



House of Commons
Home Affairs Committee

Monitoring of the UK Border Agency

First Report of Session 2008–09

*Report, together with formal minutes and oral
evidence*

*Ordered by the House of Commons
to be printed 16 December 2008*

HC 77
[Incorporating HC 1192, Session 2007-08]
Published on 12 January 2009
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

The Home Affairs Committee

The Home Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Home Office and its associated public bodies.

Current membership

Rt Hon Keith Vaz MP (*Labour, Leicester East*) (Chairman)
Tom Brake MP (*Liberal Democrat, Charshalton and Wallington*)
Ms Karen Buck MP (*Labour, Regent's Park and Kensington North*)
Mr James Clappison MP (*Conservative, Hertsmere*)
Mrs Ann Cryer MP (*Labour, Keighley*)
David TC Davies MP (*Conservative, Monmouth*)
Mrs Janet Dean MP (*Labour, Burton*)
Patrick Mercer MP (*Conservative, Newark*)
Margaret Moran MP (*Labour, Luton South*)
Gwyn Prosser MP (*Labour, Dover*)
Bob Russell MP (*Liberal Democrat, Colchester*)
Martin Salter MP (*Labour, Reading West*)
Mr Gary Streeter MP (*Conservative, South West Devon*)
Mr David Winnick MP (*Labour, Walsall North*)

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk.

Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/homeaffairscom. A list of Reports of the Committee since Session 2005–06 is at the back of this volume.

Committee staff

The current staff of the Committee are Elizabeth Flood (Clerk), Eliot Wilson (Second Clerk), Elisabeth Bates (Committee Specialist), Sarah Harrison (Committee Specialist), Mr Darren Hackett (Senior Committee Assistant), Mr Ameet Chudasama (Committee Assistant), Sheryl Dinsdale (Committee Assistant) and Ms Jessica Bridges-Palmer (Select Committee Media Officer).

Contacts

All correspondence should be addressed to the Clerk of the Home Affairs Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 3276; the Committee's email address is homeaffcom@parliament.uk.

Contents

Report	<i>Page</i>
1 Background	3
Oversight of the UK Border Agency	3
2 Oral evidence	4
Initial decision-making by UK Border Agency staff	4
Clarity of refusal notices	5
Evidence base for visa refusals and issues	6
Transitional arrangements: Independent Monitor to Chief Inspector	6
Title of Chief Inspector	8
Conclusions and recommendations	9
Formal Minutes	11
Witnesses	12
List of Reports from the Committee during the current Parliament	13

1 Background

Oversight of the UK Border Agency

1. John Vine CBE QPM was appointed to the newly created post of Chief Inspector of the UK Border Agency in July 2008, with a mandate to establish an independent inspectorate to oversee the UK Border Agency. There had previously been no such inspectorate. He is an independent Crown servant, appointed by the Home Secretary and reporting through her to Parliament and the public. The new inspectorate will subsume five currently separate independent monitoring posts, including the Independent Monitor for Entry Clearance Refusals without the Right of Appeal, the Independent Monitor of Non-Suspensive Appeals, the Complaints Audit Committee, the Independent Race Monitor and the Advisory Panel on Country Information.

2. Linda Costelloe Baker was appointed by the Home Secretary as Independent Monitor for Entry Clearance Refusals without the Right of Appeal in April 2006. Her term of appointment runs out in April 2009, when the role will be subsumed within the new UK Border Agency inspectorate. The role of the Independent Monitor was set out in the Immigration and Asylum Act 1999¹ and amended by the Nationality, Immigration and Asylum Act 2002.² The Independent Monitor cannot investigate individual complaints or overturn a decision not to issue a visa, but may make recommendations to the Government based on her findings. She is directed by the Home Secretary:

- To examine the quality of decision-making, within the spirit of fairness and consistency, in certain cases where, as a result of legislation, there is a limited right of appeal: this includes cases determined under the Points Based System;
- To ensure that correct procedures are used to reach decisions.³

The Independent Monitor submits a twice yearly report to the Home Secretary.

1 Section 23

2 Paragraph 27 of schedule 7

3 Report of the Independent Monitor to the Home Secretary (File sample April – September 2007), p 4

2 Oral evidence

3. On Tuesday 18 November 2008 we took evidence from John Vine CBE QPM, Chief Inspector of the UK Border Agency, and Linda Costelloe Baker, Independent Monitor of Entry Clearance Refusals without the Right of Appeal, on their monitoring of the UK Border Agency.

Initial decision-making by UK Border Agency staff

4. The Independent Monitor is specifically directed by the Home Secretary to examine the quality of decision-making by UK Border Agency staff in visa refusal cases with a limited right of appeal. To this end she spends three months each year on operational visits to overseas Posts to examine the information available to visa applicants, the quality of decision-making, and how Posts handle complaints and post decision correspondence.⁴ She also inspects two randomly selected global file samples annually, each one covering a six month period. She calculated that “overall in a year I see about 3,000 files on cases within my remit”.⁵

5. We asked Mrs Costelloe Baker for her assessment of the quality of decision making on visa applications. She told us that in her opinion “decision quality is reasonable and very slowly improving”.⁶ However, in her view, there remained inadequacies in the training of visa entry clearance officers. She noted that “over the past two and a half years the really big recommendations that I have made that have not been accepted have been to do with training”.⁷ More than one of the recommendations she had made about training had been considered by the UK Border Agency to be “a good idea but too difficult”.⁸ These included a recommendation that “officers who determined whether a document was non-genuine or not should have forgery training that was externally validated”,⁹ and one that “locally engaged support staff who act as translators in interviews should have a proper translator qualification”.¹⁰

6. We were pleased to hear the Independent Monitor’s assessment that quality of decision making in visa applications by UK Border Agency staff is “reasonable and very slowly improving”. But we were disappointed to hear of her residual concerns about staff training, and to learn that several of her recommendations on training had not been accepted.

7. The Independent Monitor’s recommendations on external validation of forgery training, and on translator qualifications for locally engaged staff seem to us to touch on issues crucial to ensure confidence in the entry clearance system. We recognise that

4 IM Report, p 7

5 Q 2

6 Q 1

7 Q 6

8 *Ibid.*

9 *Ibid.*

10 *Ibid.*

they are not easy to implement, but we consider that the Government should review them to determine whether there might be other means of attaining the same ends.

Clarity of refusal notices

8. Although she considered that decision making had improved, Mrs Costelloe Baker told us that she still had concerns about the quality and transparency of some visa refusal notices. She considered that the use of plain English in refusal notices had “improved enormously over two and a half years... I have embarrassed the visa business by publicly quoting some of the really, really ridiculous reasons [for refusing a visa].”¹¹ She gave an example of a reason given by one entry clearance officer: “your relationship is fugacious in nature”.¹² Mrs Costelloe Baker said that the quality of notices had improved considerably from this level, and that “these days I think mostly refusal notices are in plain English”.¹³

9. However, she did note that the introduction of standardised paragraphs, although useful in principle, had often made refusal notices obscure:

in an attempt to get consistency, headquarters issued recommended standard paragraphs and the problem has been in places where people have just littered these throughout a refusal notice without any evidence to do with the candidate. So these general, rather bland ten or 12 standard paragraphs have just been peppered into a refusal notice and the entry clearance officer has not read it through to see whether it makes sense or whether it duplicates or contradicts itself.¹⁴

10. Mrs Costelloe Baker set out ten ‘indicators’ which she recommended that all entry clearance officers should follow in order to ensure the quality and transparency of refusal notices. Five of these assess whether the notice “is lawful and reasonable, if the application has been considered against the correct immigration rules”.¹⁵ The other five concern the quality and appearance of the refusal notice. She also told us that in her latest report, currently with the Home Secretary, she had set out as a blueprint “what I think is best practice in a refusal notice”.¹⁶

11. Based on our experiences as constituency MPs, and from recent visits, including to visa offices in India and Bangladesh, we have ourselves expressed concern about the length and unintelligibility of visa refusal notices. We were pleased to learn that the Independent Monitor has made similar criticisms about the indiscriminate use of standardised paragraphs, and of unintelligible or obscure legal jargon.

12. We recommend that the Government should ensure that the Independent Monitor’s ten ‘indicators’ for good quality refusal notices be implemented throughout UK Visas, that entry clearance staff be trained to follow these, and that they form part of the inspection regime for visa refusals.

