

The Independent Monitor's Report for decisions made in 2005

The Secretary of State for Foreign and Commonwealth Affairs has published the thirteenth Report by the Independent Monitor for Entry Clearance Refusals without the Right of Appeal.

The Independent Monitor's main task is to make a twice-yearly review of between 3000 and 4000 randomly chosen entry clearance refusals without a right of appeal. The Monitor looks at the overall quality of refusal decisions, paying particular attention to fairness, consistency and the procedures used to reach those decisions.

This is the first report written by Mrs Linda Costelloe Baker and covers the calendar year 2005. Mrs Costelloe Baker visited a number of Visa Posts during the first 6 months since her appointment and reviewed a sample of around 2000 applications refused without the right of appeal.

UKvisas welcomes the Independent Monitor's recommendations and is keen to use her recommendations to drive up decision quality. The following table shows how UKvisas will take forward her specific suggestions.

Recommendation	Paragraph	UKvisas' comments
<p>I do...think that there is a specific role for UKvisas to follow up progress on recommendations that I have made and which have been accepted. I recommend that UKvisas considers how this should be achieved, and by whom.</p>	20	<p>UKvisas agrees that implementation of agreed recommendations must be rigorously followed up. There is already a full-time post in UKvisas whose function is to coordinate and monitor follow-up. In addition, in order to strengthen capacity in this area, UKvisas is creating a new post of Head of Customer Services, part of whose remit will be to oversee and help drive forward implementation as part of the overall aim to raise customer standards and decision quality across UKvisas' overseas network. UKvisas in London issues instructions and guidance on implementation which is assured overseas by the Directors of Visa Services.</p>
<p>I recommended that visa teams hold policy meetings to discuss matters such as the assessment of means in order to improve consistency. UKvisas agreed. I do note that UKvisas had accepted the former Independent Monitor's recommendation to provide guidance on the terms "disproportionate or non-commensurate" expenditure, but it has not yet done that. It needs to.</p>	28	<p>The recommendation to hold policy meetings was made in the Monitor's overview report on her visit to Southern Africa in July 2006. UKvisas accepts this recommendation and has communicated it to the Director of Visa Services (DVS) network. UKvisas is in any case upgrading its internal communications effort on all issues, including by arranging for discussion of priority issues and the provision of feedback to UKvisas London. Guidance on using "disproportionate or non-commensurate" is included in the Best Practice Guidance on Refusals and Appeal Bundles that we expect to distribute to Entry Clearance Managers (ECMs) during December.</p>
<p>I recommended that newly trained Entry Clearance Officers who were going to a singleton Post should go</p>	29	<p>UKvisas agrees in principle with this recommendation, and will encourage DVSs to arrange pre-posting</p>

<p>first of all to a larger visa team in that region for 3 to 4 weeks.</p>		<p>mentoring at larger posts in their region. Some already do. However, this is dependent on timing of the posting, the availability and personal circumstances of the new ECO and the facilities at the larger post.</p>
<p>I noted that Entry Clearance Managers in the smaller Posts did appear to have valued having time to focus on that part of their role. I recommended better use of regional training sessions which benefit smaller posts with their multi-tasking Entry Clearance Officers and Entry Clearance Managers.</p>	<p>31</p>	<p>UKvisas agrees with this recommendation. It will look at incorporating a training profile into the Balanced Scorecard measurements so that it can monitor more closely regional training. DVSs already hold regional training sessions on a regular basis for both ECMs and ECOs.</p>
<p>UKvisas currently places emphasis on applicants referring to websites but many people want a human face and personal response. As visas sections are increasingly being closed to the public, there is more opportunity for local advisers – good and bad – filling the gap. I note, however, that with the introduction of biometric data, the applicant has to be seen in person when an application is lodged. It would, therefore, be possible to have a formal advice approval system for whoever captures biometric data as part of a commercial contract with UKvisas. I recommend that UKvisas considers this possibility.</p>	<p>37</p>	<p>Many of UKvisas commercial partners currently provide information on the application process, either through their website or a call centre, or in person at the application centre. Some provide an online application tracking facility. In addition Posts will respond to specific inquiries from applicants. UKvisas will review the standardisation of these services as part of the new contract with commercial partners to deliver biometrics. UKvisas makes a distinction between the provision of factual information on the process and advice on, for example, interpretation of immigration rules or the chances of success of an application or an appeal. We do not think it appropriate for commercial partners to offer advice of this kind.</p>
<p>I recommended that all standard visa information is provided centrally from UKvisas' website and that Posts have no more than one or two pages to provide local and factual information...</p>	<p>38</p>	<p>UKvisas agrees and is initiating a project to achieve this. It is a significant undertaking however because of the need to translate into a variety of languages in order not to reduce current information services offered by Posts locally. In the interim UKvisas has asked the DVS network</p>

