

**Independent Monitor for Entry Clearance
refusals with limited rights of appeal**

Report to the Secretary of State

File sample: October 2006 to March 2007

Visits: April to September 2007

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

21 September 2007

The Independent Monitor for Entry Clearance
(Refusals without right of appeal)
Foreign & Commonwealth Office
King Charles Street
London
SW1A 2AH



To The Secretary of State for Foreign Affairs

I am pleased to submit my Report covering decisions made in a six month period ending March 2007 and visits made from April to September 2007.

UKvisas is rapidly, and successfully, changing the way applications are handled and determined with the introduction of biometric data, risk assessments and commercial partnerships. Increasingly, decisions are based on fact rather than interpretation or presumed intentions. Applicants no longer need to queue to lodge an application during very limited opening hours at British Missions. Entry Clearance Officers, meanwhile, have to remain focused on the application in front of them as well as adapting to the non-stop changes.

Given the pace of change, I am concerned by the barrage of guidance, advice, information and directions that must be absorbed by very busy front-line staff. It is to their credit that this Report is, overall, a positive one and I note in particular that Refusal Notices are more consistent, less intemperate and of an increasingly professional appearance. There is still work for UKvisas to do to raise the poorest performing Posts to the standard of the best.

Linda M Costelloe Baker

L M Costelloe Baker MBA
21 September 2007

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INTRODUCTION

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

Who needs a visa?

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

Where do you get a visa?

2. The Immigration Rules say that an applicant for an entry clearance as a visitor must be outside the United Kingdom and Islands at the time of the application and must apply to a Post designated by the Secretary of State to accept applications for entry clearance for that purpose and from that category of applicant. A Post is a British Diplomatic Mission (Embassy or High Commission), British Consular Post, or the office of any person outside the United Kingdom and Islands who has been authorised by the Secretary of State to accept applications for entry clearance. Any other application must be made to the Post in the country or territory where the applicant is living which has been designated by the Secretary of State to accept applications for entry clearance for that purpose and from that category of applicant. Where there is no such Post the applicant must apply to the appropriate designated Post outside the country or territory where he is living. The Foreign and Commonwealth Office publishes a list of designated Posts.
3. An application for an entry clearance is not made until any fee required to be paid under the Consular Fees Act 1980 (including any Regulations or Orders made under that Act) has been paid. The level of fees set is aimed at ensuring that entry clearance work is funded from applicants rather than by UK taxpayers and the fee is for the application process, and not for the visa itself.
4. In the 2006-07 financial year, visa fees income amounted to £189,797,667, a 16% increase compared with the previous year. Applications over the same period rose by 8%¹.

¹ UKvisas Annual Report

Who issues visas?

5. UKvisas was formed in June 2000 as a joint Foreign & Commonwealth Office and Home Office initiative designed to meet ministerial objectives of a 'fairer, faster and firmer' entry clearance process. The Secretary of State for Foreign and Commonwealth Affairs is, for the period covered by this Report, accountable to Parliament on matters concerning the entry clearance operation overseas.
6. UKvisas' mission statement says that it is "the overseas arm of the UK's integrated border management. It aims to bring communities together and improve the UK's competitiveness as a destination for travel, trade, migration and investment through programmes which prevent immigration abuse, deliver value for money and earn public confidence".
7. UKvisas manages 146 visa sections around the world in Embassies, High Commissions and Consulates. Over 876 staff are directly involved in the overseas visa operation of whom around 299 work in London. Visa sections around the world employ 577 (380 full-time equivalent) UK-based staff and 2,253 (1,800 full time equivalent) locally engaged staff².
8. UKvisas' Entry Clearance Officers assess applications against The Immigration Rules made under section 3(2) of the Immigration Act 1971 and frequently amended. These Rules constitute a statement of practice, as laid before Parliament by the Home Secretary, to be followed in regulating entry into, and stay of persons in, the United Kingdom. Entry Clearance Officers spend most of their time issuing visas to genuine visitors who meet the requirements of the Immigration Rules.
9. From October 2006 to March 2007
 - UKvisas received 562,556 visit visa applications where there are limited rights of appeal and issued 466,193 visas. The refusal rate of 17% is a 3% increase compared with the first nine months of 2006.
 - UKvisas received 24,891 visa applications for students intending to study in the UK for less than 6 months, and issued 12,071 visas. The refusal rate was 47%.
 - The overall refusal rate for all applications was 19%.
10. UKvisas performance tracking system, the Balanced Scorecard, continued to be trialled during this reporting period and went live in April 2007. The Independent Monitor's assessments are included in a complex matrix of measurements covering Controls, Competitiveness, Costs, Capabilities and Confidence.