11 Q 7

12 Q 24

13 Q 9

14 Q 7

15 Q 8

16 Q 11

Evidence base for visa refusals and issues

13. Visa refusal decisions are regularly reviewed, by the Independent Monitor and others, and therefore are subject to detailed scrutiny. Mrs Costelloe Baker noted that no such review or detailed scrutiny was conducted of decisions to issue visas, and that consequently the evidence recorded for a visa refusal was far more detailed than that recorded for a visa issue:

The qualitative difference in the recording of the evidence base is really very marked. A decision to issue is simply a few very short notes and a decision to refuse has got to be evidenced in a way that is open to external scrutiny.¹⁷

14. We asked whether this perhaps created “a danger that if immigration officers know that somebody is going to assess very efficiently whether or not they have correctly refused an application but nobody is going to assess whether they have correctly approved an application, there is a tendency to be tempted to approve more applications than one should on the basis that that work is never going to be checked?”¹⁸ Mrs Costelloe Baker agreed in part, saying that “it is a much, much faster process to issue a visa than it is to refuse. So I think that there is pressure to issue visas because it helps people with their productivity targets”.¹⁹ However, she added the caveat that “although there might be an assumption that there is no external scrutiny of visa issues, I think people are very conscious of the pressures within the UK to make sure that visas are issued to genuine visitors who intend to leave at the end of their visit”.²⁰

15. In a later session we asked the Minister of State for Immigration and Citizenship, Phil Woolas MP, about visas which might have been erroneously issued because of this administrative bias. The Minister clarified that Mrs Costelloe Baker’s comments about possible errors in the visa issuing process referred to the fact that “within some of the refusals there will be errors in the process, which does not mean that the decision was wrong; some of the errors may be spelling mistakes, they may be misquoting of a particular piece of legislation or whatever, and that is not the same as a mistake”.²¹

16. We share the concern of the Independent Monitor that the substantially lower level of evidence that entry clearance officers are obliged to record for a visa issue than for a visa refusal may provide a perverse incentive for officers to issue visas rather than refuse them. However, the extent to which this has happened in practice is far from clear.

Transitional arrangements: Independent Monitor to Chief Inspector

17. In April 2009 the role of Independent Monitor for Entry Clearance Refusals without the Right of Appeal will be subsumed within the new UK Border Agency inspectorate. Mrs Costelloe Baker told us that, in her view, “the Independent Monitor’s role [should be]

17 Q 4

18 Q 28

19 *Ibid.*

20 *Ibid.*

21 Q 1

repealed because I think that would be tidier than trying to subsume it or run it in tandem with [the Chief Inspector]”.²² The Chief Inspector told us he considered that his role in inspecting visa services would be “much broader in terms of looking at visa sections much more comprehensively and from a user perspective as well”.²³

18. Mr Vine explained that the UK Border Agency inspectorate was still in the initial stages of establishment:

The inspectorate has been set up from nothing, so we are still literally only a few people in an office in central London...we do not have any baseline data, we do not have any baseline systems to begin with and we do not have the sort of infrastructure that virtually any other inspectorate or ombudsman body has in existence at the moment.²⁴

He added:

We are recruiting staff at the moment, some interviews are scheduled for December, so I imagine by the time we get some of those staff and have them trained it is likely to be February at the earliest. At that point we will be able to examine the business [the UK Border Agency] in more detail, but at the moment it is not feasible for me to do so.²⁵

We suggested that since the inspectorate was being established from scratch, the reality was that it would be Spring 2009 before inspections would take place on UK Border Agency core business.²⁶ Mr Vine thought that by February 2009 he “should be able to give the Committee an idea of the approach [that the inspectorate would take] over the next three years”.²⁷

19. The question arises whether by April 2009 the new UK Border Agency inspectorate will be sufficiently developed to carry out all the functions currently performed by the Independent Monitor. If not, this would leave a hiatus after the abolition of the Independent Monitor’s role. Furthermore, since the inspectorate will have a far larger overall remit than the Independent Monitor, there is a possibility that scrutiny of visa refusal decisions will simply not be as effective as it hitherto has been.

20. The new inspectorate is still being established and therefore is not yet conducting scrutiny of the UK Border Agency. We will invite the Chief Inspector back to give evidence to this Committee in the Spring of 2009, once the inspectorate is fully operational.

21. We were dismayed to learn that the role of Independent Monitor for Entry Clearance Refusals without the Right of Appeal will be repealed in April 2009, by which

22 Q 29

23 Q 31

24 Q 57, Q 88

25 Q 72

26 Q 88

27 Q 85

juncture it was by no means clear to us that the new inspectorate will be fully operational, and therefore able to scrutinise visa refusal decisions in the same detail that the Independent Monitor currently does. We therefore recommend that the Government retains the Independent Monitor position for some months longer, in order to ensure that there is a sufficient overlap with the new inspectorate, and absolutely to guarantee that there is no hiatus in the oversight of visa refusals.

Title of Chief Inspector

22. There has been some misunderstanding about the independent nature of the Chief Inspector and his inspectorate. We consider it especially important that the Chief Inspector's role be visibly independent, particularly since it will subsume several existing positions which are clearly titled 'independent'. The Chief Inspector agreed that his title was not entirely transparent:

To be honest with you, that has been an issue so far...I have had to explain that I am independent and it is interesting that even you have been labouring under the misapprehension I work in some way for the Border Agency. I agree it is an issue and perhaps that is something that can be addressed in the future.²⁸

23. We recommend that the title of the Chief Inspector and his inspectorate be amended explicitly to include the word 'independent', in order to clarify that the post is independent from the UK Border Agency.

Conclusions and recommendations

1. We were pleased to hear the Independent Monitor's assessment that quality of decision making in visa applications by UK Border Agency staff is "reasonable and very slowly improving". But we were disappointed to hear of her residual concerns about staff training, and to learn that several of her recommendations on training had not been accepted. (Paragraph 6)
2. The Independent Monitor's recommendations on external validation of forgery training, and on translator qualifications for locally engaged staff seem to us to touch on issues crucial to ensure confidence in the entry clearance system. We recognise that they are not easy to implement, but we consider that the Government should review them to determine whether there might be other means of attaining the same ends. (Paragraph 7)
3. Based on our experiences as constituency MPs, and from recent visits, including to visa offices in India and Bangladesh, we have ourselves expressed concern about the length and unintelligibility of visa refusal notices. We were pleased to learn that the Independent Monitor has made similar criticisms about the indiscriminate use of standardised paragraphs, and of unintelligible or obscure legal jargon. (Paragraph 11)
4. We recommend that the Government should ensure that the Independent Monitor's ten 'indicators' for good quality refusal notices be implemented throughout UK Visas, that entry clearance staff be trained to follow these, and that they form part of the inspection regime for visa refusals. (Paragraph 12)
5. We share the concern of the Independent Monitor that the substantially lower level of evidence that entry clearance officers are obliged to record for a visa issue than for a visa refusal may provide a perverse incentive for officers to issue visas rather than refuse them. However, the extent to which this has happened in practice is far from clear. (Paragraph 16)
6. The new inspectorate is still being established and therefore is not yet conducting scrutiny of the UK Border Agency. We will invite the Chief Inspector back to give evidence to this Committee in the Spring of 2009, once the inspectorate is fully operational. (Paragraph 20)
7. We were dismayed to learn that the role of Independent Monitor for Entry Clearance Refusals without the Right of Appeal will be repealed in April 2009, by which juncture it was by no means clear to us that the new inspectorate will be fully operational, and therefore able to scrutinise visa refusal decisions in the same detail that the Independent Monitor currently does. We therefore recommend that the Government retains the Independent Monitor position for some months longer, in order to ensure that there is a sufficient overlap with the new inspectorate, and absolutely to guarantee that there is no hiatus in the oversight of visa refusals. (Paragraph 21)

8. We recommend that the title of the Chief Inspector and his inspectorate be amended explicitly to include the word 'independent', in order to clarify that the post is independent from the UK Border Agency. (Paragraph 23)

Formal Minutes

Tuesday 16 December 2008

Members present:

Rt Hon Keith Vaz, in the Chair

Tom Brake
Ms Karen Buck
Mrs Ann Cryer
David T C Davies

Mrs Janet Dean
Martin Salter
Mr Gary Streeter
Mr David Winnick

Draft Report (Monitoring of the UK Border Agency), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 23 read and agreed to.

