



# **An inspection of the UK Border Agency's handling of legacy asylum and migration cases**

March - 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



In 2006, the then Home Secretary made a commitment that the UK Border Agency 'must deal with' the legacy of unresolved asylum cases no later than the summer of 2011. The Case Resolution Directorate (CRD) was subsequently created in 2007 to 'conclude' these cases. At the time, a 'conclusion' was generally understood to mean that an applicant would either receive a grant of Indefinite Leave to Remain (ILR) or be removed from the UK. Cases would also be considered as concluded because of data errors, duplicate records, or because applicants could not be traced.

In March 2011, the Agency stated that it had achieved its aim, 'having completed its review of all cases in the legacy cohort.' This was a different outcome from the conclusion of cases that was the original goal of CRD. However, 147,000 cases remained unresolved: some where barriers to conclusion existed as well as archived cases where applicants could not be traced. As a result, the Case Assurance and Audit Unit (CAAU) was created in April 2011 to deal specifically with those outstanding cases. My inspection examined how well the transition of work from CRD to CAAU was managed, as well as the efficiency and effectiveness of the handling of legacy asylum and migration cases generally.

I found that the transition of work from the Case Resolution Directorate to the new Case Assurance and Audit Unit was poorly managed. The volume of the remaining work to resolve legacy cases was not anticipated by the new unit. As a result, CAAU was quickly overwhelmed by the casework and the associated high levels of correspondence from MPs, legal representatives and applicants. I have commented previously about the importance of effective governance during major business change initiatives. I was therefore disappointed to find that a lack of governance was again a contributory factor in what turned out to be an extremely disjointed and inadequately planned transfer of work. Such was the inefficiency of this operation that at one point over 150 boxes of post, including correspondence from applicants, MPs and their legal representatives, lay unopened in a room in Liverpool.

I found that a considerable number of cases dealt with by this new unit fell within CRD criteria but had not been progressed by CRD. Furthermore, an examination of controlled archive cases showed that the security checks – which the Agency stated were being done on these cases – had not been undertaken routinely or consistently since April 2011. I also found that no thorough comparison of data from controlled archive cases was undertaken with other government departments or financial institutions in order to trace applicants until April 2012. This was unacceptable and at odds with the assurances given to the Home Affairs Select Committee that 124,000 cases were only archived after 'exhaustive checks' to trace the applicant had been made.

As a result, the programme of legacy work is far from concluded. At the time of inspection, the Agency estimated that up to 37,500 applicants would be located and that their cases will need to be considered. On the evidence it is hard not to reach the conclusion that cases were placed in the archive after only very minimal work in order to fulfil the pledge to conclude this work by the summer of 2011. This has serious consequences for asylum seekers who had already waited many years for the resolution of their case. In addition, through the inefficiency and delay of the Agency, those who would otherwise have faced removal will have accrued rights to remain in the UK.

The implementation of a policy change in July 2011 to grant legacy asylum applicants Discretionary Leave for three years (where removal from the UK was not considered appropriate), rather than ILR as had been the case previously, was also flawed. Exceptions allowing for the continued grant of ILR to applicants whose cases the Agency had promised to resolve by July 2011 were not initially in place, nor were they communicated effectively to staff. This adversely affected a number of applicants, including former unaccompanied asylum seeking children, whose cases should have been dealt with in a timely fashion. These applicants were not at fault for the significant delays in their cases. It should make no difference whether they had been in contact with the Agency themselves, or whether any contact was via their legal representatives or MP, or whether litigation was contemplated or pending. I consider that applicants who had been told that their case would be dealt with by July 2011 had a reasonable expectation that their cases would have been resolved by that date. It was reasonable for them to expect that, if a decision to grant had been made in the stated time, the policy applied would be the relevant policy at the date of decision, which would have resulted in a grant of ILR.

As with many of my previous inspections, I identified that customer service outcomes were poor. I found significant opportunities to improve both general correspondence handling and complaints handling.

The Agency had started to tackle the problems at the time of my inspection. A business plan for CAAU had been created by the time of my inspection and a stronger performance framework had been put in place. Governance of CAAU had improved and significant numbers of additional staff were being recruited. I also found that a much more robust approach had been introduced to locate and trace applicants within the controlled archives.

The Agency must now make a new commitment to the resolution of legacy cases and stick to it. At the same time, information about progress presented to Parliament and other stakeholders must be absolutely accurate in order that the performance of the Agency in this high profile area of work can be evaluated effectively.

A handwritten signature in black ink that reads "John Vine .". The signature is written in a cursive style with a period at the end.

**John Vine CBE QPM**

**Independent Chief Inspector of Borders and Immigration**

# 1. Executive Summary

1. In July 2006, the Home Office published a report entitled Fair, effective, transparent, and trusted – Rebuilding confidence in our immigration system. In this report, the then Home Secretary committed the UK Border Agency to dealing with the legacy of unresolved asylum cases ‘within five years or less’.<sup>1</sup> In 2007, the UK Border Agency created the Case Resolution Directorate (CRD) to conclude approximately 400,000-450,000 unresolved legacy records. A conclusion was considered to be:
  - a grant of permanent residence;<sup>2</sup>
  - the removal of an applicant from the UK;
  - a record being closed, for example through data errors or duplicate records being resolved; or
  - where applicants could not be traced and their cases were placed into the controlled archive.
2. The clearance of legacy asylum casework has remained a prominent area of interest for a wide range of stakeholders since 2006. The Agency provided regular updates to Parliament on the progress it was making to complete this work by the summer of 2011. These updates included the Agency adding approximately 40,000 older migration cases (mainly predating 2003), to the work of CRD in 2009 for clearance by the summer of 2011.

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*The clearance of legacy asylum casework has remained a prominent area of interest for a wide range of stakeholders since 2006*

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3. In March 2011, the Agency stated that it had completed its review of all outstanding legacy cases and created a Case Assurance and Audit Unit (CAAU) in the North West Region to manage those legacy cases which it had been unable to conclude, typically because cases:
  - either faced significant barriers to conclusion (23,000 cases); or
  - had been archived, as exhaustive checks had failed to locate the whereabouts of applicants (98,000 asylum legacy cases and 26,000 older migration cases).
4. This inspection’s primary focus was on the work of CAAU and the progress it was making in resolving the legacy of asylum and migration cases. We assessed whether all ‘live’ asylum cases had faced significant barriers to conclusion and what efforts were being made by the Agency to resolve cases in the asylum and migration controlled archives.<sup>3</sup>
5. We identified a number of prominent organisational failings linked to the transition of this work from CRD to CAAU in early 2011. This included a lack of effective strategic oversight and engagement at senior levels, an inadequate resourcing model, poor quality management information concerning the remaining caseload and ineffective handover processes.

1 Fair, effective, transparent, and trusted – Rebuilding confidence in our immigration system (Home Office, July 2006).

2 Cases that are accepted by the Secretary of State as falling under the R(S) criteria will be granted Indefinite Leave to Remain subject to certain exceptions or caveats relating to the conduct of the applicant or where the applicant, not the UKBA, was responsible for the relevant delay.

3 In 2008 the controlled archive was defined as ‘a hold for those cases where CRD had tried to establish contact with the applicant through the current set of processes and had been unsuccessful’.

6. The absence of a strategic lead at Senior Civil Service level, covering all elements of the transfer of legacy work, was a significant management failing. Assumptions outlined in the transition plan were not effectively challenged and this meant that risks associated with the transfer of work were not properly considered or identified. This was compounded by a resourcing plan that failed to adequately match resources with the amount of work CAAU actually received.
7. A key contributing factor to these work levels was the very demand-led nature of the work, caused by ever-increasing amounts of correspondence from MPs and legal representatives. This increase in correspondence was at least in part caused by the Agency stating that the work of CRD was completed at the end March 2011, with outstanding cases either facing significant barriers to conclusion or applicants not being located. This view was not shared by MPs or legal practitioners who were aware of applicants who did not fit these descriptions – a view supported by our file sampling and interviews with staff.
8. The issue of limited resources also created a significant impediment to case clearance. As a result, timescales given to applicants or their representatives about the resolution of cases were frequently missed, even where litigation was being threatened.
9. While all staff highlighted the lack of resources engaged in deciding cases as the greatest challenge for CAAU, a wide range of staff also held the view that effective case clearance was impaired by changing priorities. These changing priorities often resulted in cases being left incomplete because staff were allocated at short notice to other pieces of work. One consequence of this was that security checks<sup>4</sup> frequently had to be repeated because their three month period of validity had expired. This further delayed decision-making.
10. Asylum cases placed into the controlled archive had not been subject to regular and routine security checks against either the Police National Computer (PNC) or the Warning Index (WI) system since at least April 2011. Prior to April 2012, the Agency had also failed to undertake any proactive data-matching with external government departments or financial companies to locate and trace any of the individuals in our sample of asylum controlled archive cases. The same applied to migration control archive cases. The public statements made by the Agency to the Home Affairs Select Committee on this issue did not reflect what we found.
11. Since April 2012, the Agency had matched data for all asylum and migration archive cases (approximately 105,000 cases) against information held by both the Department for Work and Pensions and a credit reference agency, in addition to continuing checks against its own IT systems. The Agency expected up to 31,000 asylum and 6,500 migration controlled archive cases to become 'live' as a result of this work (36%). However, we found that once an individual was located CAAU was unable to take immediate action to see these cases through to conclusion, because of other work priorities. It is essential that the Agency ensure delays are minimised so that these cases are dealt with efficiently, either through removal from the UK or a grant of leave.
12. The Agency should ensure that staff employed by contractors to carry out administrative work on its behalf are properly trained. It is also important that Agency staff update the Casework Information Database (CID) with information that is relevant, as we found that files were wrongly included within the controlled archive when they should have been excluded.
13. Nine thousand, three hundred and ninety-three cases within the 'live' cohort of 23,000 cases had not been reviewed by CRD. Once these cases came to light, CAAU took immediate remedial action

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*We identified a number of prominent organisational failings linked to the transition of this work from CRD to CAAU in early 2011*

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<sup>4</sup> Police National Computer (PNC) and Warning Index (WI).

to send letters to applicants and/or their legal representatives via a mass mail-merge exercise (July/August 2011). The letter either notified them of a potential grant of leave subject to security checks,<sup>5</sup> or informed them they had no basis to stay in the UK.

14. This mail-merge took place at a time when the unit was already significantly under-resourced and was not coping either efficiently or effectively with its existing workloads. The mail-merge exercise exacerbated this and added even more incoming correspondence to the unit, at a time when it already had a backlog of correspondence in excess of 100,000 pieces of post, the majority of which it had inherited from CRD prior to its closure in March 2011.
15. CID was not updated to reflect the correspondence that was sent to applicants via this mail-merge exercise. As a result, other parts of the Agency were unaware that several thousand applicants had been advised about a potential grant of leave subject to security checks. Such communications should be recorded on CID, as other parts of the Agency might subsequently take action which is out-of-step with what has been agreed elsewhere in the Agency.
16. Approximately 30% to 40% of legacy asylum decisions made by CAAU related to cases that fell outside the cohort of legacy asylum cases that the Agency reported on to the Home Affairs Select Committee. This included 'active review'<sup>6</sup> cases. CRD had not made decisions on these cases, on the basis that applicants, including unaccompanied asylum seeking children, continued to benefit from Section 3C leave.<sup>7</sup> However, there was no effective system in place to notify applicants that their leave continued under Section 3C.

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*Nine thousand, three hundred and ninety-three cases within the 'live' cohort of 23,000 cases had not been reviewed by CRD*

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17. CAAU managers told us they had not been resourced to undertake this work and so had worked on the assumption that active reviews would be completed by asylum teams in the regions after the closure of CRD. Regions had not accepted this work and CAAU identified that it would have to deal with approximately 16,398 active review cases between April 2012 and April 2017. It was also recognised that a further 17,000 cases, which may be granted discretionary leave between May 2012 and December 2013, would require active reviews from May 2015 onwards. While these cases fell under CRD criteria (asylum claims made before March 2007), they were not included within the asylum legacy reports provided to the Home Affairs Select Committee.
18. The Agency made a policy change in July 2011 which meant that legacy asylum applicants would be granted Discretionary Leave for three years (where it was considered that removal from the UK was not appropriate or feasible), rather than being granted Indefinite Leave to Remain – the outcome most commonly used by CRD when granting leave under the asylum legacy programme. The rationale for this policy change was that as the vast majority of legacy cases had now been cleared, it was no longer appropriate to grant ILR. The change was also justified on the basis that remaining legacy cases should not be treated more favourably than refugees who were normally granted five years' limited leave.

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*Our sampling of asylum grant cases identified that applicants had been disadvantaged because the exceptions to the new policy were not implemented effectively*

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19. Policy officials had identified two exceptions where Indefinite Leave to Remain could still be granted. They also provided further advice on circumstances in which it might be appropriate to depart from

<sup>5</sup> Police National Computer and Warnings Index checks.

<sup>6</sup> Asylum claims made before March 2007, but given a form of temporary leave (usually up to three years), who have to reapply for further leave before the existing temporary leave expires.

<sup>7</sup> Section 3C automatically extends the leave of a person who has made an application for further leave to remain during a period of extant leave. Technically, the leave is 'treated as continuing.' Section 3C then prevents such an applicant becoming an overstayer during the period in which their application for a variation of leave remains undecided and, thereafter, while an appeal against any refusal could be brought or is pending.



the policy and exceptionally grant Indefinite Leave to Remain. The two exceptions and guidance on departing from the new policy were not introduced when the change took effect, nor were they reflected in the updated guidance that was issued. As a result, caseworkers showed no awareness of them. Our sampling of asylum grant cases identified that applicants had been disadvantaged because the exceptions to the new policy were not implemented effectively.

20. The quality assurance processes in place did not provide the level of confidence necessary for senior managers to be satisfied either that legacy asylum decision-making was effective and sound or that cases within the controlled archive were being managed appropriately. We identified some poor and inconsistent decision-making, as well as failures by caseworkers to adequately set out the reasoning behind the decisions they took.
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- Customer service outcomes were poor*
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21. Customer service outcomes were poor. Correspondence from applicants and legal representatives often did not receive a response, even when queries were made on a repeated basis. There was considerable room for improvement in complaint handling, with the Agency frequently failing to address the actual subject matter of the complaint in its responses. As a result, repeat complaints were not uncommon, with over a third of the complaints we sampled repeating information set out in earlier correspondence that had been sent to the Agency.
22. At the time of inspection, the senior management team in the NW Region had started to deal with many of the problems that CAAU faced. This included developing a business plan that set more realistic targets for the final conclusion of legacy asylum and migration cases. A workflow plan had also been introduced which enabled CAAU to manage its work more effectively. The formation of a controlled archive steering group to provide governance of internal and external data matching checks was also a significant step forward, as was recruiting additional resources to deal with the work resulting from the external data matching exercise.
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- At the time of inspection, the senior management team in the NW Region had started to deal with many of the problems that CAAU faced*
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## 2. Summary of Recommendations

### We recommend that the UK Border Agency:

1. Routinely and regularly matches asylum and migration legacy cases against PNC and WI records, until the point at which cases are finally concluded.
2. Ensures that the information it provides to the Home Affairs Select Committee is accurate and includes all legacy cases where asylum applications were made before March 2007.
3. Is clear and consistent in the terminology it uses, so that Parliament and the public understand exactly what progress the Agency is making in concluding legacy casework.
4. Develops a realistic timescale to conclude all remaining legacy cases and makes a public commitment to do so.
5. Clarifies the information that should be stored on file and the Casework Information Database and incorporates checks of this into the quality assurance framework.
6. Introduces a protocol between CAAU and Local Immigration Teams to ensure that, when legacy asylum and migration applicants are refused, removals are prioritised.
7. Works with the Home Office to ensure that guidance on new policies sets out any relevant exceptions, and communicates these effectively to staff so that they are applied fairly and consistently.
8. Ensures that decisions affecting young people are dealt with in a timely way that minimises any uncertainty that they may experience with their applications.
9. Manages complaint handling processes effectively, ensuring that:
  - complaints are recorded accurately;
  - responses deal with the substance of the complaint; and
  - published service standards are met.
10. Embeds a stronger quality assurance framework within CAAU which ensures that decisions are made in accordance with the law and its policies and are based on all available evidence.

### 3. The Inspection

In order to facilitate readers we have provided a summary of the key terms and a chronology of key dates associated with this report.

Key terms used in this report	
<b>Case Assurance and Audit Unit (CAAU)</b>	A unit set up by the Agency to manage legacy cases that CRD had been unable to conclude, either because they faced significant barriers to conclusion or because applicants could not be traced by CRD.
<b>Case Resolution Directorate (CRD)</b>	The Case Resolution Directorate was established to deal with an estimated backlog of 400,000 to 450,000 asylum case records which were defined as those not being processed as part of the New Asylum Model (from 5 March 2007 onwards) and which had not been concluded (removed, granted or otherwise closed).
<b>Case Information Database (CID)</b>	An administrative tool, used by the Agency to perform caseworking tasks and record decisions.
<b>Non-cohort cases</b>	Cases which meet the legacy criteria but were either not part of the original CRD cohort, or were part of the CRD cohort and were not transferred to the CAAU cohort.
<b>Controlled archive</b>	The controlled archive is a hold for those cases where CRD had tried to establish contact with the applicant but had been unsuccessful.
<b>Discretionary Leave (DL)</b>	One of three forms of immigration status where permission to remain in the UK is given to a person whom the Agency has decided does not qualify for refugee status or humanitarian protection but who does need to stay in the UK temporarily.
<b>Indefinite Leave to Remain (ILR)</b>	A form of immigration status granted to a person who qualifies for permission to remain in the UK for an indefinite period of time.
<b>Legacy Cases</b>	Refers to unresolved asylum and migration cases.
<b>Live Cases</b>	Legacy asylum cases which were not concluded by CRD because they faced barriers to conclusion.
<b>Migration Controlled Archive</b>	Refers to approximately 40,000 non-asylum cases that were added to CRD's caseload in October 2009, 26,000 of which were subsequently transferred to CAAU in April 2011. These cases typically related to family applications (dependent spouses or other relatives seeking leave to remain), students and other types of migrants who had been given temporary leave to visit the UK, but had sought to extend that leave.

## Chronology of key dates associated with this inspection

**19 July 2006:** The Home Secretary publishes a report on the Immigration and Nationality Directorate (IND) called: *Fair, effective, transparent and trusted – Rebuilding confidence in our immigration system*, committing IND to clearing the backlog of asylum legacy cases within five years or less.

**19 February 2007:** The Agency sends its first letter to the Home Affairs Select Committee, dealing with the Agency's plans to tackle a backlog of between 400,000 and 450,000 unresolved asylum cases. Further letters from the Agency follow at roughly six-monthly intervals (14 June and 17 December 2007, 23 July and 8 December 2008).

**1 April 2007:** The Case Resolution Directorate (CRD) is established to consider these cases.

**7 July 2009:** The Agency updates the Home Affairs Select Committee about its work to trace asylum legacy applicants and the procedure it follows when this approach is unsuccessful.

**19 October 2009:** The Agency informs the Home Affairs Select Committee about a ring-fenced cohort of approximately 40,000 non-asylum migration cases which is added to CRD's caseload.

**19 July 2010:** The Agency repeats its assurances to the Home Affairs Select Committee about the processes it follows regarding placing cases into the controlled archive.