² UKvisas 8-2007

THE INDEPENDENT MONITOR FOR ENTRY CLEARANCE REFUSALS

11. The role of the Independent Monitor for Entry Clearance Refusals without the Right of Appeal was set out in section 23 of the Immigration and Asylum Act 1999 and amended by paragraph 27 of schedule 7 of the Nationality, Immigration & Asylum Act 2002:
 - (1) The Secretary of State must appoint a person to monitor, in such a manner as the Secretary of State may determine, refusals of entry clearance in cases where there is, as a result of section 90 or 91 of the Nationality, Immigration & Asylum Act 2002, no right of appeal.
 - (2) But the Secretary of State may not appoint a member of his staff.
 - (3) The monitor must make an annual report on the discharge of his functions to the Secretary of State.
 - (4) The Secretary of State must lay a copy of any report made to him under subsection (3) before each House of Parliament.
12. Although the legislation, and the Independent Monitor's title, refer to "no right of appeal", applicants do have limited rights of appeal on human rights and race relations grounds. I emphasise that Parliament decides which categories of visa applicant should not have full rights of appeal; UKvisas' role is to implement the laws set by Parliament and as interpreted by Government policies
13. The relevant applications are:

Visitors

- a visitor, other than a visit for the purpose of visiting a member of the applicant's family as construed in accordance with regulations³;

Non family visitors constitute just over half of visa applicants. The term visitor may apply to someone coming to the United Kingdom for a private visit perhaps as a tourist or to see friends; someone who visits for a short time to transact business such as attending meetings and briefings, fact finding, negotiating or making contracts with UK businesses to buy or sell goods or services; someone who arrives at one UK port or airport and needs to be here for longer than 48 hours or to transfer to another port or airport to continue a longer journey, or someone coming here for privately funded medical treatment.

Students

- someone who intends to follow a course of study for which s/he has been accepted and which will not last more than six months;
- those intending to study but who have not been accepted for a course;
- a dependant of a person in the two categories above.

³ The Immigration Appeals (Family Visitor) Regulations 2003

Extending the remit

14. The Independent Monitor's remit will extend to other types of application once the decision making process changes to a Points Based System⁴. Applications determined under that system will no longer have full rights of appeal. Earlier this year, I drew attention to the precise wording of the legislation which suggests that it is only long term students who will be added to my remit. UKvisas thought the remit would extend to all Points Based cases, including employment related categories such as Highly Skilled Migrants who are to be the first to be handled under the new system in early 2008. The official view was that there was an error in the Act which does not undermine the intention to include all such categories within the Monitor's remit. It remains to be seen how that error is addressed; my preference is an amendment to the current UK Borders Bill, because statutory powers have more substance than Ministerial Directions.

Monitoring

15. My two year term of office started in April 2006; I am the fourth person to be appointed as Independent Monitor and the first to be appointed on a full time basis. I am expected to prepare two Reports each year for the Secretary of State, and to spend at least three months of the year on monitoring visits to a range of Posts overseas.
16. I monitor as directed, and have two specific directions from the Secretary of State:
- to examine and report on the information that is available to applicants with limited appeal rights;
 - to examine and report on the handling of complaints made by such applicants.

In addition, by custom and practice, the Independent Monitor is expected to assess a sample of files from throughout the world.

17. The Independent Monitor's salary and expenses are met from visa application income, and do not impact on the UK taxpayer.
18. UKvisas provides administrative support to the Independent Monitor. I record here my appreciation for the help provided by UKvisas staff, not solely the Independent Monitor Liaison Team, in responding to my questions on policy, practice and statistics, for managing complicated travel arrangements and handling the annual file sample.