Resolved, That the Report be the First Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 13 January at 10.15 am

Witnesses

Tuesday 18 November 2008

Page

Mr John Vine CBE QPM, Chief Inspector of the UK Border Agency, and **Mrs Linda Costelloe Baker**, Independent Monitor for Entry Clearance Refusals without the Right of Appeal

Ev 1

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2007–08

First Report	The Government's Counter-Terrorism Proposals	HC 43
Second Report	Bulgarian and Romanian Accession to the EU: Twelve months on	HC 59
Third Report	Security Industry Authority	HC 144
Fourth Report	Work of the Committee in 2007	HC 226
Fifth Report	A Surveillance Society?	HC 58 (Cm 7449)
Sixth Report	Domestic Violence, Forced Marriage and "Honour"-Based Violence	HC 263 (Cm 7450)
Seventh Report	Policing in the 21 st Century	HC 364

Session 2006–07

First Report	Work of the Committee in 2005–06	HC 296
Second Report	Young Black People and the Criminal Justice System	HC 181 (Cm 7217)
Third Report	Justice and Home Affairs Issues at European Union Level	HC 76 (HC 1021)
Fourth Report	Police Funding	HC 553 (HC 1092)

Session 2005–06

First Report	Draft Corporate Manslaughter Bill (First Joint Report with Work and Pensions Committee)	HC 540 (Cm 6755)
Second Report	Draft Sentencing Guideline: Robbery	HC 947
Third Report	Draft Sentencing Guidelines— <i>Overarching Principles: Domestic Violence and Breach of a Protective Order</i>	HC 1231
Fourth Report	Terrorism Detention Powers	HC 910 (Cm 6906)
Fifth Report	Immigration Control	HC 947 (Cm 6910)
Sixth Report	Draft Sentencing Guideline: Sexual Offences Act 2003	HC 1582

Oral evidence

Taken before the Home Affairs Committee

on Tuesday 18 November 2008

Members present

Keith Vaz, Chairman

Ms Karen Buck
Mr James Clappison
Mrs Ann Cryer
David T C Davies
Mrs Janet Dean

Patrick Mercer
Margaret Moran
Mr Gary Streeter
Mr David Winnick

Witnesses: **Mr John Vine CBE QPM**, Chief Inspector of the UK Border Agency, and **Mrs Linda Costelloe Baker**, Independent Monitor for Entry Clearance Refusals without the Right of Appeal, gave evidence.

Q1 Chairman: Could I welcome everyone to this session of the Select Committee and thank our two witnesses, Mr Vine and Mrs Costelloe Baker, for coming here. This is a one-off session to look at the new role of the Chief Inspector as well as looking at the role of the Independent Monitor, which is to undergo a change very shortly, within the Committee's overall look at the points-based system and the way in which the Government has put forward its Immigration and Citizenship Bill. Can I start by referring everyone to the Register of Members' Interests and declare an interest? My wife is an immigration solicitor. Mrs Costelloe Baker, you have been the Independent Monitor for a number of years so I would imagine you have been to quite a few of the posts abroad and read many of the files. What do you think about the overall quality of the decision-making process as far as our ECNs and ECOs are concerned?

Mrs Costelloe Baker: I have been the Independent Monitor for two and half years. I think at last count I had visited 37 overseas sections, both large and small and high refusal rates and low refusal rates, so a very good spread throughout the world. I think decision quality is reasonable and very slowly improving.

Q2 Chairman: On your visits to the posts have you been able to point out particular aspects of the quality of decision making to the ECOs? Tell us about your visit. You turn up in New Delhi either announced or unannounced and they produce for you a whole lot of files which you have a look through. Do you give instant feedback to the ECOs?

Mrs Costelloe Baker: Yes. I am monitoring in two rather distinct ways. I am required to spend three months of the year visiting posts overseas, but I also instruct two global file samples a year with each one covering a six-month period and they are randomly selected. So overall in a year I see about 3,000 files on cases within my remit. I think it is also fair to say that I see probably 300 or 400 files on cases that are not within my remit, but the visa business is very relaxed about me seeing comparator file samples so that I can compare cases with limited appeal rights

to cases with full appeal rights and where visas have been issued. I do see a significant number of files during the year. Let me go back to 2006, just after I was appointed, when my first comment to what was then the UK Visas was my surprise and indeed shock about the lack of consistency in the way that even a refusal notice looked from one visa office to another. I think that what is now the Visa Services Directorate is a global business and I thought that it ought to have a global branding.

Q3 Chairman: We will come on to refusal notices in a second and the way in which they are drafted. That is very helpful. Thank you. Mr Vine, what about from your point of view, from the cases that have full rights of appeal, what is your overall assessment about the quality of the decision-making process?

Mr Vine: At the moment I am really not in a position to comment because I have not yet got a working inspectorate up and running to enable me to look at the evidence. What I am going to be doing early next week is accompanying Linda on one of her visits abroad to see exactly the extent of her process and that will give me a start and a basis on which to answer such a question, but at the moment I am really not able to do so simply because I have not availed myself of the evidence.

Q4 Chairman: What about the quality of training? As a Committee we have just come back from India and Bangladesh and we had the opportunity of looking at the visa section. Do you have any concerns about the training of locally engaged staff and whether enough time is spent ensuring that they understand the nuances of immigration policy?

Mrs Costelloe Baker: Can I just come back to the question about visas that are issued because when I look at comparator samples I do have a significant concern about the way that the visa business records the evidence when a visa is going to be issued and I think that is relevant to the Committee's consideration of monitoring. In the past visas with limited appeal rights are monitored by the Independent Monitor and those with full appeal rights are monitored by the Asylum and Immigration Tribunal.

Nobody has had the power to have a look at visas that are issued. I think the qualitative difference in the recording of the evidence base is really very marked. A decision to issue is simply a few very short notes and a decision to refuse has got to be evidenced in a way that is open to external scrutiny.

Q5 Chairman: Do you think the time has come for these interviews to be recorded? At the moment, as we saw when we went to Delhi and to Dhaka and even to Sylhet, a written note is taken. Is it now time to get these interviews formally on tape?

Mrs Costelloe Baker: That will depend on the purpose of doing that. I also have within my statutory remit and direction complaint handling and I see very few complaints about the way that an interview has been conducted. These days probably about 8% of visa applicants are interviewed anyway. The change in the business model means that increasingly decisions are made on paper. Can I come back to training? I have commented a great deal on inconsistencies/inadequacies in training during my two and a half years and in fact my predecessor also commented about poor quality training.

Q6 Chairman: Was that Rabinder Singh?

Mrs Costelloe Baker: No, Fiona Lindsley. Her comment was that Human Rights Act training ought to be taught by an expert. It is still taught in-house, but I gather the content has been approved by the Ministry of Justice. Interestingly, over the past two and a half years the really big recommendations that I have made that have not been accepted (because I do have the power to make recommendations rather than binding orders and quite right too) have really been to do with training. For example, I recommended that officers who determined whether a document was non-genuine or not should have forgery training that was externally validated. That was considered a good idea but too difficult. I recommended that the locally engaged support staff who act as translators in interviews should have a proper translator qualification because that requires more than some people speaking two languages. Again that was considered a good idea but too difficult. One of the recommendations that has been accepted, however, is the one that has been referred to in my last report, which was Entry Clearance Officers who were appointed on a local basis. They are quite often British citizens who happen to be living abroad for other reasons. They sort of slipped through the net for the basic three week Entry Clearance Officer training course which in 2007 had a pass/fail element put into it. I discovered on my visit to Ottawa—because all of the staff there are locally engaged Entry Clearance Officers—that they were not going through this pass/fail level course to the same degree of toughness that UK-based staff were. That recommendation was in my report on my visit to Ottawa and UK Visas accepted that recommendation. It has also accepted my recommendation to tighten up training for temporary staff or “floaters”, ie they go from post to post to post. I discovered that some of them had been doing that for eight years and had not

had any training. The recommendation that entry clearance training should be mandatory has been accepted as well.

Chairman: We will find out whether, having accepted it, they are implementing it because, as we all know, there is a big difference between the two.

Q7 Patrick Mercer: Your assessments have shown that the quality of refusal notices varies considerably and this was very obvious to us when we were travelling in both India and Bangladesh recently. You have identified poor performance on various grounds, including “unreasonable judgment” and “evidence”. What proportion of refusal notices give clear reasons and, probably as importantly, use plain English?