**1 November 2010:** The Agency informs the Home Affairs Select Committee about the number of cases in the controlled archive, along with those cases that will in due course be added to its conclusion statistics.

**2 March 2011:** The Agency informs the Home Affairs Select Committee it is confident that it is on track to complete the legacy programme by the summer 2011. It refers to the Agency's plans to create a small unit to carry forward the residual work on asylum cases that have been reviewed but not fully concluded, in addition to reducing the frequency of checks on controlled archive cases to every six months.

**1 April 2011:** The Agency establishes the Case Assurance & Audit Unit (CAAU) to take forward work on legacy asylum and migration cases.

**20 July 2011:** The Agency changes its policy in relation to the type of leave that it grants under Paragraph 395C of the Immigration Rules. This results in legacy asylum applicants being granted Discretionary Leave for three years (where it was considered removal from the UK was not appropriate), rather than Indefinite Leave to Remain.

**July/August 2011:** CAAU identifies 9,393 asylum cases within the 'live' cohort of cases that have not been reviewed by CRD and subsequently sends out over 6,000 letters to applicants, either notifying them of a potential grant of leave subject to security checks (WICU and PNC), or that their cases have been reviewed and they have no basis to stay in the UK.

**24 August 2011:** The Agency informs the Home Affairs Select Committee that CRD began its final phase towards closure on 31 March 2011, having reviewed its entire caseload. This letter also refers to a small number of cases where representations were made to the Agency late in the programme, with a commitment that decisions on these cases will be made by the end of August 2011.

**12 September 2011:** The Agency informs the Home Affairs Select Committee it completed its review of all legacy cohort cases at the end of March 2011. The Agency also provides statistics in this letter about the progress CAAU has made in relation to the 23,000 cases that CRD have reviewed, but where barriers to conclusion remain.

**15 December 2011:** The Agency provides updated performance statistics to the Home Affairs Select Committee in relation to legacy casework. It also includes details of the processes that CAAU followed in relation to cases within the controlled archive, including checking cases regularly against Agency watch lists and PNC.\_

**13 January 2012:** The Agency provides an update to the Home Affairs Select Committee about its work in relation to the controlled archive of 26,000 migration cases.\_

**3 May 2012:** The Agency provides updated performance information to the Home Affairs Select Committee in relation to legacy asylum cases facing barriers to conclusion. It also provides updated performance information in relation to the asylum and migration controlled archives and sets out its aim to significantly reduce both archives by March 2013.\_

## **Role and remit of the Chief Inspector**

- 3.1 The role of the Independent Chief Inspector ('the Chief Inspector') of the UK Border Agency ('the Agency') was established by the UK Borders Act 2007 to examine the efficiency and effectiveness of the 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 the Agency and its Border Force directorate would split from 1 March 2012, with the Border Force becoming a separate operational command within the Home Office. The Home Secretary confirmed that this change would not affect the Chief Inspector's statutory responsibilities and that he would continue to be responsible for inspecting the operations of both the Agency and the Border Force.
- 3.3 On 22 March 2012, the Chief Inspector of the UK Border Agency's title changed to become the Independent Chief Inspector of Borders and Immigration. His statutory responsibilities remain the same. The Chief Inspector is independent of the UK Border Agency and the Border Force, and reports directly to the Home Secretary.

## **Purpose**

- 3.4 The purpose of this inspection was to inspect the efficiency and effectiveness of the handling of legacy asylum and migration cases, making recommendations for improvement where necessary. The inspection focused on:
  - the progress the Agency was making against its targets regarding clearance of legacy asylum and migration backlog cases;
  - the actions the Agency was taking to resolve cases in the asylum and migration controlled archives;<sup>8</sup> and
  - whether 'live' asylum cases had been reviewed and taken to the furthest possible conclusion.

## **Methodology**

- 3.5 The Chief Inspector's inspection criteria<sup>9</sup> (set out in Appendix 1) were used to assess the efficiency and effectiveness of the handling of legacy asylum and migration cases under the themes of:
  - Operational Delivery;
  - Safeguarding Individuals; and
  - Continuous Improvement.
- 3.6 A number of stages were completed prior to the on-site phase of the inspection, which took place between 28 May and 1 June 2012. The pre-inspection activities included:
  - a pre-inspection familiarisation visit to the Case Assurance and Audit Unit (CAAU) on 29 February 2012;
  - an examination of management and performance information provided by the Agency, including transition planning documentation detailing the transition of work from the Case Resolution Directorate (CRD) in Croydon to CAAU in Liverpool;
  - surveys of MPs and Legal Representatives; and

<sup>8</sup> When the Controlled Archive started in 2008 it was defined as 'a hold for those cases where CRD had tried to establish contact with the applicant through the current set of processes and had been unsuccessful.'

<sup>9</sup> 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>

- file sampling 325 files, broken down between:
  - 145 asylum cases in the controlled archive;
  - 69 migration cases in the controlled archive;
  - 86 asylum cases either granted a form of leave or refused; and
  - 25 asylum cases decided without sight of paper files.

3.7 During the on-site phase of the inspection, we also sampled 40 complaint files and undertook focus groups and interviews with 65 members of staff. Figure 1 provides a breakdown of the staff we spoke to by grade.

<b>Figure 1: Agency staff interviewed during inspection</b>	
<b>Grade</b>	<b>Number</b>
Administrative Officer (AO)	13
Executive Officer (EO)	30
Higher Executive Officer (HEO)	14
Senior Executive Officer (SEO)	4
Assistant Director / Grade 7	1
Deputy Director / Grade 6	3
Director / Grade 5	2
<b>Total</b>	<b>67</b>

3.8 We also interviewed two senior Agency managers who had previously worked in CRD, to provide greater detail about the transition of work to CAAU.

3.9 Five days after the completion of the on-site phase of the inspection, the inspection team provided feedback on high-level emerging findings to the UK Border Agency. The inspection identified ten recommendations to improve the efficiency and effectiveness of CAAU. A full summary of recommendations is provided on page 11 of this report.

## 4. Background

4.1 In July 2006, the then Home Secretary published a report on the Immigration and Nationality Directorate (IND).<sup>10</sup> It was called: Fair, effective, transparent and trusted – Rebuilding confidence in our immigration system.<sup>11</sup> The report was produced following IND’s failure to consider foreign national prisoners for deportation. The report identified five key objectives that needed to be delivered to meet public expectations for change. One of these was to ‘deal with the legacy of unresolved asylum cases within five years or less’.<sup>12</sup>

4.2 The report set out that all cases would be dealt with on their individual merits and that the work would be prioritised to deal with legacy asylum applicants who may pose a risk to the public first, followed by individuals:

- who could more easily be removed;
- who are in receipt of public support;<sup>13</sup> and
- who may be granted leave.

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*The Case Resolution Directorate (CRD) was established on 1 April 2007 to deal with an estimated backlog of 400,000 to 450,000 asylum case records*

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4.3 On 19 February 2007, the Agency wrote to the Home Affairs Select Committee for the first time regarding its plans for tackling the backlog of unresolved asylum cases. This work subsequently came to be known as the Legacy Casework Programme and was managed by a special directorate – the Case Resolution Directorate – which was established by the Agency to undertake this work.

### Case Resolution Directorate

4.4 The Case Resolution Directorate (CRD) was established on 1 April 2007 to deal with an estimated backlog of 400,000 to 450,000 asylum case records. It did not deal with new asylum claims, but existed solely to focus on concluding older asylum cases that had yet to be fully resolved. These cases were defined as those not being processed as part of the New Asylum Model (from 5 March 2007 onwards) and which had not been concluded (removed, granted<sup>14</sup> or otherwise closed).

4.5 At the outset, the Agency made it clear to stakeholders and Parliament that CRD had been established to conclude cases. A Director for CRD set out that a CRD conclusion is one that has either been:

- ‘granted permanent residency; or
- removed from the country (this includes voluntary departures, assisted voluntary returns, and enforced removals).’

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<sup>10</sup> Now the UK Border Agency.

<sup>11</sup> Referred to as the IND Review.

<sup>12</sup> Asylum claims which are incomplete and which are not being processed as part of the New Asylum Model (NAM), which was created on the 1 April 2007 to deal with all new asylum claims.

<sup>13</sup> Financial and/or accommodation support.

<sup>14</sup> Certain applications for further leave, for example applications for active review from persons previously granted Discretionary Leave as Unaccompanied Asylum Seeking Children, and who remain under 18 years of age at the time of their further applications, were included within the asylum work assigned to CRD.



- 4.6 The Director of CRD added that cases could also be considered concluded where for example applicants had been given status prior to July 2006 but did not show as such on the Agency's electronic database, or were incorrectly identified in the asylum backlog in July 2006, required no further action or were duplicate records.
- 4.7 We established that legacy case records started to be allocated to staff in December 2007, once the case work teams and processes necessary to support their work had been put in place. Approximately 800 staff in Croydon and Liverpool were assigned to this work. The Agency also engaged approximately 350 temporary staff during 2009 and 2010, through an arrangement with SERCO,<sup>15</sup> to meet the deadline imposed to conclude this work by the summer of 2011.
- 4.8 The Agency reiterated that the priorities for CRD in working through these cases were as those described in the IND review – paragraph 4.2 refers.
- 4.9 In October 2009, the Agency added approximately 40,000 migration cases to CRD's caseload. These cases included family applications, students and other types of migrants who had been given temporary leave to visit the UK, but were seeking to extend that leave. A significant number of these cases predated 2003, with some going back to 1983. The Agency stated that, as the work to clear the asylum backlog started to draw to a close, it would devote more resources to concluding these migration cases by summer 2011.
- 4.10 The Agency provided regular six-monthly reports to the Home Affairs Select Committee about the progress it was making to conclude legacy asylum cases by the summer of 2011. These reports included setting out the Agency's approach to:
- the way in which it was tackling this workload, including the prioritisation that was afforded to different types of cases;
  - locating individuals with whom it had lost contact, including checking individuals against both internal and external databases in an effort to locate them; and
  - archiving cases and adding them to conclusion statistics where its attempts to trace individuals were unsuccessful over a period of time.
- 4.11 These reports provided regular assurances to the Home Affairs Select Committee, Parliament and a wide range of stakeholders that the legacy casework programme would be concluded in line with the commitments made by the former Home Secretary in July 2006.
- 4.12 On 2 March 2011, the Agency informed the Home Affairs Select Committee that there would be 'some cases that we will struggle to conclude before the end of the programme, for example, because they are awaiting removal, have impending prosecutions or ongoing litigation'.
- 4.13 On 24 August 2011, the Agency changed the terminology it was using in relation to 'concluding' legacy casework. In this letter the Agency instead stated that CRD had 'reviewed' the entire caseload, adding that a small number of cases were still outstanding because representations were made to CRD late in the programme. It set out that it would make decisions on these cases by the end of August 2011. It also added that some removal cases would also remain outstanding: for example, where final conclusion would depend on the outcomes of appeals and re-documentation processes.
- 4.14 On 12 September 2011, the Agency provided a final update to the Home Affairs Select Committee on the remaining legacy cases which had been reviewed but where 'there were remaining barriers to conclusion'. The letter stated that 500,500 cases had been reviewed as part of the programme, with the majority (455,000 cases) being fully concluded. This letter contained the information at Figure 2.

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<sup>15</sup> SERCO provided contract staff to perform basic administrative tasks in relation to CRD work.

<b>Figure 2: Categories and number of files sampled</b>	
<b>Total number of reviewed cases in the legacy cohort</b>	500,500
<b>Total concluded</b>	479,000
<b>of which</b>	
<b>Grants</b>	172,000 (36%)
<b>Removals</b>	37,500 (8%)
<b>Other (duplicates, errors or controlled archive)</b>	268,000 (56%) Including 98,000 in the controlled archive. A further 500 will be added if not traced within the next 6 months.
<b>Grants subject to final security check</b>	3,000
<b>Remaining barriers to conclusion</b>	18,000

Note: Figures have been rounded to the nearest 500, therefore there will be a discrepancy between the 'total concluded' and the individual breakdowns.

- 4.15 This letter referred to the establishment of the Case Assurance and Audit Unit, which was tasked with dealing with 23,000 cases which been reviewed but had barriers to conclusion. It said that all these cases had been decided and communicated to the applicants. The letter also set out that of these 23,000 cases, the Agency:
- 'had fully concluded 1,500 of those cases;
  - issued around 3,000 grants which are subject to information from the applicant in order to complete a final security check; and
  - is actively managing around 18,000 cases which have been case worked to the furthest possible point but barriers to their removal remain, such as ongoing litigation, impending prosecution, incomplete legal or criminal proceedings, non compliance or because they are from difficult to remove countries'.

### **Case Assurance and Audit Unit**

- 4.16 The Case Assurance & Audit Unit (CAAU) was established in April 2011 to take forward work on 147,000 cases, broken down as follows:
- 23,000 'live' asylum cases which had not been fully concluded due to various barriers;
  - 98,000 asylum cases which had matured<sup>16</sup> into the controlled archive; and
  - 26,000<sup>17</sup> legacy migration cases placed into a separate controlled archive.
- 4.17 The Agency stated that CAAU would continue to pursue cases placed into the controlled archive, checking all cases regularly against watch lists and the Police National Computer. When contact with an individual was re-established, the Agency would update its records and then work the case to conclusion. In relation to the residual work on 'live' cases which had been reviewed and were awaiting conclusion, the Agency stated that CAAU would continue to work on these cases and would conclude them once all remaining barriers had been resolved.

<sup>16</sup> Six months after files were placed into the controlled archive, they were considered to have 'matured' if no further contact had been made with the applicant. All such cases were considered as concluded for statistical purposes.

<sup>17</sup> This had reduced from the original figure of 40,000 by the time CAAU assumed responsibility for this work.

4.18 At the outset (April 2011), CAAU had 98.75 full-time equivalent posts and an annual gross expenditure budget for 2011/12 of £34,349,261. By February 2012, the number of full-time equivalent posts had increased to 141. The Agency advised us that CAAU's targets in March 2012 were to reduce the:

- 'asylum controlled archive from 98,000 (Case records) to under 83,000 by March 2012 and 51,000 by March 2013;
- migration controlled archive to under 22,000 by March 2012 and 15,000 by March 2013; and
- make-up of cases within the live case cohort solely to case types where cases have been case worked to the furthest possible point but barriers to their conclusion remain. The live cohort of cases should fall below 29,700 in line with projections which are subject to change'.

4.19 Although the majority of CAAU work was carried out by staff in Liverpool, we were told that another team had been created in Manchester in February 2012. This team was responsible for identifying and amalgamating duplicate records<sup>18</sup> on the Agency's casework information database system and identifying cases which could be removed from the controlled archive as new information about applicants came to light, either through internal or external data-matching exercises.

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*The Agency stated that CAAU would continue to pursue cases placed into the controlled archive, checking all cases regularly against watch lists and the Police National Computer*

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<sup>18</sup> Those where more than one case was held for one person.

## 5. 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.

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

- 5.1 This section gives the results and detailed analysis of the files we examined prior to conducting the on-site inspection of CAAU, which took place between 28 May and 1 June 2012. In total, 360 case files were requested. These were chosen randomly from either decisions made between 1 September 2011 and 29 February 2012 (for granted and refused cases), or from lists generated by the Agency covering files within the two controlled archives (asylum and migration). Figure 3 sets out the case categories, together with details of the case files produced by the Agency.

**Figure 3: Categories and number of files sampled**

Category	Requested	Sampled	Not received*
Asylum Controlled Archive	150	145	5
Migration Controlled Archive	75	69	6
Cases granted asylum	75	64	11
Cases refused asylum	30	22	8
Decisions made without sight of file	30	25	5
<b>Totals</b>	<b>360</b>	<b>325</b>	<b>35</b>

Note: \*The Agency was unable to locate these files for the purposes of our file sample.

### Asylum controlled archive cases

#### Background

- 5.2 Our largest file sample was of asylum controlled archive cases, which we selected due to the high level of parliamentary and public interest in these cases. When the controlled archive was established in

2008, the Agency defined it as ‘a hold for those cases where CRD had tried to establish contact with the applicant through the current set of processes and had been unsuccessful.’

5.3 In July 2009, the Agency informed the Home Affairs Select Committee that it had been unable to trace a number of the applicants within the asylum legacy caseload. It stated that it had made every effort to trace such cases, checking a number of internal and external databases. If this tracing activity proved unsuccessful, cases were placed into a controlled archive and were included within conclusion statistics if six months elapsed without the applicant subsequently coming to light. The Agency added that cases within the controlled archive continued to be run against a number of internal watch lists every three months, and cases would be reactivated and removed from the conclusion statistics if the applicant came to light.

5.4 The Agency repeated these assurances to the Home Affairs Select Committee in July 2010. In a further update on 1 November 2010, the Agency stated that the controlled archive now numbered approximately 18,000 cases, with a further 43,000 cases being placed into the controlled archive more recently. However, these cases had not been included in the conclusion statistics because they had not reached six months’ maturity. Once they did so (i.e. no contact was made with the applicant), these cases would similarly be considered, concluded and incorporated within the published figures for asylum controlled archive cases.

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*The Agency informed us, following our initial evidence request, that it had completed its internal review of all outstanding legacy cases on 31 March 2011*

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5.5 In March 2011, the Agency provided a further written progress update to the Home Affairs Select Committee, reiterating that ‘the Agency made every effort to trace such cases, checking a number of internal and external databases. If this tracing fails, the case is placed into the controlled archive.’ It was also announced that the three-monthly watch lists checks would now take place every six months because of the low rate of success in tracing applicants.

5.6 The Agency informed us, following our initial evidence request, that it had completed its internal review of all outstanding legacy cases on 31 March 2011. We noted that the Agency’s use of the term ‘review’ was very different from the commitments it provided in regular written updates to the Home Affairs Select Committee, where it always talked about ‘concluding’ cases.

5.7 The Agency told us that the initial cohort of cases within the asylum controlled archive transferred to CAAU consisted of 75,594 cases, with a further 22,435 cases in the pipeline that would ‘mature’ into the archive after six months – an overall total of 98,029 cases. Figure 4 refers to the controlled archive case statistics reported to the Home Affairs Select Committee.

**Figure 4: Asylum cases placed into Controlled Archive (cumulative totals)**

July 2010	November 2010	April 2011	September 2011
9,000	18,000	75,500	98,000

5.8 This table shows the dramatic increase in the cases placed into the controlled archive over the last ten months of CRD’s existence. We noted that this increase had not gone unnoticed by the Home Affairs Select Committee, as they had identified as early as November 2010 that the controlled archive was the ‘fastest growing category of concluded cases’.<sup>19</sup>

5.9 The operational guidance issued to staff for the controlled archive made it clear that before placing a case file into the controlled archive, it was important that all checks to establish the applicant’s whereabouts needed to be made, and:

<sup>19</sup> Home Affairs Committee – Fourth Report – The work of the Border Agency.

- if an applicant had been granted leave beyond July 2011, been removed or had voluntarily departed, the case should not be placed into controlled archive; or
- if there was any information within the paper file or on CID which might provide a lead on the applicant's address or whereabouts, this action should be pursued, prior to the file being placed into the controlled archive.

5.10 The importance of carrying out all possible checks before a case was put into the controlled archive was emphasised in this document, in line with statements made by the Agency to the Home Affairs Select Committee, Figure 5 refers.