		to review Posts' websites to ensure they contain up to date, accurate information and do not contradict UKvisas' website.
UKvisas updates guidance to Posts by way of emailed AECIPs (All Entry Clearance Posts), often still referred to by the historic term Telegrams. On my visit to Posts I have been told that a high proportion of these do not arrive safely. They are often badly written. There is no formal reference mechanism. It is the kind of system where you need to know exactly what you want and when it was issued in order to be able to find what you want..... I recommend that there is a single guidance reference document, easily achievable by copying the key section of all AECIP texts into one document, sorting them by subject and generating an index.	41	UKvisas agrees that AECIPs are a key means of communicating changes in guidance to Posts and it is essential they are clear and accessible. UKvisas currently has an "AECIP Checklist" on the FCO internal internet (FCONet), which contains a "Word" package search facility. However, it agrees that a searchable document containing sections of all the policy AECIPs would be useful and will put this in place, in order to provide an easily accessible central reference point for AECIPs. In addition, UKvisas is considering ways of simplifying and clarifying Diplomatic Service Procedures (which incorporates all guidance) and of ensuring this is updated promptly so that Posts can rely on it without having also to continually refer to AECIPs UKvisas is investigating why some Posts are having difficulties receiving emails.
In July 2006 I recommended that UKvisas commissioned a poster, perhaps in checkerboard style showing the covers of all the leaflets.	43	UKvisas agreed with this recommendation and is commissioning a poster as the Monitor suggests.
In July 2006, I recommended that UKvisas took immediate action to ensure that applicants knew they could deliver in person or post their application to the relevant visa office.	45	UKvisas has reminded the overseas network of the standard guidance on this point.
In July 2006, I recommended that a Refusal Notice should <ul style="list-style-type: none"> ▲ Have a fixed structure and style – evidence, law, decision and supporting reasons 	57	UKvisas did accept this recommendation and has included the Monitor's suggestions in its Best Practice Guidance for Refusals and Appeal Bundles, which it intends to distribute to Posts by the end of 2006. This

<p>^ Include sufficient difference and detail to demonstrate that the applicant's case has been considered on its merits. I am pleased to report that UKvisas accepted this recommendation.</p>		<p>has taken some time to prepare as it also reflects feedback obtained from Presenting Officers. UKvisas does see improving the quality of Refusal Notices as a key priority and is grateful for the input of the Independent Monitor.</p>
<p>I do note that the design of the Visa Application Form is not helpful in enabling the applicant to demonstrate that the purpose of a visit is to see a close qualifying, family member. There is no link between Section 5.5 which asks about family and friends in the UK, and 5.6 which asks where the applicant will be staying.... I recommend that this anomaly is corrected as soon as possible. There should also be a specific question on whether the applicant intends to visit declared family as that would establish if there are multiple purposes for a visit.</p>	63	<p>UKvisas is making changes to these specific questions on the next revision of the Visa Application Form (VAF) which is expected at the end of December 2006.</p>
<p>I came across a number of cases where the applicant had claimed a family visit, but the Entry Clearance Officer made no mention of that in a Refusal Notice....In such cases, I recommend that the Refusal Notice should always state why the application does not meet the definition of a family visit for which there is a full right of appeal.</p>	64	<p>UKvisas agrees with this recommendation and has incorporated this guidance into the new Best Practice Guidance for Refusals and Appeal Bundles referred to above.</p>
<p>[Finally], although most of the attention is paid to family visits, I noted that other categories, such as Domestic Workers, Voluntary Workers and Working Holiday makers, which should not have been included in the file sample, had not been advised of the correct rights of appeal. There is little easily accessible</p>	78	<p>UKvisas accepts that clearer guidance is needed on when the right of appeal exists (this is can be a complex determination) It aims to complete this project within 3 months.</p>