⁴ Section 4 of the Immigration, Asylum and Nationality Act 2006

Independence demonstrated

19. I provide my own office, though my address is at the Foreign & Commonwealth Office. UKvisas forwards my mail, unopened, and when that failed on two occasions it was UKvisas, without prompting, that found out where the error had occurred. I have full editorial control of my written reports.
20. I am pleased to report that in August, UKvisas and I, with the consent of the Secretary of State for Foreign Affairs, signed a formal Memorandum of Understanding, part of which is attached as Appendix B. The MOU did not develop because there had been problems on any of the issues covered, but rather in a co-operative spirit to make sure that there was clear guidance to prevent problems, and to form a framework for resolution if problems emerged. I note in particular that it was UKvisas which set itself tight targets for responding to requests for information and responding to my recommendations.
21. I have had less success in establishing a direct line of communication with the Secretary of State and the relevant Minister; the view is taken that some communication will continue to be passed to me through UKvisas.

EVENTS

Biometrics, Risk Assessment, Verification

22. UKvisas continued to implement ambitious programmes designed to minimise risk - fingerprinting applicants in order to check against a UK database, rolling out risk assessment units to gather and use intelligence on risk profiles, spending more time checking and verifying documents supplied in support of an application.

Commercial Partners

23. In February 2007, UKvisas entered into contracts with two Commercial Partners who will provide front-line application handling services to 95 of UKvisas' 146 overseas Posts.

Fees

24. The Government set new visa fee levels from 1 April 2007. The application process was supposed to be self-funding and UKvisas explained that the rise was necessary in order to meet its increased costs. UKvisas commissioned customer and economic research before Government set the new fee regime, which needs to ensure that the UK is cost competitive for genuine travel, study, trade, migration and investment.

The Independent Investigator

25. In June 2007, I was appointed by the Secretary of State for Foreign Affairs, to investigate and report on a breach of data security by VFS, UKvisas' Commercial Partner in India. This role was separate from my full time post as Independent Monitor, from which I was given leave of absence. I reported in July when the Secretary of State laid the report before Parliament and UKvisas published it on its website. The Secretary of State accepted all of the recommendations made which were, in summary, that outsourcing can improve customer service but needs to be closely and competently managed.

The merger

26. In July 2007, the Prime Minister announced that in April 2008, UKvisas will become part of the Border and Immigration Agency, linking with the Home Office rather than with two Government departments.

VISITS

27. The full time Independent Monitor is expected to spend at least three months each year on operational visits to Posts examining the way they handle applications with limited appeal rights. My visits focus on the information that is available to applicants, the quality of decision making, and how Posts handle complaints and post decision correspondence.
28. I have now conducted monitoring visits to 20 overseas Posts; some with one part time Entry Clearance Officer, some handling thousands of applications each month. Wherever I go, I track the applicant's path to see whether it's easy to get from thinking about applying for a visa to lodging and paying for an application. I'm sure that UKvisas' staff are sometimes mystified why I look so closely at websites and noticeboards - Are they tidy and up to date? Do they provide information that the applicant needs at that specific point? I am trying to encourage UKvisas to understand the applicant's viewpoint and needs. A basic understanding of the applicant's perspective underpins all that comes afterwards - the student, tourist or business visitor who feels valued by Britain from the outset, or applicants whose visas are refused but who have confidence that the process, and staff, treated them fairly and helpfully.
29. From April to September 2007 I visited 7 Posts and examined 321 files where visas had been refused in cases assumed to have limited appeal rights and 61 cases assumed to have full rights of appeal; although these are not within my remit, they provide a useful benchmark. I generally find that there is little discernable difference in the quality of decision making in cases with and without full appeal rights.