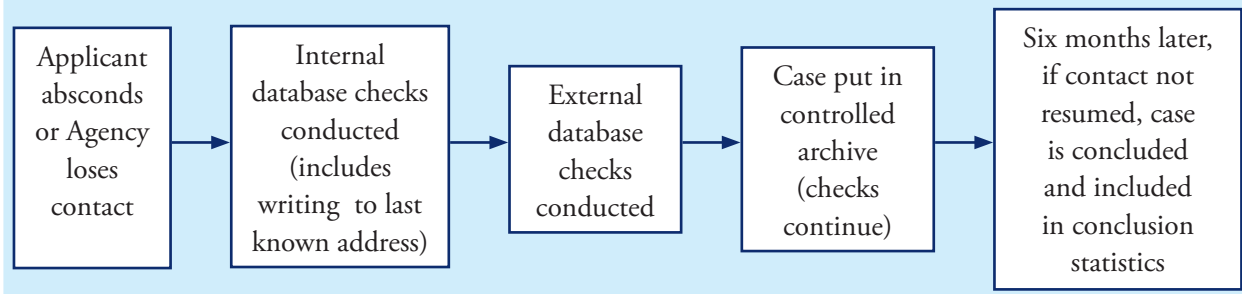
#### **Figure 5: Agency statements to the Home Affairs Select Committee regarding the controlled archive**

- *'The agency makes every effort to trace such cases, checking a number of internal and external databases. If this tracing fails, the case is placed into the controlled archive. Once a case has been in the controlled archive for six months it is included in conclusions statistics' (2nd Report – The Work of the UK Border Agency – 8 December 2009);*
- *'If you look back at my description of controlled archives, we were always clear that, after concluding the significant number of checks we do and after putting them into the controlled archive and the passing of time, we would regard them as concluded. That has proven to be appropriate so far. A very small number in a sense have come alive again. A great proportion of these, we suspect, have left the country of their own volition or have been concluded under a different name or a different reference without us completely being able to put the two together' (Oral Evidence from Chief Executive of Agency to the HAC – 9 November 2010);*
- *'Each of those cases has been the subject of the most exhaustive checks and scrutiny, both with the voluntary sector – often people have come to light and been traced through their contact with MPs, for example. We have also checked every single one of them against 19 databases – Government, Home Office, private sector databases. As a result of that there is no trace of them' (Oral Evidence from Acting Chief Executive of Agency to the HAC – 5 April 2011);*
- *'We have done the most exhaustive things we possibly can, that we reasonably and responsibly can. We have run those checks on a number of occasions in a period before we transferred them into the controlled archive' (Oral Evidence from Acting Chief Executive of Agency to the HAC – 5 April 2011).*

5.11 Following an oral evidence session with the Chief Executive in July 2009, the Home Affairs Select Committee subsequently asked the Agency what partner agencies it worked with to re-establish contact with applicants who tried to evade immigration control. In its response dated 19 October 2009, the Agency stated that applicants were put through up to 19 different checks. These included internal checks against its own databases, together with a voters' registry check for each case. In addition, the Agency stated that it could also conduct a number of external checks, for example with the Department for Work and Pensions, Local Authorities, the Prison and Probation Services and independent companies such as credit reference agencies. It added that it was constantly assessing its relationships with partner agencies and seeking new possibilities with them in order to trace applicants who attempted to evade immigration control.

5.12 Figure 6 provides details about how the controlled archive was designed to operate in cases where the Agency was no longer in contact with the applicant.

**Figure 6: Operation of controlled archive**



5.13 At the time of the inspection, we were told that the current Chief Executive had set a deadline to complete the tracing work involved in both this and the migration controlled archive by the end of December 2012. This would result in cases either being:

- transferred to the ‘live’ cohort of casework (where individuals were found to be in the UK and would therefore require their cases to be progressed, either to removal or some form of leave to remain in the UK);
- ‘closed’ because they had left the UK or had been given some other form of leave to remain in the UK (or the case was identified as a duplicate); or
- ‘closed’ as proactive tracing work, against both internal and external databases had failed to find any trace of individuals in the UK.<sup>20</sup>

5.14 Throughout our inspection, we noted the changing terminology that was used in relation to asylum legacy work. For example, ‘cleared’, ‘completed’, ‘concluded,’ ‘reviewed’ and ‘closed’. We considered that the lack of consistent terminology was confusing for stakeholders, especially as no single document set out exactly what these varying terms meant. We believe it is important that the Agency is clear and consistent in the terminology it uses so that Parliament and stakeholders understand exactly what progress the Agency is making in relation to concluding legacy asylum casework.

**We recommend that the UK Border Agency:**

- Is clear and consistent in the terminology it uses so that Parliament and the public understand exactly what progress the Agency is making in concluding legacy casework.

**File sampling methodology**

5.15 We requested 150 files and received 145 because the Agency was unable to locate five files. We then removed a further 10 cases because they were out of scope. This was because: in six cases no asylum claim had been recorded; one case was found to be an EU national; one applicant had withdrawn their asylum claim; and two applicants had been granted British citizenship. This meant that nearly 7% of the file sample was wrongly allocated to the controlled archive cohort of cases. We examined the remaining 135 cases against a number of indicators to determine:

- the accuracy of Agency statements in relation to the handling of these cases, most notably the extent to which internal and external checks had been carried out to locate individuals;
- how proactive the Agency was in relation to apprehending and removing failed asylum seekers; and
- the impact of SERCO’s contribution to case progression.

<sup>20</sup> In July 2012, the Home Secretary and Immigration Minister endorsed the closure criteria that will apply in relation to controlled archive cases.

## Data matching against internal systems

- 5.16 All cases in our sample had Police National Computer (PNC) checks conducted prior to the files being placed into the controlled archive. However, we found that, once files had been placed into the archive, the Agency had not undertaken regular and routine database checks against either the Police National Computer or the Warning Index system (WI) since at least April 2011, when CAAU became responsible for these cases.
- 5.17 This was at odds with what the Agency told us initially, which was that once cases were placed into the controlled archive 'regular checks were made against the PNC and WI'. We therefore asked for evidence that these checks (PNC and WI) had been completed regularly since April 2011 – the month in which CAAU was tasked with undertaking this work. We also requested information concerning the total number of individuals traced by PNC or WI checks that had been undertaken. Figure 7 details the Agency's written response, which was provided to us on 24 July 2012.

### Figure 7: Agency response re PNC checks on controlled archive cases

#### Agency response:

- 'From April 2011 CAAU submitted 8000 checks yielding c 2000 returns. Results were returned as paper copies and linked to file but were not recorded electronically therefore results are unknown.'
- 'A separate electronic exercise was completed by CAAU closing 01/08/11. 7998 checks were submitted by CAAU yielding 6799 returns. Of the 6799 returns, 1029 recorded a definite trace and 328 recorded a possible trace.'
- 'On 02/08/11 937 checks were submitted by CAAU. Paper records exist recording the results of definite traces, which totalled 123.'
- 'Controlled archive cases are included in daily PNC checks where capacity existed following checks for cases which fell to be case worked. It is not possible to differentiate between case work and controlled archive PNC checks; however, the controlled archive checks would be small in number due to PNC capacity. Every case that falls to be granted within CAAU will have a current PNC and WICU check before the grant can be implemented.'

- 5.18 The Agency's response shows that it had failed to ensure that PNC checks were completed routinely in order to identify whether any of the applicants in these cases had come to the attention of the Police. This was inconsistent with the information provided by the Agency to the Home Affairs Select Committee on 2 March 2011, where it asserted that these checks would be completed every six months.

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*the Agency had not undertaken regular and routine database checks against either the Police National Computer or the Warning Index system (WI) since at least April 2011*

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- 5.19 During our inspection the Agency told us that it intended to introduce in the near future a facility for PNC checking against all remaining controlled archive records. In relation to WI checks, the Agency informed us that these were only completed when considering whether to grant a form of leave – they were not undertaken routinely on controlled archive cases.

### We recommend that the UK Border Agency:

- Routinely and regularly matches asylum and migration legacy cases against PNC and WI records, until the point at which cases are finally concluded.



## Data matching with external providers

- 5.20 The cases within our file sample had lain dormant for an average of 87 months before they were reopened in 2010 for consideration. The shortest period of inactivity was six months and the longest period of inactivity was 17 years and nine months. We noted that many of these delays occurred prior to the establishment of CRD. We found that only five cases in our sample (4%) had been subject to any form of external check. The checks took place well before these cases were placed into the controlled archive, in March 2001, February 2007, March and August 2008 and August 2010.
- 5.21 The Agency had not undertaken any proactive work within CRD to locate and trace any of the individuals in our sample prior to placing these cases into the asylum controlled archive. This was a serious failing. The Agency was also not meeting the commitments it had made to carry out extensive checks in these cases. It should have been much more proactive in undertaking external data-matching exercises to identify whether any of these individuals were known to other government departments or financial institutions, for example:
- the Department for Work and Pensions (DWP);
  - HM Revenue and Customs; and
  - credit reference agencies.
- 5.22 Checks with these organisations would almost certainly have identified a considerable number of applicants in the archive who had either claimed benefits, paid tax, or held bank accounts/credit cards etc.
- 5.23 The Agency's failure to introduce bulk data-matching against any of these organisations since the inception of CRD in 2007 meant that cases were placed into the controlled archive (and considered concluded for statistical purposes) without any proactive attempts being made to trace individuals.
- 5.24 In view of the statements that the Agency had made about the level and types of checks it had conducted, (as outlined in Figure 5), we requested evidence to demonstrate that checks had been completed prior to cases being placed into the controlled archive. The Agency replied that approximately 12,000 cases had gone through extensive checks, usually linked to cases with criminality or cases where removal was considered likely. This work resulted in positive traces in 5,107 cases (43%). However, we found that these checks were undertaken by case workers on an individual basis, through completion of an Intel tracing pro forma – they did not form part of any wider bulk data-matching initiative prior to cases being placed into the controlled archive.
- 5.25 The evidence we collected regarding checks was inconsistent with the information provided by the Agency to the Home Affairs Select Committee. We therefore asked the Agency whether it had taken steps to clarify these statements. In its reply the Agency drew our attention to the following letters it had sent to the Home Affairs Select Committee on:
- 19 October 2009 – paragraph 22;
  - 11 October 2011– paragraph 13; and
  - 15 December 2011 – page 9, under section 3.4.
- 5.26 We reviewed these letters and noted they did not correct the information that the Agency had previously provided on this issue.
- 5.27 Our concerns in relation to this issue were well founded, because during our inspection we found that the Agency had finally taken action to remedy this situation, having run all asylum and

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*The evidence we collected regarding checks was inconsistent with the information provided by the Agency to the Home Affairs Select Committee*

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migration controlled archive cases (approximately 105,000 individual records in total) against information held by both the Department for Work and Pensions and a credit reference agency. The Agency informed us that, along with its internal data matching work, it expected up to 31,000 asylum controlled archive cases to become 'live' as a result of these data matching initiatives. It added that it was employing approximately 65 contracted agency staff to deal with these initiatives as it worked towards its target completion date of December 2012.

- 5.28 However, while we noted the positive action the Agency was now taking in order to locate individuals, we noted that once a case became 'live' (i.e. the individual was located), files would not be caseworked immediately, as there were insufficient resources to take this work forward. Due to the volume of cases that were expected to become 'live', we believe that the Agency needs to ensure this work is tackled promptly, as leaving cases dormant not only impacts on individuals and their families but also makes subsequent removals even more difficult to achieve.

#### **We recommend that the UK Border Agency:**

- Ensures that the information it provides to the Home Affairs Select Committee is accurate and includes all legacy cases where asylum applications were made before March 2007.
- Develops a realistic timescale to conclude all remaining legacy cases and makes a public commitment to do so.

#### **Tracing absconders**

- 5.29 One hundred and fifteen cases (85%) of our sample were found to have entered the UK illegally. We identified extended periods of inactivity, sometimes over a number of years, and in many cases we found that the Agency had taken no action to remove absconders. It was clear from the files we examined that the Agency had not prioritised work to trace absconders, as we found only ten cases (7%) where active efforts had been made to undertake tracing work.
- 5.30 In total, we identified that only 34 applicants (25%) had been recorded as absconders on the Police National Computer (PNC). The failure to record all Agency absconders on the PNC could result in individuals who come into contact with the Police not being brought to the attention of the Agency.
- 5.31 The Agency's failure to deal with absconders effectively was significant. It must ensure going forward that it has sufficient resources to complete this work, if it is not to face another backlog of asylum cases in the future. It will be especially important to develop robust tracing processes, not just to help locate these individuals but to deliver a clear message that the Agency will be tough on those who fail to comply with UK immigration rules.

#### **Contractor – SERCO**

- 5.32 The work of classifying cases as ready for the controlled archive was primarily done by administrative staff employed by SERCO. The Home Affairs Select Committee's ninth report, dated March 2011, acknowledged the Agency's efforts in trying to meet its July 2011 deadline by 'employing contract staff to perform basic administrative tasks in relation to applications, thus freeing the Agency's own caseworkers to concentrate on the substance of decision-making'.
- 5.33 One of SERCO's key roles was to re-establish contact with applicants. They did this by sending out information request letters to applicants, giving them 28 days to return requested documents and information to the Agency. As soon as the deadline passed, cases were put into the controlled archive – with no allowance being made for delayed responses, or the backlog of correspondence that accumulated during the last few months of CRD's existence.

5.34 A senior manager told us that SERCO staff handled approximately 250,000 cases and were instructed to put cases into the controlled archive if no reply was received from the applicant. If a response was received, then the letter was linked to the file and passed to a caseworker for consideration. Overall they considered SERCO to be beneficial in helping CRD to meet its commitment to conclude this work by the end of March 2011.

5.35 This was in contrast to what we were told by case working staff, who were not complimentary about the work of SERCO. They thought that SERCO staff had not been properly trained nor had they understood the context of the work they were involved in. They felt this resulted in significant numbers of cases being incorrectly placed into the controlled archive.

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*Our file sampling showed that asylum case files contain a large amount of information, not all of which is recorded on CID*

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5.36 We identified 119 cases (88%) where SERCO checklists had been completed prior to the file being allocated to the controlled archive. We found evidence of issues being overlooked by SERCO staff in 14 cases (12%) and in some instances a thorough audit of file content had not been carried out before cases were archived. For example, in one case we found the applicant had signed a disclaimer to formally withdraw their asylum application and left the UK voluntarily in 2000. In another case we found that the applicant had been removed from the UK in 2001. We noted in both cases that, while this information was recorded in the paper file, no corresponding entries had been made on CID.

5.37 Our file sampling showed that asylum case files contain a large amount of information, not all of which is recorded on CID. Similarly CID may also contain information which case files do not contain. It is therefore important that the Agency satisfies itself going forward that contractors are properly trained to undertake the work they are being asked to do, to ensure that the errors we have highlighted do not recur.

5.38 It is also important that Agency staff update CID with information that is relevant, as in the two cases above the files were wrongly included within the controlled archive when they should have been excluded. Failure to update CID with relevant information also negatively impacts staff in other parts of the Agency (or Border Force), as without sight of the file they are unaware of information that might be relevant to their work.

5.39 We raised this particular issue in our earlier inspection report *Asylum: Getting the Balance Right*, when we identified that Agency staff did not have a clear understanding whether information relating to a case should be recorded on the paper file, on CID, or on both. This lack of understanding amongst staff about what should be recorded on the file, on CID, or both, continues to cause us concern and so we therefore repeat our recommendation from our earlier inspection.

#### **We recommend that the UK Border Agency:**

- Clarifies the information that should be stored on the file and the Casework Information Database and incorporates checks of this into the quality assurance framework.

## Migration Controlled Archive cases

### **Background**

5.40 The Agency's in-country case working fits largely into three main categories: asylum, nationality and migration. The latter covers migrants who have come into the UK legally and then seek an extension or change of leave. Migration cases account for the largest share of the Agency's total in-country casework load, with a desire to study remaining the most common reason for migration to the UK.

- 5.41 Prior to 2009, CRD only dealt with cases that had an asylum element. This changed on 19 October 2009, when the Agency informed the Home Affairs Select Committee of ‘another set of historical files where it was not known whether the applicant had left the country or remained and, if the latter, whether he or she had been granted leave to remain or was here illegally.’ The Agency added that all 40,000 cases had been subject to security checks (PNC and Warnings Index checks) to identify anyone likely to cause harm. It added that it ‘intended to deal with these cases in the same timeframe as the legacy asylum cases – by mid 2011 at the latest’.
- 5.42 The Agency informed us that CAAU had reduced the migration archived cases from 26,000 (April 2011) to 21,500 at the time of the on-site phase of our inspection (May/June 2012). We were told that the majority of this reduction was driven by internal data-matching activities, for example, identifying through Agency records that an individual had left the UK.

### Timeliness of decision-making

- 5.43 It took the Agency on average seven and a half months to make a decision on the 64 cases we sampled, with no progress updates being sent to applicants or their representatives during that time. The shortest time taken to make a decision was eight days and the longest was four years. In 10 cases (16%), we found correspondence from applicants to which the Agency had failed to respond. By any standards this was a poor level of service.
- 5.44 Twenty-seven applicants (42%) had applied before their current leave to enter the UK had expired. In a further 36 cases (56%), applicants had made their applications after their original leave to enter the UK had expired. We consider that meeting customer service standards was important for dealing with both types of applications, because these decisions had a bearing on whether applicants could remain in the UK or should leave.
- 5.45 When the Agency refuses an applicant, individuals have 28 days to leave the UK, with a refusal notice being sent to their home address, together with their travel document being endorsed with a refusal stamp. In 47 of the cases we sampled (73%), the Agency returned a valid travel document (i.e. a passport) to the applicant. While this might be a reasonable approach for those applicants who have complied with the Immigration Rules, the Agency should consider whether it should return valid travel documents to those applicants who have breached the Immigration Rules. This is because valid travel documents are key to removing people from the UK who do not have valid leave to remain, and such applicants may deliberately destroy or misplace their travel documents to delay their removal.

- 5.46 We also identified five cases that should not have been included within this cohort of cases because they were out of scope (three individuals had claimed asylum, one had been granted leave and one had never had an initial decision made). We also found strong evidence in a further three cases (5%) that indicated applicants had left the UK, because:

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*It took the Agency on average seven and a half months to make a decision on the 64 cases we sampled*

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- Semaphore<sup>21</sup> identified that two had left the UK; and
- another had subsequently made a visa application while overseas.

- 5.47 We also found evidence in two further cases that colleges had notified the Agency that students had cancelled their courses and returned home. The Agency took no further action to verify this information.

<sup>21</sup> Semaphore receives advance information on passengers from carriers on journeys to and from airports outside the UK.

## General management of applicants' documents

- 5.48 Applicants must submit their passports or travel documents when they apply for further leave. The Agency's guidance clearly states that 'original documents must be returned once case consideration has been completed – unless they are retained for a specific purpose.'
- 5.49 The Correspondence team told us that their main priority was to keep important documents in secure banks so as to prevent loss. Fourteen files (22%) that we examined had original marriage, birth and death certificates on file. These documents are clearly important personal documents and should have been returned to applicants regardless of whether they were granted leave or not.
- 5.50 In some instances, returning an applicant's passport to them was the last action taken by the Agency before the case was 'filed away'. Clearly there is a need to check whether applicants comply with their 28-day notice and voluntarily depart the UK. While we recognise that, without embarkation and full e-Borders coverage, it is difficult for the Agency to easily identify whether individuals have left the UK voluntarily, we believe that the Agency needs to set out a structured approach to help it determine whether or not applicants are compliant with their legal requirement to leave the UK.

