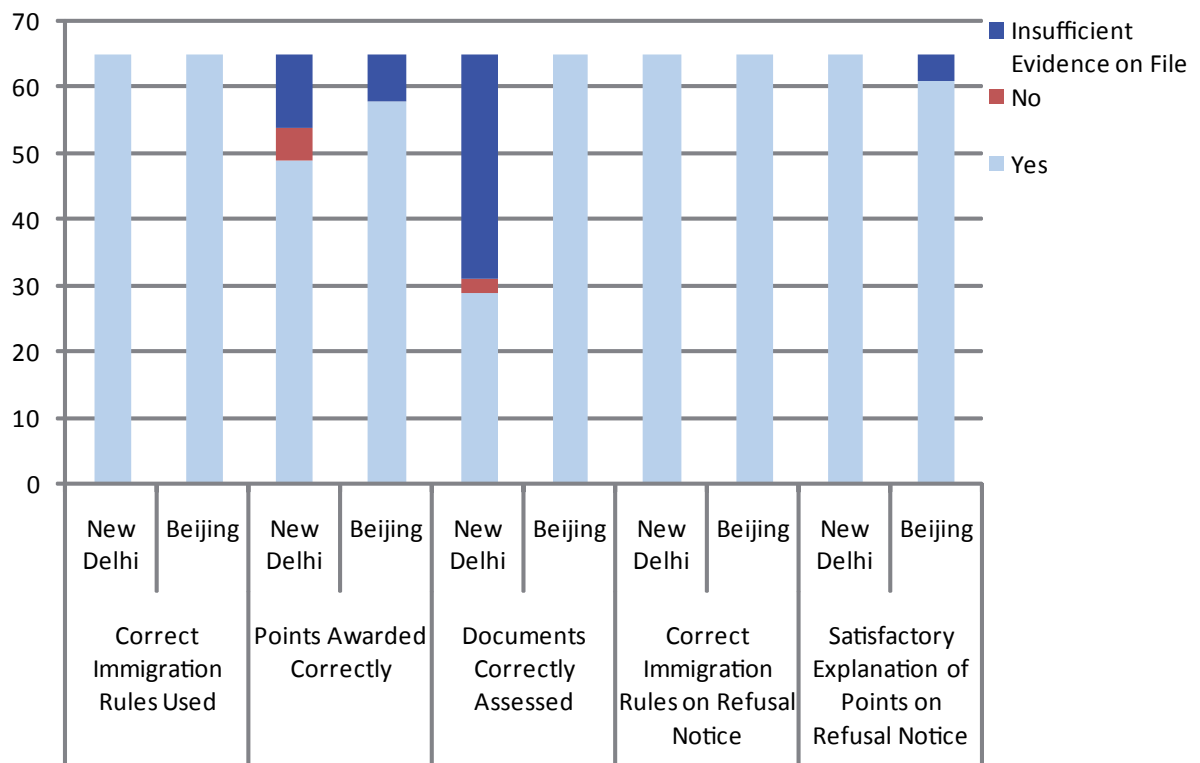


Figure 7: Tier 4 Refusal Cases from New Delhi and Beijing assessed against indicators of decision-making quality



4.14 As with the grant cases, all refusal decisions made at each location had been made in accordance with the correct Immigration Rules. In almost all cases at each location, the correct Immigration Rules had been stated on the refusal letter and there was a satisfactory explanation of points. The only exception was in Beijing, where we were unable to assess the quality of refusal letters in 5% (three cases) because the letter was not held on file or on the IT Caseworking system.

In almost all cases at each location, the correct Immigration Rules had been stated on the refusal letter and there was a satisfactory explanation of points

4.15 In contrast to grant cases, Sheffield retained documents on the file in the majority of refusal cases, as did Beijing. We were told that documents are more likely to be retained for refusal cases because it was more likely that a refusal decision would be challenged. However, in New Delhi, 52% (34 cases) did not have sufficient evidence retained on file in order for us to determine whether documents had been assessed correctly.

4.16 We considered that points had been awarded incorrectly in six cases, one in Sheffield and five in New Delhi.

4.17 For the Sheffield case, we disagreed that points had been awarded correctly because the applicant had submitted a Confirmation of Acceptance for Study (CAS) stating that an English Language test had been booked. There was no evidence on the file to show that the test had been taken and that the applicant had achieved the required standard. Therefore, the points should not have been awarded. The Agency accepted that the lack of evidence on English language ability had been overlooked in this case.

4.18 For the five cases in New Delhi, we discussed all cases with the Visa Section and were satisfied with the responses provided. These cases are described below.

- 4.19 Three of the cases were refused for the same reason, that the individual components of the IELTS test scores were not shown on the CAS, a requirement under the Immigration Rules. However, we found that in all cases, the individual scores were shown on the CAS and a copy of the test report was held on the file. The only difference between the CAS and the test report was that the scores were in a different order on the CAS to that shown on the test report. We felt that refusal in these cases was wrong. The Agency accepted our comments in all cases.
- 4.20 For the remaining two cases, we felt that the decision was wrong because documents had not been assessed correctly. In one case, the course title shown on the application form was slightly different to that shown on the CAS. The application form stated the course as ‘Level 5 HND in Hospitality’ whereas the CAS stated the course title as ‘Level 5 HND in Hospitality Management’. We felt that, as the title was not too dissimilar on the two documents, Evidential Flexibility¹² could have been used to clarify the details. The Agency agreed with our findings and confirmed that the applicant had in fact re-applied and been granted a visa.
- 4.21 In the other case from New Delhi, a bank letter sanctioning a loan had been provided as evidence; the letter had no date, which was a requirement of the Immigration Rules. The Agency had conducted a detailed check of the letter and had it verified as being genuine. The Agency refused the case because of the lack of date on the letter. Again, we felt that due to the letter being authenticated by the bank, it was unreasonable for the Agency to refuse on these grounds. The Agency accepted that it was unreasonable to refuse on a technicality when detailed checks had confirmed the document, and it stated that the applicant would be contacted and asked to re-submit the application.
- 4.22 Regarding whether documents had been assessed correctly in Sheffield and Beijing, there was one case in Beijing where we disagreed that documents had been correctly assessed. The case had been refused because, although the applicant had submitted translated versions of banking information, an original copy of a bank statement showing a date had not been submitted. We queried whether Evidential Flexibility could have been used to request the original document, given that a translated version had been provided. The Agency accepted that Evidential Flexibility should have been used in this case and that, since April 2012, all refusals must be approved by an ECM to ensure consistency of approach and accuracy of decision-making.

Refusal Notices

- 4.23 The quality of responses in the refusal letters was good in all three locations. A template was used to assist caseworkers in Sheffield and ECOs in New Delhi and Beijing to produce a refusal notice when an applicant was refused a visa under the Tier 4 rules. We found that this was a good way of ensuring consistency. It also provided a sound basis to enter bespoke details where necessary, for example, when explaining specific reasons why points had not been awarded. This was good practice.

The quality of responses in the refusal letters was good in all three locations

- 4.24 However, in Beijing, we found that the layout of the template contained eight boxes where such an explanation could be made, including:
- one box for the points on the CAS;
 - one for maintenance;
 - general grounds for refusal; and
 - refusals under Para 320 7(A).

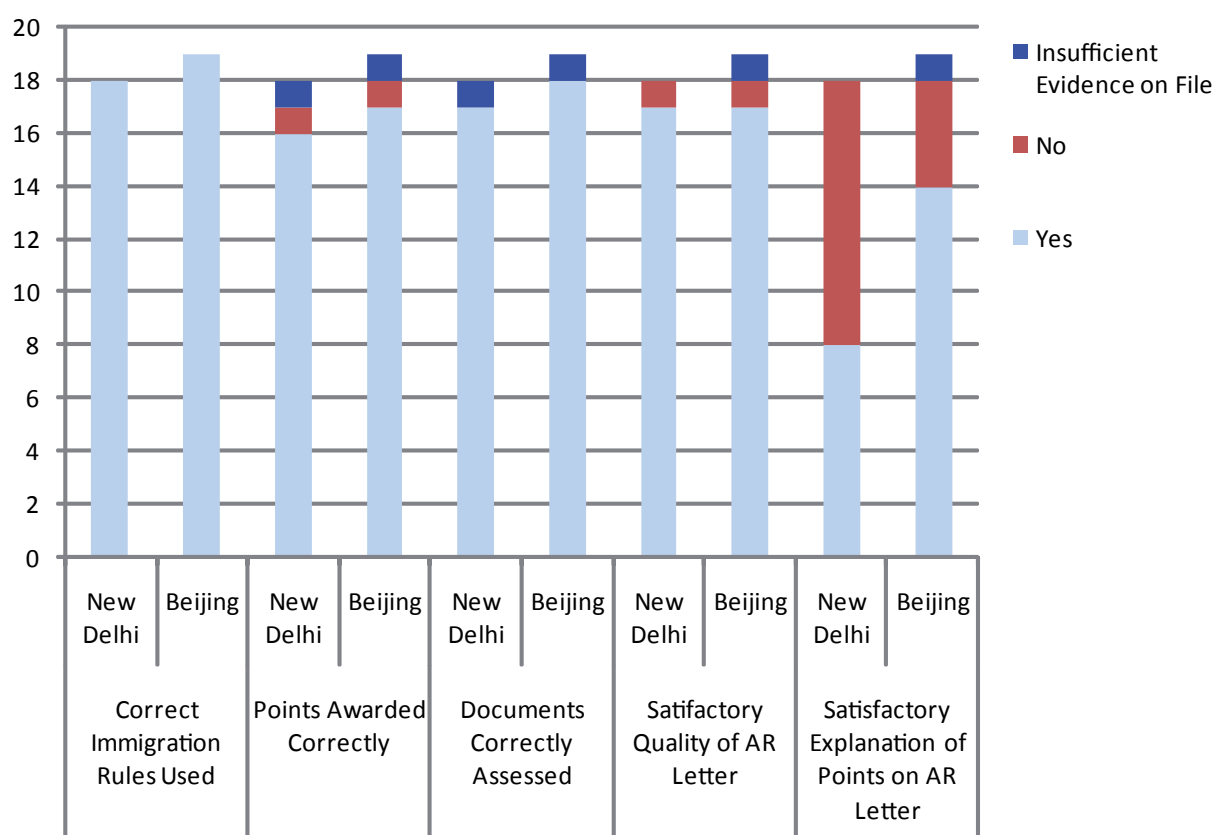
¹² Evidential Flexibility – a process allowing PBS caseworkers to invite sponsors and migrants to correct minor errors or omissions rather than refuse or reject cases for technical reasons.

In a large proportion of cases, the majority of these boxes were left blank or completed using ‘N/A’. We consider that, when communicating with applicants whose first language is not English, the existence of these boxes could cause confusion when they were mostly left blank. The Agency should revise its templates and processes to ensure that the refusal letters sent to applicants look professional and do not cause unnecessary confusion.

Administrative Reviews

4.25 In relation to Administrative Reviews (AR), Figure 8 shows a graphical representation of the results of our file sampling of these cases in New Delhi and Beijing:

Figure 8: Tier 4 Administrative Review Cases in New Delhi and Beijing assessed against Indicators for Decision-making Quality



4.26 In all cases, the correct Immigration Rules were used when Administrative Reviews were conducted.

4.27 In one case at each location, we disagreed that points had been awarded correctly. In the case from New Delhi, the applicant had been refused due to a discrepancy between information on the CAS and what the applicant had told the Agency during an interview. The Agency had also applied Para 320 7(A)¹³ to the decision and the case was upheld at Administrative Review. We felt that, although the decision to refuse was correct, Paragraph 320 7(A) should not have been applied because a higher standard of proof had not been met, a requirement when refusing under this basis. The Agency agreed with our findings and agreed to remove the Paragraph 320 7(A) element from the refusal and inform the applicant of this change.

4.28 We were concerned to note that in 56% (10 cases) sampled in New Delhi and 21% (4 cases) in Beijing, the letter giving the result of the Administrative Review to the applicant did not provide

¹³ Paragraph 320 7(A) refers to a section of the Immigration Rules which allows general grounds for refusal when an applicant has made false representations or used forged documents during their application.

a sufficient explanation of why points had or had not been awarded. This illustrated inconsistent approaches being taken across the locations and also within individual visa sections. The following are examples of the quality of response where we found that no explanation of points was provided:

- in two cases, the refusal decision was overturned and the letter contained limited information just outlining that the decision had been overturned. There was no explanation of what factors had resulted in this new decision;
- we found a number of cases where the outcome of the review was the same as the original decision, so that, rather than restate the reasons for the original refusal, the letters confirmed that the original decision still stood.

4.29 In providing applicants with the result of Administrative Reviews, the Agency should provide an explanation against each point that has been raised, in a similar way that refusal notices are constructed. The Agency accepted this and stated that feedback would be provided to ECMs to ensure that all relevant information is contained in letters following an Administrative Review.

4.30 In summary, we found that the overall quality of decision-making in all locations was good.

Data Quality

4.31 We examined the processes that each location had in respect of quality assurance of both decision-making and also the quality of documentation being sent to applications, e.g. the visa vignette or the refusal letter.

we found that the overall quality of decision-making in all locations was good

4.32 In Sheffield, the Temporary Migration Unit has operated a quality assurance system that has been embedded into the culture of the unit for a number of years. Our thematic report on Tier 2 of the Points Based System, published in February 2011, also commented on the quality control aspects in place. These were still evident during this inspection, with all quality checks given a score to determine how good or bad the decision-making had been. Quality control was carried out by line managers and the results were recorded and used for Personal Development Reviews with staff. The scores that were given, including their definitions and the standards to be met by staff, are shown in Figure 9:

Figure 9: Quality Ratings Used in Sheffield

Quality Score Code	Definition	Required Performance	Actual Performance (2011/12)
QR1	Correct decision	A minimum of 91% or more of sampled cases to achieve QR1 rating	90.25%
QR2	Correct decision but with errors in the data, casework processes or procedures	A minimum of 98% or more of sampled cases to achieve at least QR2 rating	95.59%
QR3	An incorrect or fatally flawed decision	Less than 2% of sampled cases to achieve QR3 rating	4.41%

4.33 In Sheffield the results of quality sampling were recorded on a bespoke spreadsheet system known as 'Quantum'. The system provided a breakdown of the number of cases sampled and which QR rating had been achieved. It also provided the reasons why certain ratings had been applied, for example, inadequate case notes, incorrect decision, formatting errors, incorrect period of leave granted, etc. The

system also provided an overall rating for the Temporary Migration Unit as well as individual reports for each caseworking team.