Mrs Costelloe Baker: Plain English has improved enormously over two and a half years. It is one of the things where I have embarrassed the visa business by publicly quoting some of the really, really ridiculous reasons. There was a bit of Entry Clearance Officers perhaps trying to write as they thought lawyers would write. I have said very clearly that the refusal notice is the property of the applicant and it should be written in a way that the applicant can understand rather than embellished in the way that people think maybe that lawyers talk. So these days I think mostly refusal notices are in plain English. There is a problem, however, in that in an attempt to get consistency headquarters issued recommended standard paragraphs and the problem has been in places where people have just littered these throughout a refusal notice without any evidence to do with the applicant. So these general, rather bland—Islamabad and Accra were particularly bad—10 or 12 standard paragraphs have just been peppered into a refusal notice and the Entry Clearance Officer has not read it through to see whether it makes sense or whether it duplicates or contradicts itself.

Q8 Patrick Mercer: Again this bears out exactly what we were seeing on our latest visit. What key things in your opinion must entry clearance officials do to improve refusal notices?

Mrs Costelloe Baker: In my assessment I have two sets of five indicators which I think are quite simple. The first five record whether the notice is lawful and reasonable, if the application has been considered against the correct immigration rules: there are mistakes made there particularly with students and student visitors. Does it fly in the face of the evidence? Does it directly contradict some of the evidence that has been provided? That is a real problem at the moment. About 5% of refusal notices contradict the evidence. Is the judgement reasonable? I use the Wednesbury reasonableness definition. Is there the correct information on appeal rights? There is a problem there in worsening performance. Is there no maladministration that would materially affect the decision? Those five make the decision lawful and reasonable. The second five are on quality. First of all, does it set out the immigration rules? Before that recommendation was accepted a lot of applicants thought that the Entry Clearance Officers made

18 November 2008 Mr John Vine CBE QPM and Mrs Linda Costelloe Baker

things up as they went along and did not know that it was working against a statutory basis of rules set by Parliament. Does it include applicant specific evidence or is it these general paragraphs that do not make sense? Does it accurately say the period and purpose? If you do not get that right you are not actually considering the application properly. Is it balanced? Does it record some good points or does it just throw a whole lot of critical points in? That is really, really important in presenting fairness and demonstrating fairness. And then finally there is the appearance quality, ie free of typos, plain English, one set of margins and looking tidy. Those are my 10 indicators. It sounds simple, but that is what Entry Clearance Officers need to follow to make sure that all of their refusal notices meet those 10 principles.

Q9 Chairman: Mr Mercer has raised a very important point and one that affects all of us when we see our constituents on a Friday and that is that refusal notices have become longer, not because of the factual problems, but because they bung in the entire case law concerning this. What we want to do is to go back to a situation that will allow the farmer in the Punjab who has made his application a set of six blobs indicating, "This is what you got wrong, mate, and you sort that out otherwise you are not getting your visa," not the whole history of legal practice. Why have you not issued guidance?

Mrs Costelloe Baker: I have done.

Q10 Chairman: When we were in Dhaka and we complained about their refusal notice they said, "Well, the Independent Monitor will be on our backs telling us we are not giving as much information."

Mrs Costelloe Baker: I take full responsibility for recommending that a refusal notice should have a standard style and structure, but I did not write these recommended, wordy, lengthy, clouds in the air, bowl of mist, paragraphs. Fortunately change is on the way.

Q11 Chairman: Change is on the way? You mean Mr Obama is involved? What do you mean by that?

Mrs Costelloe Baker: My current report is with the Secretary of State at the moment and has not yet been published, but in the report that I think you have I have put what I think is best practice in a refusal notice and it is a case from Sarajevo. I do think it is important that all of the relevant immigration rules are set out because otherwise people do not know what the basis for them is.

Q12 Chairman: Sure, but that could be on a separate page. You could have the rules on one page and on the second page say "And this is why you have been refused".

Mrs Costelloe Baker: I think you can do it all on one with the rule and why you did or did not. That is on its way along with a new case database which will make some of this automatically available.

Q13 Mr Streeter: I want to ask about the right of appeal under the new system which is going to be significantly changed. Do you have concerns about replacing the right of appeal with an administrative review? What would your comments be about that?

Mrs Costelloe Baker: I like the points-based system, I am a supporter, because it is very strictly evidence based, there are very clear hurdles and bars that people have to get over and it removes the problem of guessing intention. I think from an Entry Clearance Officer point of view it is very, very difficult to guess whether somebody intends to leave the UK at the end of their visit, period of study or whatever, so transferring that to very clear criteria is a really good idea. As the element of judgement, by removing intention, is not there anymore, I think the robust administrative view is not the whole answer but I think it is all right. It has not been set up exactly as I recommended. I would have preferred the administrative review to be done in regional centres so that it was demonstrably independent from the Entry Clearance Officer.

Q14 Mr Streeter: Do you think a person in the same office could really be considered by anybody to be independent from your experience?

Mrs Costelloe Baker: I think not because it is a question of public perception. The Reviewer might act independently, but the person outside the walls of the High Commission or the Embassy do not see it that way. UK Visas did set out some criteria in its guidance, "... so the reviewer must not be an Entry Clearance Manager who gave advice on the original decision", so principally not the line manager, "... reviewed the original decision", so that is quite often the line manager, "... or is in a partner relationship with the refusing Entry Clearance Officer." That is one that crossed my mind. You must rule those three out. In some cases the review is handled by a different post. I would prefer it to be done regionally.

Q15 Mr Streeter: They may not be partners, but they could still be friends and have lunch together once a week and chat about these things, could they not?

Mrs Costelloe Baker: Yes.

Q16 Mr Streeter: What do you think the Government could do to reduce the cost and length of time spent determining appeals whilst retaining an independent appeals system?

Mrs Costelloe Baker: Given that my role is restricted to the case of limited appeal rights and very, very few people have a valid appeal on Human Rights Act or race relations grounds, forgive me for being slightly hesitant on this. Perhaps I can answer it by saying what an unfairness is in the current system for people with limited appeal rights. With full appeal rights the appellant puts in their appeal and the case is reconsidered by the post before they decide to stick with their original judgement or change. There is no opportunity for limited appeal rights cases to have that second go and send additional papers. Maybe one of the things that makes the appeals system feel unfair from an entry clearance point of view is that the appellant can put in additional papers and can

have witnesses attend in person, none of which is available to people with limited appeal rights. So for a more balanced system overall maybe an appeals system that limited scrutiny to the papers that were considered by the Entry Clearance Officer would be faster, simpler and, probably from the practitioner's point of view, feel fairer.

Q17 Mr Streeter: I know you are about to be abolished, but when do you think it is reasonable to take a view as to whether or not the whole system overall is working? When would we be wise to take a judgement on that?

Mrs Costelloe Baker: The new system?

Q18 Mr Streeter: The points-based system.

Mrs Costelloe Baker: I have been looking at points based applications because by ministerial direction points-based cases are within my remit—not by statute but by direction. I started looking at these cases in April obviously with highly skilled migrants. I will give an example from my most recent visit which was to Tehran. The quality of decision making and refusal notices there was poor, but the quality of work on the points-based system was excellent and that is because it is a much, much clearer, simpler system to operate. At the end of next week, 27 November, tier two comes in with the work permit categories, youth mobility, and all the students go to points-based in March next year, so probably in about a year's time.

Q19 David Davies: You are looking at the refusal notices and whether they have been fairly refused. Does anyone look at approval notices and whether they have been correctly approved?

Mrs Costelloe Baker: Not at the moment. In the consultation about setting up the role of the Chief Inspector that has always been my point to make. About 80% of visas are issued and there has been no external scrutiny over that 80%. The Chief Inspector will be able to do that.

Q20 David Davies: We have established that around 15% of refusal notices were incorrectly refused and so it is reasonable to assume that around 15% of approval notices were incorrectly approved.

Mrs Costelloe Baker: I think that is a reasonable supposition.

Q21 David Davies: And as 80% of all notices are approved that 15% is going to be over four times greater than the number refused. There will be four times as many incorrectly approved applications as there are incorrectly refused ones.