## Security checks

- 5.51 Although the Agency announced that CRD took over responsibility for these cases in the autumn of 2009 and had immediately checked all cases against PNC and WI, we found no evidence either in the paper file or on CID that these checks took place at the time. Our examination of cases did, however, show that these checks were undertaken in the majority of cases approximately 18 months later, between April and June 2011, when the Agency also wrote to all of the applicants in the migration controlled archive (a mail-merge initiative). Figure 8 is a typical example of one such case.

### Figure 8: Example of CRD writing to last known address in May 2011

- In October 2005, the applicant submitted an application to remain in the UK on the basis of Article 8 of the European Convention on Human Rights (right to private and family life). The application was refused in March 2007 and the applicant did not exercise their right to appeal. The file was sent to storage.
- It was not until May 2011 that the Agency reviewed the case by sending out an information request letter to the applicant's last known address. They failed to respond and the case was put in the migration controlled archive.
- In July 2012 the file was removed from the controlled archive as the applicant had come to light following a credit reference check (part of the April 2012 data-matching initiative).

- 5.52 This approach was followed to meet the assurance made by the former Chief Executive of the Agency on 2 March 2010 that all legacy migration cases would 'be cleared by June 2011 with the remainder of the {asylum} backlog'. When replies were not received and the security checks returned negative results, the files were placed into the controlled archive. We found that once these files were allocated to CAAU, no further action was taken on them until April 2012.

## Tracing / Enforcement action

- 5.53 In three cases (5%) we found applicants who had applied for leave to remain in the UK who had not held any form of leave prior to their applications. The Agency correctly refused these applications. Although over two-thirds of the cases we examined had appeal rights, only 19 applicants (30%) chose to exercise these appeals, which were all dismissed. In 12 of these 19 cases we noted that, although the applicants had valid travel documents, they were treated as a low priority by the Agency, with no active attempts being made to ensure they left the UK.

- 5.54 Furthermore, in 35 cases (55%) we came across additional evidence linked to files that could have been used to trace applicants. This evidence included:
- employer contact details;
  - local authority information; and
  - medical information.
- 5.55 It was unacceptable that this information was not followed up. Operational guidance made it clear that such information should be used to try and locate an address for an applicant before placing a case file into the controlled archive.
- 5.56 In previous statements to the Home Affairs Select Committee, the Agency indicated that many applicants leave the UK once their applications have been refused, without notifying the Agency of their departure. Whilst this may be true for some applicants, we found that the Agency had recently initiated contact with 16 of the applicants in our sample of cases (25%), following positive external data- matching with a credit reference Agency.<sup>22</sup> Prior to this, the Agency had not taken any proactive steps with external providers to trace these individuals and establish whether they had left the UK.
- 5.57 Figure 9 refers to one individual from the migration controlled archive who was identified as a result of a credit reference agency check (part of the April 2012 data- matching exercise). This case also illustrates ineffective case working and poor communication between and across various parts of the Agency.

### Figure 9: Ineffective case working and poor case administration, linked to a positive trace of applicant

#### Background:

- Mr W was issued with a two-year visa on 30 January 2002, as was his sister, to study at the same UK institution. On 8 February 2002, a denunciatory letter<sup>23</sup> was received by the Agency and detailed how eight individuals, including Mr W and his sister, planned to use forged documents to gain entry into the UK.
- The Visa Section immediately verified all the information received and sent a fax to the Warnings Index Unit on 11 February 2002, asking them to place all eight individuals on the WI. This was not completed until June 2004.
- In April 2002, both applicants gained entry into the UK and later, when their initial two-year period of leave expired in March 2004, successfully applied for another six months' leave, taking them up to 31 December 2004.
- A month after the WI was updated, in July 2004, Mr W's sister returned from an overseas holiday and was subject to further examination. At the interview and following extensive enquiries by the Immigration Officer, it was discovered that:
  - the institution (on whose letter Mr W had been granted a two year visa) confirmed that he had never enrolled nor studied there;
  - Mr W's sister had never attended the college;
  - neither of them had even lived in the city where the college was located; and
  - their purported sponsors denied ever sponsoring them but confirmed that both of them had been working full-time whilst in the UK.

<sup>22</sup> CAAU 3, the team responsible for managing internal and external bulk data matching activities also sent out letters to a further 10 applicants in our sample (16%) during the same period. It is possible these letters were the result of the bulk data matching initiative undertaken with the credit reference agency, but the individual case notes on CID provide no reason for these letters being sent out.

<sup>23</sup> An allegation of wrongdoing.

- Mr W's sister was refused and following an unsuccessful appeal was removed from the UK in December 2004.
- Mr W's leave expired in December 2004 but he did not apply for further leave till March 2005. On 01 April 2005, the Immigration Officer who had refused his sister at the airport made contact with the in-country case working team. This team's own subsequent enquiries led to a refusal of further leave in May 2005 and referral to an enforcement unit. An unsuccessful enforcement visit was carried out at Mr W's home address nearly a year later, on 30 April 2006.
- Although Mr W's further leave was refused in May 2005, the refusal notice had been wrongly sent to his college and not his representatives who had applied on his behalf, and so neither the applicant nor his representatives were aware that he had been refused. His representatives sent in seven letters between April 2005 and June 2006 requesting progress updates and eventually, in August 2006, the refusal was refreshed and sent to the representatives along with Mr W's passport and supporting documents.
- In May 2011 the case was archived as there was no response to a standard CRD letter. In May 2012, the case was retrieved from the controlled archive as external checks with a credit reference agency led to a trace on the applicant.
- Mr W's sister is now a UK resident following the grant of a two-year spouse visa in 2006 in her home country. The Entry Clearance Officer's issue notes show that her previous attempts at deception were never considered.

**Chief Inspector's comments:**

- The delay in updating the Warnings Index (nearly 28 months) with the denunciatory information was unacceptable and led directly to several people, including Mr W and his sister:
  - gaining entry to the UK in April 2002 on false pretences, when they should have been apprehended and removed the first time they arrived in the UK; and
  - having their in-country applications to extend their leave in the UK approved, when they should have been refused.
- The consequences of the Agency sending refusal correspondence to the wrong address and merely attaching correspondence to files without fully considering its content were clear. It was not until April 2006 that a caseworker decided to respond to the representative's letters. By this time the applicant had already been in the UK illegally for sixteen months with no idea about the outcome of his case.
- Following his refusal in May 2005, Mr W was referred to a local enforcement team. It remains unclear why the applicant's passport, which would have facilitated his return, was returned to him, particularly in view of the original denunciatory evidence and the evidence uncovered in July 2004, which showed he had abused his student visa. It is also concerning that it took the enforcement team a further 11 months to undertake an enforcement visit.
- After this unsuccessful enforcement visit, no action was taken by the Agency for five years, until an information request letter was sent out to his last known address in May 2011. This is unacceptable, given that the Agency had denunciatory information which it had substantiated.
- Whilst it was accepted that Mr W's sister may have met the criteria for a spouse visa, we were concerned that she had not been interviewed about this application, nor had her previous adverse immigration history or deception been taken into account.

5.58 The decision taken by the Agency to place these files into the controlled archive was wrong. We also found that the public statements made by the Agency regarding external checks carried out on cases that had been archived did not reflect the true position, as we found only one case out of 64 that had any form of external checking.

5.59 Interviews with senior managers confirmed that these cases had not been data-matched against any external databases. We were satisfied that plans had been put in place to rectify this in April 2012, when migration case records were data-matched externally against a credit reference agency and the Department for Work and Pensions. This initiative, along with its internal data-matching work, was expected to result in 6,500 migration cases becoming 'live'. The Agency told us it intended to recruit 14 additional staff with migration case working experience to deal with these cases.

## Legacy asylum cases granted leave

### File sampling methodology

5.60 We randomly selected 75 asylum cases which had been granted some form of leave by CAAU (decisions made between 1 September 2011 and 29 February 2012). The Agency was unable to locate 11 of the case files we requested. This reduced our sample to 64 cases. During our file examination, we identified that a further seven of these cases were out of scope.<sup>24</sup> We sampled the remaining 57 cases which were broken down between:

- 37 cases (65%) which had been contained within the 'live' cohort of cases transferred by CRD to CAAU in April 2011; and
- 20 cases (35%) which were in the asylum controlled archive when received by CAAU in April 2011.

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*The decision taken by the Agency to place these files into the controlled archive was wrong*

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5.61 Eleven (19%) of the cases we sampled related to unaccompanied asylum seeking children. We therefore report our findings on these cases in the section on Safeguarding Individuals, where we specifically examine whether the Agency carried out its functions having regard to the need to safeguard and promote the welfare of children.

5.62 We examined the remaining 46 cases against a number of quality indicators to establish:

- the barriers that existed which meant that these cases could not be completed by the end of March 2011;
- the effectiveness of casework administration and decision-making; and
- how well CAAU managed the move from Indefinite Leave to Remain (ILR) to Discretionary Leave (DL) in July 2011.

### Asylum casework – Prior to CRD

5.63 All of the 46 cases had an initial decision on their asylum claim prior to March 2007. The earliest claim date was 22 June 1995, meaning that this applicant had already been in the UK for approximately 12 years at CRD's inception. The latest asylum claim date was 10 January 2007.

5.64 Our sampling showed that initial asylum decisions took on average eight months, with the quickest decision being made the same day as the asylum application and the longest decision taking 3 years and 10 months to make. Thereafter, it took the Agency on average 29 days to notify applicants of their initial asylum decisions. In five cases (11%), applicants were not informed of the outcome of their asylum claim because four had absconded prior to their initial asylum decisions being made and one withdrew their initial claim. However, all subsequently put in further submissions.

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<sup>24</sup> Three cases had been granted ILR prior to our file sampling period, two cases were granted without sight of the file and the last was a migration case.



5.65 Figure 10 shows the outcome of the initial asylum decisions affecting all 46 adult asylum applications that we examined.

<b>Figure 10: Decision outcome in 46 cases sampled</b>	
<b>Outcome</b>	<b>Number</b>
Refusal	40
Discretionary Leave	2
Exceptional Leave to Remain	2
Humanitarian Protection	1
Withdrawn	1
<b>Total</b>	<b>46</b>

5.66 Of the 40 applicants refused, 35 (87%) subsequently appealed the decision. Thirty (86%) were subsequently dismissed, two were withdrawn, one was struck out by the judge at appeal stage (they did not have an in-country right of appeal), one was allowed and the last was allowed on human rights grounds only.

5.67 Although 17 of these cases were subsequently referred to an enforcement team for removal, we found only one case where the Agency made active efforts to remove the applicant. We noted that, once the appeal process was finished, neither applicants nor their legal representatives made further contact with the Agency for a number of years.

### **Asylum casework – Since creation of CRD**

5.68 The Agency adopted a number of approaches to help re-establish contact with asylum applicants following the creation of CRD in 2007, including:

- using its website to encourage applicants to provide their current address to the Agency;
- working with stakeholders to encourage them to update the Agency about any legacy asylum applicants that they may represent; and
- sending out mail-merge letters to the last known address for all applicants.

5.69 Contrary to the statements made by the Agency to Parliament, our file sampling showed that few cases had any significant barriers to removal. We saw several examples of what we considered inconsistent decision-making. For example, we noted some cases where CRD reviews had concluded that applicants did not qualify for leave, but soon after CAAU was established these applicants were granted. We refer to three such examples in Figure 11.

## Figure 11: Examples of inconsistent decision-making

- 1
- In March 2011 a CRD caseworker concluded that the case was not suitable for a grant of leave under 395C<sup>25</sup> due to a lengthy period of non-compliance and multiple examples of deception. The case was recommended for removal action. This was agreed by a senior caseworker in CRD.
  - In February 2012 the applicant was granted 3 years' DL by CAAU.

### Chief Inspector's comments:

- There was no information available to explain why the applicant, a single adult of a removable nationality,<sup>26</sup> had not been removed from the UK.
- There were no details as to why this applicant qualified for leave in February 2012 and why the issues outlined previously were outweighed by factors in the applicant's favour.

- 2
- In March 2010 a CRD senior caseworker wrote a detailed note explaining why the applicant was not eligible for a grant of leave because they left the UK after the conclusion of their asylum claim and returned to the UK in August 2008. In addition, they had been sentenced to 9 months' imprisonment for fraud.
  - In February 2011 a CRD caseworker reviewed the case and re-affirmed that the applicant did not qualify for leave under Paragraph 395C due to these reasons.
  - Seven months later, in September 2011, the applicant was granted 3 years' DL by CAAU.

### Chief Inspector's comments:

- No explanation was provided as to why the applicant qualified for leave in September 2011.
- No details were provided to explain the reasoning behind this decision or that any consideration had been given to the issues outlined previously that prevented a grant of leave.

- 3
- In July 2010, a CRD caseworker concluded that the applicant did not qualify for leave due to non-compliance. This decision was not communicated to either the applicant or his legal representative.
  - In November 2011 the applicant was granted 3 years' DL due to his length of residence, strength of connections to the UK and because there was a limited prospect of enforcing removal.

### Chief Inspector's comments:

- There were no details given regarding what connections the applicant had established in the UK or what evidence had been considered.
- It is unclear why it was concluded that removal in this case would be problematic. The applicant was a single adult of a removable nationality and the Agency had possession of his expired passport. In addition, at the time of the decision to grant leave, the applicant was reporting to the Agency.

5.70 The failure to articulate clearly in these cases why removal had not been considered was similar to an issue we highlighted in our earlier inspection, *Asylum: Getting the Balance Right*.<sup>27</sup> In this report we emphasised the need for legacy case owners to provide sufficient reasoning as to how the various factors involved in a case have been weighed prior to making a decision.

5.71 We identified significant and ongoing delays within CRD in many of the files we sampled. We

<sup>25</sup> Paragraph 395C of the Immigration Rules set out that full account should be taken of all relevant circumstances before a decision was made to remove someone (including Failed Asylum Seekers). Caseworkers had to balance factors such as strength of connections with the UK against non-compliance with the immigration system and criminality. Where these factors were such that removal was not appropriate, the removal would not proceed and leave was to be granted. Paragraph 395C of the Immigration Rules was deleted in February 2012.

<sup>26</sup> A national of a country where no legal barrier existed that would prevent removal action and where an effective and efficient re-documentation procedure was in operation.

<sup>27</sup> [http://icinspector.independent.gov.uk/wp-content/uploads/2010/07/Lessons-to-learn\\_The-UK-Border-Agency's-handling-of-complaints-and-MPs-correspondence.pdf](http://icinspector.independent.gov.uk/wp-content/uploads/2010/07/Lessons-to-learn_The-UK-Border-Agency's-handling-of-complaints-and-MPs-correspondence.pdf)

appreciate that CRD were dealing with cases according to the priorities we outline elsewhere in this report, but we noted that, in many of the files we examined, ongoing correspondence was being submitted by legal representatives.

- 5.72 In 11 of the cases we sampled (24%), we found that CRD staff had recorded on CID that the cases were ‘decision ready’. It was evident from the CID notes that a ‘decision ready’ case was one where:
- CRD had successfully made contact with the applicant and/or their legal representatives;
  - the Agency had received all correspondence they required to make a decision; and
  - security checks had been completed and were up-to-date.

- 5.73 We noted that these cases were made ‘decision ready’ by CRD staff between January and November 2010. On the evidence we saw, we could see no reason why these cases were not decided prior to the closure of CRD.

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*On the evidence we saw, we could see no reason why these cases were not decided prior to the closure of CRD*

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- 5.74 This failure had a considerable impact on the applicants involved. This was because, had the decisions been made at the time, any grants of leave would have been ILR, in accordance with the policy that was in place at the relevant time. However, following the July 2011 policy change,<sup>28</sup> which saw caseworkers being instructed to grant DL rather than ILR, all 11 applicants were granted DL. This was unfair, especially in view of the public commitments made by the Agency about asylum legacy cases when CRD was created.

## Asylum refused cases

### Background

- 5.75 Figure 12 shows the number of asylum cases granted or refused by CAAU between April 2011 and February 2012. CAAU told us that of these refusals 104 individuals had been removed.

**Figure 12: Monthly grant/ refusal rates for asylum cases – April 2011 to February 2012 inclusive**

Month	Grants	Refusals	Refusals % of total
Apr-11	294	76	21%
May-11	392	68	15%
Jun-11	468	72	13%
Jul-11	339	75	18%
Aug-11	336	89	21%
Sep-11	660	65	9%
Oct-11	683	62	8%
Nov-11	812	54	6%
Dec-11	644	61	9%
Jan-12	790	73	9%
Feb-12	673	69	9%
<b>Total</b>	<b>6,091</b>	<b>764</b>	<b>13%</b>

Note: Management information provided by CAAU (percentages rounded up decimal point).

<sup>28</sup> See section 7 ‘July 2011 Policy Change’ for our inspection findings on this issue.

5.76 This shows there has been an increase in the number of cases granted leave since April 2011. We believe the decrease in the refusal rate from September 2011 onwards coincided with two key decisions that were taken by the Agency. These were to:

- run a mail-merge exercise in relation to 9,393<sup>29</sup> cases which, although recorded by CRD as being within the live cohort facing significant barriers to conclusion, had not been reviewed; and
- make asylum decisions without sight of the paper file, using CID to decide whether a grant of leave was appropriate.<sup>30</sup>

### **File sampling approach**

5.77 We requested 30 files and received 22. The Agency was unable to send us eight files due to ongoing litigation following refusal. Of the remaining 22 cases, we identified that a further six (27%) were out of scope, because they had not had refusals made by CAAU.<sup>31</sup> We examined the remaining 16 cases against a number of indicators to examine:

- if the overall decision to refuse was reasonable and in line with evidence;
- the differences between these cases and those granted leave; and
- the reasons why refusal cases failed to reach the removal stage.

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*we concluded that in all cases the decision to refuse was informed by key evidence and that decisions to refuse were reasonable*

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### **Casework analysis**

5.78 Eleven of the 16 (69%) applicants had appealed their initial asylum refusals and all had their appeals dismissed. It was therefore surprising to see that only six (38%) had ever been referred to an enforcement unit for removal. Whilst we acknowledge the difficulties in procuring travel documents for applicants who typically have no valid leave at the time of application, or who may have entered the UK illegally, we believe the Agency must take more proactive action to enforce removals.

5.79 Cases should be progressed at the time when applicants have exhausted their appeal rights. The Agency had failed in this regard, as the cases we examined had suffered from long administrative delays, sometimes over a number of years.

5.80 Seven applicants (44%) had put in further submissions.<sup>32</sup> All but one had been treated as a fresh claim<sup>33</sup> and all were subsequently refused. Judicial Reviews<sup>34</sup> had been lodged in two cases and both had been denied permission to proceed by the courts. There was strong evidence of caseworkers conducting thorough checks of documents submitted and we concluded that in all cases the decision to refuse was informed by key evidence and that decisions to refuse were reasonable.

### **Removing applicants**

5.81 We found that all of the decisions to refuse and pursue removal were reasonable and in line with the evidence. Four (25%) individuals out of the 16 cases had been removed from the UK. One had been

<sup>29</sup> See section 7 'Cases not reviewed by CRD' for further details on these cases.

<sup>30</sup> This management decision was subsequently reversed following the AS (Somalia) judgement.