- 4.34 The actual performance shown in the table meant that during 2011/12 when 4,080 decisions were sampled for quality purposes, 180 cases had an ‘incorrect or fatally flawed’ decision. If this performance was replicated against the overall number of decisions made during the same period (88,508) then potentially 3,903 cases could have had a similar outcome.
- 4.35 An incorrect decision can have a significant impact on an applicant, for example, refusal to continue their studies and the threat of removal. At the time of the inspection, only one month’s data (April 2012) had been recorded on Quantum for the current financial year. This showed that 6.35% of cases were given a rating of QR3 meaning that failures were still occurring. This high level of error in decision-making is a concern and the Agency needs to address this as a matter of urgency.
- 4.36 New Delhi and Beijing adopted similar approaches, but these were not as formalised as Sheffield. In these visa sections, staff were subjected to random sampling of decisions by an ECM. New staff were subject to 100% of their work being checked until they were considered to be achieving suitable quality, after which they would be subjected to random sampling in accordance with other ECOs.
- 4.37 We also found evidence that a Data Quality strategy had been implemented within the South Asia region, which includes New Delhi. The strategy identified key areas where the visa section could improve and set out standards, including a process for providing feedback to ECOs when quality was not at the required standard. Delivery of the strategy was being developed at the time of the inspection, but we did find that ECMs conducted quality checks of a proportion of work from each ECO.

Recommendation

We recommend that the UK Border Agency urgently addresses the volume of ‘incorrect or fatally flawed’ in-country decisions and ensures that quality control processes are formalised across all locations.

Timeliness

- 4.38 At the time of the inspection, the following service standards were in place for Immigration & Settlement and International Operations & Visa Groups for dealing with Tier 4 Student applications;
- Immigration & Settlement Group – 75% of cases to be decided within four weeks of the application being made;
 - International Operations & Visas – to complete 90% of non-settlement¹⁴ visa applications in not more than 15 working days, 98% within 30 working days and 100% within 60 working days.

Prior to the inspection we requested details from the Agency regarding their own recorded performance against these targets. We compared what the Agency told us with our findings in the file sampling.

Sheffield

- 4.39 We were provided with a monthly breakdown of performance for the whole of 2011. Figure 10 shows the percentage of cases that were dealt with within the four week target and relates to applications made under the Tier 4 (General) and Tier 4 (Child) categories. These were the only categories we considered during the file sample. It shows that overall, during 2011, 85.1% of cases were dealt with within four weeks:

¹⁴ Visas issued under Tier 4 of the Points Based System are classed as Non-Settlement visas.

Figure 10: Performance Against Timeliness Target of 75% - Sheffield

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
General	79	94	95	95	95	95	81	83	72	89	92	47
Child	73	90	95	64	92	82	100	100	82	92	86	70

*Data provided by the UK Border Agency; figures have been rounded to the nearest whole number

- 4.40 The results of the file sample we conducted showed that the timeliness target of four weeks (20 working days) was met in only 12% (16) of the cases. This represents a significantly worse performance than that which the Agency had provided to us. Figure 11 provides further details of our findings in this regard:

Figure 11: Timeliness of Decision-making in Sheffield

Total Cases Sampled	135
Percentage of files concluded within 20 working days (target 75%)	12%
Average number of working days to conclude files in sample	55 days
Shortest period to conclude case	1 day
Longest period to conclude case	279 days
Number of cases falling outside of 75% target	119 (88%)

- 4.41 While the figures from the Agency show that performance targets were generally being achieved, the data was not as accurate as was being reported. We found similar evidence in our inspection of Tier 2 of PBS, which was published in 2011. The target states that the four week period is from date of application to date of decision. We were informed that the performance data was calculated from the date of biometric enrolment, and was not calculated from the date of application. Biometric enrolment takes place after the applicant's data has been entered onto the IT caseworking system and the applicant is invited to submit their biometric information. This meant that any delays in entering the data onto the system were not being accounted for in the performance data.

While the figures from the Agency show that performance targets were generally being achieved, the data was not as accurate as was being reported

- 4.42 The measurement was based upon parameters that were within the control of the Agency, for example, the entry of data and the decision. The Agency did not have control over when an applicant made an appointment to have their biometric information recorded, which could impact on the timeliness of the decisions. Senior managers acknowledged this anomaly in the performance data but informed Inspectors that they aimed to implement a more transparent reporting regime during the current financial year.
- 4.43 The calculation we used in our file sample was based upon the time taken from the date of receipt of application and therefore provided a more accurate reflection of the Agency's performance. It showed that reported performance would be significantly worse if the processing time was calculated using the date of application as the starting point, in line with the Agency's published target. Calculating performance on an end-to-end basis would also enable the Agency to identify and target the areas of the process which were contributing to the delays.

New Delhi

- 4.44 Figure 12 shows the timeliness of decision-making for the files in our sample compared to the information that the Agency had reported to us. The data from the Agency was an overall ‘year to date’ figure for the year 2011/12 with the information being provided in February 2012.

Figure 12: Performance Against Timeliness Targets – New Delhi

		Within 15 working days (Target 90%)	Within 30 working days (Target 98%)	Within 60 working days (Target 100%)
Agency reported (17,881 applications)	Number of files	8798	11394	14396
	Percentage	49%	64%	81%
Chief Inspector’s file sample (130 applications)	Number of files	108	127	128
	Percentage	83%	98%	99%

- 4.45 The Agency failed to achieve its targets for applications made at the Visa Section in New Delhi. The Agency had made significant improvements in our file sample, with a 34% increase on performance against the 15 day target and only a 1% shortfall against the 60 day target.

- 4.46 We were informed that Operation Bergan – commenced in May 2011 – had significantly impacted the Agency’s ability to meet its timeliness targets. Operation Bergan was a targeted investigation of 115 sponsors following a spike in the number of applications from South Asia just before the requirements for applicants’ proficiency in English Language were tightened. Part of the operation involved overseas Visa Sections in South Asia conducting interviews to assess English Language capability for applicants who were sponsored by one of the 115 sponsors identified. The introduction of these interviews, along with the annual summer surge of applications, had created backlogs of undecided applications for Entry Clearance Officers (ECOs) to consider. This accounted for the Agency’s lower than expected performance during 2011. However, when we were on site at the Visa Section in New Delhi, we found that during 2012, reduced volumes of applications and changes to the PBS rules¹⁵ had resulted in improvements in performance. In April 2012, the target was being met.

The Agency failed to achieve its targets for applications made at the Visa Section in New Delhi

Beijing

- 4.47 Figure 13 below compares the performance of the Agency against its published targets, detailing information reported to us and the results of our file sample. In line with the data for New Delhi, the data for the Visa Section in Beijing was also an overall ‘year to date’ figure for the year 2011/12 with the information being provided in February 2012.

¹⁵ The Agency introduced ‘differentiation’ in July 2011, meaning that applicants from low-risk countries did not have to submit as much supporting documentation.

Figure 13: Performance Against Timeliness Targets – Beijing

		Within 15 working days (Target 90%)	Within 30 working days (Target 98%)	Within 60 working days (Target 100%)
Agency reported (26,728 applications)	Number of files	26,211	26,557	26,701
	Percentage	98%	99%	100%
Chief Inspector’s file sample (130 applications)	Number of files	103	118	127
	Percentage	79%	91%	98%

4.48 The data provided by the Agency shows that the Beijing Visa Section was consistently meeting its targets during the financial year 2011/12. However, the results of our file sampling showed a worse performance, with the Agency missing its performance targets. Our sample contained an equal number of refusal cases and cases where a visa was issued. This was disproportionate to the number of refusals that are made in the Beijing Visa Section, therefore it resulted in a disproportionate statistical result. The refusal rate in the Beijing Visa Section for Tier 4 applications is very low, with only 3% of applications being refused.

Administrative Reviews

4.49 In addition to the targets for making decisions to issue or refuse visas, overseas posts also had a target to complete all Administrative Reviews within 28 days. Again, we compared what the Agency told us with the data they provided for the year 2011/12 to date and that of the file sampling we conducted.

4.50 Figure 14 below shows the percentage of cases that met the 28 day target in the Visa Sections in both New Delhi and Beijing in respect of Administrative Reviews:

Figure 14: Comparison of Timeliness for Administrative Review Cases (target 100%)

	Agency Data for 2011/12	File Sample
Beijing	99%	100%
New Delhi	87%	89%

4.51 As with other categories of cases, New Delhi fell short of the target in both the file sample and during the 2011/12 financial year. However, Beijing either met or fell slightly short in both sets of data used.

4.52 We were informed that the volume of refusal cases in New Delhi meant that the volume of Administrative Reviews was also high. As with other Tier 4 cases, Operation Bergan had also had an impact. However, we found that in April 2012 the target was being met.

We were pleased that the targets had been set in consultation with staff

Benchmark Targets

4.53 In our inspection of Tier 2 of PBS – A Thematic Inspection of the Points Based System – Tier 2 (Skilled Workers)¹⁶ we recommended that the Agency ‘evaluates and compares productivity levels and targets for PBS applications decided overseas and in the United Kingdom to provide assurance that these are realistic, accurate and fair, while maintaining decision quality’. In this inspection, we found that productivity targets, known as benchmark targets, were different across all three locations. It

¹⁶ http://icinspector.independent.gov.uk/wp-content/uploads/2011/02/A-thematic-inspection-of-the-PBS-Tier-2_Skilled-Workers1.pdf

was evident that the culture across the Agency was performance- driven. Staff were aware of the local targets for productivity and how they contributed towards overall performance of their respective sections.

Sheffield

- 4.54 In Sheffield, the benchmark targets were not set as a specific number of decisions that staff were expected to meet each day. This was a change since our Tier 2 inspection, when caseworkers had a target of concluding five cases per day. At the time of this inspection, the benchmark had been changed to reflect the amount of time a caseworker spent actually making decisions. They were required to spend 80% of their working day on decision-making activities. We were pleased that the targets had been set in consultation with staff. We were informed that, overall, the targets were achievable and realistic because they took other work that caseworkers had to carry out into account, for example, dealing with queries on cases.

New Delhi

- 4.55 In the New Delhi Visa Section, the benchmark target was set as a number of cases that staff were expected to conclude each day. The number depended on whether the sponsor was a known high-risk sponsor or not, as high-risk applications required more scrutiny and therefore more time to complete. Staff had to complete 22 decisions per day for cases from high-risk sponsors. For all other sponsors, the benchmark was set at 42 decisions per day.
- 4.56 Staff informed us that they had been consulted on the benchmark targets in accordance with the Agency guidance which was published in February 2011. They also stated that the targets were achievable and the different target for high-risk applications reduced the pressure to make decisions on cases which required more scrutiny.

Beijing

- 4.57 In the Beijing Visa Section, targets were set in a similar way to New Delhi where staff had a specific number of decisions to make each day. We found that targets were also set in accordance with the guidance published by the Agency and that staff felt they had been consulted and that targets were achievable. Similarly to New Delhi, we found that the benchmarks varied depending on the perceived risk of the application. However, the required number of decisions per day was higher in Beijing than it was in New Delhi. For high-risk applications, staff were required to complete 30 decisions and for low-risk applications, the target was 60 decisions per day.
- 4.58 We report later on inconsistencies in the approach to processing applications in different posts, and can therefore accept that it may be reasonable for there to be some variation between posts regarding staff benchmarks. However, there was no clear rationale for the extent of the disparity between International Operations & Visas and Immigration & Settlement Group in the significantly different targets they set for staff.
- 4.59 It was not clear what (if any) progress the Agency had made against the recommendation we made in our report of Tier 2 of PBS, because of our findings in the different locations. In the overseas visa sections, individual targets were high but decision quality was also good. However, in Sheffield, where targets are set differently and a lower number of decisions per caseworker are required, there were concerns over the number of decisions that were ‘incorrect or fatally flawed’.

Consistency of Approach

- 4.60 The inspection considered how consistent the Agency was in following and applying the Immigration Rules for Tier 4 of PBS. In the following sections, we consider how Evidential Flexibility was being applied, how points were awarded and the quality of the notes being recorded on the Agency’s IT caseworking system.

Evidential Flexibility

- 4.61 Our thematic inspection of Tier 2 of the PBS found that the Agency was using different methods across its locations to allow some flexibility when considering the evidence that applicants had submitted to support their applications. In our report on Tier 2, we recommended that the Agency ‘adopts a pragmatic approach to deciding applications where there are minor omissions in documentation or information and implements this consistently at all its locations worldwide’.
- 4.62 As a result of this recommendation, the Agency’s International Operations & Visas group produced a new Operational Instruction, which allowed ECOs to contact applicants to request additional information when a minor omission regarding the supporting documents had been made. It stated that the caseworker ‘must have sufficient reason to believe that any evidence requested exists’. The instruction provided a number of scenarios where flexibility could be used, but it was clear that if the relevant points could not be met even if flexibility was used, then additional evidence should not be requested.
- 4.63 In Sheffield, Evidential Flexibility was only used where there was an indication that additional documents existed or that a query existed on a document that had already been provided. Staff in Sheffield were not subject to the same Operational Instructions as those produced by International Operations & Visas for overseas staff. Instead, they used their own local guidance produced by the Policy and Guidance team in Sheffield. The guidance in Sheffield stated that they should not make speculative requests for evidence, even if this meant that an application would be successful. However, we were not satisfied that it was being applied correctly in all cases. We also noted that this created a disparity in the application of Evidential Flexibility between caseworkers based in the UK and those overseas. Figure 15 highlights a case from Sheffield where Evidential Flexibility should have been used:

Figure 15: Case Study – Failure to Apply Evidential Flexibility

The applicant:

- previously studied for a BSc in Computer Information Systems;
- made a new application to extend his leave to study for BSc in Computer Networking;
- the CAS did not state that this represented academic progression or complemented a previous course of study at the same level (as required by the Immigration Rules).

Chief Inspector’s comments:

- queried whether Evidential Flexibility could have been used in this case because, although academic progression was not being made, the new course could complement the previous course of study;
- the decision on the case was very recent and the applicant was still in the UK.

The UK Border Agency:

- examined the case and told us the decision was based on a previous out-of-country visa application having been made for a level 6 course and the current application was also at level 6;
- examined the records and found that the previous course was actually at Level 5 and therefore the new course did constitute academic progression;
- agreed that Evidential Flexibility should have been used in this case and that the case would be reviewed.

- 4.64 We have already provided an example of a case study from the Visa Section in New Delhi where we thought Evidential Flexibility should have been used. However, we also found that the use of the instruction varied depending on where the applicant was studying. The instruction does allow for a difference in treatment where it states that: ‘Student going to Oxford forgets to send all bank statements. By the very fact that he has been accepted to Oxford, the Entry Clearance Officers would have ‘reason to believe’ that he perhaps has the funds. Therefore contact him’. We found that, in New Delhi, this element of difference was taken further. We were informed by ECMs that, if there were minor discrepancies, the fact that a student was going to one of the top universities, for example, Oxford, was enough to accept the information and that the student or sponsor may not be contacted. This was contrary to the instruction and increased the risk of inconsistencies being introduced to decision-making. It also affected the audit trail for the decision, because specific documentation might be missing and not recorded.
- 4.65 At the Visa Section in Beijing, the Regional Manager provided a copy of an email that he had sent to all staff on 28 July 2011 clarifying the new instruction on the use of Evidential Flexibility. The email gave practical examples to staff on when and how the instruction could be used. We found that staff had a good understanding of the instruction and, other than in two cases in our file sample where the Agency agreed that Evidential Flexibility could have been used, we had no concerns about its application in Beijing.
- 4.66 We found examples of when Evidential Flexibility had been used well, but also where it could have been used but was not. As a result, the Agency needs to do more to encourage and ensure a consistent approach that is adopted across different locations.