Mrs Costelloe Baker: I think we have got to be a bit careful with the statistics because, for example, if I find that a decision was made against the wrong immigration rules, assessing it against the right immigration rules might still have been a refusal.

Q22 David Davies: True, but it is certainly reasonable to assume that a large number of visa applications have been incorrectly approved.

Mrs Costelloe Baker: I think perhaps you would need to look at the statistics for refusals at port when people arrive because that is the chance to have another look at a visa that has been issued.

Q23 David Davies: I am not trying to put you on the spot or catch you out. I am trying to make an assumption here which I think is reasonable based on the evidence that you have supplied to us and that is that a large number of visa applications have been incorrectly approved in the country where they were requested.

Mrs Costelloe Baker: I think that is probably a reasonable assumption.

Q24 David Davies: I just wanted to congratulate you for calling for clear English and doing your bit. I wish that was going on in many other government departments.

Mrs Costelloe Baker: My favourite one was "your relationship is fugacious in nature"!

David Davies: I will look that up afterwards!

Q25 Chairman: You did say to Mr Davis "a large number". Are we able to put a percentage on the numbers that have been improved that you think are perhaps dodgy?

Mrs Costelloe Baker: I did not say a large number.

Q26 Chairman: Mr Davis said a large number. What was your answer?

Mrs Costelloe Baker: I was narrowing that down.

Q27 Chairman: To?

Mrs Costelloe Baker: I do not know. I do not think there has been adequate scrutiny of decisions to issue. What I do know is that the evidence base that Entry Clearance Officers are required to do is very short compared with the evidence base that they have to refuse an application.

Q28 David Davies: Is there not a danger that if immigration officers know that somebody, ie you, is going to assess very efficiently whether or not they have correctly refused an application but nobody is going to assess whether they have correctly approved an application, there is going to be a tendency perhaps to be tempted to approve more applications than one should on the basis that that work is never going to be checked?

Mrs Costelloe Baker: At the moment the visa business is very much struck by both productivity and costs. It is a much, much faster process to issue a visa than it is to refuse. So I think there is pressure to issue visas because it helps people with their productivity targets. Against that can I quote an Entry Clearance Officer and I will not name the post because it might identify him too closely. His work was very, very poor and he said, "Well, of course, if I issue a visa I am very careful about that because if the person applies to remain in the UK they are on at me like a ton of bricks and if they have got full appeal rights I am very careful because I know that the tribunal is going to be looking at it, but I do not really care about yours." Although there might be an

assumption that there is no external scrutiny of visa issues, I think people are very conscious of the pressures within the UK to make sure that visas are issued to genuine visitors who intend to leave at the end of their visit.

Q29 Mrs Cryer: Mrs Costelloe Baker, how do you see the transitional arrangements from Independent Monitor to Chief Inspector working, and what problems or improvements do you envisage?

Mrs Costelloe Baker: I am very comfortable about the transition so far. In the current report, the one that is with the Secretary of State, I have recommended that the Independent Monitor's role is repealed because I think that would be tidier than trying to subsume it or run it in tandem with Mr Vine taking over my role and that is partly because his legislation covers all of my legislation and my Secretary of State's directions and more. On a slightly more personal note, having said that I should be abolished next April when I finish, and having met Mr Vine, we do share ethnic origins in that we are both from Yorkshire and we have both lived in Scotland, I am entirely comfortable that he and I are going to work appropriately closely together for the next four or five months. He is coming with me to Dhaka next week to see how I monitor, but I think the transition will be very smooth. I am conscious that the Visa Services Directorate is really trying to cling on still to having its own Independent Monitor. I think there is more of what I could do it should be doing itself by a proper quality assurance programme, but I think the statutory role really ought to be repealed for me and completely handed over to the Chief Inspector.

Q30 Mrs Cryer: Do you expect the Immigration and Citizenship Bill simply to transfer existing powers from the Independent Monitor to the Chief Inspector, or do you think the Government may go beyond that and try to include additional powers?

Mrs Costelloe Baker: My recommendation is that the Independent Monitor's statute is repealed. I think it will be up to the Chief Inspector to talk about his powers and increasing them in the Bill.

Mr Vine: Did you want me to comment on that?

Q31 Mrs Cryer: You can do, yes.

Mr Vine: My role is going to be much broader than Linda's. I think the approach I take is going to be much broader in terms of looking at visa sections much more comprehensively and probably from a user perspective as well, from much more of a user perspective. It is very useful that I am able to accompany Linda on the visit next week and see exactly the detail in which she scrutinises the work. It is useful as much for me as well to see what she does not do and what she is not empowered to do in terms of our current legislative base in order to help me scope out the methodology and approach for the inspectorate generally, which is basically the stage I am at, trying to look at the approach that we should take generally in the inspectorate in looking at the UK Border Agency. I think once we have done that then I will be better informed to try and answer that question in more detail as to what extra powers the office may

need. Certainly I am aware that in the Bill that will be introduced it will give me power to look at Customs, at borders and contractors employed by the Border Agency and I think that will be welcome and that will be probably essential in looking at the process from start to finish, which is an approach I would like to take, but beyond that I am not entirely sure what else we could ask for yet in the Bill.

Q32 Mrs Cryer: You have been in post now five months. How do you feel UKBA has performed during those five months? Have there been any improvements?

Mr Vine: Again it is very difficult for me to say because in that five-month period what I have in effect been tasked to do is to establish an independent inspectorate from scratch. I literally inherited an office and two people at the beginning of that five-month period. At the moment what I have been concentrating upon doing is meeting key stakeholders around the business who have been telling me their perception of the UK Border Agency's performance and the issues that concern them and additionally I have been getting around the business quite comprehensively, paying visits to the various parts of the system, including the points-based system in Sheffield where I spent a day speaking to staff. My first impressions are there are very many hard-working, very committed people working in the business in what is a very complex and difficult area. It is very difficult for me at the moment to say that I have any evidence to say that the service has improved measurably from where it was five months ago.

Q33 Mrs Cryer: So you are not comparing it with targets that may or may not be there?

Mr Vine: I am very conscious that very much of the business is target driven and that is something that I have been very interested in because we all know that a target-driven approach can produce benefits but it also can have a downside. I have spent the time really getting to know the business as much as I possibly can.

Q34 Margaret Moran: You referred in your previous answer to looking at this more perhaps from the user perspective when you are going to be doing a review of how the system works. Would you consider that MPs are part of that user profile? We are now an integral part of the whole immigration and asylum system because routinely cases are referred to us and, of course, we are writing to UK Visas. When we were in Dhaka we questioned what the response to our letters is and there seemed to be greater emphasis given if it is an MP's letter. Would you perhaps reconsider how the whole process works, including the performance as perceived by MPs?

Mr Vine: Yes. I am very aware that MPs generate a considerable volume of correspondence every year. I think at the last count it was about 40,000 letters last year. I am aware that that is a particular issue. I would certainly consider you to be customers or users of the system. If I can look at issues around

MPs' correspondence and the issues that MPs' have, I would think it is encompassed very well in my remit.

Q35 Margaret Moran: And the experience of our limited staff?

Mr Vine: Yes.

Q36 Margaret Moran: Mrs Costelloe Baker, you were raising your eyebrows there. Do you have any comments to make on that?

Mrs Costelloe Baker: I hope I was not raising my eyebrows. When I first took up the appointment I did ask the Secretary of State to give me two specific additional directions: one was the information that is available to applicants because if that is poor then the chances are that they will not put in a reasonable application, and the other one is complaint handling and that is particularly important where there are limited appeal right cases. I do look at correspondence on my visits to posts. I go and sit in waiting rooms in visa application centres and spend time talking to applicants, but I specifically look at the way the correspondence is handled and I look at the way that complaints are handled. I continue to have really, really serious concerns about the way that complaints are handled. I do not think in the visa business that they have been paid adequate attention. It worries me—and perhaps you did see a raised eyebrow—that there is a lot of jump to, get it done, do it properly, do it fast, if it is an MP's letter and to have an MP's letter the person has to have some contact in the UK, whereas for the cases that are within my statutory remit they do not have family here, they do not have employers, they do not have anyone who can raise their case for them and in a number of cases their complaint letters are simply unanswered and put on the file.

Q37 Chairman: What paragraph of your report deals with the failure of the authorities to deal with complaints?

Mrs Costelloe Baker: It is always the last third of the report, the last section.