European Regional Conference: April 2007

30. The Director of Visa Services Europe and both Deputy Directors hosted a series of conferences and invited me to address each of the groups - 6 in all - over a 10 day period. I thought that these complicated overlapping conference arrangements were well managed, with separate programmes for Entry Clearance Managers, Officers and Assistants. The conferences combined updates on UKvisas' busy business change programmes with training workshops providing practical experience for delegates.
31. In an earlier report I recommended that UKvisas consider targeted training aimed at singleton Entry Clearance Officers and multi-tasking Entry Clearance Managers. The European region is, with a few exceptions, composed of such Posts whose needs can be overlooked when much of the focus is on visa sections handling hundreds or thousands of applications each day. This conference was an excellent way of providing the support and refreshment training that is needed and I understand that delegate feedback was very positive. From my own perspective, there are now around 100 visa staff who have a better understanding of my role. I thought that the conference made

good use of my time and I am grateful to the European management team for the invitation.

Athens: April 2007

32. I saw Athens at a time of significant disruption. A newly appointed multi-tasking Entry Clearance Manager had arrived a few days earlier and was about to head back to the UK to undertake the required training course. Whilst the timing of my visit may not have been the most convenient, it did show the Post in a real life situation and that in itself was useful. I commended the visa staff for their willingness to contribute to my visit, and to be open minded to change. Given the significant gap in recent managerial oversight, I classed that element as Poor but thought it could quickly improve so long as adequate time and attention is paid to visa work in a Post that has a heavy consular demand. Soon afterwards, the Regional management team decided that a full time Entry Clearance Manager, not based at the Post but used as a regional resource, would be able to provide better oversight.
33. I thought that Entry Clearance Officer work was of Good quality, scoring 93% in my assessment of 12 key quality pointers for Refusal Notices, with an easy capability to lift that to very good or excellent. I recommended that all visa staff should contribute to a fresh look at making best use of roles and resources. I thought that as part of a wider review, UKvisas and the Embassy should confirm the actual level of resource needed and provided. I also recommended that a very careful eye was kept on waiting times for appointments and that queues are noticed and then managed out.

Beijing and Guangzhou: May 2007

34. In Beijing, performance in the file sample almost reached the Excellent level, and the quality of interviews certainly did. Complaint handling was mostly good, though I recommended that care needed to be taken that all complaints are recorded. Having found that one complaint, of delay and failing to respond to a request for information, had been adequately handled but not recorded, I was concerned by Beijing's response that it was satisfied that complaints are being recorded as currently instructed by UKvisas and it did not propose to take further action in response to this recommendation. The information for applicants varied from Good to Poor and adding all these components together, my overall assessment was that Beijing's performance was **Very Good**.
35. I was concerned by inconsistent practice relating to conditional offers for students in Guangzhou, where around half of the applicants were being told that they had full appeal rights and the other half, correctly being told that the appeal rights were limited. I thought that was an indicator of insufficient team discussion of practice and inadequate managerial review. In order to spot that the wrong information is being given on appeal rights, the Entry Clearance Manager has to read the Application Form and the supporting documents and I suspected that, as in many Posts, the review was limited to looking at the general quality of the Refusal Notice. My overall assessment was that

Guangzhou's performance was **Fair** because of the significant problems with consistency in applying the Immigration Rules correctly and providing accurate information on appeal rights. I thought that the Entry Clearance Officers were receptive to change and easily capable of working to high standards so with the amendments confirmed during my visit, I was confident that performance immediately improved.