Awarding of Points

- | | |
|--|---|
| <p>4.67 Points under Tier 4 are awarded if an applicant has a valid Confirmation of Acceptance for Study (CAS) (30 Points) and evidence of their having the required funds (maintenance) to support their studies (10 points). In order to qualify for a visa to be issued, the applicant must secure an award of 40 points.</p> | <p><i>We found examples of when Evidential Flexibility had been used well, but also where it could have been used but was not</i></p> |
| <p>4.68 The CAS includes details of the cost of the course, the cost of any accommodation if applicable and details of any fees that have been paid in advance. If the CAS is valid, the Agency accepts that funds stated are accurate and correct.</p> | |
| <p>4.69 Our file sampling found an inconsistent approach in the awarding of points for maintenance where a CAS was not considered to be valid and was therefore not awarded the 30 points. In Sheffield and New Delhi, staff took the view that if no points were awarded for the CAS, the accuracy of the fees paid could not be determined. As a result, their view was that points for maintenance could not be awarded, as the Agency did not definitively know the correct amount of funds required. However, in Beijing, staff took the view that the points for maintenance were independent of the CAS and would award 10 points even if no points were awarded for the CAS.</p> | |
| <p>4.70 This inconsistent approach did not materially affect the outcome of these applications, because 40 points were required before a visa could be issued. However, it is another example of a difference in approach being taken with a resultant lack of consistency, which the Agency needs to improve.</p> | |

Quality of Notes on IT Caseworking System

- 4.71 In Sheffield and New Delhi, the quality of the notes on the IT Caseworking System was generally adequate to determine what factors had been used to make the decision. If no supporting documents were retained on file, we could see how the decision had been made. We saw evidence of calculations for funds against a currency conversion to ensure that local currency converted to the required

amount of Pounds Sterling. We also found numerous examples in the notes from these two locations when Evidential Flexibility had been used, including a description of why it had been used and what actions had been taken. This was good practice.

- 4.72 In comparison, we found the quality of notes in Beijing was often lacking. The staff in the Visa Section in Beijing worked on the basis that documentary evidence had been used to make the decision, so only recorded basic notes on the system. As a result, it was not always clear what actions had been taken in Beijing. In particular, in cases where Evidential Flexibility had been used, this had been recorded but the notes were not as comprehensive as in the other locations in that they did not record what actions had been taken. The documentary evidence retained on file did not record this either.
- 4.73 The notes on the Agency's IT caseworking system were sufficient in 62 of the 65 cases that we sampled in Beijing, with references to documents assessed and how the decision was made. In relation to the three cases where we felt notes were insufficient, the issues we identified were:
- A case with no supporting documents and where the notes did not provide the amount of maintenance that had been assessed;
 - A case with very brief details in the notes and significant use of abbreviations;
 - A disparity between the amount of funds shown on supporting documentation and the amount shown in the notes. This did not affect the material outcome of the case, as both amounts were sufficient to meet the maintenance threshold.
- 4.74 The agency accepted that the quality of notes could have been better in these cases.
- 4.75 The results of our file sample from Beijing also found that when an ECM had carried out a review of the case, the notes were merely an indication that a review had taken place. There were no additional notes to inform what action had been taken or what had been reviewed.
- 4.76 On 4 July 2012, an Agency Operational instruction for ECM reviews was updated to include a minimum standard for review notes to be recorded on the Agency's IT caseworking system. Whilst this instruction was issued after the on-site phases of the inspection we conducted in Sheffield and New Delhi, it was introduced prior to our arrival in Beijing. We were pleased to note that the instruction had been implemented in Beijing and that ECM review notes on cases we sampled while on-site met the new standard.
- 4.77 As a result of the number of inconsistencies we found across the three locations, there is a need for the Agency to implement robust mechanisms to ensure that all guidance and operational instructions are applied consistently in the future. There is also a need to ensure there are no differences in approach when making decisions against the Immigration Rules.

Sponsorship Decision-making

- 4.78 In April 2011, some independent schools were automatically upgraded to HTS for 12 months. The Agency informed us that this was because they were the lowest risk category of sponsors who had a good record of compliance. However, after an initial 12 month period, they must re-apply to maintain their status.
- 4.79 We did not conduct a file sample for sponsorship cases, due to the complex nature of some applications and the time they take to decide. Instead, we observed sponsor caseworkers in their decision-making processes and also reviewed the guidance and policy that supports their work.

- 4.80 At the time of the inspection, there was no published target for dealing with an application from a sponsor. The Agency had set an internal target to decide 65% of all new applications in four weeks. However, this only related to new applications for A-rated sponsors. There was no target for HTS applications. Aside from any targets regarding the timeliness of decisions, we noted that individual caseworkers had a target to make the equivalent of two decisions per day.
- 4.81 We found a rigorous approach to decision-making on sponsor license applications. Staff had a good awareness of the impact that refusal of an application could have on an educational institution. There was also a commonsense approach adopted for applications when incorrect or insufficient information had been submitted. Instead of refusing the application, which meant a licence would not be issued and the sponsor would have to make a new application which would incur an additional fee, the Agency rejected the applications. This meant that where information used to support the application was incorrect or insufficient, the sponsors were given a chance to improve the quality of the application in order that a correct decision could be made. There was no additional application fee when an application was rejected.
- 4.82 Guidance for caseworkers was up to date and made available to all staff. Decisions were made using a matrix, known within the caseworking environment as a stencil. This provided instructions to caseworkers on actions to take for specific parts of the application. We felt this approach assisted in promoting consistency of approach when making decisions.
- 4.83 We examined the level of rigour for both A-Rated applications and those for HTS. A-rated applications included the following checks:
- checks of the Police National Computer and Immigration databases;
 - reports from Compliance Officers; visits are automatic if the institution has been trading for less than 18 months or they are a further education (FE) college;
 - eligibility checks on directors;
 - check of Companies House (if applicable);
 - referral against known risk profiles generated by the Agency’s Intelligence Unit.
- *We found a rigorous approach to decision-making on sponsor license applications*

- 4.84 For HTS applications, the sponsor must have been an A-Rated sponsor for at least six months, therefore additional records were checked when these applications were made. The additional checks included:
- details of CASs issued by the institution are checked to see which ones may be relevant to the application;
 - for every relevant CAS, the details are checked to ascertain:
 - attendance records of the student;
 - enrolment rate of the CASs that were issued;
 - percentage of CASs issued where the subsequent visa application was refused.
 - visit reports.
- 4.85 For HTS applications, the CAS data was provided by taking a download of data of all CAS data from the sponsor management system for the previous 12 months relating to a particular college. The data contained all information about a student, for example, details of their enrolment and attendance. Certain conditions had to be met in order for the college to achieve HTS, for example, if 20% of the CASs issued resulted in a refusal of a visa, this would result in the automatic refusal of HTS status. Notifications from the sponsor to the Sponsor Management System were also checked as well as checks being made against the Agency’s own IT caseworking systems. We found that this was a time-

consuming process, particularly for large institutions with thousands of international students, with decisions taking up to a week to be made.

- 4.86 However, we found that decisions made on sponsor applications were considered thoroughly and fairly. Refusals had to be authorised by a senior manager. This reflected the Agency's recognition of the potential impact on educational institutions and students if an application was refused.
- 4.87 We also found that a pragmatic approach was taken to some applications. For example, if an institution issued a very low number of CASs, but one or two resulted in the refusal of a visa, this could affect the prospect of a successful application for HTS, by taking them over the 20% refusal threshold. During our own consultation period with stakeholders in the early stages of the inspection, we were informed that sponsors felt it was unfair that factors outside of their control, e.g. refusals, were considered as part of the decision-making for HTS applications. It was therefore pleasing to note that in these cases, the Agency employed what they termed as 'holistic decisions' whereby a senior manager reviewed the case and advised the outcome to the caseworker.
- 4.88 The Agency did not record statistics on the number of decisions that were made using the holistic approach, but they estimated that the number was approximately 5%-10% of all decisions. We considered this pragmatic approach to be good practice, ensuring that sponsors with low numbers of students were not adversely disadvantaged by statistical data, particularly when the outcome did not reflect the data recorded on the stencil. However, we also considered there was a need to record the number of decisions made using this approach to enable the Agency to monitor consistency in making these decisions.
- 4.89 For applications that were refused, there was no right of appeal against the decision, however, the Agency allowed a sponsor to request reconsideration of the case. This operated in a similar way to the Administrative Review process for applicants overseas. When a reconsideration request was received, a manager would review the decision against the evidence provided. The decision of the reconsideration was then signed off by a senior manager. This was good practice. If the result of the reconsideration remained a refusal of the application, the only route available to the sponsor was seeking permission for a Judicial Review (JR).
- 4.90 Despite our generally positive view of the decision-making process, we did consider that the time taken to deal with applications in some cases was too long. With no specific target for making decisions, there was no accountability to process decisions in a timely manner on the Sponsor Licensing Unit. We found a number of examples where not only did the decision take a number of months to make but the customer service provided by the Agency was also lacking. In one such case, an application was made for the renewal of a HTS licence in June 2011 and the sponsor did not hear anything until the end of January 2012. It is unacceptable that the Agency can take so long to make a decision, and furthermore not maintain contact with the sponsor during the interim period keeping them up to date about the progress of their application. We also found in this particular case that the sponsor had made numerous requests to the Agency, none of which had received a response.
- 4.91 We were informed at the time of the inspection that backlogs were starting to build on sponsor casework. In April 2011, all independent schools received HTS status but had to renew after 12 months. As a result, approximately 600 institutions were required to renew in April 2012. This was on top of an existing backlog of 84 cases which pre-dated the HTS deadline of October 2011. The backlogs could result in delays to some applications, therefore the Agency should maintain contact with these sponsors, particularly in times when student applications are likely to increase and the institutions need the ability to issue a CAS.
- 4.92 The Agency must improve customer service when delays are incurred with applications. This issue was also raised during our own stakeholder consultation. Educational institutions commented that the 'UKBA takes weeks to respond to urgent issues and concerns'. They also felt there was a lack of

a single enquiry line for making contact with the Agency. In the absence of a good service from the Agency, they felt there was a reliance on their own representative organisations acting on behalf of the education sector, for example, Universities UK¹⁷ or the UK Council for International Student Affairs (UKCISA).¹⁸

- 4.93 In July 2012, The Public Accounts Committee (PAC) published its Seventh Report on Immigration: the Points Based System – Student Route.¹⁹ The PAC also commented that customer service provided by the Agency was in need of improvement.

Recommendation

We recommend that the UK Border Agency introduces and publishes a service standard for making decisions on sponsorship applications.

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

Intelligence and Risk

- 4.94 We examined how intelligence and risk profiles were used in each location to assist caseworkers and entry clearance staff in making decisions. Risk profiles provide caseworkers with details of potential risks based on numerous factors, for example, country and region of origin for the applicant, details of the sponsor and financial institution. The profiles applied a risk rating (High/Medium/Low) in order to guide the caseworker regarding the level of scrutiny which should be given to a particular application. Risk Profiles did not determine the decision on behalf of the caseworker, but were merely to be used as an aid to decision-making.
- 4.95 We also examined how this data was collated to ensure that the information being passed to staff deciding visa applications was accurate and up to date. For in-country applications, there was an intelligence team based in Sheffield. In New Delhi and Beijing, as with all overseas posts, there was a RALON section (Risk and Liaison Overseas Network) based within the Visa Section. RALON is an intelligence operation delivering objectives across the fields of Air, Risk and Criminality. One of the roles of RALON is to provide support to ECOs in their decision-making process by providing information and intelligence on known risks.

Sheffield

- 4.96 The Temporary Migration Intelligence Unit (TMIU) was responsible for all intelligence for in-country applications for extensions to existing Tier 4 visas and also for sponsorship. The unit collated information and intelligence and produced risk profiles for use by caseworkers and sponsorship management/licensing teams. There was a specific Risk Profiling team within TMIU who were responsible for this.
- 4.97 Risk profiles were issued in the form of caseworking instructions and were provided to staff both in hard copy format and also stored on the intranet for electronic reference. In order to ensure

¹⁷ <http://www.universitiesuk.ac.uk>

¹⁸ <http://www.ukcisa.org.uk/>

¹⁹ <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/101/10102.htm>

consistency across the teams, a Senior Case Worker in the Technical Team must have signed off the casework instruction before it was used. The Technical Team, which is part of the caseworking unit, provided advice and support to all Tier 4 caseworking teams.

- 4.98 The gathering and dissemination of intelligence and the production of instructions resulted from two specific meetings. The Analysis and Interpretation Meeting (AIM) and the Level of Rigour (LoR) meetings were both held on a monthly basis. The AIM was attended by senior managers and the LoR by operational staff. The AIM considered threat assessments²⁰ and the impact they had on temporary migration. The LoR considered the impact on caseworking and whether any new caseworking instructions were required, for example if additional scrutiny was required on particular documents.
- 4.99 We were provided with evidence of this process working well when the Agency found a trend in the use of false English Language test certificates from a particular test provider. The threat was considered by the AIM and caseworkers were instructed to check 100% of certificates from the relevant providers in an attempt to identify any that might be false.
- 4.100 In addition to the casework instructions, we found that each caseworking team was assigned an 'Intel Buddy' who was responsible for the dissemination of information to their caseworking teams. The Intel Buddy was responsible for circulating a monthly Intelligence newsletter called 'Into Intel'. The newsletter was circulated to approximately 2,000 staff and provided information on updates to guidance that affected caseworkers, key contacts within the TMIU and also details of any success stories that had emerged from the use of intelligence. This was good practice.
- 4.101 The Intel Buddy network ensured that there was a two-way flow of information between caseworkers and TMIU. There was also a referral process whereby caseworkers could provide information to TMIU if they felt it was worthy of further investigation and potential dissemination to other teams. We found evidence of positive collaboration and good relationships between the teams.