<sup>31</sup> Two applicants had applied under the 14-year long residence concession; one had returned to their home country and applied for an entry clearance; one applicant had been granted ILR in 2001 and was now naturalised; one had absconded after their initial refusal in 1999 and had no recent refusal and the last applicant had never made an asylum application.

<sup>32</sup> The term given to grounds submitted to the UK Border Agency by those who have already made an unsuccessful claim to remain in the UK, and who ask for their claim to be re-considered. A further submission refers to a situation where an applicant has had an initial asylum refused and exhausted all their appeal rights but chooses to provide additional information for consideration.

<sup>33</sup> A fresh claim is when someone who has been refused asylum submits further evidence which is accepted by UKBA to be new and relevant. It must be evidence that was not included in a previous claim.

<sup>34</sup> The means through which a person or people can ask a High Court judge to review the lawfulness of public bodies' decisions.

removed using their own passport, two had been removed on EUL letters<sup>35</sup> and the last opted for the Assisted Voluntary Returns scheme.<sup>36</sup>

- 5.82 The Agency had removed 104 (13%) of the 820 applicants whom it had refused, but we believe there were further opportunities for the Agency to improve its removal performance. For example, in ensuring that CAAU has effective agreements in place with Local Immigration Teams<sup>37</sup> (LITs) to ensure that CAAU refusals are prioritised for removal – particularly important bearing in mind the age of these cases and the non-compliance by applicants that feature in some of them.
- 5.83 At the inception of CAAU, a small team was created to focus on removals liaison with LITs in order to progress CAAU removals. However, this team was reallocated into general casework shortly after it was created, in order to meet other work priorities.

#### **We recommend that the UK Border Agency:**

- Introduces a protocol between CAAU and Local Immigration Teams to ensure that when legacy asylum and migration applicants are refused, removals are prioritised.

## Decisions taken without sight of paper file

### **Background**

- 5.84 On 14 November 2011, CAAU senior management authorised a new case consideration approach. This was to encourage quicker decision-making based on an initial appraisal of the case details on CID. If caseworkers were satisfied that the case could be granted leave, there was no requirement for them to request the paper file. The instruction that accompanied this new approach was clear that:
- all potential grants should still be subject to PNC and WICU checks;
  - where there were concerns, obvious database errors or issues such as deception, case files should be requested and reviewed prior to any decision being made; and
  - any additional work as a result of an incorrect decision should be flagged up to the director, so that such issues could be monitored and escalated accordingly.
- 5.85 There was also a suggestion in the instruction that this move was a natural progression to a paperless environment. This was a reference to the Agency's work to implement an electronic document management system. However, we noted that this system was not in place within CAAU.
- 5.86 By the time of our inspection in May 2012, the Unit had reverted back to the normal practice of requesting all paper files before consideration. We were told that this was because of the AS (Somalia) judgement.<sup>38</sup>

<sup>35</sup> A locally produced travel document used for removal when no valid travel document or passport is held. There are no formal agreements concerning the use of an EUL.

<sup>36</sup> The Assisted Voluntary Returns Scheme refers to a range of programmes available to people who are in the asylum system or who are irregular migrants, and who wish to return home permanently.

<sup>37</sup> A team undertaking as many functions as practicable at a local level within an Immigration Group region. They focus on enforcement work and community engagement, although the functions of LITs can vary between regions.

<sup>38</sup> The AS (Somalia) ruling found that applicants who had appealed their asylum refusal under a section 82 appeal were entitled to a second appeal, by virtue of section 83 of the Nationality, Immigration and Asylum Act 2002. Section 83 allows refused asylum seekers to appeal the rejection of their asylum claim if they have been granted leave to remain for over 12 months.

## File sampling approach

5.87 We selected 30 files covering the period 3 November 2011 to 13 March 2012 – the earliest date being some ten days before the instruction was officially issued. We received 25 files and classified one as out of scope, as CID notes indicated that it had been decided with sight of the paper file. The 24 remaining files were examined against a number of indicators to establish:

- whether decisions were correct;
- whether there was evidence on paper files that would have altered the decision, (i.e. a refusal rather than a grant of leave); and
- the robustness of monitoring mechanisms in place to assess how this new process was working.

## Casework analysis

5.88 All 24 cases had PNC and WICU checks conducted before the grant of leave. This was sensible, given that these two checks could highlight adverse behaviour that would merit consideration for refusal. Checklists had been used by caseworkers in 22 of the cases we examined (92%). We considered that this helped caseworkers to apply the same criteria consistently when deciding cases. Figure 13 sets out the main criteria covered in the checklists.

**Figure 13: Main criteria used in the decision-making process**

No:	Assessment indicators
1	Criminal convictions over threshold? <sup>39</sup>
2	Any activities meriting exclusion from the UK?
3	Agency delay has contributed to a period of residence over 4 years?
4	If evidence of previous non-compliance, is this outweighed by length of residence and recent compliance?
5	Any evidence of connections to the UK?
6	Limited prospect of enforcing removal?

5.89 Caseworkers routinely accepted that a private life had been established in the UK on the basis of long residency – no other evidence was required to satisfy this requirement. While we noted that the Agency accepted in 20 out of 24 cases (83%) that administrative delays caused by the Agency weighed heavily in the favour of applicants, we identified that in 15 of these cases (63%), the delays were compounded by significant periods of non-compliance by the applicants themselves, prior to their re-contacting the Agency a number of years later.

5.90 In three out of 24 cases (13%), we concluded that there was documentation which should have been reviewed before granting leave, even if the outcome had stayed the same, given the length of residency and family ties. For example, in one case we found evidence suggesting that an applicant had submitted a false identity document and used an alias in relation to a spouse application in November 2010, but this had not been considered when the decision to grant leave was made.

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*We judged that in 18 out of 24 cases (75%) the decisions to grant leave were consistent with the criteria that caseworkers were given*

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5.91 We judged that in 18 out of 24 cases (75%) the decisions to grant leave were consistent with the criteria that caseworkers were given. However, in the remaining six cases we considered that the

<sup>39</sup> Cases where an applicant has been convicted of criminal charges and sentenced to over 12 months' imprisonment.

decisions to grant leave were not properly justified and we provide an example of one such case in Figure 14.

#### **Figure 14: Incorrect decision**

- The applicant entered the UK undocumented<sup>40</sup> in September 2006 and immediately claimed asylum as a minor, although shortly thereafter admitted they were an adult.
- The applicant was prosecuted for failing to produce a genuine document and was sentenced to four months' imprisonment. They were released in November 2006 and granted temporary admission to report to the Agency a fortnight later.
- The applicant failed to attend this reporting event and was subsequently refused for non-compliance in January 2007.
- The next action took place in January 2010 when security checks were conducted. The file was then placed into the Controlled Archive as the Agency had no contact details for the applicant.
- In October 2010, the applicant put in Further Submissions in person on the grounds that they had been in the UK since 2006; had made associations and lots of friends; that removal would affect their physical and moral integrity; and that they had nobody to support them should they be returned to their home country.
- The caseworker noted that Agency delay had contributed to a period of residence of over four years.

#### **Chief Inspector's comments:**

- The applicant was never circulated as an absconder, despite failing to report in line with their temporary admission criteria.
- While the caseworker noted that Agency delay had contributed to a period of residence over four years, we found that the majority of delay was caused by the applicant, who absconded in November 2006 and did not reappear until October 2010 (so Agency delay was 13 months, while the remaining delay – nearly four years – was the responsibility of the applicant).
- The caseworker noted that the applicant did not have any criminal convictions but the information on CID clearly indicated that this statement was incorrect.
- Apart from length of residence, which was in the main due to the applicant's failure to comply for nearly four years, there was no evidence of the applicant's strong connections to the UK – as required by Paragraph 395C – to justify issuing them with Discretionary Leave. The only evidence of connections submitted were letters written by purported friends and acquaintances, none of which were verified.
- This decision was allegedly made without sight of the paper file. Whether or not the caseworker had seen the Further Submissions, we believe that the decision to grant leave was wrong.

5.92 In these six cases we found that, while there was some delay by the Agency, this followed several years of non-compliance by the applicants themselves. The extent of this non-compliance was sufficient to question the decision to grant leave. Staff told us that significant levels of non-compliance were not taken into account when deciding to grant leave if applicants could demonstrate some form of compliance within the last 12 months. This view was supported by our file sampling.

<sup>40</sup> An undocumented passenger is someone who has failed to present a valid passport with photograph or some other document satisfactorily establishing their nationality and identity or citizenship.

- 5.93 In some cases, we found that caseworkers accepted statements by applicants without taking steps to verify that the statements made were reliable. In other cases, we saw the same evidence being used to justify a very different decision depending on when the decision was being made; Figure 11 refers.
- 5.94 Caseworkers expressed some concerns about the approach of making decisions without sight of files. However, they confirmed that they had been told they could request files if they considered it necessary. When we requested management statistics detailing the number of times this approach was used for making decisions without sight of files, we were informed that contemporaneous statistics had not been collected at the time these decisions were made. However, following our information request, the Agency estimated that approximately 3,750 decisions appeared to have been made without sight of the file.
- 5.95 The lack of robust management information in relation to this approach meant that it was difficult for us to quantify definitively how many cases were affected by this policy. As a result, we were unable to establish if certain decisions had been made without sight of the file, because if a caseworker failed to make notes on CID there was no other straightforward way of identifying this batch of cases. Further evidence of this was that two of the 75 files we were given as part of our asylum grant request (cases decided as per normal practice) had been decided without sight of the paper file.

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*Effective quality assurance helps to identify best practice and improvements that need to be made*

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## Quality assurance processes

### Grant and refusal decisions

- 5.96 It is important that the Agency has processes in place to assure itself that the asylum decisions its caseworkers make are in accordance with the law and its own policies, and are based on all the evidence the Agency has gathered. Effective quality assurance helps to identify best practice and improvements that need to be made – both important elements in helping to drive continuous improvement activities in the quality of overall decision-making.
- 5.97 We reviewed the quality assurance arrangements that the Agency had put in place. We found that each caseworker should have one decision checked (either a grant or a refusal) every three months. We were also told that all refusal cases where further submissions had been made were checked by a senior caseworker.
- 5.98 In our file sampling of grants and refusals, we found that quality assurance checks were more frequently undertaken in refusal decisions, with five out of 16 cases (31%) being reviewed by a senior caseworker, while only five out of 81 cases<sup>41</sup> granted leave (6%) were similarly reviewed. While we understand the importance of reviewing refusal cases to ensure that decisions are correct, we believe that cases granted are similarly important, because the outcome leads to individuals being allowed to remain in the UK.
- 5.99 Given the volume of applicants being granted leave, we consider that the quality assurance process to be insufficient to provide the necessary confidence to senior managers that decision-making was effective and sound.
- 5.100 We also found that decisions to grant leave were not always adequately explained, with little evidence in a number of cases to demonstrate that they were being considered on their individual

<sup>41</sup> 57 granted cases within our main file sample of cases granted leave and a further 24 cases where leave was granted without sight of the paper file.



merits. Sometimes the notes on CID were generic and factually incorrect, for example, an applicant's criminality being missed or long periods of non-compliance being counted as Agency delay. We consider that issues such as these may have affected the final decision.

### **Archived cases – Asylum and Migration**

- 5.101 While there was a quality assurance process for cases where decisions were made to either grant or refuse leave, we found that there was no such process in place for those cases that were subsequently placed into the controlled archives. This lack of quality assurance had serious consequences, and we found numerous examples within our file sampling of cases that effective quality assurance processes would have identified. For example, we identified cases:
- that had not been subject to any form of external checks;
  - that had not been subject to internal security checks since at least April 2011;
  - that should not have been placed into the controlled archive because they had no related asylum claim or had been granted some form of leave; and
  - where additional evidence in files that might have helped to locate applicants had been ignored (contrary to guidance that had been issued by the Agency).
- 5.102 At the time of our inspection we were told that CAAU was in the process of developing a CAAU-specific quality assurance framework. We consider this was a positive step and should include both 'live' cases and those contained within the controlled archives.

#### **We recommend that the UK Border Agency:**

- Embeds a stronger quality assurance framework within CAAU which ensures that decisions are made in accordance with the law and its policies and are based on all available evidence.

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

### **Complaints and correspondence handling**

- 5.103 We examined 40 complaint files selected at random from complaints allocated to CAAU between 1 September 2011 and 29 February 2012. As part of our assessment, we considered whether complaints were handled in accordance with the Parliamentary and Health Service Ombudsman's (PHSO) complaint handling principles,<sup>42</sup> which set out what is expected from public bodies when dealing with complaints. This sets out that good complaint handling means:
- getting it right;
  - being customer-focused;
  - being open and accountable;
  - acting fairly and proportionately;
  - putting things right; and
  - seeking continuous improvements.

42. <http://www.ombudsman.org.uk/improving-public-service/ombudsmansprinciples/principles-of-good-complaint-handling-full>

- 5.104 We also reviewed the Agency's handling of complaints and general correspondence as part of our wider file sampling exercise. We did this to assess whether:
- any complaints within the files we examined had been dealt with appropriately and in accordance with the Agency's complaints handling policy; and
  - general correspondence received by the Agency, which either expressed dissatisfaction with the service provided or referred more directly to being a complaint, was correctly classified as such.
- 5.105 We also reviewed the Agency's complaint management guidance, with a particular focus on service complaints, to assess whether complaints were dealt with in accordance with its published guidance. Finally, we reviewed the performance of CAAU in relation to the recommendations we made in our thematic inspection on Lessons to learn: the UK Border Agency's handling of complaints and MPs' correspondence.<sup>43</sup>

## Complaints file sampling

### Nature of complaints

- 5.106 Of the 40 complaints we reviewed, 27 (68%) were from applicants or their representatives, complaining about delays in concluding casework or considering further submissions. Six (15%) of the complaints we reviewed related to the Agency's delays in amending Immigration Status Documents.<sup>44</sup> This latter issue was identified during the onsite phase of our inspection, at which time we found a large backlog of this type of work. The remaining seven (18%) cases were other types of complaints, including:
- complaints about the Agency writing to applicants rather than their legal representatives;
  - a complaint about case details being mixed up; and
  - complaints about the Agency failing to respond to previous complaints.
- 5.107 On the issue of delays affecting the amendment of Immigration Status Documents, staff told us during the on-site phase of our inspection that these delays were caused by the significant backlog of post that accumulated in Croydon prior to CRD closing down at the end of March 2011. We were told that in September 2011, the backlog of Immigration Status Documents stood at 1,200 cases – Figure 18 refers.

### Complaints responses

- 5.108 We found that the Agency had responded to 32 (80%) of the complaints we reviewed. In the remaining eight cases (20%), the Agency had failed to respond. In two of these cases, CAAU determined they were not required to respond to the complaints. Figure 15 illustrates one of these cases.

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*We found that the Agency had responded to 32 (80%) of the complaints we reviewed*

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<sup>43</sup> This report can be found at: [http://icinspector.independent.gov.uk/wp-content/uploads/2010/07/Lessons-to-learn\\_The-UK-Border-Agency's-handling-of-complaints-and-MPs-correspondence.pdf](http://icinspector.independent.gov.uk/wp-content/uploads/2010/07/Lessons-to-learn_The-UK-Border-Agency's-handling-of-complaints-and-MPs-correspondence.pdf)

<sup>44</sup> Issued by the Home Office with an endorsement indicating a person's immigration status.

## Figure 15: Failure to respond to a complaint

### Background:

- The applicant's councillor wrote to the Agency on 14 November 2011 stating: i) the applicant's Immigration Status Document was sent to the Agency to be corrected on 12 January 2011 but the corrected document had not been received; ii) the applicant contacted the Agency to chase this in March 2011 and received a holding reply in April 2011; and iii) the applicant had chased this again in October 2011 but had not received a reply.
- The councillor wrote to the Agency again on 4 December 2011: i) to complain that they had not received a reply to their letter of 14 November 2011; ii) requesting the contact details for the Chief Executive of the UK Border Agency in order to make a direct complaint; and iii) to complain about their experience trying to telephone the UK Border Agency on 14 November 2011, and the poor service provided by the Agency.

### The UK Border Agency:

- Failed to respond to the councillor's complaints of 14 November 2011 and 4 December 2011.
- Updated the complaints management system on 31 January 2012 stating that since the complaint was lodged the case was coincidentally dealt with by another team who had returned the Immigration Status Document.
- Considered that the fact the document had been returned quashed the complaint.
- Recorded the complaint as 'invalid' and closed it.

5.109 In this case there was no evidence that the team that returned the Immigration Status Document to the applicant were aware of the councillor's complaint. Although the Immigration Status Document had been returned to the applicant, we consider that the Agency should have demonstrated better customer service by responding to the formal complaint, particularly as this was not the first time this complaint had been made. We consider that this demonstrated ineffective and poor customer service. Dealing with cases in this way could also contribute to misleading information about the Agency's performance against its complaint handling responsibilities.

5.110 However, in another similar case, we saw a good standard of customer service. In this case, the complaint related to a delay in deciding an applicant's case, which was decided shortly after the complaint arrived. However, the Agency still responded to the complaint appropriately and in a timely manner. This higher standard of customer service should be adopted consistently by the Agency.

### Quality of responses

5.111 Correspondence issued by the Agency should be written in plain English and be free of formatting errors, unnecessary repetition and spelling mistakes. Of the 32 responses we reviewed, we found ten (31%) where the correspondence contained grammatical errors, formatting errors and/or spelling mistakes. We considered that these errors adversely affected the overall quality of the correspondence.

5.112 In 18 of the 32 complaints (56%) which received a response from the Agency, we found that the responses were unsatisfactory and not in accordance with one or more of the PHSO's complaint handling principles, for example by failing to provide fair and proportionate remedies in response to complaints. The Agency was responding to complaints using standard paragraphs, which often failed to fully address specific points raised by complainants. Figure 16 illustrates one such example.

## Figure 16: Failure to fully address specific points raised in the complaint

### Background:

- The applicant's legal representatives wrote to the Agency on 10 November 2011 to complain about: i) the failure of CAAU to correspond directly with them (the Agency previously sent a letter directly to the applicant); and ii) the content of the Agency's letter of 10 November 2011, which stated that the applicant had no outstanding applications (the legal representatives stated they had made further submissions in August 2009 and March 2010).

### The UK Border Agency:

- Responded stating that the applicant's case had been allocated to CAAU; that the applicant could expect to receive a further response shortly, but that they were unable to give any indication as to when their case would be completed;
- Acknowledged that the Agency had received the further submissions referred to in the complaint letter.

### The Chief Inspector's comments:

- It was clear the representatives knew the case had been allocated to CAAU, as they were writing to complain specifically about CAAU. It is therefore not clear why this paragraph was included in the response.
- The complaint centred on the UK Border Agency's failure to correspond directly with the legal representatives; however, this point was not specifically addressed in the Agency's response.
- The Agency's response included contradictory statements, stating the applicant could expect a response shortly, whilst also stating they could give no indication when the case would be completed.

5.113 Significant improvements need to be made to ensure that responses accurately deal with the subject of the complaint. The failure to address complaints properly resulted in further complaints being made, as evidenced by our sample.