Ulaanbaatar, Seoul and Tokyo: July 2007

36. An interesting variety of reasons were put forward as to why I should not make these visits, or if I did, later would be better. The proposed visit programmes seem to be copied from each other with little in them intended to show me differences, innovations, what made that Post special. It's fair to say that at the end of each visit, visa staff reached almost identical conclusions - that the monitoring visits had been useful, getting on for positively enjoyable, and the reality was far better than anticipation.
37. There was a strong sense of teamwork in Seoul which, I am sure, has helped to improve practice. Performance in the file sample, at 97%, reached the Excellent level and Seoul produced the highest quality Refusal Notices I had seen. In one case, I found that the decision was incorrect in terms of the Immigration Rules. The case had been handled by a temporary officer, but the Entry Clearance Manager took immediate responsibility. The applicant had re-applied and been issued with a visa; without prompting, Seoul said that the costs of that application would be refunded. I thought this open-minded acceptance of a genuine error, with rapid redress, was a very positive sign. I did have wider concerns about registering and learning from applicant feedback so my overall assessment was that Seoul's performance was **Good**.
38. Tokyo felt behind the times, and fragmented. There was below average performance in Refusal Notices, and the information provided for applicants is too limited, so my overall assessment was that Tokyo's performance was **Fair**. Changes were, however, already underway to gather together visa expertise into 2 Entry Clearance Officers rather than a larger number of staff who undertook other duties as well. I find it hard to see how someone can check that they are spending precisely 56% of their time on visa work, for example. Once the staffing changes are in place, the Entry Clearance Officers should be able to have the informal discussions that help to ensure consistency.
39. In a country such as Mongolia, with rising wealth and aspirations, it is unsurprising that demand has grown, and grown more rapidly than anticipated. Ulaanbaatar was under significant pressures, trying to keep up with a 70% increase in applications with no added resources. I was concerned that applicants were experiencing slower than normal turnaround times but, in terms of quality of service, they would be less concerned if they had adequate and firm information on how long the decision will take. I recommended that such information was provided on the website, and by a notice in the visa section. Despite the pressures, visa staff had worked hard to maintain sound levels of customer service. Performance in the file sample, at 98%, reached the

Excellent level, as did the Entry Clearance Assistant's work at the public counter, and I commend them for that achievement. My overall assessment of the Post was **Excellent**.

Copenhagen: September 2007

40. I am able to make unannounced monitoring visits, and this was the first. I chose Copenhagen partly because I had met some of the visa staff at the European conference and had the warmest invitation to visit. Copenhagen's reaction was as welcoming as I had anticipated, and that was repeated in very high levels of customer service to applicants at the gate and at the visa section counter.
41. I found that there was patchy information for applicants who, given the introduction of a User Pay phone helpline, will be more likely to use free websites. I was especially critical that UKvisas' website information on visa refusals is still seriously out of date and factually inaccurate. Refusal Notices were of good quality and decision quality was reasonable, though 10% of the sample I reviewed had been incorrectly classed as ordinary visits with information on limited appeal rights, when they were family visits. Complaint recording needed more managerial oversight, though it looked to be better than in many of the Posts I have visited. Overall, I classed Copenhagen's performance as **Good**.

Monitoring visit Reports

42. I prepare detailed Reports immediately after a visit. A Report for each Post covers detailed findings and recommendations and if I visit a series of Posts there is an overview which highlights issues for UKvisas to address. I send the Reports to the Foreign & Commonwealth Office, the Director of UKvisas and to the relevant High Commissioner or Ambassador. UKvisas publishes the overview Report and its response on its website and my key findings are also included in this Report.
43. UKvisas' Liaison Team supervises a follow-up programme, preparing a 6 monthly report for UKvisas' Business Improvement Board.

Key findings

44. Four of my recent visits were to Posts that handle a high proportion of long term student applications. Although these cases are not currently within my remit, they will be once the decision method changes to a **Points Based System** in 2009. UKvisas is currently developing the system and these visits were a good way for me to learn about the student market. Information on the change will need to be carefully timed and managed. There seems to be little or no curiosity at the moment, perhaps understandably because the student who wants

to apply for the current academic year is not interested in what will happen to the next year's intake.

45. In my visits to China I recommended that there was urgent work to do in ensuring accurate **information** for applicants and their agents in respect of the September 2007 changes to the Immigration Rules for Short Term Students. I repeated that recommendation after visiting two further high student volume Posts in North East Asia.
46. UKvisas' management information system is not **recording** student applications accurately or consistently. Not all Posts use the Short Term Student category and some Posts do not reset a default category if an application is refused. Inaccurate management information means that planning for changes to the Rules and assessing the impact cannot be as good as it should be.
47. In all visits, Posts raise concerns about **resourcing** and I note that UKvisas is developing a better system for assessing that. Given the differences in application methods, application types and refusal rates it will be inappropriate to have a single "cases per day" benchmark. In developing a resourcing model, I hoped that UKvisas would take into account that two Posts that have had high grading from me - Chennai and Beijing - have Entry Clearance Officers who spend part of their time on outreach project work rather than being tied to a desk with a relentless mountain of files. Giving real responsibility to Entry Clearance Officers does improve the quality of decision making. At the other end of the numbers scale, Ulaanbaatar easily merited its excellent grading but that depended on high quality staff who were committed to providing a good service in the face of considerable under-resourcing and adversity. There is no guarantee that level of excellence will continue if staff change.
48. **Complaint handling** and analysis is generally poor. Routine recording is improving but it will take longer to convince staff that thorough responses and adequate complaint analysis are part and parcel of running a high quality business. At the moment, it's often seen as an annoying add-on that can be dealt with by standard letters sent by support staff.
49. Some aspects of UKvisas' **website information** continue to be difficult to access, and inaccurate.