RALON staff had helped to train airline staff to identify passengers who should not necessarily have a visa

New Delhi

- 4.102 In New Delhi there was a good relationship between RALON and entry clearance staff.
- 4.103 RALON analysed relevant data, which resulted in the production of risk profiles. One risk profile highlighted high-, medium- and low-risk sponsors as well as banking institutions. The high and medium risks were based on the number of forged documents that had been used in an attempt to obtain visas. Institutions with high numbers of forgeries were considered to be high-risk and the profile was used to alert entry clearance staff that there might be a greater likelihood of documents being false, so they could carry out detailed checks as appropriate. For example, one report stated that 66% of all forgeries in a particular month related to financial information.
- 4.104 RALON staff regularly attended ECO and ECM meetings to ensure that any new information on risks was passed to staff. There was also one member of RALON staff assigned to an 'Operational' role each day, which meant they were the point of contact for ECOs to speak to if any advice was needed. This was good practice and highlighted the good relationship between both sets of staff.
- 4.105 We found evidence of work being carried out to ensure relevant information was being fed into RALON in order to produce risk profiles. We were told that RALON staff had helped to train airline staff to identify passengers who should not necessarily have a visa. In the early days of Tier 4, the post was receiving approximately 10 referrals a day from airlines. This number had significantly reduced as the rules for Tier 4 had been tightened.

²⁰ Reports based on intelligence which evaluate specific threats to the operation of the Temporary Migration Unit.

- 4.106 We also found that during 2011, in the South Asia region, RALON assigned almost half of its 18 staff to Tier 4 of PBS. The five main objectives of these staff were:
- Operation Bergan;
 - increase the level of interaction with Sponsor Management/Sponsor Licensing Units
 - build up risk profiles
 - influence policy where they could; and
 - introduce the Police Referral Programme (PRP) with the aim of disrupting agents, not students.
- 4.107 This approach had led to fewer refusals and some improvement in the quality of applications. It had also caused some conflict between some students and unscrupulous agents, because students were beginning to find out that the integrity of some agents was not what it should have been. Data confirmed that the refusal rate had dropped in New Delhi.
- 4.108 While we cannot say with certainty that these actions specifically contributed to the change in refusal rate, there appeared to be some correlation between the two. In 2010/11 the refusal rate for New Delhi for Tier 4 applications was 53%, in the year to date for 2011/12 (based on data provided in February 2012) the rate had reduced to 43%.

Beijing

- 4.109 There was a good relationship between RALON and entry clearance staff with an 'Operational' role being assigned each day in RALON to ensure that ECOs had a point of contact when seeking advice. RALON staff attended ECO and ECM meetings to receive any relevant feedback and also to update ECOs on changes to risk profiles or to communicate any intelligence.
- 4.110 We saw evidence of risk profiles being produced. There was an annual 'Tier 4 Risk Profile', which was updated each spring. The profile identified certain factors that ECOs should consider when dealing with applications. For example, the age, sex and originating province of the applicant could determine the level of risk applied to certain applicants. The profile was produced using data from the previous 12 months. Updates were provided throughout the year and alerts were produced when necessary. An alert was an ad-hoc notification to ECOs about potential new risks that could affect their decision-making.
- 4.111 We were also informed that staff in the Visa Section and the Visa Application Centre run by the Agency's commercial partners were provided with training to help identify fraudulent documents. We found evidence of good liaison with airlines to help airline staff identify passengers who should not necessarily have a visa. As with New Delhi, the number of referrals from airlines had reduced as the Tier 4 rules had been tightened.
- 4.112 The main finding however within Beijing was the use of an IT system called 'Informa'. This was a system that had been designed using a spreadsheet / database as a tool for the section to analyse a large amount of data and determine the level of risk that should be applied to an application. It was designed to remove the need for caseworkers to have to remember all of the risk profiles. It also saved time because caseworkers did not have to locate risk profiles if they were uncertain about whether something was a risk. The system also ensured that short term ECOs, who were used extensively in Beijing, did not require extended training on risk profiles.
- 4.113 Data was automatically drawn from numerous sources, for example, applicant data, the Agency's IT caseworking system, RALON data and profiles. Figure 16 shows what data was used to determine the profiles:

Figure 16: 'Informa' Data Sources

Applicant	IT Caseworking System	RALON
<ul style="list-style-type: none"> • Application category • Biographic details • Location details • Previous applications • Sponsors 	<ul style="list-style-type: none"> • Previous decisions • Sponsor's history 	<ul style="list-style-type: none"> • Risk profiles • Database of sponsors associated with fraud • Tier 4 sponsors of concern • Applications with suspicious links • Summer school agents blacklist²¹

- 4.114 After initial data had been entered on to the Agency's IT caseworking system, the system generated a routing instruction detailing where the case should be sent next in the Visa Section for action depending on the level of risk that Informa produced. This routing could be straight to an ECO for a decision (low-risk) or to a pre-sift section and document verification checking unit (high-risk). When the ECO received the application, either straight from the data input section or following additional checks, they did an Informa search to review a summary of the risk that applied to the application. The review screen showed Red or Green annotations to identify whether a profile of high (Red) or low (Green) risk applied to the case.
- 4.115 We found that staff in all units within the section thought highly of the system and agreed that it saved time and effort. ECOs did not have to remember everything in the risk profiles because they were all loaded into Informa. Any changes to Informa had to be approved by an ECM and RALON, so there were controls in place to protect the integrity of the data used to calculate the risk.
- 4.116 However, we did identify some risks relating to the system. The system had been designed by an experienced ECO within the Visa Section who had acquired considerable knowledge in setting up and maintaining the system. There was no support for the system from central IT and therefore, if the system failed and the designer was not available, system faults would not be rectified immediately. We also questioned why a tool of this nature, which had obvious benefits, was not in use in other Visa Sections. We were informed that a number of posts had viewed the system and shown an interest but that the Agency's new Integrated Casework (ICW) system, currently being developed and piloted, will supersede all existing systems. However, it was not clear whether similar functionality will be provided by ICW and if the same benefits would be available.
- 4.117 Another potential risk we identified was that ECOs could use the system as a decision-making tool, particularly during busy periods. If all indicators are green, there was a risk that they could issue a visa without a full and careful consideration of all of the evidence. We did not see that this risk had materialised and our file sample showed that all evidence was being considered, however, the Agency must ensure that there is sufficient mitigation to reduce the chance of the risk occurring. The Agency should also assess the feasibility of continuing to use Informa as it moves forward with ICW, considering whether any benefits can be achieved by rolling out the system beyond Beijing in the interim period.

Detailed Checks

- 4.118 Visa Sections are required to have processes in place to carry out detailed checks on visa applications, for example, to verify the authenticity of documentation. Such checks were being made in each inspected location by specialist teams.

21. In Beijing, agents who work with children/school groups attending summer schools in the UK must apply to the Agency for permission. Failure to comply with the scheme will result in the agent being placed on a blacklist, which prevents them from representing applicants in the future.

4.119 We considered whether the Agency had been effective in carrying out verification checks of documents. In cases where no detailed check had been made, we assessed whether a check should have been undertaken. Figure 17 shows the number of cases where we felt additional checks should have been made:

Figure 17: Cases Without Appropriate Verification Checks			
Location	Number of Cases Examined	Cases Without Appropriate Checks	%
Sheffield	135	2	1.5%
New Delhi	130	1	0.8%
Beijing	130	0	0%

This illustrates that the Agency was undertaking detailed checks where appropriate in virtually all cases. We observed verification processes in each location and found that all necessary checks were carried out. In Sheffield, we found that documents originating from the UK were checked locally but also, for documents originating outside the UK, the International Liaison Unit (ILU) was able to conduct checks in conjunction with colleagues in overseas locations.

Use of Interviews

4.120 The Agency experienced a surge in applications from the South Asia region prior to a published rule change on Tier 4 in April 2011, increasing the level of proficiency of English Language which applicants for Degree courses needed to achieve. In response to this surge, the Agency introduced Operation Bergan, which we referred to earlier in this report at paragraph 4.22. The Agency considered that applicants' English Language ability was not being adequately assessed by sponsors and that a number were issuing a CAS despite applicants not having the appropriate understanding of English. Sponsors could assess English capability by video conferencing using an internet link. The Agency identified a risk that imposters²² could be used for these interviews.

The Agency experienced a surge in applications from the South Asia region prior to a published rule change on Tier 4 in April 2011

4.121 As a result, the region was tasked with interviewing applicants from sponsors deemed to be the highest risk, in order to assess their English Language. The findings of these interviews were used to inform the Sponsor Management Unit of any concerns that were identified. The Sponsor Management Unit would then take action against a sponsor if it was found they were not complying with the obligations of their sponsor licence. The purpose of the interview was to:

- make an assessment of the applicant's English language proficiency;
- identify evidence of misrepresentation on the CAS;
- establish evidence of misrepresentation by the applicant; and
- provide sufficient evidence to refuse the application where appropriate.

At the Visa Section in New Delhi, interviews were being used to assess English Language

4.122 At the Visa Section in New Delhi, interviews were being used to assess English Language. This was because a risk had been identified that some applicants continued to attempt to obtain a visa despite not achieving the required levels of English language ability.

4.123 The Visa Section in New Delhi had also been part of a wider pilot exercise to assess the viability of conducting interviews for Tier 4 applications. Between December 2011 and February 2012, over

²² An individual who assumes the identity of the applicant in an attempt to deceive the Agency.

2,300 applicants were interviewed across 13 Visa Sections to test the effectiveness of interviewing Tier 4 applicants, particularly in relation to their intentions to study and their credibility as a genuine student. The pilot was also used to assist in assessing a potential requirement for new powers of refusal under the Immigration Rules.

- 4.124 The pilot was considered a success and the Visa Section in New Delhi had continued to use interviews as an effective tool for assessing English Language. We saw evidence that this approach was successful in identifying applicants who did not have sufficient proficiency in English. Staff informed us that imposters were often identified, for example, either taking a test on behalf of an applicant or attending interviews. When imposters were identified, there were effective relationships between the Visa Section, RALON, the British Council and the local Police to ensure that imposters were dealt with and intelligence gathered to ensure that future immigration risks could be mitigated. We witnessed one such case whilst on site in New Delhi, the details of which are highlighted in Figure 18.

Figure 18: Case Study – Interview regarding English Language Proficiency, New Delhi

The applicant:

- had appeared as a possible match on a Home Office database in relation to forged documents being submitted during English Language tests;
- had a previous test cancelled due to the use of a forged passport;
- submitted a false English Test Report Form with her visa application.

The UK Border Agency:

- checked the IELTS database for the results of her test and compared them to the Test Report Form that had been submitted: the test results on the form did not match the database;
- invited the applicant in for interview and arranged for the British Council's Exams Compliance Manager to be present to examine documents;
- identified that fraudulent documents had been used when sitting the English Language Tests.

Outcome:

- the Agency referred the case to the Delhi Police on suspicion of Cheating (S.420 of the Indian Penal Code) and Forgery for the Purpose of Cheating (S.468 of the Indian Penal Code);
- Delhi Police conducted an interview with the applicant;
- intelligence on a local agent was collected and shared between the Police and the Visa Section in order that risk profiles could be updated;
- under general grounds for refusal under paragraph 320 7(A) of the Immigration Rules, the applicant would be automatically refused entry into the UK for a period of 10 years.

Chief Inspector's Comments:

- This was a very good use of the interviewing facility to ascertain more facts when suspicion arose regarding the authenticity of an application;
- the cases showed excellent links between the Agency, the British Council (who have responsibility for English Language testing) and the local police;
- security of the Border was maintained because a non-genuine student was prevented from travelling to the UK.

- 4.125 We also found that interviews were being used in Beijing, not just to test English Language proficiency, but also to test the credibility and intentions of potential students. In Beijing, we were informed by senior managers that interviews for applicants whose credibility had caused concern for ECOs had been conducted since Tier 4 was introduced. Where a student met the criteria to be awarded full points for the CAS and maintenance, and therefore should have been granted a visa if the application did not fall for refusal under general grounds, the Visa Section was making a decision based also on credibility or intentions of applicants. If the ECO suspected that all was not genuine regarding the applicant's credibility or intentions and they could not refuse the application under general grounds for refusal, the Beijing Visa Section had implemented a process to enable them to refuse to issue a visa although there was nothing in the Immigration Rules that allowed the Visa Section to refuse on this basis. Staff made contact with sponsors to alert them of their concerns, and asked them to withdraw sponsorship, therefore giving the Visa Section a valid reason for refusal.
- 4.126 While we understood that the Beijing Visa Section undertook this action with the intention of protecting the border, this practice was not within the spirit of what Tier 4 was introduced to achieve in 2009. Tier 4 was meant to provide a transparent approach to decision-making because all decisions would be evidence based. In addition, in order to influence sponsors to withdraw the CAS at the request of the Agency, we noted that strongly worded requests were made to sponsors. We saw evidence of this during our file sample when letters to sponsors included the following:

'The Entry Clearance Officer has assessed the intentions of the student through interview and found them to be questionable. We strongly recommend you withdraw sponsorship for this applicant who we do not believe to be a genuine student. If however you wish to maintain sponsorship, a visa may be issued, but we will notify the Sponsor Licensing Unit in order for them to confirm the arrival and attendance of the student at your institution.'

- 4.127 Sponsoring a student who does not enrol or who does not subsequently attend all necessary lectures is an area of sponsorship where the Agency can gather evidence with a view to suspend or revoke a licence. We raised this practice with sponsors, who stated that they felt compelled to agree with the Agency because they did not want any adverse information on their sponsorship record which could affect their sponsorship. However, they also stated that this approach could result in a reputational risk to their institution because in such cases they cannot tell the student why sponsorship has been withdrawn. This could have an impact on the institution's ability to recruit students in the future.

- 4.128 When we raised this with the Agency, managers stated that the line used in the email was used as a reminder to the sponsor of their obligations, which should be considered for all students. While we understood the reasons for this practice, we were concerned that it meant that ECOs were not making decisions based on the merits of the case, but using alternative methods to ensure that the relevant number of points could not be achieved. However, due to the change in the Immigration Rules, staff now have the ability to test whether a student is genuine or not and to refuse if they are not satisfied. Managers in Beijing confirmed that they would adopt the process within the new instruction.

While we understood that the Beijing Visa Section undertook this action with the intention of protecting the border, this practice was not within the spirit of what Tier 4 was introduced to achieve in 2009

Sponsorship Management & Licensing

- 4.129 As with caseworking in Sheffield, the Temporary Migration Intelligence Unit was responsible for the collection and dissemination of intelligence in relation to Sponsorship Management and Licensing.

Written summaries were provided for all new applications for sponsor licences, licence renewals, applications for HTS and all change of circumstance requests. The summary was used by compliance staff to determine whether a visit to the sponsor was required or whether any further investigation should be carried out. This process was also supported by the sponsor watch list, which was managed by the TMIU. Data from numerous sources, including International Operations & Visas (overseas visa sections), Border Force and other parts of the Immigration & Settlement Group was collated and analysed to feed into the watch list. This list identified sponsors who had caused concern or who had failed in their sponsor obligations in the past.