### Repeat complaints

5.114 Of the 40 complaints we reviewed, 15 (38%) were repeat complaints. The majority of these included cases where the Agency had repeatedly failed to respond to routine correspondence and as a result, applicants and their legal representatives had become increasingly frustrated. Our sample identified three cases where the Agency's failure to deal with complaints efficiently and effectively resulted in legal representatives submitting Pre-Action Protocol letters to CAAU (the forerunner to full Judicial Review proceedings), thereby further adding to this type of workload, and diverting valuable resources from case working functions. The Agency needs to manage initial correspondence and complaints much more efficiently and effectively, to provide a better standard of customer service and reduce the volume of repeat correspondence received.

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*Significant improvements need to be made to ensure that responses accurately deal with the subject of the complaint*

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## Timeliness

5.115 We assessed the timeliness of the Agency's complaints handling process by examining the dates when:

- the complaint was received by the Agency;
- the Agency recorded that it received the complaint; and
- a response was issued.

5.116 In 21 (53%) cases, we were unable to determine the date when the Agency received the correspondence because this information had not been recorded. In the remaining 19 (48%) cases, we considered whether the date the complaint was received was accurately recorded on the complaints database. We found that only one case was accurately recorded on CID. The remaining 18 cases were recorded as having been received one day or more after the actual date of receipt. The average delay between the time correspondence was received and the time it was recorded as having been received was seven days and the longest delay was 50 days. There was no justification for failing to record this information accurately.

5.117 The Agency complaints procedure stated that complaints would be responded to within 20 working days. We examined the date when a response was issued by the Agency in relation to the 32 complaint responses we examined<sup>45</sup> and found that two-thirds of the cases (66%) missed the 20 day target for responding to complaints. We also noted that only one of the three cases that had received complaints within our broader file sampling had been responded to within 20 working days. This was a poor performance.

5.118 Despite the shortcomings identified in our earlier inspection report on the Agency's handling of complaints, this inspection showed there is still considerable room for improvement in the way in which the Agency handles complaints and so we make a further recommendation here.

### We recommend that the UK Border Agency:

- Manages complaint handling processes effectively, ensuring that:
  - complaints are recorded accurately;
  - responses deal with the substance of the complaint; and
  - published service standards are met.

## General correspondence handling

5.119 In our examination of applicants who had been granted leave, we found that many applicants and/or their legal representatives had contacted the Agency following the creation of CRD in April 2007 and it was not unusual to see multiple and repeat correspondence from a range of sources in individual cases. Figure 17 shows that 156 pieces of correspondence were received between 2007 and the end of March in 2011 in the 57 cases<sup>46</sup> we sampled.

<sup>45</sup> In all cases we used the date of receipt recorded by the Agency.

<sup>46</sup> Includes adult and unaccompanied asylum seeking children cases.

**Figure 17: Correspondence received in 57 cases sampled**

Type of correspondence	2007	2008	2009	2010	2011
MPs	6	5	5	6	6
Legal Representatives	5	4	13	21	8
Further submissions	2	5	7	12	8
Pre Action Protocols	0	0	0	4	1
Judicial Reviews	0	1	1	1	2
Other correspondence / complaints	3	8	7	9	6
<b>Total</b>	<b>16</b>	<b>23</b>	<b>33</b>	<b>53</b>	<b>31</b>

5.120 We noted that as the March 2011 deadline drew closer, increasing levels of correspondence was being received by CRD. In some cases, we noted that CID had been updated to show that correspondence had been received. This was usually linked to the receipt of photos or Pre-Action Protocol letters/ Judicial Reviews. However, our analysis of this correspondence and associated case work records also revealed that CID was not updated in respect of other correspondence that was received, for example, from applicants or their legal representatives. We also noted that the Agency had failed in many cases to:

- determine whether the correspondence it had received was in fact a complaint (we frequently saw legal representatives expressing dissatisfaction about failures to respond to earlier correspondence that they had sent previously);
- acknowledge receipt of this correspondence; and
- routinely examine it to assess what impact, if any, it would have on the case. Rather, it was simply linked to the paper file without any caseworker reviewing its content.

5.121 Staff told us that they would like to send acknowledgments to each piece of correspondence received, but were not resourced to do so – a view supported by our file sampling. As a result, correspondence received that did not directly progress a case was just linked to a file. Staff added that this was usually the outcome when legal representatives wrote in. This meant that the subject of correspondence was never reviewed by a caseworker to determine whether the information being provided or requested should have been actioned. This was a key failure.

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*In September 2011, the backlog of correspondence numbered over 100,000 pieces of post and this took until December 2011 to clear*

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### **Correspondence not being dealt with**

5.122 Over the last few months of CRD’s existence, we found that correspondence being received was not being actioned. We noted that the transition plan had identified this as an issue and set out that all correspondence linking would be completed by 31 March 2011. This did not happen, and resulted in the creation of a very large backlog of correspondence (150 boxes of post) being transferred to CAAU in Liverpool. CAAU staff told us they were not resourced to undertake this work, nor had they expected it.

5.123 This issue was exacerbated when CAAU identified 9,393<sup>47</sup> cases where reviews had not been carried out by CRD prior to its closure, contrary to the public statements made by the Agency that CRD had completed its review of all legacy cases as at 31 March 2011. A mail-merge exercise was

<sup>47</sup> See section 7 ‘Cases not reviewed by CRD’ for further details on these cases.

subsequently undertaken by CAAU in July/August 2011 and the responses to this added to the already significant levels of correspondence that remained to be dealt with by CAAU.

- 5.124 In September 2011, the backlog of correspondence numbered over 100,000 pieces of post and this took until December 2011 to clear. Figure 18 provides a snapshot of the outstanding correspondence in early October 2011, one month after work had started to clear it.

**Figure 18: Backlog of post in October 2011**

Correspondence Types	Pieces of post
Unopened Recorded Delivery post	14,800
Unopened first/second class post	13,600
'Further work'	10,000
Progress updates	8,400
Linking to files	4,000
Further submissions	2,800
Photographs supplied	2,800
Errors/corrections on Immigration Status Documents)	1,200
Mail-merge returns	1,200
Other <sup>48</sup>	8,000
<b>Total</b>	<b>66,800</b>

- 5.125 It is likely that many of the cases placed into the controlled archive towards the end of the CRD programme were done so incorrectly, on the basis that applicants and/or legal representatives had not replied to Agency correspondence when in fact they had.

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*It is likely that many of the cases placed into the controlled archive towards the end of the CRD programme were done so incorrectly*

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- 5.126 These delays also had potentially serious consequences for these applicants following the policy change made by the Agency in July 2011, when the category of leave given to asylum legacy applicants changed from ILR to DL.<sup>49</sup>

- 5.127 During the on-site phase of our inspection, we found six boxes of post in CAAU that were referred to as 'in transit'. This meant that the post could not be linked to files because the files were in transit at the time when the post was received/opened. We randomly selected 103 pieces of correspondence to assess both the age and type of this correspondence. The earliest piece of correspondence was received by the Agency on 2 April 2010 and the latest on 2 May 2012. The main types of correspondence that we found were:

- 24 pieces of correspondence requesting an update or chasing a response to previous correspondence;
- 17 pieces of correspondence confirming details in response to the Agency's mail-merge exercise;
- 11 pieces of correspondence notifying the Agency that an applicant's legal representatives had changed; and
- eight pieces of correspondence asking for a decision to be made on an application.

<sup>48</sup> Includes returned post (800); receipt of valuable documents (800) and permission to work requests (400) etc.

<sup>49</sup> See section 7 'July 2011 Policy Change' for further details on this issue.

5.128 During interviews we were told that post/correspondence contained within the ‘in-transit’ boxes would be reviewed every so often when staff were available to carry out this work. The Agency needs to manage this type of work more effectively to ensure that correspondence is dealt with efficiently and appropriately.

### Enquiry Telephone Line

5.129 Three weeks before the on-site phase of our inspection, CAAU set up a telephone enquiry line. The purpose of this was to provide a dedicated telephone number for applicants or their legal representatives to call with queries about their legacy applications. While we were on-site, we listened to staff answering calls that came through on the enquiry line. We found they were professional and courteous. Staff and managers told us that the introduction of the enquiry line had helped to reduce the number of calls made to the appointment booking line requesting a progress update, as applicants and their legal representatives now had a dedicated number to call.

### MPs’ correspondence

5.130 There has continued to be a high level of correspondence and contact from MPs raising cases on behalf of constituents whose legacy cases have remained unresolved. The Agency saw a considerable increase in the amount of MPs’ correspondence that it received following its announcement at the closure of CRD that all legacy cases had been reviewed, taken to their furthest possible conclusion and all applicants informed of decisions. Figure 19 sets out the volume of correspondence received from MPs in relation to legacy cases, between April 2011 and February 2012.

<b>Figure 19: MPs’ Correspondence</b>			
<b>Month</b>	<b>Ministerial letters</b>	<b>Official response letters<sup>50</sup></b>	<b>MP enquiry emails</b>
April 2011	57	596	140
May 2011	73	633	84
June 2011	127	1015	39
July 2011	74	888	34
August 2011	49	589	115
September 2011	50	852	53
October 2011	3	953	121
November 2011	0	989	121
December 2011	83	834	161
January 2012	68	745	300
February 2012	78	1015	288
<b>Total</b>	<b>662</b>	<b>9109</b>	<b>1456</b>

Note: Management information provided by the UK Border Agency.

5.131 As part of this inspection, we surveyed MPs to capture their views about the level of customer service provided to them by the Agency in relation to its handling of legacy cases. We received responses from 38 MPs. While we received some positive responses from MPs, the overwhelming response was that the service provided by the Agency was either poor or very poor. Figure 20 sets out the main findings from our MP survey.

<sup>50</sup> Official response letters were sent when the MP did not address their letter to a Minister or the Chief Executive of the Agency.



**Figure 20: MP survey – main findings**

MP Responses No.	Issue
31	Knew of constituents that were still waiting for a decision on their original asylum claim.
29	Considered the service provided by the Agency was either poor or very poor.
19	Reported that the Agency generally took more than one month to respond to their letters.
11	Reported concerns with the Agency’s handling of cases involving child applicants.
7	Reported concerns regarding the failure to provide any indication of the timescale for conclusion of legacy cases.
4	Reported concerns regarding the Agency’s decision to grant applicants DL rather than ILR.
3	Reported concerns regarding administrative errors which meant applicants were incorrectly informed they had been granted leave to remain when in fact they had not been.

5.132 We were told that 184 pieces of MPs correspondence were outstanding at the time of our inspection. CAAU was continuing to receive approximately 170 letters from MPs each week, although this was decreasing from a high of over 300. Many of these letters raised concerns about the delays in concluding legacy applications. This concern was also raised by a number of other stakeholders including Refugee Action and the Immigration Law Practitioners Association.

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*the overwhelming response was that the service provided by the Agency was either poor or very poor*

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5.133 During our file sampling, we found that 20 of the asylum grant cases we examined contained Agency responses to MPs’ correspondence. We found that these were generally of a good standard, with caseworkers demonstrating a sound appreciation of the relevant factors and relaying them in an accurate manner.

**The Immigration Law Practitioners Association (ILPA)**

5.134 ILPA is a professional association with approximately 950 members, including barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. It is a key stakeholder group for the Agency and for this reason we asked members to complete a survey to capture their views on the Agency’s handling of legacy cases. We received responses from six individual ILPA members, together with an overall response from the organisation. The main concerns they highlighted related to:

- rarely receiving responses to correspondence and/or further submissions that they submitted to the Agency;
- the Agency’s approach to handling Judicial Reviews and Pre Action Protocol letters, for example in terms of efficiency and/or a failure to address the substance of the case;
- the quality of case handling and decision-making with regards to legacy cases which they considered had either remained the same or deteriorated since legacy cases were assigned to the CAAU; and

- concerns that the Agency had mislead the public with statements that the outstanding legacy cases all fell into specific categories (set out at paragraph 4.11).

5.135 As we found with MPs, ILPA members were also concerned about the delays in concluding legacy applications, with one member commenting that none of their outstanding cases fell within the criteria published by the Agency as a barrier to conclusion. We noted that this particular criticism chimed with the findings we made during our file sampling.

### **Parliamentary and Health Service Ombudsman**

5.136 The Parliamentary and Health Service Ombudsman (PHSO) considers complaints from individuals in cases where government departments, such as the UK Border Agency, have not acted properly or fairly or have provided a poor service. We established from the Agency that since April 2011, it had received 145 complaints from the PHSO. It told us that the vast majority of these complaints related to complaints affecting old CRD cases rather than work that CAAU had completed.

5.137 We were told that the majority of these complaints related to delays in concluding cases. Others related to lost documents, challenges to policy and compensation claims. From interviews with staff, we learned that no work was undertaken to learn lessons from the referrals received from PHSO. We consider this is a lost opportunity and would expect CAAU to evaluate trends and patterns across all complaints, including those from PHSO, so that the Agency can make improvements to deliver a better service, while at the same drive a reduction in the number of complaints.

## 6. Inspection Findings – Safeguarding Individuals

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

### **Unaccompanied Asylum Seeking Children (UASC)**

#### **Background**

- 6.1 Section 55 of the Borders, Citizenship and Immigration Act 2009 (the 2009 Act) places a duty on the Secretary of State to make arrangements for ensuring that asylum functions<sup>51</sup> give due regard to the need to safeguard and promote the welfare of children in the UK. The Agency's duty to safeguard and promote the welfare of children includes good treatment and good interactions with children throughout the immigration and customs processes.<sup>52</sup>
- 6.2 Although most children do not qualify for asylum, they are generally refused but granted discretionary leave,<sup>53</sup> to take account of the lack of adequate reception arrangements<sup>54</sup> in their home countries. Once discretionary leave expires, an application must be made in time for further leave to remain in the UK. This should then trigger an 'active review' of the applicant's circumstances to see if they still qualify for leave. We examined eleven cases that related to children, representing 19% of the overall sample of cases granted leave, to determine:
- how the Agency prioritised these cases;
  - the impact of any delay and what if anything was done to put that right; and
  - the timeliness and quality of responses provided to correspondence.

#### **Sampling analysis**

- 6.3 In 10 cases, applicants were initially granted leave in the following categories:
- Discretionary Leave – eight cases;
  - Exceptional Leave to Remain – one case; and
  - Humanitarian Protection – one case.

<sup>51</sup> Also immigration, asylum, nationality and customs functions.

<sup>52</sup> Statutory guidance to the Agency on making arrangements to safeguard and promote the welfare of children issued under section 55 of the Borders, Citizenship and Immigration Act 2009, Nov 2009.

<sup>53</sup> The system of granting leave to people exceptionally outside the Immigration Rules changed on 1 April 2003. On that date, the old 'exceptional leave to enter/remain (ELTE/R)' category was replaced with a system of leave being granted on the basis of Humanitarian Protection or Discretionary Leave. These categories were more closely tied than exceptional leave had been to the UK's obligations under the European Convention on Human Rights.

<sup>54</sup> Information regarding the availability of safe and adequate reception arrangements for children can be found within the Country of Origin Information (COI) reports for each country on the Agency's website.

- 6.4 In the final case the applicant was refused. We found that a higher percentage of these applicants sent in correspondence to the Agency compared to the adult cases we examined. In addition, more of these applicants finally resorted to writing to their MPs when the Agency failed to respond to their earlier correspondence, which was usually made on their behalf by legal representatives. These concerns were supported by the findings of our survey of MPs, with 11 (29%) reporting concerns about the Agency's handling of cases involving children.
- 6.5 All 11 applicants had been notified of their initial asylum decision, unlike the 46 adult cases where we could find no evidence that six applicants (13%) had been sent their refusals. It took the Agency an average of four and a half months to make a decision on these cases, compared to eight months for initial adult decisions.<sup>55</sup> These were the only two indicators that demonstrated an approach of prioritising decisions on children's cases; thereafter we found that unaccompanied children had to wait their turn like everyone else.
- 6.6 Of the eight cases granted discretionary leave, all but one had applied in time – that is to say before their period of leave expired.

### **Active Reviews**

- 6.7 An active review is required where an application is made for further limited or indefinite leave to remain by a person who was granted:
- (their first period of) Humanitarian Protection prior to 30th August 2005;
  - Discretionary Leave; or
  - a period of less than four years' Exceptional Leave to Enter or Remain (ELE/R) prior to 1 April 2003 (following refusal of asylum).
- 6.8 Children who were originally granted discretionary leave (following their claim for asylum being refused pre March 2007), could, under the Unaccompanied Asylum Seeking Children (UASC) policy have, at the time of application for further leave, been eligible for asylum, humanitarian protection or discretionary leave. The fact that they were not eligible for asylum at the time of their original application would not have precluded them from qualifying as a refugee at the time they re-applied.
- 6.9 The Agency should have been aware that 10 of these cases would require further case working, as they had all been granted a form of temporary leave after their initial asylum decisions were refused. In normal circumstances it should have been ready to conduct these active reviews to make decisions about further grants of leave or removal.
- 6.10 However, we established that while these 10 cases fell into the legacy cohort, because their original asylum claims predated March 2007, they had not been progressed by CRD, even though their original leave expired between 2003 and 2009.

### **Section 3C Leave**

- 6.11 It was clear to us from the evidence we examined that active reviews within CRD were not prioritised. Staff and Managers told us this was because applicants who made an in-time application would continue to receive Section 3C leave. This is a section of the Immigration Act 1971 which automatically extends a person's leave if an applicant applies for further leave before their current leave expires and while their application is still outstanding and they do not withdraw the application before a decision is made.
- 6.12 There was no effective system in place to notify UASC applicants that their leave continued under Section 3C. It is therefore difficult to see how applicants, who complied with the Immigration

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<sup>55</sup> The quickest decision was made in 37 days and the longest time taken to make a decision was 411 days.

Rules and applied in time, would be able to convince other bodies that they had continuing leave to remain. For example, some applicants were delayed in gaining entry into university and one had great difficulty obtaining a driving licence as their Immigration Status Document had expired. We would have expected the Agency to prioritise active review cases, particularly those related to children, and actively case work them upon receipt of further leave applications. Figure 21 is an example of a case where we considered that ILR should have been granted because of significant periods of Agency delay, coupled with ineffective decision-making.

### Figure 21: Example of a case where ILR should have been granted

- The applicant was a child who claimed asylum on 29 April 2004 and was refused. They were granted discretionary leave until 23 June 2007.
- An in-time application for further leave was submitted on 05 June 2007. On 08 June 2007, a letter of acknowledgment stating the following was sent to the applicant; ‘On the 19th July 2006, the Home Secretary made a statement to Parliament about the then Immigration and Nationality Directorate’s legacy of electronic and paper records relating to unresolved asylum cases. He stated that the aim was to clear these cases within five years or less, namely by July 2011. I can confirm that your client’s case falls into this category but I cannot give any indication at this stage when it will be actioned.’
- On 23 February and 20 May 2009, the legal representatives wrote in asking for a progress update. This request was responded to on 23 June 2009, some four months after the first progress update was received. They were informed that the case was in the backlog of asylum cases and would be concluded by July 2011.
- On 21 December 2009, an information request letter was sent to the applicant asking them to provide updated photographs and copies of original documents. The representatives sent in all the required documents in February 2010, including a Metropolitan Police report dated 08 February 2010 stating that the applicant had lost their original Immigration Status Document.
- On 31 March 2010, a caseworker reviewed the case and decided that Indefinite Leave to Remain (ILR) was appropriate; but as the case required a valid PNC check, the file was put into a hold pending another PNC check. A negative PNC result was returned on 05 May.
- On 20 May 2010, another caseworker reviewed the case and agreed with the grant of ILR but sent a fax to the representatives requesting a copy of the applicant’s Immigration Status Document – oblivious to the previous minute about the lost Immigration Status Document and police report.
- A phone call was made to the representatives on 28 May to follow up the fax, and the case worker was informed that the person representing the applicant was on leave till 09 June. A note was made to call her back on 09 June but this never happened.
- The next file action was not until 05 August 2011 when another negative PNC result was received. This was followed by an MP’s letter on 11 August, responded to on 25 August. Nothing happened till 05 September 2011, when another standard letter requesting photographs was sent out. The applicant was subsequently granted discretionary leave on 04 November 2011.