INFORMATION FOR APPLICANTS - AND ENTRY CLEARANCE OFFICERS

50. Information is important for all applicants, but especially so for those who do not have a full right of appeal. Good pre-application information gives them the best possible chance of completing the application form accurately and enclosing the relevant supporting documents. Competent local advice is not always available and without accessible, understandable, consistent and accurate information, applicants with limited rights of appeal can run into problems and may need to pay a further fee to make a second application. UKvisas has accepted that good information is a foundation stone that needs to be managed at headquarters level and is making improvements, though they are taking time.

Websites

Post websites

51. In a survey of applicants in the Gulf region, UKvisas learnt that the British Consulate or Embassy is the main source of information on visa processes for over three quarters of potential travellers. The key sources of information were browsing the official website and making telephone calls and personal visits to the visa section.
52. UKvisas has continued to work on improvements to ensure that website information is accessible, accurate, and consistent. In my visits to Posts, I have continued to find that it is not. I note, for example, that the elegantly designed British Embassy website in Tokyo had clear visa information, but none for people who need visit visas. The website, perhaps understandably, focuses on the categories which are most relevant for Japanese nationals, such as Work Permits and Long Term Students. Though Japanese nationals do not normally need a visa for a visit of under 6 months, there are plenty of other nationalities living and working in Japan who do. The failure to provide even basic accessible information, including the requirement for a Japan Residence Permit to have 2 months remaining after the end of the proposed visit to the UK, can mean that applicants are caused significant inconvenience and even a wasted visa application fee.
53. UKvisas has recognised that information must be managed carefully as part of the move to transfer the front-line visa application process to Commercial Partners. I agree with its view that applicants can be confused about where to obtain sound information about how to apply for a visa. The decision to have a single source of information is sensible and in accord with my 2006 recommendation: it minimises the risk of conflicting information and there has been far too much of that in the past. If there is a Commercial Partner, they will host web-based information and there will be a link direct from the British Mission website. If there is no Commercial Partner, then the British site will

host the necessary information. Commercial Partners will translate the Information leaflets and make the translated content available for British websites. All of that sounds sensible so long as it works smoothly, and I note that in Copenhagen the link to the Commercial Partner's website was broken, but no-one knew how long it had been like that.

54. UKvisas and its Partners must also take adequate steps to ensure that applicants know who does what. This is an issue that I often raise in my visit Reports because it must be crystal clear to applicants who makes the Rules and makes the decision, and who organises the practicalities of the process. I am pleased, therefore, by UKvisas' commitment for all British Mission websites to have a page explaining UKvisas' relationship with the Commercial Partner, and that the information will be provided by UKvisas so that it is the same worldwide.
55. Posts have been informed that they will no longer be allowed to publish policy guidance and information in English, but instead must provide links to the UKvisas central website. This will save a great deal of time because something only has to be written once. I have found it hard to understand why, in the past, each Post has been allowed and even encouraged to draft its own information - some has been carefully thought and is accurate but in others it has been borrowed without thought or amendment, including poor English, spelling mistakes and typos, in addition to guidance that is wrong or misleading.