- 4.130 We found that overall the use of intelligence was good in relation to sponsors. However, we did find some areas for improvement which could benefit the service as a whole. We found that intelligence from Local Immigration Teams (LITs) was not always shared with the TMIU and feedback from the LITs following compliance visits was not always provided. The result of a Compliance Visit was a formal report written to assist in determining whether a sponsor should be considered for achieving sponsorship status following a new application, retention of their licence following a renewal application, or revocation/suspension of a licence due to non-compliance. The reports were not routinely sent to the TMIU and therefore did not always contribute to future summaries if required.
- 4.131 In addition, we were informed that there was a lack of some specialist knowledge on the teams when considering complex issues. For example, one factor taken into account when considering sponsorship applications was the financial management of the educational institution and that it should not be operating at a loss. We were informed by staff that they were not trained in finance, for example in understanding profit and loss accounts, and therefore in some cases, a proper assessment of financial data could not be carried out. We reported similar findings in our inspection of Tier 2.
- 4.132 In this section, we also consider how the Agency investigated offences as a result of sponsor management or sponsor compliance activity. In March 2012, the National Audit Office published its report 'Immigration: The Points Based System – Student Route'²³ which noted the Agency's failure to deal with notifications made by sponsors on the sponsor management system. Figure 19 refers to the number and types of notifications received by the Agency up until March 2012.

Figure 19: Number of Notifications to the Sponsor Management System by Category

Migrant Reporting Activity	Total Count of Activity
Significant change in student's circumstances	62,085
Sponsor has stopped sponsoring the student	29,001
Student has discontinued his/her studies	16,314
Student has failed to enrol on course within enrolment period	31,930
Student has missed 10 expected contacts without permission	11,697
Student may have breached the conditions of his/her leave	1,766
Total	152,793

*Data Provided by the UK Border Agency

- 4.133 We found that there were no targets to deal with these notifications and that they were only dealt with when resources permitted. The only exception to this was if a student was considered high harm using the HARM Matrix.²⁴ As a result, there could potentially be thousands of migrants in the UK who were not complying with the conditions of their visa and whose leave should have been curtailed by the Agency but had not been. One Senior Manager informed us that at the time of the inspection

²³ http://www.nao.org.uk/publications/1012/points_based_immigration.aspx

²⁴ The HARM matrix is a tool to assess the level of harm in a particular case and/or individual. Its intention is to provide a simple and intuitive tool that allows decision-makers across the Agency to assess harm in a consistent way.

there were potentially 26,000 students whose leave should have been curtailed²⁵ and who should have had enforcement action taken against them. The fact that the Agency had not yet identified that leave should be curtailed is a significant failing. There is a concerning parallel between the Agency's lack of proactivity on these cases and its failure to deal with the 159,000 cases in the Migration Refusal Pool that we identified in our Inspection of the Local Immigration Team in Hampshire and the Isle of Wight.²⁶ The NAO report also highlighted a concern that the Agency was not dealing with notifications for students whose leave had been curtailed.

4.134 In May 2012, the Agency launched Operation Mayapple to identify individuals who could be in the UK and who were not complying with the conditions of their leave. All notifications to the SMS were analysed by a team of staff in Sheffield. The results of the analysis showed that many notifications were related to minor issues, for example, a change of address for a student which did not affect the student's permission to stay. However, for more serious notifications, which indicated that students were not complying with their leave conditions, a process had been introduced to ensure that a referral was sent to the relevant Local Immigration Team (in the area where the student had a last known address), so that enforcement action could be taken. At the time of the inspection, Operation Mayapple had just started, so we were unable to determine the success or otherwise of this work.

There is a concerning parallel between the Agency's lack of proactivity on these cases and its failure to deal with the 159,000 cases in the Migration Refusal Pool that we identified in our Inspection of the Local Immigration Team in Hampshire and the Isle of Wight

4.135 The action taken by the Agency in relation to Operation Mayapple was a positive step forward in ensuring that students who fail to comply with their conditions of leave are tackled and removed from the UK. However, we had some concerns with this approach, including:

- staff carrying out the review of notifications were drawn from other teams within Temporary Migration;
- this 'fire fighting' approach to the analysis of notifications cannot be sustained without an impact on other areas of the business, e.g. caseworking;
- different priorities between Temporary Migration (Sponsor Compliance) and Local Immigration Teams.

4.136 The last point above was particularly relevant because although the Temporary Migration Units in Sheffield saw the curtailment of leave and appropriate enforcement activity as a priority, the Local Immigration Teams who carried out the enforcement activity were not under the command of Temporary Migration. As a result, conflicting priorities could prevent some of the enforcement activity for Tier 4 students being taken in a timely manner. For example, LITs had a priority to remove Failed Asylum Seekers and Foreign National Prisoners because they were deemed to be a bigger threat to the UK, and needed to balance their resources against these priorities.

4.137 We had similar concerns in relation to the Compliance Officers. Compliance Officers carried out the function of conducting visits to sponsors, either when they applied for a sponsor licence or if intelligence suggested that compliance action was required. We were informed by managers and Compliance Officers that conflicting priorities had impacted on the number of visits that were being carried out because Compliance Officers came under the command of a LIT manager, the same as enforcement teams. As a result they were often assigned tasks that were a higher priority to the LIT. This was a problem that was beginning to show signs of improvement with the number of visits increasing on a yearly basis.

²⁵ When the permission of a student to remain in the UK has either expired or been withdrawn by the Agency.

²⁶ <http://icinspector.independent.gov.uk/wp-content/uploads/2012/06/ICIBI-Inspection-of-Hants-IOW-LIT.pdf>

- 4.138 We saw evidence that Compliance Officers had a target to carry out a set number of visits per month. The target was 8.4 visits per full time equivalent member of staff (FTE). This target was exceeded in three out of 11 months between April 2011 and February 2012. We received information that the objective was to increase this target to 16 visits per month per FTE. Overall, we saw that the target for the year to date in February 2012 was 5,133 visits. The Agency had actually achieved 6,475 visits by this time. It was unclear whether this number of visits was sufficient or not, however the evidence provided suggested that improvements were being made with 11.8 visits per FTE being achieved in February 2012, compared to 4.9 in April 2011. It should be noted that these figures include visits to sponsors across all Tiers of the PBS, however, we were informed that Tier 4 visits are given the highest priority.
- 4.139 In order to gain more control over the tasking of the Compliance Officer network, which numbers approximately 140 staff, we were informed that a proposal had been submitted to the Agency Board to change the line management structure to bring them under the control of the Sponsor Management Unit at Sheffield. This would ensure that the priority given by sponsor management to tasking would be mirrored in the tasking of the Compliance Officers, ensuring all relevant visits are carried out. It was unclear, however, at the time of our inspection whether this proposal would be accepted or not.
- 4.140 In addition to the management of the Compliance Officers, we also considered the training that they received. There used to be a lack of consistency or an agreed format for producing reports made by Compliance Officers. There was also no specific training relevant to their role. However, as a result of some Judicial Reviews, we found that significant improvements had been made to their role.
- 4.141 A new training regime linked to vocational qualifications was introduced in June 2012. The aim of the training was to ensure that all officers were trained to a consistent standard across the network. In addition, using feedback from Judges about how evidence had been presented, there had also been changes to the way that reports were produced and how the compliance visit was carried out. Visits were structured with specific instructions for Compliance Officers. They were also instructed to report in a specific way including all relevant information. In addition, all reports were returned to the Sponsor Compliance Unit at Sheffield who would reject reports if they were not to the required standard.
- 4.142 We observed a compliance visit and found that the changes that had been introduced had been implemented. We were satisfied that the visit we observed was conducted in accordance with Agency guidance. We were pleased that the Agency was learning and making improvements to the business as a result of findings within the Judicial Review process.
- 4.143 We also considered the powers assigned to Compliance Officers. Compliance Officers were not warranted officers like enforcement teams; therefore they did not have a power of arrest and could take little or no action if they encountered someone who was in breach of immigration laws. We found that if an officer on a visit encountered a student who, for example, had overstayed under the terms of their existing visa, the Compliance Officer could only refer the matter to an enforcement team to take action. They had to leave the sponsor premises and the student and hope that the follow up action was carried out. This was an area of weakness which the Agency should address.

Recommendation–

We recommend that the UK Border Agency takes all necessary steps to ensure that resources are effectively allocated to deliver its obligations in respect of:

- sponsorship decision-making and notifications on the Sponsor Management System;
- the identification of students who have failed to comply with the obligations of their leave and whose leave should be curtailed;
- locating and removing students whose leave has been curtailed.

Paragraph 320 7(A) & (B) and Paragraph 322

4.144 Figure 20 provides an explanation of Paragraph 320 and its sub-paragraphs & Paragraph 322:

Figure 20: Paragraphs 320 and 322 of the Immigration Rules

- Paragraph 320(7a) is one of the general grounds for refusal and is used when a forged document has been submitted or false representations have been made or material facts not disclosed – in these cases refusal of entry clearance will follow. Paragraph 320 is used for applications made overseas.
- 320(7b) is used when there has been a previous breach of immigration law or the use of deception in an entry clearance application, and depending on the circumstances can result in the refusal of any future entry clearance applications for a specified time, up to a maximum of ten years.
- 320(11) is a discretionary power to refuse an application for frustrating the intentions of the Immigration Rules. This applies where the applicant has been in breach of UK immigration or other law and / or received services or support to which they were not entitled. For this paragraph to apply there must have been aggravating circumstances. Examples of aggravating circumstances include absconding, engaging in a sham marriage, or using an assumed identity to illegally obtain state benefits.
- Paragraph 322 is also one of the general grounds for refusal and is used when a forged document has been submitted or false representations have been made or material facts not disclosed. Paragraph 322 is used for in-country applications and in these cases, refusal of an extension will follow.

- 4.145 As part of our file sample, we examined whether the Agency was identifying in an effective way the cases that fell for refusal under these paragraphs. We also examined whether all such cases were the subject of review by an ECM or Senior Caseworker, as required by Agency procedures.
- 4.146 In Sheffield, only one case in the sample had been refused under Paragraph 322. This concerned a bank statement, which following verification with the issuing bank was confirmed to be false. However, we found that while the case was correctly refused under Paragraph 322, it had not been reviewed by a Senior Caseworker. All cases refused under these paragraphs should be subject to a line manager review. The Agency accepted that this had been overlooked in this case.
- 4.147 In New Delhi, we found seven cases out of 65 refusals which had been refused using Paragraph 320 7(A). In all cases we agreed that Paragraph 320 had been used correctly. For example, false educational certificates had been provided and a false bank statement had been submitted.
- 4.148 In six cases, the ECM had conducted a review as required by the Agency. The Agency accepted that in the remaining case, the review of the decision had been overlooked.

- 4.149 In the Visa Section in Beijing, 16 of the 65 refusal files that we sampled were refused under Paragraph 320 7(A) or 320 7(B). Having reviewed these 16 cases, we were satisfied that Paragraph 320 was used appropriately. The types of applications refused under Paragraph 320 included:
- forged educational certificates (six cases);
 - forged English Language Test Report (two cases);
 - false claims about previous employment (two cases);
 - imposter used to conduct English Language test.
- 4.150 Regarding ECM reviews of the Paragraph 320 refusals, we noted that only 13 of the 16 files had been reviewed in Beijing.
- 4.151 Refusals on these grounds were being applied correctly in all three locations. The only area for improvement was that the Agency must ensure that all cases of this nature are reviewed by ECMs in overseas posts, or by a Senior Caseworker for in-country applications in Sheffield.

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

- 4.152 Our inspection did not identify any particular trends in the complaints process relating to Tier 4 applications. We examined the complaints logs in all three locations as well as the process and areas of responsibility when dealing with complaints. We also examined how complaints against the Agency's commercial partners were handled.
- 4.153 The complaints processes were well established in each location and complaints were being recorded appropriately. However, the recording format differed across all three locations. All were using a spreadsheet, but the details included in the spreadsheets differed. For example, in New Delhi, the time taken to process the complaint was recorded whereas in Beijing, this was not included in the evidence provided to Inspectors. In Sheffield, details of timeliness were recorded and a summary report was produced for senior managers. In order to effectively assess how complaints are being managed, the Agency should ensure that recording is consistent in all locations.
- The complaints processes were well established in each location and complaints were being recorded appropriately*
- 4.154 Unfortunately, not all locations could provide exact numbers for Tier 4 complaints because they did not all record complaints by category of visa. For example, the complaint log for Beijing only showed the total number of complaints per month for the Visa Section and the type of complaint received. The type of complaint was broken down into categories, which included delay, discrimination and processing errors.

Sheffield

- 4.155 In Sheffield, complaints were received into the Customer Service Unit where the complaint was recorded before being passed to the unit head to investigate the complaint and prepare a response. The target for dealing with complaints was that 95% should be completed within 20 days. This was measured from the date the complaint was received by the Agency to the date a response was sent out. We were provided with an example of a summary report for March 2012. The report showed the number of complaints received in relation to Tier 4 and the proportion of complaints dealt with

within the target time. The report showed that Sheffield dealt with 121 service complaints with 115 (95%) being dealt with in the target time.

- 4.156 We found through our stakeholder engagement activities that there were numerous complaints from educational institutions about the quality of the customer service received, particularly when queries were addressed to the Agency and especially regarding batch processing.²⁷ Batch processing had been the responsibility of a separate unit based in Croydon, where some cases had been waiting up to 12 months to be processed. However, at the time of the inspection, the responsibility for this work had transferred to Sheffield. Feedback from stakeholders indicated that since the transfer of work had taken place, service levels had improved. During our inspection we witnessed good customer service in responding to queries and emails.

New Delhi

- 4.157 In New Delhi, complaints were received either direct to the Visa Section by email or letter. Complaints could also be made against the commercial partner which operated the Visa Application Centre (VAC). We reviewed the complaints log and were pleased to note that complaints made against the Visa Section were recorded as well as those made against the VAC. The log showed that only six complaints were made that specifically related to Tier 4. The nature of the complaints ranged from delays, incorrect visa endorsement and decision-making. Of these complaints, only one was upheld. This related to an incorrect endorsement on a visa which had prevented the student from carrying out part time work in the UK. The log showed that the applicant was advised to contact the Agency to have the visa rectified. The length of time to deal with complaints ranged from 8 days to 18 days with all complaints dealt with within the target time.

Beijing

- 4.158 In Beijing, records showed that only four complaints were made that specifically related to Tier 4. None of these complaints were substantiated. The basis of the complaints covered; delay, admin/ process error, incorrect information/quality and poor communication.
- 4.159 Records for Beijing also showed the complaints made at the VAC as well as those made direct to the Visa Section. Unfortunately, records did not indicate how long it took the Beijing Visa Section to deal with the complaints.