<p>guidance on appeal rights, and I recommend that UKvisas provides that as part of it guidance review.</p>		
<p>I doubt whether the [Visa Application] Form has been through the normal consumer testing that would have ironed out problems. I recommend that the Visa Application Form is redesigned, tested, and that thought might be given to a machine readable front page which, with the appropriate technology, could quickly filter out various categories, such as low risk, for a fast track.</p>	<p>99</p>	<p>UKvisas already has initiated a project to re-design the VAF to make it more user-friendly yet enable it to capture information that is vital for the assessment of an application. The new VAF will be piloted at selected posts prior to global roll-out.</p>
<p>Each application must be dealt with on its own merits, with its own reasons related to the Rules (para 104). I was concerned to see the inappropriate disclosure of personal data when there is a single Refusal Notice for a group of applicants. As each applicant has to pay an administration fee, I think it fair that each has a Refusal Notice in their own right and I recommend that that is established as policy.</p>	<p>106</p>	<p>UKvisas agrees with this recommendation. The Best Practice Guidance on Refusals and Appeal Bundles advises ECOs to issue a separate Refusal Notice for each applicant.</p>
<p>I recommend that UKvisas and Entry Clearance Managers ensure that Refusal Notices quote accurate and up to date legislation.</p>	<p>126</p>	<p>UKvisas agrees with this recommendation. ECOs should be using the Refusal Notices GV51 (LRA) and GV51 (FRA) which were issued to Posts in September 2005. The Best Practice Guidance on Refusals and Appeal Bundles contains further updates and ECOs will be expected to use these Notices with effect from December 2006. ECMs in Posts with one or more ECM are expected to review all refusal notices prior to the notice being served. In other Posts all settlement refusals must be reviewed prior to service and non-appealable and Family Visit application refusals should be reviewed within 24</p>

		hours after the decision. At review the ECM should ensure the correct notice has been issued.
English language training is a key element of the Prime Minister's Initiative: students who learn English in the UK are much more likely to be well disposed to the UK. Immersion teaching is a common and well respected method of language tuition and I recommend that the availability of language tuition in the home country is no longer used as a reason for refusal.	135	UKvisas agrees that the mere fact of availability of language tuition in the home country is not in itself a reason for refusal and advice on this point is included in the new Best Practice Guidance for Refusals and Appeal Bundles. However, in testing the credibility of the applicant's stated intentions, the ECO will wish to consider the applicant's whole circumstances; his knowledge of and attitude towards local facilities may play a part in this.
I have noted from my visits to Posts that some Entry Clearance Officers issue short term visas for the length of the specific course, rather than multi-entry 6 month visas. The absence of guidance on this allows unacceptable variations in practice. I recommend that UKvisas provides guidance.	139	UKvisas agrees with this recommendation and is currently updating the chapter on students in the Diplomatic Service Procedures (DSPs). This will be published as soon as Home Office policy clearance is obtained.
I have noted from the file sample and from visits to Posts that there is a lack of awareness that a short term student may be allowed to work...I recommend that UKvisas reminds Posts of this provision and provides guidance on how it should be interpreted.	140	UKvisas will issue appropriate guidance reminding Posts of the position.
The evidence from the file sample is supported by my findings from visit to Posts. I note in particular that there are problems with the allocation of time and commitment when a part time Entry Clearance manager is juggling a number of other competing priorities and roles. I have recommended better use of regional training events as a means of improving	162	[Covered above in paragraph 31]

performance and consistency.		
<p>For applicants without the right of appeal, being able to make a complaint about inadequate service or an unreasonable decision is their only route of grievance. UKvisas' Best Practice 12.1 says that "A notice must be displayed in public areas advising applicants to whom they should address their complaints..." Not all of the Posts I visited in July had all of the required notices and none had the complaints register required by Best Practice. I recommended that Posts were reminded of this requirement and UKvisas issued that reminder in Sept 2006.</p>	163	<p>As the Monitor notes, UKvisas is reviewing its complaints procedures and has already reminded Posts to adhere to the current procedures and the displaying of notices in local languages.</p>
<p>Judicial Review is important to applicants with limited rights of appeal and the outcome of an application ought to be important to UKvisas. UKvisas does not, however, keep information on how many Judicial Reviews have been raised by applicants with limited rights of appeal so it has been unable to learn from the outcomes. I note that UKvisas has now set up a Judicial Review database but it has not carried out any analysis of the data. I recommend that it does.</p>	180	<p>UKvisas agrees with this recommendation and will run an analysis of the data as soon as the database is sufficiently populated.</p>