UKvisas' website

56. UKvisas is now capturing and acting on user feedback for its own website. As an example, for the period May to July 2007, 39% of website users were visit visa applicants and typically 80% of user comments were about visit visas. Although the feedback report does not break down satisfaction into applicant types, 59% of users found the information easy to read and understand, although 15% were not able to find information quickly.
57. The survey enabled UKvisas to pick up the need to provide a facility where users can track their visa application process. This has become more important as the current variety of application methods can mean significant differences in how long an application takes. At one end of the scale, there are still visa sections that take in applications and provide a decision on straightforward cases that same day. At the other end are Posts which have been closed to the public where applications are received by a Commercial Partner at a Visa Application Centre and couriered to and from a UKvisas visa section, sometimes in a different country.
58. UKvisas' Public Service Agreement targets do not capture this variation as they focus on the turnaround time once an application hits a desk in a Post. Whilst the PSA target might be a useful measure of internal performance, they no longer provide an accurate measure of public service delivery. **I recommend**, therefore, that UKvisas adopts a simple start-to-finish measure to show how long visa applications take, looking at it from the applicant's point of view.

59. As an example,

- Step 1 the applicant posts the VAF to an application centre and/or makes an appointment to call in to provide biometric data;
- Step 2 the application and biometric data is sent to the UKvisas' Post;
- Step 3 the Entry Clearance Officer decides that an interview is necessary;
- Step 4 the applicant makes an appointment, which might be some days away;
- Step 5 the Entry Clearance Officer makes the decision;
- Step 6 UKvisas sends the sealed decision to the application centre which either calls the applicant in to collect it or sends it by courier or post.

All the applicant is interested in is *How long will this take from when I post my application to when I receive the decision?* This information should be routinely published on the relevant website and at the point where applicants are seen in person; it should be updated as and when required.

Appeal rights

- 60. In my Report for 2005⁵, I recommended that UKvisas and Entry Clearance Managers should ensure that Refusal Notices quoted accurate and up to date legislation. UKvisas said that the recommendation did not acknowledge that the Refusal Notice was replaced in August 2005 by one labelled GV51(LRA) which gives details of all appeal rights for those with limited rights of appeal.
- 61. In this file sample for October 2006 to March 2007, 3% of Refusal Notices in cases with limited appeal rights used an out of date Refusal Notice which said there was no right of appeal. At worst, there was a single case from Tbilisi where the Entry Clearance Officer, in November 2006, used the 2002 version of the Refusal Notice template, quoting the 1999 legislation and notifying *no right of appeal*. This Notice had been stamped as approved by the Entry Clearance Manager. In Lusaka and Rabat, all of the sample cases had incorrect information. Hanoi was using the 2004 version of the Refusal Notice until November 2006. I therefore **recommend** that UKvisas should ensure that Refusal Notices quote up to date and accurate appeal information.
- 62. I have asked UKvisas to require the named Posts to issue correct Refusal Notices not only to the applicants whose files formed part of the sample, but to all others who have had incorrect information. Just as important, UKvisas should find out why this error has been allowed to happen over such a long period. I was pleased to note that the immediate response from the Director of Visa Services for North Africa confirmed the need to review similar cases to identify the scale of the problem and how it had occurred.

⁵ dated October 2006 and published in January 2007

Information on how to lodge an appeal

63. In my Report for 2006⁶, I noted that in cases where there are full rights of appeal the Refusal Notice includes the address of the Asylum and Immigration Tribunal and information on how to lodge an appeal. I recommended that applicants with limited rights of appeal should also be provided with the appropriate contact address and an explanation that an appeal should be in writing. I made that recommendation because I had seen cases where an applicant clearly thought that they were making an appeal, but it was not treated as such.
64. UKvisas consulted legal advisers and policy colleagues at the Home Office and decided, with Ministerial approval, not to implement the recommendation.
65. The Immigration (Notices) Regulations 2003 govern the circumstances in which a person or his representative must be notified of an appealable decision under Part 5 of the Nationality, Immigration and Asylum Act 2002 or under the Immigration (European Economic Area) Regulations 2006 (SI 2006/1003). They also govern the information that the notice of decision must contain. Where a right of appeal may only be brought on the grounds of Human Rights, asylum or racial discrimination the Notice Regulations provide that the Secretary of State need only notify the person in question of:
- The reasons for the decision
 - The proposed country of removal
 - Reasons for rejecting any asylum claim

Only the first is relevant for those who apply for visas; the remaining two apply to people who are assessed in the UK.