Complaints involving Commercial Partners

- 4.160 In both overseas locations, processes for managing complaints with commercial partners were embedded within the Visa Section. We saw evidence that all complaints were recorded and discussed at regular meetings between the Visa Section and the VAC. Applicants were provided with sufficient information on 'how to complain' when they were at the VAC. Information was provided with Agency branding clearly indicating that the service provided by the VAC was being provided on behalf of the Agency.
- 4.161 While we found evidence of good collaboration between the Agency and commercial partners overseas when dealing with complaints, we were concerned with the approach in Sheffield. The Post Office is a commercial partner for the Temporary Migration Unit in Sheffield. It was contracted to provide a service for applicants to submit their biometric information prior to a decision being made on their visa. The service provided was known as the Front Office Services (FOS) project.
- 4.162 The FOS project was new at the time of our inspection in Sheffield and the service was continuing to be rolled out to Post Office establishments across the country. However, when we discussed how complaints about the Post Office service were managed, we were informed that these complaints

²⁷ A facility which enables educational institutions to send multiple applications to the Agency as a batch on behalf of their students when extensions to existing visas are being applied for.

were sent to the Post Office and that the Agency did not have any involvement in them. This demonstrated an inconsistent approach to the one taken overseas where the contract was managed in a collaborative way and any complaints were reviewed with a view to improving the service offered. This was not evident in Sheffield. There is a need to ensure that, where a commercial partner provides a service on behalf of the Agency, the Agency is kept informed about all issues that are affecting that service. This should include complaints and the Agency needs to ensure that a process is introduced whereby all complaints about the Post Office FOS project are collated and discussed between all parties.

Sponsorship Complaints

- 4.163 Regarding complaints relating to sponsorship, we found that, unless a sponsor wrote to the Customer Services Unit, no log was kept of the number or types of complaints being received. We found that in most cases sponsors would email a senior manager with responsibility for the sponsorship function directly using their Agency email address. In order to analyse complaints properly, the Agency must ensure that a robust process to capture all of the information is maintained.

Recommendation –

We recommend that the UK Border Agency ensures that all complaints, including those relating to Sponsorship and the Agency's commercial partners, are recorded, monitored and analysed consistently to achieve performance improvement.

5. Inspection Findings – Safeguarding Individuals

All people should be treated with respect and without discrimination except where the law permits difference of treatment.

- 5.1 In Beijing, applicants were being interviewed if ECOs had concerns over their intentions or credibility. Although we found no evidence that applicants were being discriminated against when being considered for interview, only applicants in Beijing were being subjected to interviews to test intention and credibility at that time. However, this meant that applicants in Beijing were facing additional requirements to those people making applications in New Delhi or in Sheffield.
- 5.2 As previously reported, during the inspection the Immigration Rules were changed to introduce a new paragraph (245ZV(k)), which placed a responsibility on ECOs to be satisfied that an applicant was genuine. This means that as of 30 July 2012, applicants could be interviewed to test intention and credibility at all Agency Visa Sections.
- 5.3 Other than the interviewing at the Visa Section in Beijing, we were satisfied that all decisions were dealt with on a case by case basis, based upon the evidence provided with the application and in accordance with the Immigration Rules. The file sampling and staff focus groups confirmed these findings.

Functions should be carried out having regard to the need to safeguard and promote the welfare of children.

- 5.4 The Agency has a responsibility to protect the welfare of children, both in the direct safeguarding of children and also promoting the welfare of children.
- 5.5 We found no evidence to show that the Agency in Sheffield, New Delhi or Beijing was failing to comply with this requirement. Staff at all locations had received the mandatory training on 'Keeping Children Safe' and there was a good level of awareness of what safeguarding children means. The file sampling we conducted also supported this finding. While the number of child applications in our file sample was low (7 out of 432), all files sampled showed that the additional requirements for children had been considered appropriately, for example:
 - a case from Sheffield had been refused because the bank account showing the required funds was not in the name of a parent or guardian;
 - in New Delhi, an application was made using a forged birth certificate: the document was sent for verification and confirmed to be false, and the application was refused;

- in Beijing, insufficient documents had been submitted to confirm the guardianship of a child: this case was also refused.

5.6 In addition to the extra checks that ECOs conducted for child applications, we also found good evidence in Beijing of a scheme that both promoted the welfare of children and also improved the quality of applications being made to the Visa Section.

5.7 The Agent Registration Scheme was a collaborative scheme between the Agency and the British Council. It was introduced to facilitate travelling school groups and placed a requirement on agents to register themselves with the British Council. The registration operated in a similar way to that of a sponsor, however, the scheme was not as formal. Nevertheless, the scheme placed certain responsibilities on the agent before they could register and make group applications. The requirements included:

- ensuring that applications are completed fully and with all required evidence before they are sent to the post;
- ensuring that documents are checked for forgeries before the applications are made;
- ensuring that the reason for travel to the UK is a genuine one;
- reporting back to the UK Border Agency if any child absconds whilst on the trip.

Staff at all locations had received the mandatory training on 'Keeping Children Safe' and there was a good level of awareness of what safeguarding children means

5.8 Failure to comply with these requirements could result in suspension from the scheme, although, at the time of the inspection, the detailed rules surrounding this element of the scheme were still being developed. However, we were provided with evidence of road shows and meetings held by the Agency and the British Council to promote the scheme to prospective agents. All staff were aware of this scheme and commented that it had improved the quality of applications that they received. This joint approach by staff in Beijing and the British Council was good practice.

5.9 However, we identified an area for improvement for in-country applications made in the UK, where the Post Office was responsible for collecting applicants' biometrics for extensions of a visa or switch into Tier 4.

5.10 If a child required their biometrics to be taken, they had to be accompanied to the Post Office by an appropriate adult who could confirm their relationship status to the child or the guardianship of the child. We were informed by a number of staff that reports had been received of the Post Office being unable to verify the identity of the appropriate adult. In cases where this occurred we were informed that the Post Office process was simply to refuse to administer the biometric collection, sending both the child and adult away.

5.11 This information was verified by a manager with responsibility for the project and therefore raises concerns about the potentially differing standards towards dealing with children between the Agency and its commercial partners. We were informed that the current contract did not contain any provision for the Post Office to raise their concerns with anyone in the Agency, Police or Social Services if they had doubts about the appropriate adult who accompanied a child. We also found that the contractors in this case did not receive the same training as Agency staff in relation to Safeguarding Children and at the time of the inspection, there was nothing in the contract to ensure that standards in relation to children were adhered to.

5.12 This was a serious omission from the contract, and the Agency should ensure that where contractors are used, any standards adopted by the Agency should also be a minimum requirement for the contractor. However, we were informed that the contract was under constant review and when this issue was raised with the Agency, and they agreed to give this consideration.

Recommendation –

We recommend that the UK Border Agency protects children and vulnerable people by ensuring that all commercial partners who interact with these people:

- are trained to the same standard as Agency staff in the relevant Safeguarding functions; and
- have robust mechanisms in place to report any concerns about individuals to the Agency.

Personal data should be treated and stored securely in accordance with the relevant legislation and regulations.

- 5.13 There was good awareness amongst staff in all three locations of the need to protect personal data. All staff had completed the Agency's mandatory training on 'Safeguarding Personal Information'.
- 5.14 Comprehensive policies were in place in Sheffield and New Delhi for staff to leave desks clear when they left the office. In Sheffield, Home Office policies on securing personal data were in place and enforced. There was also a local guide for dealing with security breaches, which detailed the responsibilities of staff if they discovered a breach. We noted that if a minor breach occurred, staff received a warning in the form of a yellow card. This information was then passed to line managers to ensure that staff were reminded of their responsibilities.
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- the Agency should ensure that where contractors are used, any standards adopted by the Agency should also be a minimum requirement for the contractor*
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- 5.15 The local policies in place at Sheffield were similar to those which we found in New Delhi. Both had a checklist which was used by staff who were last to leave the office, or by security staff who checked the building once the staff had left. The checklist, published as part of Home Office policy, ensured that all security risks were considered.
- 5.16 In Beijing, the approach was slightly different in that a clear desk policy was not in place and staff were allowed to leave files on their desks if the file was still being worked on. A clear desk policy was not considered to be practical by local managers who also pointed out that there were security measures in place restricting access to authorised Visa Section staff only. This issue was more prevalent during peak periods when there were known surges in the number of applications. However, the post was still subject to Embassy security sweeps with reports being provided to managers on the outcome of these sweeps. We were provided with a copy of an email dated 27 March 2012 from the Post Security Officer to the Operations Manager which states 'An excellent outcome from last night's sweep'. It goes on further to highlight some minor points about workstations being left logged on, but locked, but that 'overall, very good result'
- 5.17 In addition to the policies and training in place, we also considered the number of times that personal documents had been lost or misplaced. These documents could include passports, birth certificates or bank statements that had been submitted as part of a visa application.
- 5.18 Between 1 April 2011 and 31 March 2012, there were 97 investigations in Sheffield relating to lost documents from Tier 4 applications. Of these the Agency reported that 81 were lost in transit by the Royal Mail, and 16 lost by the Agency. Of the 16 that were lost by the Agency, seven had been sent to an incorrect address with the remainder being lost within the office.

- 5.19 For the period January 2011 to December 2011, there were no complaints of lost documents in Beijing relating to Tier 4 applications. However, the post did report that they had experienced a number of instances of misplaced documents which had been placed in the wrong part of a file and were therefore not returned to the applicant at the appropriate time. The post had identified the cause of this and had amended processes to ensure that the risk of further instances was reduced.
- 5.20 In New Delhi, there were no complaints of lost documents for Tier 4 applications between 1 April 2011 and 31 March 2012.
- 5.21 Despite the clear policies and training on safeguarding personal data, there is some work to be done in Sheffield to ensure that personal documents remain protected. The number of lost documents is low in comparison to the overall number of applications. However, the impact on the applicant can be significant. For example, if a passport is lost by the Agency, the applicant could be faced with the inconvenience and time delay of having to apply for a new passport from their embassy. Any delay could prevent the applicant from travelling home if there is a need to do so.

Files for Sampling

- 5.22 The ease with which files are provided by the Agency can be an indicator of the effectiveness and efficiency of the file storage processes that are employed. For the file sampling carried out before we went on-site, each location was given at least two weeks' notice to prepare the files that we had requested. For the on-site sampling that we conducted, this period was reduced to less than a week because we requested files that had been worked on very recently.
- 5.23 We experienced no problems in relation to the files coming from New Delhi and Beijing. For the files we requested from Sheffield, 15 out of 150 files (10%) could not be located in time for the sampling. All files could be located but could not be provided on time. This was of some concern to us and is an area the Agency needs to address.

6. Inspection Findings – Continuous Improvement

The implementation of policies should be continuously monitored and evaluated to assess the impact on service users and associated costs.

The Tier 4 Guidance

- 6.1 The Tier 4 guidance for applicants and sponsors has been the subject of many changes and revisions since the introduction of PBS in 2008. At the time of the inspection, we found there had been over 180 changes to the applicant guidance during this period and 118 changes to the sponsorship guidance. These changes ranged from significant changes as a result of changes to the Immigration Rules, typically to tighten the rules to stop abuse of the system, to minor changes to clarify previous versions of the guidance. Examples of some of the changes made to the guidance included:

Sponsorship:

- change to Immigration Rules restricting the student to study only with the sponsor named on their Visa Letter or CAS (October 2009);
- Introduction of Highly Trusted Status rating (April 2010);
- requirement for Educational Oversight²⁸ (April 2011);
- change to the rules on the number of hours that students age 16 and over can work whilst in the United Kingdom as a Tier 4 student (March 2010).

Applicant:

- introduction of English Language requirement (March 2010);
 - English Language to be tested under secure conditions (August 2010);
 - removal of post study work route (April 2012);
 - credibility and intention testing of students (July 2012).
- 6.2 We received feedback from staff at all levels and from stakeholders that the frequency of these changes had caused them significant problems since Tier 4 was introduced. This was the most common message we received during the whole inspection.
- 6.3 Applicants, sponsors, student advisors, caseworkers and legal teams all had to familiarise themselves with new guidance and any new rules that were introduced. For the applicants, it could cause confusion in understanding what their exact requirements were, and sponsors may have had to produce additional material and change their own processes to continue to comply with their sponsor

²⁸ Sponsors are required to have independent inspections or be reviewed by a designated Educational Oversight body.

obligations. Examples of the comments we received during our consultation with stakeholders included:

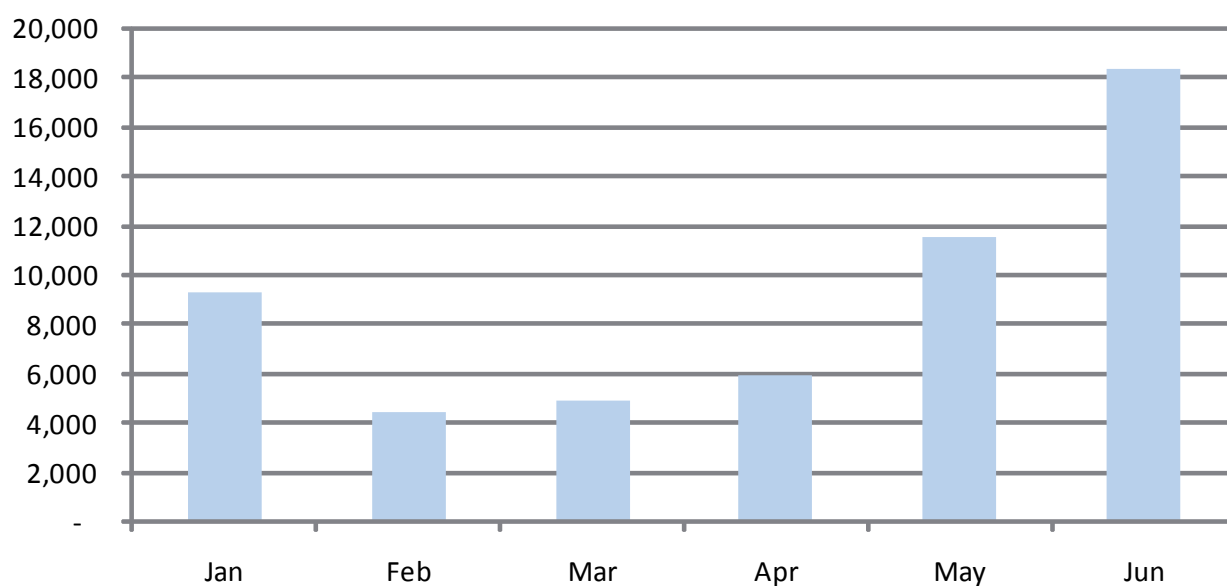
‘The speed which changes are introduced and the frequency of change does not allow industry or students time to adjust’;

‘There is a lack of consideration for the academic year’;

‘Insufficient notice is provided when new rules are implemented and a lack of transitional arrangements for institutions to absorb changes in policy guidance’.