Chairman: We will certainly have a look at that.

Q38 Mr Winnick: Mr Vine, you have been in your position since July of this year and you have a distinguished background as a former Chief Constable.

Mr Vine: That is right.

Q39 Mr Winnick: You applied for this position. Was it publicly advertised, Chief Inspector?

Mr Vine: Yes, it was publicly advertised and I did apply for the position, it was competed for.

Q40 Mr Winnick: May I ask why you were particularly keen to take up this appointment?

Mr Vine: It sounds a bit like the interview panel!

Q41 Chairman: This is a confirmation hearing!

Mr Vine: Thanks for the clarification! I was very interested in the whole area. I thought it was an area that demanded a great deal of scrutiny, a very rigorous evidence-led approach. I thought I could bring

that approach to the post and I thought it was a tremendous challenge for anybody taking up a post. Having been a Chief Constable for nearly eight years and a Chief Officer for considerably longer and having risen very quickly through the police ranks, I wanted a new challenge, so that is why I applied.

Q42 Mr Winnick: Your boss is the Chief Executive of the Border Agency, is that right?

Mr Vine: No, that is not the case.

Q43 Mr Winnick: Perhaps you could explain.

Mr Vine: I am an independent Crown servant appointed by the Home Secretary. I do not work for the Chief Executive of the Border Agency. In my visits around the business I have had to explain that very clearly to people because I think it is something that can be easily misconceived. I report to Parliament and the public through the Home Secretary.

Q44 Mr Winnick: So although your position is Chief Inspector UK Border Agency, as you have just said, you are independent, are you?

Mr Vine: I am independent, yes. I have offices separate from the Border Agency and I am doing everything in my power to try and convey that sense of independence about the role because I think that is critically important in enabling me to perform the role correctly.

Q45 Mr Winnick: In your role as Chief Inspector you will be looking, once the transition has taken place, at the work that has been undertaken by Mrs Costelloe Baker. What other role will you be undertaking?

Mr Vine: There are three main areas of work that are occupying my attention at the moment. First of all, setting up a working, functioning inspectorate with the right methodology and approach and recruiting staff to it. We really are in the early stages of that. Secondly, absorbing the independent monitoring roles that have existed for some time, of which Linda's role is one, but there have been others. For example, a Complaints Audit Committee has been an independent monitoring function that has existed for three years, there has been an Independent Monitor of non-suspensive appeals, an Independent Race Monitor and there has also been the Advisory Panel on Country Information which advises on the country of origin information reports which are used by immigration tribunals and immigration officers in prosecuting cases, and all those roles need to be absorbed within the new inspectorate. I am clear that those functions, whilst all important in their own right, have been confined within very narrow parameters. What I want to do is broaden out their function within the role of the Chief Inspector. For example, if we take the Independent Race Monitor function, I now have a much broader duty to look at race diversity and equality across the whole business. So the way that that function has been done in the past will not necessarily be the way that I would like to conduct it in future. The third main bit of the work at the moment is to try and think through and

18 November 2008 **Mr John Vine CBE QPM and Mrs Linda Costelloe Baker**

put together a comprehensive inspection programme for the business as a whole which takes us through the next three to four years because clearly this is an enormous area of the public sector and I have to start somewhere. Having a plan about where I start is an important point.

Q46 Mr Winnick: So the work which has been undertaken by your colleague on your right will be undertaken by yourself and other members of your staff?

Mr Vine: Yes. We will be recruiting staff to the inspectorate. There will be assistant chief inspectors and inspectors working under my leadership and we will build Linda's work into the work of the inspectorate, but at the same time it is an opportunity for us to have a look at what Linda has done and also to take a much more comprehensive view of the visa sections abroad and the way that users of the service go through a visa section perhaps and then are treated by the rest of the system.

Q47 Mr Winnick: And that includes looking at cases where there is no right of appeal, which has been undertaken by Mrs Costelloe Baker, and perhaps where a refusal has occurred to see if all that should have taken place has taken place, is that right?

Mr Vine: I will not be confined within the statutory parameters that Linda is confined within. I should be able to look and address those issues and indeed the issues that Mr Davies has raised as well.

Q48 Chairman: I think you have raised a number of points that will be picked up by colleges later on in the session. I have one which should concern anyone starting a new post, which is the level of backlogs that we have at the Home Office. You are a former Chief Constable. When you look at the books and the figures are you not horrified at the level of backlogs that are currently in existence in the Home Office?

Mr Vine: I think—

Q49 Chairman: What is the backlog?

Mr Vine: At the moment there are several.

Q50 Chairman: Could you go through the figures for the Committee?

Mr Vine: I am not in possession of those figures at the moment.

Q51 Chairman: Who would have those figures?

Mr Vine: The Border Agency has those figures.

Q52 Chairman: As Chief Inspector would you not want to know what the backlog is and have those figures?

Mr Vine: Yes, I would. I have already started making approaches to the Chief Executive of the Border Agency—

Q53 Chairman: You are the Chief Executive, you have been in post for five months and you do not know what the backlog figures are?

Mr Vine: I have been to visit parts of the Border Agency and I have been seen for myself—

Q54 Chairman: Visiting is one thing. As the Chief Inspector who has been in post for five months do you not know what the figures are of the backlogs at the Home Office?

Mr Vine: I do not have the figures to hand, no.

Q55 Chairman: Do you have them in your office?

Mr Vine: I am aware of the extent of the backlogs.

Q56 Chairman: Do you have the figures in your office? It is a yes or a no question.

Mr Vine: I do not have the figures in my office at the moment, no.

Q57 Mr Clappison: Perhaps I could be of some assistance here. This Committee has been dealing with the backlog from the asylum claims which we have been told is in the region of 400,000-450,000. Does that figure ring a bell with you?

Mr Vine: These are figures which at the moment I have not asked for from the UK Border Agency and the reason that is the case is that we are still thinking through our approach and we are still deciding what information to demand from the business. You should bear in mind that the inspectorate has been set up from nothing, so we are still literally only a few people in an office in central London. Whilst I am aware that there are backlogs and backlogs are certainly a cause for concern and an issue, I am not yet in a position to inspect any of those backlogs or inspect parts of the business that may have created them. When we launch an inspection programme we will be able to look at this in more detail. I think what is important is that the inspectorate bases its works on evidence and the evidence that it gleans from the business but also evidence from the inspectorates on the grounds when we actually get on the ground and looking at a particular part of the business.

Chairman: Mr Vine, I think your answers are totally unsatisfactory to this Committee. We would have expected the Chief Inspector to be able to tell this Committee what the backlogs of the Home Office are. If you do not have that function it is difficult to know what your function is.

Q58 Margaret Moran: Would you not think that because backlogs exist it means that these cases are either more problematic or are being dealt with in an unsatisfactory way? Should that not be a priority for you to look at given that those are the cases that we are also seeing repeatedly?

Mr Vine: Yes, it will be a priority. Certainly it will be something—

Q59 Margaret Moran: Forgive me, but it does not sound like it is.

Mr Vine: Forgive me, but it certainly will be a priority. When I was asked to come here I did explain that we are at a very embryonic stage of development as an inspectorate. The inspectorate cannot really, without a proper approach and without the staff,

examine any part of the business thoroughly. That is the reality of where we are at the moment. We will be looking at backlogs. I do take the point that that is of great public concern, but the approach in terms of the programme of inspection has not yet been finalised.

Q60 Mrs Dean: How will you satisfy yourself that the same criteria are applied to legacy cases as would have been if they had been processed at the time?

Mr Vine: The criteria which the?

Q61 Mrs Dean: The criteria under which the individual cases are considered, how will you make sure that the legacy cases are considered in the same way and have the same criteria applied as if they had been processed at the time that others of the same age were processed?

Mr Vine: Clearly we are going to have to go into the business and we are going to have to look at the criteria that have been used. There is now a residual casework directorate which looks at files before the inception of the new asylum model in 2006 and we are going to have to look at the criteria by which those have been put into that directorate and whether I consider that that is correct. At this stage I am not in a position to comment in any detail on that because I have not looked at this in detail and I cannot look at it in detail without the staff to do so and without a working inspectorate and we are not yet at that stage in our development.

Q62 Mrs Dean: We were told by Lin Homer that, of the 90,000 legacy cases which had been concluded by the end of May this year, 23,500—a quarter of that number—were closed due to “errors”. Does that worry you?