#### Chief Inspector’s comments:

- This decision was characterised by very poor administration, including errors and delay, which were compounded by ineffective correspondence handling.
- This culminated in an incorrect grant of discretionary leave for an applicant who had always been fully compliant with the Agency.
- In addition, the applicant had accrued over six years’ leave in the UK. Therefore they qualified on this basis regardless of the July 2011 policy change.

- 6.13 CAAU managers told us that they had initially worked on the assumption that active reviews of cases granted discretionary leave would fall to asylum teams within regions after the closure of CRD. This had not happened, because regions within the Agency had indicated they were not aware of any such undertaking and did not have the capacity to perform this work.
- 6.14 CAAU subsequently identified that it will have to deal with approximately 33,000 active review cases between April 2012 and April 2017.<sup>56</sup> This issue was not identified during the transition planning phase, because CAAU had not been resourced to do this work. We were told that this would require approximately 13 additional case workers. Of significance is that we noted that, although such cases created considerable amounts of additional work for CAAU staff, the resultant case work decisions were not included within the asylum legacy reports provided to the Home Affairs Select Committee. It remains unclear to us why these statistics were excluded, as the original asylum claims all fell before March 2007. We therefore make the following recommendation.

#### **We recommend that the UK Border Agency:**

- Ensures that the information it provides to the Home Affairs Select Committee is accurate and includes all legacy cases where asylum applications were made before March 2007.

#### **The impact of delay on unaccompanied children**

- 6.15 Whilst Agency delay was a major factor leading to a grant of leave in eight cases (73%), the delays resulted in a grant of three years' discretionary leave rather than ILR. This was primarily due to the July 2011 policy change, which saw ILR being replaced with DL. However, we noted that in seven of these cases (64%), file minutes on CID record that the cases were recorded as 'decision ready' between January and October 2010.<sup>57</sup> It is not clear why the Agency did not proceed to make decisions on these cases at the time, but what is clear is that if the decisions had been made at that time, the policy applied would be the relevant policy at date of decision. Any grants of leave would therefore have been ILR, as the Agency had stated publicly that legacy asylum applicants being managed through the creation of CRD would either be removed or granted permanent residence in the UK.
- 6.16 Applicants in eight of these cases had submitted their further leave applications in time, between 2007 and 2009. We found that the average delay between making a further leave application and being granted leave was just over three years. The failure to review these cases in accordance with the principles of good administration contributed to significant delays that had negatively impacted the lives of these young people, who would have been uncertain about what would eventually happen to them. In addition, we note that failing to prioritise active review cases undermines the whole basis of the policy itself, which is that applicants get Humanitarian Protection or DL for as long as they need it and if they no longer need it, they should be refused and removed. Alternatively, if they still qualify, they should be granted further leave in a timely fashion.
- 6.17 Whilst we acknowledge that, in usual circumstances (i.e. UASC cases that did not fall under the CRD criteria), some of these applicants would have needed another grant of discretionary leave before qualifying for ILR (six years of DL is required before ILR considered), we found that the Agency's delay was not always sufficiently accounted for when reviews were eventually carried out. We looked at the cases we examined and applying this rule we found that one applicant should have been granted ILR instead of an additional period of discretionary leave because:
- their initial grant of discretionary leave, granted on 29 April 2004, was valid until 23 June 2007;
  - they applied in time on 7 June 2007; but their application was not decided until 4 November 2011 – some four and a half years after their application was made.

<sup>56</sup> Made up of i) asylum application dates prior to 5 March 2007, with a grant of discretionary leave which expires after 1 April 2011; and ii) cases granted DL by CAAU between May 2012 and December 2013.

<sup>57</sup> One case in January, one in April, three in May, one in June and one in October 2010.

- 6.18 We have no doubt that had the case worker applied the Agency’s guidance correctly, this applicant would have been granted ILR.
- 6.19 Unreasonable delays have caused significant problems for a number of these applicants. Figure 22 details one such case badly affected by administrative delays.

**Figure 22: Example of a case badly affected by administrative delays**

- The applicant submitted their further application for leave ‘in time’ in November 2004, following a grant of Exceptional Leave to Remain (ELR).
- Letters sent by the local authority supporting the young person in November 2007 and a letter from their MP in December 2008 were never responded to.
- Legal representatives wrote in February 2009 to which the standard letter of a July 2011 deadline was sent.
- In July, September and Oct 2010, the applicant wrote in enquiring about a travel document as they wanted to apply for a driving licence as well as work. The Agency responded, but only with another standard July 2011 letter (a common outcome as set out in our chapter on complaints).
- After a further long delay, ILR was eventually granted in January 2012, seven years after the application for further leave was made.

- 6.20 Although there were no Pre-Action Protocol letters or applications for Judicial Review, there was a higher volume of general correspondence linked to these files. There was evidence in one case of a formal complaint but we found no evidence of a reply. Many of the applicants had educational establishments, legal representatives, Social Services and foster parents send in representations as they tried to expedite consideration of their cases. The vast majority of progress update requests received no response. On the odd occasion when there was a response to a piece of general correspondence,<sup>58</sup> it took on average three months and three weeks.
- 6.21 There was little evidence of non-compliance in nine of these cases, another reason why the delays were unacceptable. Only two (18%) had ever been non-compliant. One absconded for eight years after being refused, and the other absconded for three years after their application for further leave was refused.
- 6.22 Overall, we found that young people had been disadvantaged by the Agency’s long delays in dealing with their further leave applications. We believe that some of these delays undermined the fairness of decisions that were finally made. In conclusion, we believe that applicants whose cases fell within the legacy guidelines and who had been compliant, and whose applications had been outstanding for several years, should not have been disadvantaged by a lesser grant of DL due to a policy change in 2011. This is particularly true for those cases that had been declared ‘decision ready’ by CRD in 2010.

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*We believe that some of these delays undermined the fairness of decisions that were finally made*

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**We recommend that the UK Border Agency:**

Ensures that decisions affecting young people are dealt with in a timely way that minimises any uncertainty that they may experience with their applications.

<sup>58</sup> General correspondence refers to letters from applicants or their representatives requesting progress updates about their case, a return or some documentation or notification of a change of circumstances to the Agency.

## 7. Inspection Findings – Continuous Improvement

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

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

7.1 We assessed how efficiently and effectively the Agency planned, implemented and monitored the transfer of legacy casework from CRD to CAAU, including how effectively the Agency managed the risks associated with the transfer of this work. To do this we examined the:

- NW Region business plan (CAAU was located in this region);
- efficiency and effectiveness of transition planning;
- impact of any significant policy changes; and
- risk registers governing both the transfer of work from CRD to CAAU and ongoing risk identification within CAAU.

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*This was the first positive sign that the unit was starting to manage its workload proactively, rather than operating in reaction to events*

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7.2 We also conducted interviews with senior managers and staff to gather their views about this significant organisational change.

### **North West Region business plan**

7.3 The 2011/12 – 2014/15 business plan re-stated the high level target to complete legacy casework by March 2013, but there was no further information indicating how this target would be achieved. This was a serious omission, as a specific business plan for CAAU had not been developed in advance of the unit accepting the work in April 2011.

7.4 CAAU developed a business plan for 2011 to 2013, eight months after the unit was established. We noted that CAAU had acknowledged that the original target of completing legacy casework by March 2013 was unrealistic. CAAU had therefore set new targets for March 2013 to reduce:

- the asylum controlled archive to under 51,000 cases; and
- the migration controlled archive to under 15,000.



7.5 The new business plan also included detailed information about the number of legacy cases that were outstanding and the plans and timescales for completing various strands of this work. This was complemented by a CAAU workflow model, which outlined the high-level calculations applied by the Agency, to determine the closure of the controlled archive. This took account of ongoing work to review live cases, and projected forward to February 2014. This was the first positive sign that the unit was starting to manage its workload proactively, rather than operating in reaction to events. The business plan set out a number of positive steps, including:

- appointing a new Deputy Director for CAAU, with clear priorities being agreed with the Head of Immigration;
- the formation of a controlled archive steering group, providing governance of internal and external data matching checks; and
- the recruitment of additional resources to deal with the work resulting from the external data matching exercise.

7.6 However, a number of challenges remained. They included the need to allocate further case working resources to deal with the projected 37,500 cases that would transfer from the asylum and migration controlled archives, in addition to the increased workloads caused by out of cohort cases. Work also remained to create an effective protocol with Local Immigration Teams to help deliver increased removals.

### Transition planning

7.7 The transition plan produced by CRD set out the 28 work streams to be transferred to CAAU. These included:

- can't grant/remove;
- checks against PNC;
- control archive correspondence cases.
- MP's correspondence;
- non-cohort cases; and
- Pre-Action Protocols and Judicial Reviews;

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*We concluded that the robustness and assumptions outlined in the transition plan were not properly tested*

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7.8 The transition plan included details of staff responsible for these work streams, as well as deadlines for when the work should transfer to CAAU. The plan also included the potential impact of moving the work streams early (before the 31 March 2011 deadline) or late (after the 31 March 2011 deadline). We were told that formal weekly planning meetings with staff from Croydon and Liverpool started in January 2011 and that these increased to twice weekly towards the end of the programme.

7.9 It was evident from our examination of the transition plan, the North West Region business plan and from interviews with senior managers that transition of this work was driven by CRD in Croydon. There was a lack of understanding and engagement with senior managers in the NW Region, who were responsible for taking forward and finally concluding this work. The transition risk register, which detailed six risks, were all primarily related to issues affecting CRD as part of the transition planning process. We concluded that the robustness and assumptions outlined in the transition plan were not properly tested and contributed to the significant problems that then arose in CAAU from April 2011 onwards.

7.10 The lack of effective risk identification during the transition planning phase was a management failing. Our review of the transition plan identified a number of risks which were not included in the transition risk register, including cases:

- that were in the control archive for which correspondence had been received, but had not been dealt with;
- that fell under the CRD criteria, but had not been assigned to a cohort; and
- where CRD was in contact with applicants, but would not conclude cases before the end of March 2013.

7.11 These risks should have recorded on the transition risk register and more importantly should have been escalated within the Agency. CRD had also identified cases within the controlled archive which should have been removed from that cohort but had not been. This meant that performance statistics produced by the Agency relating to legacy casework were inaccurate.

7.12 Senior managers in Liverpool were unsighted on these issues. They had not seen the transition plan and were not involved in the transition planning meetings, and told us that their expectation was that they were simply responsible for closing down the residual work left by CRD. They had no expectation that this was going to be problematic.

7.13 However, increasing levels of correspondence and legal challenges during the first few months meant that they soon realised there were significant underlying issues that they had inherited from CRD. This included 9,393 cases that CRD had not reviewed.

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*It is surprising to us that, on the evidence available, the transition faced little effective challenge from anyone of seniority within the Agency*

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7.14 We noted that once the work transferred to CAAU, senior managers began to identify and manage some of the risks that had not been identified during the transition planning phase. We found that the first risk register was produced by CAAU in May 2011 and risks were reviewed approximately each month thereafter. Some of the risks identified by CAAU included:

- the requirement to process backlogs of un-cleared CRD correspondence;
- its inability to meet work priorities due to high volumes of demand led cases; and
- insufficient staff resources to deal with demand led work.

7.15 The main impact of the failure to identify these risks earlier was that insufficient resource was allocated to this area of work. Although CAAU tried to take a number of actions to manage this, either by obtaining additional resource from elsewhere in the region, authorising overtime or reallocating staff to different work streams within the unit etc., these actions were simply insufficient to:

- manage the volume of correspondence it had received;
- deal with the volume of demand-led work; and
- conclude cases in the controlled archive within the timeframe originally stated.

7.16 Although it was positive that CAAU eventually identified these risks, we believe the Agency should have managed this much more effectively. Legacy casework had remained a high priority area of work for the Agency since 2006. It is surprising to us that, on the evidence available, the transition faced little effective challenge from anyone of seniority within the Agency. The issues we identified seriously affected the level of service provided to applicants, legal representatives and MPs. Litigation was also adversely affected, with the Agency missing timescales in relation to sealed consent orders.

## CAAU priorities

- 7.17 Staff considered that changing priorities often resulted in cases being left incomplete, because they were allocated at short notice to other pieces of work. For example, we were told that cases raised by MPs were generally given a high priority, but the priority given to cases involving litigation was more variable.
- 7.18 We found that these changing priorities often resulted in the duplication of effort within the team. A good example of this was the need to conduct security checks prior to granting leave, which had a validity of three months. However, these security checks often expired because the caseworkers were not able to conclude the cases within the timeframe allowed. This meant the checks needed to be carried out again before leave could be granted. We frequently saw evidence of this particular issue within the cases we sampled.
- 7.19 Apart from the issue of insufficient resource, CAAU had also identified that its workflow processes and a lack of a robust performance framework were other key contributing factors to some of the wider problems it faced. It had therefore arranged a review of its business processes in early 2012, but this was suspended pending the outcome of further planned reorganisation throughout the Agency.

## Cases not reviewed by CRD

- 7.20 Following the transfer of legacy casework to CAAU, managers identified 9,393 cases within the 'live' cohort of 23,000 cases that had not been reviewed by CRD. Senior managers told us that, in view of the public statements that all cases would be reviewed by July 2011, CAAU resource was reallocated to review these 9,393 cases using CID. A mail-merge exercise took place in July/August 2011, with letters being sent out to applicants and/or their legal representatives, either notifying them of a potential grant of leave subject to security checks, or that their case had been reviewed and they had no basis to stay in the UK.
- 7.21 The CAAU risk register dated 27 July 2011 formally identified the mail-merge exercise as a risk for the first time. However, this exercise took place at a time when the unit was already significantly under resourced and was not coping either efficiently or effectively with its existing workloads. The risk mitigation put in place by CAAU failed to alleviate the increase in work that the mail-merge caused for staff in CAAU, at a time when it already had a backlog of correspondence in excess of 100,000 letters. This included correspondence from and on behalf of applicants who:
- did not fall into the categories of cases set out in the initial mail-merge letter;
  - did not fit into the category of cases set out in public statements;
  - had not received a decision within the timescale specified by CRD;
  - wanted to know when their grant of leave to remain would be processed; and
  - were questioning refusal decisions, and submitting further representations for the Agency to consider.
- 7.22 At this point in time CAAU was overwhelmed by the volume of the work it was receiving, especially from MPs, legal representatives and applicants who had to date received a poor level of service.
- 7.23 CID was not updated to show when these mail-merge letters had been sent to applicants. This meant that other staff accessing CID across the Agency were not aware of correspondence that had been sent to applicants. An example of the impact of this is illustrated in Figure 23.

### Figure 23: Failure to communicate details of the mail-merge exercise

- The applicant appealed the Agency's decision to refuse them leave to remain in the UK.
- During an appeal hearing, the applicant produced a mail-merge letter indicating that they were likely to be granted leave subject to security checks.
- The Immigration Judge suspended the hearing briefly to allow the Presenting Officer to establish whether the letter was genuine or not, as the Presenting Officer was unaware that such a letter existed or had been issued to the individual.
- The presenting officer contacted CAAU and was informed the letter was genuine.

#### Chief Inspector's comments:

- If the Presenting Officer had been aware of this letter, the appeal hearing would not have gone ahead. This would have saved public money.
- It is probable that a considerable amount of public money could have been saved in similar circumstances if there had been better communication between CAAU and other parts of the Agency.

### Non-cohort cases

7.24 These cases met the legacy criteria but were either not part of the original CRD cohort, or were part of the CRD cohort but had not been transferred to CAAU. Senior managers told us that this work represented between 30% and 40% of CAAU's work and included:

- active review cases – asylum claims made before March 2007, but given a form of temporary leave,<sup>59</sup> (usually up to three years), who have to reapply for further leave before the existing temporary leave expires;
- leave-in-line cases – those cases where there is a change in the applicant's circumstances which mean that dependents also need to be considered; and
- data quality errors – either cases not part of the original CRD cohort of cases, or those considered by CRD but, because of poor data quality of electronic records, not picked up by CAAU when the cohort was transferred on 1 April 2011.

7.25 Active reviews represented over half of this work. We examined a number of these active review cases during our file sampling of cases granted leave. We found that many of these applicants had waited several years for a decision, despite repeated representations being made about the status of their cases. We received mixed messages from managers and staff about whether active review cases were dealt with by CRD or not. However, our sampling clearly identified that CRD were either not reviewing/concluding these cases or were failing to properly identify all such cases and progress them.

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*We found that many of these applicants had waited several years for a decision, despite repeated representations being made about the status of their cases*

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7.26 We also noted that the transition plan had identified an issue in relation to non-cohort cases and questioned whether they would form part of CAAU's work. It was clear from our interviews with CAAU senior managers that they initially thought this work would fall to the regions, but this had not happened. The Agency should have set much clearer direction for this work at the outset of

<sup>59</sup> The system of granting leave to people exceptionally outside the Immigration Rules changed on 1 April 2003. On that date, the old 'Exceptional Leave to Enter/Remain (ELTE/R)' category was replaced with a system of leave being granted on the basis of Humanitarian Protection or Discretionary Leave.

CRD, as many applicants, particularly former unaccompanied asylum seeking children, were severely disadvantaged as a result of the delays that they experienced, which led to very different outcomes in relation to the form of leave they were finally granted.

### **Cases incorrectly allocated to the asylum control archive**

- 7.27 We believe that the push to close down CRD by the end of March 2011 was a major factor in cases being incorrectly placed into the controlled archive. The significant correspondence backlog that was allowed to build over the last few months of CRD's existence led to many cases being placed into the asylum controlled archive incorrectly, on the basis that applicants or their legal representatives had not responded to Agency correspondence, when in fact they had. We noted that in its oral evidence to the Home Affairs Select Committee in May and September 2012, the Agency acknowledged that cases had been placed into the controlled archive incorrectly.
- 7.28 CAAU also identified other cases within the controlled archive that should have been excluded by CRD from this cohort, including cases that were duplicates (approximately 2,500), or further submissions had been received before the end of March 2011 which should have resulted in CRD reactivating cases (figures not recorded by the Agency).
- 7.29 CAAU also identified over 2,000 cases involving individuals who were complying with reporting conditions immediately prior to their case being placed by CRD into the asylum controlled archive. Clearly these cases should not have been placed into the controlled archive as they were still very much 'live'.