6.4 In January 2012, changes were announced that removed the ability for students to move directly onto a Tier 1 Post Study visa. Applicants were also required to show that they could meet an increase in the amount of funds to support themselves during their studies. The announcement resulted in an initial spike of applications in the early part of the year because applicants wanted to meet the deadline before the changes came into effect. After the initial surge, the number of applications fell before the usual summer surge of applications in May and June. Figure 21 shows the number of applications in the first 6 months of 2012:

Figure 21: Number of Tier 4 Applications between January and June 2012



6.5 The frequent changes to Tier 4 meant that in some cases, caseworkers in Sheffield could be working on up to three different versions of the Tier 4 guidance, primarily because some of the applications they were working on were up to 12 months old (decisions had to be made against the guidance in place at the time of application). As a result, staff reported to us that there was a greater risk that mistakes could be made.

The frequent changes to Tier 4 meant that in some cases, caseworkers in Sheffield could be working on up to three different versions of the Tier 4 guidance

6.6 The feedback we received from managers and staff in the Agency, as well as stakeholders, was that a period of stability would help to embed the recent changes and allow applicants, sponsors and the Agency to improve levels of service. All agreed, however, that the changes made over the years had tightened the rules, increased the quality of sponsors and made it more difficult for non-genuine applicants to be successful.

Appeals and Administrative Reviews

- 6.7 If an application for a Tier 4 visa is refused, the applicant can appeal the decision to refuse in one of two ways depending on where and how their application is made. If the application is made in the United Kingdom (in-country), then the applicant receives a statutory right of appeal. If the application is made overseas (out of country) then the applicant only has a right to request an Administrative Review.
- 6.8 A statutory appeal is heard before an Immigration Judge and the applicant can make representations in person and with the support of legal representation. Prior to 23 May 2011, applicants could also submit additional evidence to support the appeal hearing, however, on this date, section 19 of the UK Borders Act 2007²⁹ was introduced, which stated that any evidence submitted at the appeal must have been produced at the time of the original application.
- 6.9 Administrative Reviews are conducted by an ECM in the overseas post and the applicant can only write in explaining why they think the decision was wrong. The ECM conducting the review must be independent of the original decision. In addition, the applicant cannot supply any evidence additional to that which has already been supplied with the original application for the visa. The only difference for Administrative Review cases is if an applicant has been refused under Paragraph 320 7(A), they are able to submit additional evidence to support their claim for a review.
- 6.10 We have commented in previous reports about the limited analysis the Agency has conducted in relation to the outcomes of appeals in order to understand why appeals had been made and why some were successful.³⁰
- 6.11 For this inspection, we noted that appeals that had been heard relating to in-country Tier 4 applications were returned to the Specialist Appeals Team (SAT) based in London who reviewed the Judge's decision before sending the file back to Sheffield to take any necessary action. If the Agency wanted to challenge a decision made by a Judge, the challenge must be lodged within 10 days of the Judge's decision. We found that due to the volume of appeals being dealt with by SAT, it was often more than 10 days before the file was processed and arrived back in Sheffield and it was therefore too late for any decision to be challenged.
-
- a period of stability would help to embed the recent changes and allow applicants, sponsors and the Agency to improve levels of service*
-
- 6.12 We were told that the time delay in reviewing the appeal decisions meant that the Agency was often unable to challenge any decisions where it considered this might be appropriate to do so. Staff who carried out responsibilities on appeals in Sheffield commented on the frustration they felt when SAT had identified cases where legal challenges could have been considered, had the cases been received by Sheffield in time. We felt this was a weakness in the administrative processes used by the Agency.
- 6.13 There were 7,074 appeals made between August 2011 and July 2012. Of these 42% (or 2,968) were allowed. This highlighted the scope for challenges against decisions if it was appropriate to do so.
- 6.14 Due to this weakness in the system for challenging appeals 'in time'; it was pleasing to learn during the inspection that a project had already commenced to review the whole appeals process. This included the timeliness of the flow of documentation, increasing awareness of Tier 4 with Immigration Judges, and new processes to analyse the outcomes of appeals. The project aimed to have preliminary work completed by July 2012. We were informed that the project would consider:
- introduction of Determinations Teams to review decisions by Judges;

²⁹ <http://www.legislation.gov.uk/ukpga/2007/30/section/19>

³⁰ <http://icinspector.independent.gov.uk/wp-content/uploads/2011/02/An-inspection-of-the-UK-Border-Agency-Visa-Section-in-New-York.pdf>

- how feedback is provided to caseworking teams both in the UK and overseas;
- a forum to discuss appeals with ILPA³¹ and HMCTS³² in order to improve shared understanding.

6.15 We considered this project to be a positive step forward for the Agency in relation to appeals. There were also positive findings when reviewing the outcomes of appeals, which showed that some decisions have influenced the way the Agency handles applications. For example, in November 2009 a Tier 4 applicant applied for an extension of their existing leave at the college where they had already been granted permission to study. In the interim period between applying for the extension and receiving the decision, the college had had its sponsor licence revoked, therefore rendering the Confirmation of Acceptance of studies invalid. The applicant appealed and the case³³ was subsequently heard in June 2011 at a second tribunal hearing. The Judge concluded that the applicant should have been provided with 60 days to find an alternative sponsor, rather than be refused based on their existing sponsor having their license revoked.

6.16 We found that as a result of this case, the Agency had issued new guidance to caseworkers to ensure that the Judge's findings were implemented.

Administrative Reviews & Sponsorship Reconsiderations

6.17 Regarding Administrative Reviews, we found that, in both overseas posts, all reviews were conducted by ECMs. In the Visa Section in New Delhi, specific trends from Administrative Reviews were fed into the regional tasking and co-ordinating group.³⁴ In the Visa Section in Beijing, the refusal rate for Tier 4 applications is very low compared to other regions, therefore the number of Administrative Reviews is also low. Any specific trends or issues around processes are fed back to the ECMs for dissemination to their teams.

6.18 In addition to the analysis of applicant appeals or Administrative Reviews, we also considered any analysis from the decisions that had been challenged when an organisation had applied for a sponsor licence.

6.19 We found that there was no right of appeal for a decision to refuse, suspend or revoke a sponsor licence. If an organisation was not satisfied with a decision made by the Agency, they could write to the Assistant Director who had responsibility for Sponsorship and ask for reconsideration, or they could submit a request for permission to seek a Judicial Review through the courts. The High Court made the decision whether permission was granted for a sponsor to lodge a Judicial Review against the Agency.

6.20 Within the Sponsor Management Unit, there was a Litigation Team who dealt with all matters relating to the Judicial Review process. The team was responsible for preparing documentation to support the Agency's original decision when the Agency intended to defend the original decision. Following the outcome of the Judicial Review, the team disseminated information to relevant staff. We were provided with evidence that to date, changes to sponsorship management as a result of Judicial Reviews included:

- changes to the Compliance Officer reporting template to ensure a more robust reporting mechanism is in place;
- restructuring of letters to remove any ambiguity and clearly identifying the reasons for the decision on the letter;
- providing advice to Compliance Officers regarding the retention of evidence and hand-written notes.

³¹ Immigration Law Practitioners Association – www.ilpa.org.uk

³² Her Majesty's Courts and Tribunals Service – www.justice.gov.uk/about/hmcts

³³ Patel (revocation of sponsor license – fairness) India [2011] UKUT 211 (IAC) (06 June 2011).

³⁴ A strategic group within the region which has responsibility for directing all operational activity in accordance with regional aims and objectives.

- 6.21 All of the above had contributed to an improved method of communicating decisions, which had resulted in a low number of Judicial Reviews. As of 22 March 2012, 150 requests for Judicial Review had been made, however, only 13 had been granted permission to do so. There were also 33 cases awaiting a decision on whether permission would be granted.
- 6.22 We considered the analysis and amendments to processes as a result of lessons learned in Administrative Reviews and Judicial Reviews to be a positive finding of this inspection. We also note that it shows the Agency has made some progress in meeting recommendations made in previous reports regarding the need to analyse the outcomes of any appeals made against the Agency.

Risks to the efficiency and effectiveness of the Agency should be identified, monitored and mitigated

Risk of Displacement

- 6.23 We have already reported that the rules for entry to the UK using the Tier 4 route have been tightened, both for applicants and their sponsors. For sponsors, there were more requirements in order to obtain a sponsor licence and these were complemented by a series of obligations that had to be met in order to maintain the sponsor licence. As a result, the number of sponsors had reduced since the original licences were introduced in 2009. Figure 22 below shows the number of educational institutions that have either had their licence suspended or revoked (as of February 2012):

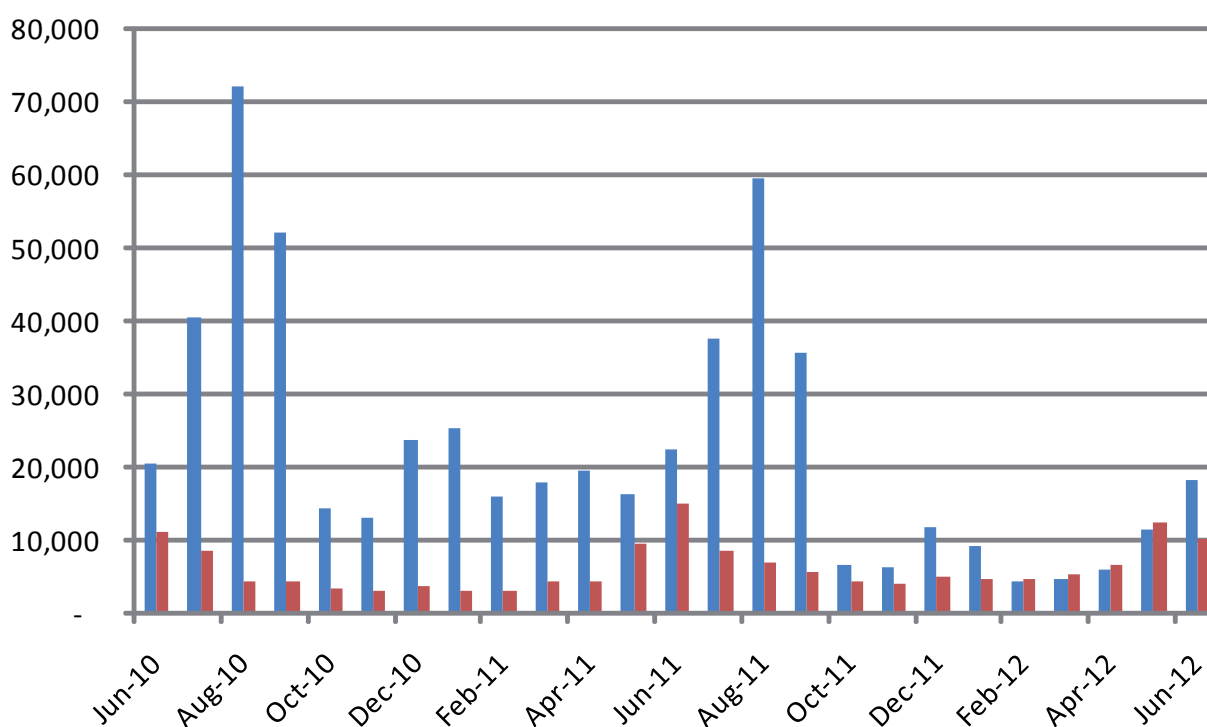
Figure 22: Number of Tier 4 Sponsor Licences Suspended or Revoked		
	Suspended	Revoked
Publicly Funded	11	75
Privately Funded	37	274
Not Stated	1	1

- 6.24 The existence of sponsor licensing and management requirements meant that students who had a Tier 4 visa should be accounted for. Examples of this included the need for the educational institution to confirm enrolment of the student and their attendance rates. Even if a student failed to attend, there was a requirement on the sponsor to notify the Agency using the Sponsor Management System. The issue of a sponsor licence also ensured that an educational institution could only issue a limited number of CASs based on the capacity of their institution. All of these restrictions meant that it was more difficult for non-genuine students to gain access to the UK using the Tier 4 route.
- 6.25 However, the tightening of these rules heightens the risk that applicants who are not genuine students will seek to circumvent other weaknesses in the system. One route that could be used is the Student (Visitor) Visa route. Student (Visitor) visas were issued to students who were carrying out short term study courses, for example for less than 12 months. Sponsors of Student (Visitors) are not subject to the same stringent requirements as Tier 4 sponsors and there are no requirements for a student to obtain a CAS to support their application. As a result a college could potentially sponsor more students than it had the capacity to teach.

6.26 The Home Affairs Select Committee published a report into Student Visas on 17 March 2011³⁵ acknowledging the work that the Agency had done to reduce the number of so-called ‘bogus colleges’. It reported further on 23 July 2012³⁶ that in order to reinforce the Agency’s stance in tackling the potential problem of bogus colleges, all inspection visits should be unannounced. While we consider that the number of bogus students and colleges had significantly reduced under the Tier 4 regime, there are risks that some Tier 4 sponsors may benefit from the lack of control on the Student (Visitor) route. Unannounced inspection of Tier 4 sponsors will act as both a detection and deterrent activity to identify any colleges that attempt to exploit this weakness.

6.27 Figure 23 below shows the trend of Tier 4 student applications and Student (Visitor) applications:

Figure 23: Visa Applications in the Tier 4 and Student (Visitor) Categories Between June 2010 and June 2012



6.28 The chart shows that the number of applications made under Tier 4 had been significantly higher than Student (Visitor) numbers for the majority of the two year period up until June 2012. However, in February 2012, just after more Rules changes were announced, the number of Tier 4 visa applications was less than Student (Visitor) applications for the first time. This trend continued until May when the summer surge for Tier 4 students commenced. The number of Student (Visitor) applications was also on average 28% higher between January and June 2012 than during the same period in 2011.

6.29 We consider that this is an area the Agency should monitor to ensure that any risks in other parts of the PBS, or its more general visa regime, are not being exploited as a consequence of the good work they have achieved in making Tier 4 more robust.

35 <http://www.parliament.uk/documents/commons-committees/home-affairs/Studentvisas.pdf>

36 <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/71/7102.htm>

Recommendation –

We recommend that the UK Border Agency monitors the impact of tighter rules on the Tier 4 route and any impacts on other entry routes to mitigate against attempted abuse by those who are not genuine students.