Mr Vine: Yes, it would worry me, but what I would like to do is examine the evidence and the basis on which those figures are compiled. One of the things that I am very keen to do is to establish a capability within the inspectorate to look at the data that is produced by the UK Border Agency, but at the moment I do not have the staff to enable me to do that. We are recruiting those staff at the moment. One of the things that I want to do is look very carefully at the figure that is produced by the business and see whether I think the data has been collated correctly and whether the data is accurate.

Q63 Mrs Dean: Although you are saying you have not had time to look at it and you need to have the staff in place, what assessment have you made of this subject at all? You must have looked at something in the last five months to do with the backlog. Could you tell us what you have learned about the backlog?

Mr Vine: Yes. I have been to visit, for example, Liverpool where there is a considerable backlog of charged casework and I have been around the business to try and understand the extent of the backlog, to speak to staff about their feelings about the backlog and the performance culture in the business, but beyond that and beyond collating some of the data, it has really just been about as much first impressions as anything else.

Q64 Mr Clappison: When do you think you might be in a position to inspect the backlog and the way it has been handled?

Mr Vine: We are hoping to do some pilot inspection work in the new year where we are going to test some of the approaches that the inspectorate is going to take and when we have decided the inspection plan and when that has been passed through the Home Secretary then we will be able to build an examination of some of the backlogs into that.

Q65 Mr Clappison: When will that be?

Mr Vine: That will probably be into the early or the middle part of next year.

Q66 Mr Clappison: This is a very large subject. It is some 400,000–450,000 cases which have been dealt with. It is a process which is taking place now and has been for several years.

Mr Vine: I understand.

Q67 Mr Clappison: We need to have answers about how well it is being done to learn the lessons.

Mr Vine: I accept that, but establishing an independent inspectorate from scratch does take some considerable time. It is not like any other inspectorate where there has been an established methodology and approach and a working office; there is nothing like that in existence. I think if we are going to do this we need to do this thoroughly, in an evidence-based way and it cannot be done overnight. When I was asked to appear here today I did ask that the Committee be made aware of the stage of development of the inspectorate. It is in the very early stages and we are not in a position to do what you ask.

Q68 Chairman: The Committee is well aware of the situation. That is why they asked you to give evidence and I am glad that we have, but we would have expected someone appointed Chief Inspector to have the facts and figures before him before he appeared before the Committee. To be perfectly frank, it seems that the Government has set up this agency at the same time they are abolishing the Independent Monitor and you seem to be taking on a number of other roles which you feel that you are capable of taking on with a staff of two. What is your budget?

Mr Vine: The budget has not yet been finalised, but the indicative budget is going to be about £3 million.

Q69 Chairman: When you took the job were you told what the budget was?

Mr Vine: The budget was indicated in the advert, yes, and it was around that figure.

Q70 Chairman: How many members of staff have been appointed so far?

Mr Vine: At the moment we have about 10 people in the office.

Q71 Mr Streeter: Are we perhaps to understand that your inspectorate was set up on a shadow basis to start with until other inspectorates are abolished? For example, Linda’s is being abolished in the

spring. Is that the cause of this confusion, that you have not gone live yet or have you gone live and it is just taking an awful long time to get up to speed?

Mr Vine: We have not gone live as an inspectorate in terms of inspecting parts of the business yet, no. We are still at the setup stage of the business. I was appointed in early July. My first task was to establish the inspectorate from nothing rather than launch into an examination of the business. In effect, yes, that is probably a very good way of putting it, that we are really in the setup phase of the inspectorate at the moment, but we are not actually inspecting the business at this particular moment in time.

Q72 Mr Streeter: When do you think you will go live?

Mr Vine: We are recruiting staff at the moment, some interviews are scheduled for December, so I imagine by the time we get some of those staff and have them trained it is likely to be in February at the earliest. At that point we will be able to examine the business in more detail, but at the moment it is not feasible for me to do so.

Q73 Patrick Mercer: I would have thought that the “bookends”, the left and right of your business, have got to be your budget. How can you possibly proceed if the budget has not been finalised?

Mr Vine: We have a provisional budget to see us through this year, but the budget for the next three years has not been finalised and that is something that is the subject of discussion.

Q74 Patrick Mercer: Is that not a crucial piece of intelligence?

Mr Vine: It is, yes. I would like it to be finalised as soon as possible. I need to try and scope the extent of the inspectorate and give an indicative budget to the Home Office for approval. In terms of scoping the extent of the inspectorate work for what is quite an enormous business, that is basically the extent of the work that we have done thus far, that is the stage of development which the inspectorate is in at the moment.

Q75 Patrick Mercer: It strikes me that you are being asked to do something that is almost impossible and that is to come up with a result without understanding the parameters within which you are working.

Mr Vine: No, I am not coming up with a result. I suppose I am trying to scope the extent of the inspectorate work and for the first year that will be a matter of judgement on my part. At the end of the first year, for example, we will know whether we have touched upon important areas of the business like the backlog or whether we have sufficient capacity and capability to do that. We will have to assess what we have achieved and if more resources are demanded then obviously that is something I will have to go back and argue for against other priorities. At the moment what we are trying to do is scope and assess and establish something that has not existed before.

Patrick Mercer: Chairman, may I make a suggestion? This is terribly important and very interesting stuff but, through no fault of his own, Mr Vine is

struggling. May I suggest that we invite Mr Vine back in the fullness of time to retrospectively see how this scoping project has gone?

Q76 Chairman: Indeed. He has mentioned February and February sounds like a good date. Mrs Costelloe Baker, what worries me is you have just heard this exchange and the fact that we have a shadow agency with a limited number of staff. You are an established Independent Monitor, established by Parliament, by this Government. Are you absolutely certain you support the abolition of your post given that it is going to submerge into an organisation that is clearly not set up? What is going to happen to all the work that you were doing? It is all very well taking Mr Vine to Dhaka, but I think he probably needs to go to Croydon, does he not?

Mrs Costelloe Baker: I am sure he has already been.

Q77 Chairman: Does it not worry you? You have had a statutory function. Parliament established your position. You are answerable in a sense to Parliament because we asked that you lay your report before Parliament and you are quite happily agreeing to be abolished and to be merged with an organisation that clearly has not been established.

Mrs Costelloe Baker: I have always said, I say it in nearly all of my Parliamentary reports, I say it every time I speak at conferences both inside and outside of the business, that I think I represent Parliament's interest in having a fair and balanced system. I am very clear that that is my principal duty.

Q78 Chairman: But Mr Vine is simply not going to be able to do your job as well as all the other jobs because he has made it very clear the business is so big. What is going to happen once you are abolished?

Mrs Costelloe Baker: Interestingly, I am the first Independent Monitor to be appointed on a full-time basis. My predecessors worked solely in the UK during the global file sample for 40 or 50 days a year.

Q79 Chairman: Yes, I know. I appointed your first Independent Monitor.

Mrs Costelloe Baker: So nobody has directed me to undertake the sort of monitoring visits that I do.

Q80 Chairman: I understand that but I am talking about process here. Why are you so keen to vote yourself out of a job bearing in mind that Mr Vine's organisation just is not established? Who is going to do this work?

Mrs Costelloe Baker: I have developed my own system of monitoring. I am a public appointment, it was advertised and I applied, it was for a fixed term, as they all are, so that I would be leaving in April anyway and the person who came after me is only bound by the simple legislation that governs me. There is no guarantee that the next Independent Monitor would do any of the things that I do because that is my working method rather than the statute.

Q81 Chairman: I understand that. What I am putting to you, rather than the history of what you have done, is your post is going to be abolished in April, it is going to be submerged into Mr Vine's post. He is going to carry out your duties in effect.

Mrs Costelloe Baker: Yes.

Q82 Chairman: How on earth is he going to do it when he has not established his agency?

Mrs Costelloe Baker: I think by April he will have done.

Q83 Ms Buck: Mr Vine, can I ask you what your impressions are since you have been in this role of the success or otherwise of measures to return and deport overseas prisoners? I know there has been a significant increase in deportations in the last three years. What do you put that down to? How is that being monitored?