### **July 2011 Policy change – Indefinite Leave to Remain (ILR) to Discretionary Leave (DL)**

- 7.30 On 20 July 2011 the Agency changed its policy in relation to the type of leave that it would grant under Paragraph 395C of the Immigration Rules.<sup>60</sup> This resulted in legacy asylum applicants being granted Discretionary Leave for three years where it was considered removal from the UK was not appropriate. This was a change from the previous position where Indefinite Leave to Remain (ILR) was routinely granted in asylum cases where a decision was made not to remove under Paragraph 395C.
- 7.31 The rationale for this policy change was that as the vast majority of legacy cases had now been cleared, it was no longer appropriate to grant ILR. The change was also justified on the basis that remaining legacy cases should not be treated more favourably than refugees who were normally granted five years' limited leave. The Agency recognised this policy change increased the risk of litigation and told us it considered the potential impact in detail when the change was made. This included the need to provide for certain exceptions whereby ILR could still be granted. While we make no comment on the new policy itself, we identified that the exceptions were not in place when the change took effect, nor were they subsequently clearly communicated to staff.
- 7.32 The Agency planned to allow CAAU caseworkers to retain their discretion to grant ILR in cases where it had 'made a written commitment that a case would be considered before 20th July 2011, but had failed to do so, and the Agency later decided that a grant was appropriate'.
- 7.33 The Agency intended that this exception would address situations where granting DL would be unfair. However, when the operational guidance was issued on 20 July 2011,<sup>61</sup> caseworkers were not informed of this exception – indeed the guidance stated that:

<sup>60</sup> Staff from the Agency's Policy and Strategy Group transferred to Home Office HQ on 18 July 2011 to form a new Immigration and Border Policy Directorate. Although this predates the policy change by two days, we concluded that the policy change was driven by the Agency at this point in time.

<sup>61</sup> Chapter 53 of the enforcement instructions and guidance.

*‘Where, as a result of considering the factors set out in 53.1.2, (the relevant factors set in Paragraph 395c of the Immigration Rules) removal is not considered appropriate, a maximum of 3 years Discretionary Leave (DL) should be granted.’*

7.34 On the same day, an email was circulated to CAAU senior caseworkers and above, setting out that:

*‘With immediate effect from this morning we can no longer grant ILR following consideration of Chapter 53.’*

7.35 An attachment to this email reinforced this message, stating:

*‘Section 53.1.1 will be amended to include a line stating that where, as a result of considering the factors set out in 53.1.2 (relevant factors in Paragraph 395C), removal is not considered appropriate, a maximum of 3 years Discretionary Leave (DL) should be granted. To be clear, from 20 July 2011, ILR should no longer be granted in any cases as a result of considering the factors in 53.1.2.’*

7.36 On 1 August 2011 revised training material was circulated to senior caseworkers in CAAU. This made no mention of any exception which allowed caseworkers to continue granting ILR in certain circumstances.

7.37 We were told that this exception was excluded from the Agency-wide guidance because it was only applicable to asylum legacy cases managed through CAAU, and not those cases decided under the New Asylum Model. Instead, the policy change was supported by local guidance, which was issued specifically to senior caseworkers within CAAU (who provide guidance and advice to case workers), setting out the exception under which they could grant ILR.

7.38 While the exception was considered prior to 20 July 2011, it was not actually approved until the last week in August. This meant the exception was not in place at the time the policy was changed. While the exception originally referred to a ‘written commitment’ being made in individual cases, we noted that senior caseworkers in CAAU were subsequently told on the 29 July 2011 that this discretion would only apply in cases where individual written commitments had been given in response to Pre Action Protocol letters, Judicial Reviews or correspondence from MPs. This mitigation flowed from work that the Policy Unit had undertaken to mitigate risks linked to this policy change, which stated:

*‘CAAU report a number of cases were given an undertaking by CRD (in relation to PAPs, JRs or MPs’ correspondence) that a decision would be made on their case by a date pre-dating the change in policy, but the undertaking has not been met. We will seek to distinguish these cases and grant ILR on the basis that it is in line with a previous undertaking. We recommend that we adopt this approach.’*

7.39 We noted that this risk mitigation plan went on to state that the Agency ‘would defend challenges from older cases where the above does not apply’. From other written chains of evidence that we examined, it was clear that this aspect of the risk mitigation plan was based in part on earlier evidence from CAAU. This set out that CAAU wanted to distinguish cases given an undertaking by CRD in relation to PAPs, JRs or MPs’ correspondence, granting ILR on the basis that it had failed to meet an earlier undertaking to make a decision prior to July 2011.

7.40 This approach excluded other types of written communication, for example from legal representatives (otherwise than in the context of litigation) or applicants themselves, including complaints. The written commitment had to have been given in individual cases, which therefore excluded those applicants who were sent letters and who were told to wait their turn for a decision by CRD. These applicants had sometimes waited over a number of years, due to the priority order in which CRD was working through asylum legacy cases. This disadvantaged applicants who were compliant and who had to wait for their case to be considered and had a reasonable expectation that a decision would be made by the summer of 2011.

7.41 This was a serious omission, because in many of the cases we sampled, we found that applicants or their legal representatives had been in contact with the Agency about their asylum claims over a number of years, sometimes repeatedly (Figure 17 refers). They were encouraged by the Agency not to contact it once they had provided the additional information requested, because of the way the Agency was prioritising its workload, which was set out originally in the IND Review:

*‘We plan to do this within five years or less. We will prioritise those who may pose a risk to the public, and then focus on those who can be more easily removed, those receiving support, and those who may be granted leave. All cases will be dealt with on their individual merits.’*

7.42 This approach saw hundreds of thousands of letters being sent out to applicants and their legal representatives during the lifetime of CRD, reminding them of the Agency’s intention to conclude all legacy cases by July 2011. These letters were of particular significance to those applicants who were in contact with the Agency and complying with Agency requests, who were given an expectation that their cases would be concluded by July 2011. Figure 24 details two types of generic letters that were sent out to applicants by CRD.

**Figure 24: Example of stock letters sent out to legacy asylum applicants**

1	<i>‘On 19 July 2006, the Home Secretary made a statement to Parliament about the then UK Border Agency’s legacy of electronic and paper records relating to unresolved asylum cases. He stated that the aim was to clear these cases within five years or less, namely by July 2011. I can confirm that your client’s case falls into this category but I cannot give any indication at this stage when it will be actioned. We will contact your client when your client’s case comes up for decision.’</i>
2	<i>‘Please send your photographs and any other documents<sup>62</sup> along with the completed form sent with this letter, to the address at the top of this letter. You should do this within 21 days from the above date. If you do not return the documents requested above, we will consider your case on the documents available to us.’</i>  <i>‘We ask that you do not make routine telephone or written enquiries about the progress of your case, as this diverts our resources from resolving cases. We will not confirm receipt of your reply to this letter or receipt of your photographs. Should we require any further information about your case, a UKBA colleague will contact you.’</i>

7.43 In September 2011, a CAAU manager asked the Home Office policy unit whether it could include cases within the first exception where CRD had not dealt with cases appropriately and there was no obvious reason why it had not made a decision. For example, where applicants were in contact with the Agency and the delay in making the decision was not attributable to them. The communication went on to add that applicants could argue that ‘they would be covered by the commitment to finish CRD by summer 2011’. The Home Office Policy Unit responded, stating that the policy position

62 Four passport sized photographs; Immigration Status Documents; confirmation of employment, etc.

was that such cases would not fall within this exception, highlighting the importance of maintaining the principle ‘that cases are decided according to the law and policy in place at the time of decision’.

7.44 However, this position changed in November 2011, when the Home Office policy unit stated that it had no objection to older CAAU cases receiving ILR, where it was clear that this was appropriate and where it would not undermine the principle of cases being decided according to the law and policy in place at the time of decision. The advice to CAAU then went on to identify a further exception which could result in a grant of ILR rather than DL, in addition to providing further advice on circumstances where it may be appropriate to depart from policy and exceptionally grant ILR – Figure 25 refers.

**Figure 25: Two further scenarios where the grant of ILR might be appropriate**

1	Where a decision was made prior to 22nd July that a grant of leave on these grounds was not appropriate, but after 22nd July 2011 the Agency reviews that decision and – on the basis of the same evidence – decides the earlier decision was wrong and that leave should have been granted.
2	Other cases where there are other compelling reasons to grant ILR rather than DL. Indicators that suggest a case may fall into this category include: <ul style="list-style-type: none"> <li>• having spent a very long time in the UK (say 7 years plus);</li> <li>• having had multiple and serious administrative delays in a case being considered, through no fault of the applicant; and</li> <li>• having had one or more periods of lawful leave (e.g. DL as a UASC) that meet / come close to meeting the six years of DL that an applicant would need to qualify for ILR.</li> </ul> <p>These factors are not definitive and are cumulative, if several apply to one case it is more likely to fall into this category.</p>

7.45 The above scenarios did not allow caseworkers to grant ILR themselves. they had to refer all such cases to a senior caseworker at Senior Executive Officer level. The Agency was unable to provide us with any evidence that local guidance had been issued to CAAU caseworkers setting out the exceptions (or the further advice provided), nor had any records being kept detailing when these exceptions were applied. This was unacceptable. Best practice is always to set out exceptions to the policy in guidance, which should be published for transparency purposes if possible. By failing to publish the exceptions and disseminate them widely, it was much more likely that the implementation of these exceptions would be adversely affected, with caseworkers either applying them inconsistently or not at all, as demonstrated by our file sampling findings.

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*Best practice is always to set out exceptions to the policy in guidance, which should be published for transparency purposes if possible*

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7.46 If the exceptions had been implemented effectively, we would not have commented on this policy change. However, implementation was flawed. Our examination of cases where some form of leave was granted showed that adult applicants in four cases (9%) were granted ILR, while the remaining 42 (91%) got DL. We found nothing in either the paper file or on CID to indicate that those granted ILR fell under one of the exceptions. Furthermore, in our interviews with caseworkers none showed an awareness of any of the exceptions, they only spoke of ILR being replaced by DL.

7.47 The Immigration Law Practitioner’s Association (ILPA) confirmed their understanding that all legacy applicants would receive a decision on their case by the summer of 2011. ILPA stated that the Agency reinforced this message through its website and also at the National Asylum Stakeholder Forum Case Resolution Subgroup meetings (NASF CRD Sub Group), at which ILPA and others were requested



to disseminate information concerning the programme to resolve the legacy asylum work – including that individuals (or legal representatives) should wait for the Agency to get in touch with them, unless they wished to provide a new address for their client. We reviewed a letter from a former Director of the Asylum Casework Directorate and this confirmed this position – Figure 26 refers.

#### **Figure 26: Letter to ILPA dated 16 March 2007**

*‘The Home Secretary’s statement implies that the asylum legacy will be cleared by July 2011, in other words within 5 years of his statement. Revision of our standard reply letters to avoid any confusion on this point is in hand.’*

*The priority criteria set out in the IND Review report of 25 July 2006 represent the priorities to be applied in the early stages of the legacy programme. They do not cover all legacy cases. Those not covered by the priorities are likely to be left until later in the programme. We shall adopt a principle of completing cases which we have drawn, so if a case is drawn on the basis of the priorities but further examination reveals that it was not in fact a priority case, we will still complete the case.’*

- 7.48 In the minutes of the NASF CRD Sub Group stakeholder meeting dated 9 September 2008, the Agency set out that a CRD conclusion is one that has either been:
- granted permanent residency;<sup>63</sup> or
  - removed from the country (this includes voluntary departures, assisted voluntary returns, and enforced removals).
- 7.49 The minutes of this meeting also made it clear that the Agency did not consider that a grant of Discretionary Leave was a conclusion by CRD.
- 7.50 It is evident that, had applicants received a decision on their case before the policy change came into effect, they would either have faced removal from the UK or would have been granted Indefinite Leave to Remain, which had been routinely granted in legacy asylum cases that qualified for a grant of leave under Paragraph 395C of the Immigration Rules up until 19 July 2011. Applicants who found themselves subject to this policy change had been disadvantaged, because our case file sampling revealed that:
- many applicants were in contact with the Agency prior to the closure of the CRD programme, in many cases for considerable periods of time;
  - applicants had complied with CRD requests for further information (and sometimes repeated requests for the same information);
  - the Agency was in possession of all the information it needed to make a decision prior to the closure of the CRD programme;
  - this information had not materially changed, so that when the decision was finally made by CAAU it did not take any additional information into account (other than further delays caused by the Agency); and
  - few applicants had any significant barriers which would have precluded a decision being made prior to the closure of the CRD programme.
- 7.51 This was not what we were told by the Agency at the outset of this inspection. We were told that CAAU was responsible for taking forward residual work on cases which had been reviewed and were

<sup>63</sup> ‘Cases that are accepted by the Secretary of State as falling under the R(S) criteria will be granted Indefinite Leave to Remain subject to certain exceptions or caveats relating to the conduct of the applicant or where the applicant, not the Agency, was responsible for the relevant delay’.

awaiting conclusion. The Agency added that ‘in many of these cases there are barriers to conclusion such as ongoing litigation, pending prosecutions, incomplete legal or criminal proceedings or continued non-compliance’. The cases we examined had few such barriers. Rather, we found that a significant proportion of these cases should have been dealt with by CRD, but were not.

**We recommend that the UK Border Agency:**

Works with the Home Office to ensure that guidance on new policies sets out any relevant exceptions, and communicates these effectively to staff so that they are applied fairly and consistently.

# Appendix 1

## Inspection Framework and Criteria

The criteria used in this inspection were taken from the Independent Chief Inspector's Inspection Criteria. Figure 27 refers.

### **Figure 27: Inspection Criteria used when inspecting the Agency's handling of legacy asylum and migration cases**

#### **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**

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

#### **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

## Glossary

Term	Description
<b>A</b>	
Absconder	A term used by the Agency to describe a person with whom the Agency has lost contact, who has breached reporting restrictions or bail conditions and/ or with whom the Agency is unable to make contact via their last known address.
Agency	Refers to the UK Border Agency.
Assisted Voluntary Return (AVR)	AVR refers to a range of programmes available to people who are in the asylum system or who are irregular migrants, and who wish to return home permanently. This can be to their (non-European Economic Area) country of origin or to a third country where they are permanently admissible (country of return).
Asylum	Asylum is when a country gives protection to someone who is attempting to escape persecution in their own country of origin. To qualify for refugee status in the UK, an individual must apply to the UK Border Agency for asylum and demonstrate that they meet the criteria as set out in the 'Refugee Convention'.
<b>C</b>	
Casework Information Database (CID)	The Casework Information Database is an administrative tool, used by the UK Border Agency to perform case working tasks and record decisions.
Case Worker	The Agency term for an official, usually at Executive Officer level, responsible for making decisions on legacy cases.
Criminal convictions over threshold	From 1 August 2008, all foreign national offenders (FNOs) who have received a custodial sentence of twelve months or more are subject to automatic deportation from the UK under the UK Borders Act 2007. This means that where such a sentence has been imposed, the Secretary of State will be legally obliged to make a Deportation Order unless the FNO falls within one of five exceptions. The FNO will usually only have an out-of-country right of appeal against this decision.

Complaint	Any verbal or written statement made by a person who is not satisfied with the service or treatment they have received or perceive to have received by the Agency. The Agency's own definition is <i>'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.'</i>
Contact management	Process of maintaining contact with a person who is not in detention, pending the conclusion of their case.
Customer	Anyone who uses the services of the Agency, including people seeking to enter the United Kingdom, detainees and MPs.
<b>E</b>	
Enforcement	Reference to all activity that takes place within the UK to enforce the Immigration Rules and ensure that applicants comply with conditions set by arrest, detention and removal teams.
European Union Letter (EUL)	A locally produced travel document used for removal when no valid travel document or passport is held. There are no formal agreements concerning the use of an EUL.
<b>F</b>	
Further submissions or representations	The term given to grounds submitted to the UK Border Agency by those who have already made an unsuccessful claim to remain in the UK, and who ask for their claim to be re-considered. A further submission refers to a situation where an applicant has had an initial asylum refused and has exhausted all their appeal rights but chooses to provide additional information for consideration.
Fresh claim	A fresh claim is when someone who has been refused asylum submits further evidence which is accepted by UKBA to be new and relevant. It must be evidence that was not included in a previous claim.
<b>H</b>	
Home Office	The Home Office is the lead government department for immigration and passports, drugs policy, crime, counter-terrorism and police.
Humanitarian Protection (HP)	A form of immigration status given to a person who does not qualify as a refugee, but can show that there are substantial grounds for believing that if they were returned to their country of origin they would face a real risk of suffering serious harm. Serious harm means either the death penalty; torture or inhuman or degrading treatment or punishment; or a serious and individual threat to a person's life or safety in situations of armed conflict.
<b>I</b>	
Illegal worker	An illegal worker refers to a person who is subject to immigration control; is aged over 16; and whose conditions of stay do not allow working, including those whose conditions have expired.
Immigration Group	Group that deals with applications for temporary and permanent migration. Staff working within the Group's local immigration teams are responsible for enforcement action, including the detection and removal of illegal immigrants. They also make decisions relating to asylum.

Immigration Law Practitioners Association (ILPA)	ILPA is a professional association with approximately 950 members, including barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members.
Immigration offender	Someone who has broken the immigration laws, for example by entering or staying in the country illegally.
Immigration Status Document	A document issued by the Home Office with an endorsement indicating a person's immigration status.
Independent Chief Inspector of Borders and Immigration	The role of the Independent Chief Inspector of Borders and Immigration 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 the Border Force and reports directly to the Home Secretary.
Intelligence	The information that is gathered by the Agency and recorded, assessed and developed into a format that can be used by the Agency.
Intelligence Unit	A team that collates and disseminates intelligence, usually for LIT arrest teams.
<b>J</b>	
Judicial Reviews (JR)	The means through which a person or people can ask a High Court judge to review the lawfulness of public bodies' decisions.
<b>L</b>	
Local Immigration Team (LIT)	A LIT is a local team undertaking as many functions as practicable at a local level within an Immigration Group region. They focus on enforcement work and community engagement, although the functions of LITs can vary between regions.
<b>N</b>	
Non-compliance	When a person fails, without reasonable excuse, to comply with conditions imposed by the Agency, including: failure to attend a screening interview, failure to report to an Immigration Officer and failure to respond to an information request.
<b>O</b>	
Overstayer	A person who illegally remains in a country after the period of their permitted leave has expired.
<b>R</b>	
Regional Director	Senior manager responsible for one of the former six Immigration Group regions.
Removal	The process by which a person is removed from the UK voluntarily or forcibly by a removal or enforcement team.
Removable nationality	A national of a country where no legal barrier existed that would prevent removal action and where an effective and efficient re-documentation procedure was in operation.
Reporting	A form of contact management where a person reports in person to a Reporting Centre or Police Station to maintain contact with the Agency.

Reporting Centre	UK Border Agency office (or Police Station) where people who are liable to detention (for example, failed ers) are required to report on a regular basis.
<b>S</b>	
Senior Caseworker	The Agency term for an official at either Higher Executive Officer or Senior Executive Officer level, responsible for a team of case workers.
<b>U</b>	
Unaccompanied Minor	A child under the age of 18 who does not have a parent or legal guardian in the UK. A child who is applying for asylum in their own right; and is separated from both parents and is not being cared for by an adult who by law has responsibility to do so.
United Kingdom Border Agency (the Agency)	The agency of the Home Office which, following the separation of Border Force on 1 March 2012, is responsible for immigration casework, in-country enforcement and removals activity, the immigration detention estate and overseas immigration operations. The UK Border Agency has been a full executive agency of the Home Office since April 2009.
<b>V</b>	
Visa nationals	Visa nationals are those who require a visa for every entry to the United Kingdom, though some may be able to transit without a visa.
<b>W</b>	
Work in Progress (WIP)	The file store for cases that have not yet been concluded by the Agency.

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