Risk Registers

- 6.30 We assessed how the Agency managed the high level risks that existed in the operation of Tier 4. We also assessed the levels of staff awareness of risk and how they escalated any risks to senior management.
- 6.31 We found that each location maintained a risk register for their operations. For the overseas posts, we did not expect to find a register specific to Tier 4, however, we were provided with the strategic risk register for the whole region. Some of the risks on these registers were applicable to all categories of visa and were therefore relevant to this inspection.
- 6.32 In each risk register that was supplied, the format followed a standard template where the risk was identified, had been assessed for impact and probability and documented what action had been taken or was planned to mitigate the risk. We also found that risks were discussed and managed through senior management team meetings.
-
- Despite risk registers being in place and the subject of management discussion, the level of awareness of risk amongst staff below management level was low*
-
- 6.33 Despite risk registers being in place and the subject of management discussion, the level of awareness of risk amongst staff below management level was low. Staff had not received training in risk awareness and most were unaware that a risk register existed to manage risks. In Beijing, managers had reacted to a new Operational Instruction which was introduced in July 2012 and circulated this to all staff, therefore staff were aware of the risk registers when we questioned them.
- 6.34 As a result, potential risks to the Agency could be missed, as operational staff were best placed to identify new and emerging threats or attempts to circumvent the immigration system. If there is no system in place to upwardly report any concerns to managers, these threats could go unrecorded.
- 6.35 However, International Operations & Visas had responded to concerns raised in our previous reports and issued a new instruction relating solely to risk registers. On 12 July, a new operational instruction was circulated to all staff. The instruction provided advice and guidance on how to identify and report emerging risks to management. This was good practice and a positive move by the Agency, however, this instruction only served staff within International Operations & Visas and was not relevant to staff in Immigration & Settlement Group. To improve consistency the Agency should adopt the same risk management techniques and approach across all parts of its business.

Information Technology

- 6.36 The Agency continues to experience problems with its IT systems which impacts against staff productivity. Staff told us that their IT systems frequently go off-line and we experienced one such episode during our file sampling in Sheffield, when the system went down for approximately four hours.
- 6.37 The unreliability of IT systems had been recognised at Board level and an email had been issued to all staff informing them that IT providers had been consulted to improve the reliability of IT systems. However, Staff informed us that IT problems persisted, particularly in Sheffield.

6.38 The Agency is currently moving away from a paper based system to a process which will see applications being made online, with supporting documents being scanned at a document scanning centre. Caseworking staff will then view all evidence electronically in order to make their decision. This approach will rely entirely on an effective and reliable IT system. If the IT system or infrastructure remains unstable, the potential impact on staff productivity and customer service should not be underestimated. The Agency therefore needs to assure itself that its IT systems are capable of supporting its move to a 'paperless' office.

Appendix 1

Inspection Criteria

The criteria used in this inspection were taken from the Independent Chief Inspector's Inspection Criteria, revised in March 2011. They are shown below.

Inspection Criteria used when inspecting Tier 4 of the Points Based System	
Operational Delivery	
1.	Decisions on the entry, stay and removal of people should be taken in accordance with the law and the principles of good administration.
2.	Customs and immigration offences should be prevented, detected, investigated and, where appropriate, prosecuted.
3.	Complaints procedures should be in accordance with the recognised principles of complaint handling.
Safeguarding Individuals	
4.	All people should be treated with respect and without discrimination except where the law permits difference of treatment.
7.	Functions should be carried out having regard to the need to safeguard and promote the welfare of children.
8.	Personal data should be treated and stored securely in accordance with the relevant legislation and regulations.
Continuous Improvement	
9.	The implementation of policies should be continuously monitored and evaluated to assess the impact on service users and associated costs.
10.	Risks to the efficiency and effectiveness of the Agency should be identified, monitored and mitigated.

Appendix 2

List of Stakeholders

During the inspection, we contacted and consulted with the following stakeholders:

- British High Commission – New Delhi
- British Embassy – Beijing
- British Council – New Delhi & Beijing
- Ministry of Foreign Affairs – China
- Visa Application Centres in New Delhi & Beijing
- UKTI – New Delhi
- Sheffield Hallam University – New Delhi
- Strathclyde University – New Delhi
- Middlesex University – New Delhi
- Kaplan Colleges – Beijing
- UK Council For International Student Affairs
- London School of Economics

Appendix 3

Glossary

Term	Description
A	
Agency	Refers to the UK Border Agency.
Audit trail	Chronological list of events.
B	
Biometrics	All customers are now routinely required to provide ten digit finger scans and a digital photograph when applying for a United Kingdom visa. There are some minor exceptions to this rule, e.g. Heads of State and children aged under five.
Border and Immigration Agency (BIA)	The name of the Agency responsible for immigration functions prior to creation of the UK Border Agency.
C	
Chief Executive Officer	Senior civil servant at the head of the UK Border Agency.
Complaint	Defined by the UK Border Agency as ‘any expression of dissatisfaction about the services provided by or for the UK Border Agency and/or about the professional conduct of UK Border Agency staff including contractors’.
Customer	Defined by the UK Border Agency as anyone who uses the services of the Agency, including people seeking to enter the United Kingdom, people in detention and MPs.
D	
Data Protection Act 1998 (DPA)	The Data Protection Act requires anyone who handles personal information to comply with a number of important principles. It also gives individuals rights over their personal information.
Director	Senior UK Border Agency manager, typically responsible for a directorate, region or operational business area.
E	
e-Learning	Computer based training course.

Entry Clearance	<p>A person requires leave to enter the United Kingdom if they are neither a British nor 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. Entry clearance takes the form of a visa (for visa nationals) or an entry certificate (for non-visa nationals).</p> <p>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 United Kingdom Government decides which countries' citizens are, or are not, visa nationals. Non-visa nationals also require entry clearance if they seek to enter the United Kingdom for purposes other than to visit and/or for longer than six months.</p> <p>More detailed information about Entry Clearance can be found on the UK Border Agency website: http://ukba.homeoffice.gov.uk/</p> <p>The Immigration Rules say that a customer making an application for an entry clearance as a visitor must be outside the United Kingdom and Islands at the time of their application and must apply to a Visa Section designated by the Secretary of State to accept applications for entry clearance for that purpose and from that category of applicant.</p>
Entry Clearance Assistant	Supports the visa application process.
Entry Clearance Manager	Manages the visa application process.
Entry Clearance Officer	Decides visa applications.
European Economic Area (EEA)	<p>The European Economic Area (EEA) was established on 1 January 1994 following an agreement between the member states of the European Free Trade Association (EFTA) and the European Community, later the European Union (EU).</p> <p>All European Economic Area (EEA) nationals enjoy free movement rights in the EEA. This means that they are not subject to the Immigration Rules and may come to the United Kingdom and reside here in accordance with the 2006 Regulations. They do not require permission from the UK Border Agency to enter or remain, nor do they require a document confirming their free movement status.</p>
European Economic Area (EEA) Family Permits	<p>All European Economic Area (EEA) nationals enjoy free movement rights in the EEA. This means that they are not subject to the immigration rules and may come to the United Kingdom and reside here in accordance with the 2006 Regulations.</p> <p>They do not require permission from the UK Border Agency to enter or remain, nor do they require a document confirming their free movement status. An EEA family permit is a form of entry clearance issued to the non-EEA national family members of an EEA national who is in, or intends to come to, the United Kingdom in order to exercise a Treaty right.</p>

H	
Home Office	The Home Office is the lead government department for immigration and passports, drugs policy, crime, counter-terrorism and police.
Hub and Spoke	<p>Prior to 2007, virtually all British diplomatic missions had a Visa Section. Each worked largely independently; handling all aspects of visa processing including taking decisions on site.</p> <p>Hub and Spoke was introduced in order to move away from the traditional model, which was based on the physical presence of the Visa Section. The consideration of an application does not need to happen in the same place as it is collected.</p> <p>Applications can be moved from the collection point (the spoke) to the processing point (the hub). This separation between the collection network and the decision-making network aims to improve quality and consistency of decision-making; efficiency and flexibility. Work can be moved to staff rather than the other way round.</p>
Human Resources (HR)	UK Border Agency Human Resources Directorate.
I	
Immigration & Settlement Group	The directorate within the UK Border Agency which is responsible for asylum, enforcement and compliance and nationality.
Immigration Liaison Assistant (ILA)	UK Border Agency job title.
Immigration Liaison and Intelligence Directorate (ILID)	UK Border Agency directorate responsible for coordinating the work of the Risk & Liaison Overseas Network (RALON).
Immigration Liaison Manager (ILM)	UK Border Agency job title which encompasses posts previously known as Airline Liaison Officers (ALOs) and Risk Assessment Managers (RAM).
Immigration Liaison Officer (ILO)	UK Border Agency job title.
Immigration Liaison Officers Risk Database (ILORD)	ILORD is a database, used in visa sections throughout the world to collate information relating to risks, and facilitate the production of risk profiles.
Independent Chief Inspector of the UK Border Agency	The role of the Independent Chief Inspector of the UK Border Agency was established by the UK Borders Act 2007 to examine the efficiency and effectiveness of the UK Border Agency. The Chief Inspector is independent of the UK Border Agency and reports directly to the Home Secretary.

<p>Independent Monitor and legislation</p>	<p>The legislation which established 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 and Statutory Instrument 2008/310 regarding the points-based system (from April 2008).</p> <p>Section 23 of the Immigration and Asylum Act 1999, as amended by section 4(2) of the Immigration, Asylum and Nationality Act 2006, stipulates:</p> <ul style="list-style-type: none"> • 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, as a result of section 88A of the Nationality, Immigration & Asylum Act 2002 (c.41) (entry clearance: non-family visitors and students), an appeal under section 82(1) of that Act may be brought only on the grounds referred to in section 84(1)(b) and (c) of that Act (racial discrimination and human rights). • The Secretary of State may not appoint a member of his staff. • The Secretary of State must lay a copy of any report made to him under subsection (3) before each House of Parliament. <p>Although the legislation and the Independent Monitor’s formal title refer to ‘no right of appeal’, all customers have limited rights of appeal on human rights and race relations grounds. Parliament decides which categories of visa customers 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.</p> <p>John Vine, the Chief Inspector of the UK Border Agency was appointed to this role by the Home Secretary on 26 April 2009, effectively bringing this work within his remit.</p>
<p>International Operations & Visas</p>	<p>The overseas arm of the UK Border Agency, responsible for running visa operations in 135 countries. Formerly known as UK Visas.</p>
<p>L</p>	
<p>Locally engaged staff</p>	<p>Staff recruited directly by the British Embassy or High Commission in the country where they are employed.</p>
<p>M</p>	
<p>Ministerial authorisation</p>	<p>A new Ministerial authorisation for nationality-based differentiation – covering entry clearance, border control and removals – came into force on 10 February 2011 under the Equality Act 2010. The new authorisation allows International Operations & Visas to differentiate on the basis of nationality in the entry clearance/visa process.</p>

N	
Non-visa nationals	<p>A national or citizen of any country that is not listed on the UK Border Agency website (Appendix 1 of the Immigration Rules). A non-visa national does not need a visa to come to</p> <p>the United Kingdom for less than six months, unless it is a requirement of the immigration category under which they are entering. A non-visa national coming to the United Kingdom for more than six months will need a visa.</p>
O	
Omnibase	UK passport database.
Other Visitor	Visitor cases that only attract limited appeal rights.
P	
Paragraph 320 (7a) – deception rules	From 29 February 2008, under Paragraph 320 (7A) of the immigration rules, a customer 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 customer’s knowledge.
Points-based system (PBS)	<p>On 29 February 2008, a new immigration system was launched to ensure that only those with the right skills or the right contribution can come to the United Kingdom to work or study. The points-based system was designed to enable the UK Border Agency to control migration more effectively, tackle abuse and identify the most talented workers. The system:</p> <ul style="list-style-type: none"> • combines more than 80 previous work and study routes to the United Kingdom into five tiers; and • awards points according to workers’ skills, to reflect their aptitude, experience and age and also the demand for those skills in any given sector. <p>Employers and education providers play a crucial part in making sure that the points-based system is not abused. They must apply for a licence to sponsor migrants and bring them into the United Kingdom, and meet a number of duties while they are sponsoring migrants.</p>
Post	See Visa Section.
Proviso	The database used by overseas Visa Sections as the audit trail of entry clearance applications. It records all details of an entry clearance application from the date of application through to the decision and any post decision correspondence.
R	
Race Relations Act 1976	An Act of Parliament established to prevent discrimination on the grounds of race.

Race Relations (Amendment) Act 2000	The Race Relations (Amendment) Act 2000 was an Act to extend further the application of the Race Relations Act 1976 to the Police and other public authorities; to amend the exemption under that Act for acts done for the purpose of safeguarding national security; and for connected purposes. Section 19D sets out exceptions from section 19B for certain acts in immigration and nationality cases. Section 19B does not make it unlawful for a relevant person to discriminate against another person on grounds of nationality or ethnic or national origins in carrying out immigration and nationality functions.
Regional Director	Senior manager responsible for one of the six Immigration Group regions.
Risk and Liaison Overseas Network (RALON)	An amalgamation of the former Airline Liaison Officer Network and Overseas Risk Assessment Unit Network. RALON has responsibility for identifying threats to the UK border, preventing inadequately documented passengers from reaching UK shores, providing risk assessment to the UK Border Agency visa issuing regime and supporting criminal investigations against individuals and organisations which cause harm to the UK.
Risk Profile	An outline that determines the relative potential harm (to the UK of a visa applicant / travelling passenger) based on characteristics of an individual when compared to existing evidence of adverse activity either in the UK or overseas.
S	
Senior Entry Clearance Officer (SECO)	Decides visa applications and also manages Entry Clearance Assistants.
Settlement	Application to come to the UK on a permanent basis, most commonly as the spouse or other dependent of a British Citizen or a UK resident.
U	
UK Visas	Ran visa operations at overseas locations. One of the legacy organisations that made up the UK Border Agency and is now known as International Operations & Visas.
United Kingdom and Islands	The United Kingdom is made up of England, Scotland, Wales and Northern Ireland. The Channel Islands and the Isle of Man are not part of the United Kingdom. The geographical term 'British Isles' covers the United Kingdom, all of Ireland, the Channel Islands and the Isle of Man.
United Kingdom Border Agency (UKBA)	Executive Agency of the Home Office responsible for border control, enforcing immigration and customs regulations.
United Nations High Commissioner for Refugees	The United Nations High Commissioner for Refugees has a mandate to lead and coordinate international action to protect refugees and resolve refugee problems.

V

Verification Checks	Checks to assess the authenticity or validity of documents submitted by applicants or their sponsors when making an application for entry clearance.
Visa Nationals	<p>Visa nationals are those who require a visa for every entry to the United Kingdom. A visa national is a national of a country listed on the UK Border Agency website (Appendix 1 of the Immigration Rules). Some visa nationals may pass through the United Kingdom on the way to another country without a visa, but in some circumstances they will require a direct airside visa or visitor in transit visa. Visa nationals must obtain Entry clearance before travelling to the United Kingdom unless they are:</p> <ul style="list-style-type: none">• returning residents;• those who have been given permission to stay in the United Kingdom and, after temporarily leaving the United Kingdom, return within the duration of that permission to stay;• school children resident in a European Union member state who are on an organised school trip from a general education school and accompanied by a teacher.
Visa Section	UK Border Agency office which manages UK visa operation services. UK Border Agency visa sections are located in a variety of locations around the world.

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