Mr Vine: I am aware that there has been significant success and I am aware that has been very much a priority for the agency. What I find when I look around the agency is that that has very often been a priority; it has taken certainly precedence over other facets of the business. I have not looked at the foreign national prisoner business in any detail at the moment, although it is something that I shall be doing as part of the inspection work. Obviously what I want to do is look at whether the administrative processes that are leading to the number of people being deported are efficient and effective. My primary aim in the legislation is to look at the efficiency and effectiveness of the Border Agency, so I will be looking very much in terms of that issue at whether the administrative processes are such that, in terms of government policy and maximising the number of foreign national prisoners that are deported, that is something being maximised.

Q84 Ms Buck: You made an interesting point in what you said then because you implied that your impressions from your earlier scoping would indicate that that had been given priority. Is it your impression that the resources and the priorities within the agency have perhaps been diverted away from other areas of important activity, such as dealing with the backlog? If so, how is your scoping work being done to make sure that you do not just look at performance against an individual priority, such as the deportation of foreign prisoners, but at the extent to which priorities are in conflict and resources are being moved around so there is equal attention being given to different areas of the service?

Mr Vine: It is certainly my impression from speaking to people in the business that it is a priority and everybody feels it is a priority and that is certainly as far as people at the grassroots are concerned who I have spoken to. I do not know whether other parts of the business are suffering as a result of the emphasis on foreign national prisoners. One of the processes that we will be very keen to establish is a way of looking at the evidence to suggest either one way or the other whether indeed it is in balance or it is out of balance, but at the moment I cannot do that. I need to look

at the evidence from the business and the evidence from an inspection regime that we put in place and then perhaps I will be able to give some considered and evidence-based views to the Committee, but at the moment I cannot do that until I have been and looked at it in more detail.

Q85 Ms Buck: Are you indicating that perhaps when you return in February you will be able to set out a business plan for the year after that will include a scoping analysis of those kinds of priorities?

Mr Vine: I certainly should have a pretty good idea of the approach for the inspectorate over the next few years, but I do not think by that time we will have done a piece of work on that issue. We might have started a piece of work on that issue, but I could not give any guarantee of that. We certainly should be able to give the Committee an idea of the approach over the next three years, yes.

Q86 Mr Clappison: Would you agree that when you come to look at this issue it would be important to have transparency and to know, for example, not just the number of prisoners who have been deported, but the number of foreign prisoners who were eligible for deportation?

Mr Vine: Yes.

Q87 Mr Clappison: And the number who are eligible to be considered for automatic deportation and how many of them had actually been deported, for example?

Mr Vine: Yes. I am sure we will take all those issues into account.

Q88 Mr Streeter: Mr Vine, it seems to me that you are getting a slightly unfair ride from the Committee this morning because in one sense the Government has set up an inspectorate from scratch. Perhaps we were all under the impression that it was not from scratch and that you had a flying start, but you have not, you have had a standing start and it will take several months to set up a new inspectorate. Is it the case that the UK Border Agency is effectively getting a period where nobody is really inspecting from outside its core business?

Mr Vine: There has not been any independent inspectorate. I suppose from my previous world I have always been used to having the Constabulary's Inspectorate come in to the division that I am in charge of or any force I have been part of and similarly with any other parts of the public sector like, for example, the prison service, but there has not been such a beast in terms of borders and immigration matters. There have been independent monitoring functions, such as Linda's, that have looked particularly at specific, very narrow areas which probably have arisen because of concerns that the politicians have had as Immigration Bills have gone through Parliament. We do not have any baseline data, we do not have any baseline systems to begin with and we do not have the sort of infrastructure that virtually any other inspectorate or ombudsman body has in existence at the moment who you might call to give evidence before you. We really do have

quite an uphill battle as far as establishing all those things are concerned before we can provide authoritative evidence to this Committee or indeed publish it into the public domain. I think it is important in this area that we do have authoritative data and we do have a process that you can have confidence in and indeed Parliament and the public can have confidence in, so that will take a little bit of time.

Mr Streeter: Perhaps some of us thought that an independent inspectorate, the Border Agency, had been set up from the summer of 2008 when in fact the reality is it is going to be spring 2009 before such inspections are taking place on the core business. I think that is a slight revelation to many of us today.

Q89 Chairman: It is a big revelation. Why do you keep talking about the business as if it is a company making profits? Is there a reason why you called it the business? Both of you referred to it as the business. Is there a reason for this?

Mrs Costelloe Baker: There is a reason for me referring to it as the visa business because it saves me explaining that it is UK Visas up until 31 March and it is now the UK Border Agency International Group Visa Services Directorate.

Q90 Chairman: Is there a reason, Mr Vine?

Mr Vine: No. I think it is a conglomeration of different functions.

Q91 Chairman: The Independent Race Monitor, who I actually did not know existed, presumably will become you, will it not?

Mr Vine: Yes. That has been Dr Mary Cousey.

Q92 Chairman: So we are saving six jobs by having you?

Mr Vine: Yes, you could put it that way, although I would not want to claim any credit for that as I have not done anything yet. There are six functions that are going to cease to exist and they are going to be incorporated within the Chief Inspector.

Chairman: What the Committee has suggested is that you come before us again in February.

Q93 David Davies: How are you going to decide what you are going to give priority to investigating? Will you be taking a lead from the Home Secretary, the Committee, the press, others and ultimately will it be down to you to decide? How can we ensure as scrutineers that you investigate things that we think are important and not things which other people might find it convenient for you to inspect but which might not be of so much interest to those of us taking an interest in home affairs?

Mr Vine: At the end of the day, it is down to my judgement what we inspect. In terms of answering a question, what I have been trying to do is get around as many stakeholders as I can and that ranges from many groups that are associated with asylum seekers to the commercial sector, the educational sector who are very concerned about, for example, students coming into the country to study English and other courses.

Q94 David Davies: So it is your judgement at the end of the day. You obviously have not been in the position for very long. I suppose one of my concerns would be—and I have no reason to think that it should be a concern—that there might be a temptation to investigate the bits that are working quite well and publicise glowing reports but less of an interest in investigating the parts that are not working so well, some of which we have raised today. I hope you can assure me that that will not be the case.

Mr Vine: I can assure you of that. The first principle around inspection is to help improve the service. I am very clear in my mind that my role is to try and help the service improve the delivery. If I produce well-evidenced, well-thought through reports then I hope that we can raise the level of debate about borders and immigration issues as well because I am not entirely sure that that sort of independent perspective has ever been there. In order to do that we need to do it thoroughly, we need to take a well-considered approach and not try to run before we can walk.

Chairman: Mr Vine, you will appreciate that it is the Government that has made a priority of this area. It is the Government that tells Parliament constantly that they regard this as an important issue. It is a crucially important issue. It is not like being the Chief Constable of a force, even though that is a very, very important task. It is right in the middle of the caldron on one of the most important issues before Parliament hence our questioning to you.

Q95 Mr Winnick: Surely the challenge, Mr Vine, for you is how far you will be able to establish the perception that it is in fact an independent organisation, whereas with Mrs Costelloe Baker there has never been any question that she has been totally—like her predecessors—*independent*. The challenge really, bearing in mind that her post has been abolished, is how far you will be able to establish it as indeed *independent* of the Border Agency.

Mr Vine: I am acutely aware of that. It is a unique responsibility being asked to set up an independent inspectorate in such a high profile area. I am up for that challenge, but I want to do it in a way which means that when I appear before you again then perhaps I can produce the evidence which carries weight.

Q96 Mr Winnick: The designation which is at present Chief Inspector can be misleading. I would have thought a title more along the lines of “Independent Inspectorate” or whatever would be far more understandable to the general public.

Mr Vine: To be honest with you, that has been an issue so far in terms of I have to explain that I am independent and it is interesting that even you have been labouring under the misapprehension I work in some way for the Border Agency. I agree it is an issue and perhaps that is something that can be addressed in the future.

Chairman: We will be putting some of these points to the Minister for Immigration when we see him on Thursday, but I want to thank both you and

18 November 2008 Mr John Vine CBE QPM and Mrs Linda Costelloe Baker

Mrs Costelloe Baker. If we do not see you again before you are abolished, Mrs Costelloe Baker, thank you for all the work that you have done as the Independent Monitor. Your reports have been extremely thorough and we do appreciate what you are doing. The Government asked for this post to be

created, Parliament established you in 1999 and, therefore, we would be very worried about giving up this independent element. Mr Vine, we look forward to seeing you again in February when I hope you will give us good news of your progress. Thank you very much.