The scope of the Human Rights Act 1998

66. UKvisas' view is that human rights will only be an issue where the decision interferes with family life, and in family visit cases full rights of appeal will normally apply, along with full information on how to lodge an appeal. I disagree, because I have seen a complaint referring to human rights and the right to education⁷ that was not recognised as a human rights appeal. Whether such grounds would be upheld is a matter for the Asylum and Immigration Tribunal.

The “right” to information on how to appeal

67. UKvisas says that indicating where to appeal on a refusal notice for an application that attracts only limited rights of appeal is likely to invite unmeritorious appeals for human rights claims in non-family categories. UKvisas is concerned that it might mislead potential appellants by giving

⁶ dated March 2007 and published in June 2007

⁷ article 2 of the First Protocol

details of how to appeal for a right which is only likely to be valid for a small percentage of cases. I note that UKvisas does not have a record of how many appeals are treated as valid, but in any event it is extraordinary that a modern organisation wishes to keep people in the dark in case they exercise a right given by Parliament. UKvisas has not commented on whether the same issue applies to Race Relations Act appeals.

68. UKvisas and the Border and Immigration Agency also considered that it is important that the notification of appeal rights is consistent wherever the immigration decision is made, whether in the United Kingdom, at ports or at overseas Posts. At UK ports, when entry is refused to someone without an appropriate entry clearance, the Border and Immigration Agency says that it must be able to return him or her promptly and if the person makes a human rights claim this is not possible. The Border and Immigration Agency say that notifications in the UK currently do not give details of where to submit an appeal and believe that if details are given actively of how to make an appeal on grounds of human rights claims, it would frustrate a quick removals process. I find this approach worrying as it is founded on what is convenient for a UK based organisation with rather different pre-occupations, rather than what is fair and right for an overseas visa applicant.
69. UKvisas notes that it is reasonable to expect that an applicant would raise unprompted any concerns on the grounds of race relations or human rights issues. It says that if an applicant did raise such issues, the Entry Clearance Officer is expected to re-issue the refusal notice on the form that includes full information of how to appeal. I can confirm that that does not always happen. In Paris, an applicant who had been refused indicated that the decision had been racist. In a detailed note of an undoubtedly unpleasant incident when he refused to leave, no-one mentioned that he had the right to appeal on Race Relations grounds. He was told that he could complain in writing, told that he could re-apply, but not told that he had the right to appeal.

Awareness by Entry Clearance Officers

70. In that case, the applicant made a specific indication of racism and even that was missed. It requires expert knowledge to recognise when a comment at the end of an interview or a written complaint contains issues that may be relevant to the Human Rights Act; the right of appeal applies to the whole of the Convention Rights and not just the right to family life. I have doubts whether most Entry Clearance Officers are sufficiently conversant with the Human Rights Act and Race Relations Act in detail; they need to be in order to recognise all relevant concerns and re-serve the Refusal Notice.
71. In her Report for 2004⁸, my predecessor recommended that the human rights and race relations aspects of the Entry Clearance Officer course be written and taught by an expert. UKvisas agreed that an expert on human rights and other legal issues would be a valuable addition to the training programme and, in 2005, said that it was working to provide training in these areas. In December

⁸ dated November 2005 and published in July 2006

2006, this was marked For Action. I note, however, that the human rights element is still being delivered by the UKvisas internal training team and it appears that this recommendation was not followed through: the current training team members do not know why this was so. Given the lack of in-depth expertise and training it is unfair on Entry Clearance Officers, as well as on applicants, to expect the Officer to identify what might be relevant. I also note that complaint handling is often delegated to Assistants with little or no managerial oversight, yet UKvisas' policy expects them too to be able to recognise a human rights or race relations comment in a written complaint that may be intended to be an appeal.

72. My view is that it is up to the Asylum and Immigration Tribunal to determine whether an appeal raises human rights or race relations issues of any kind and, equally, it is for the Tribunal to determine if there has been a breach. UKvisas' responsibility should be to let applicants know the bare bones of where to direct an appeal if the applicant believes there has been a breach. If UKvisas is unable to accept my recommendation that the Refusal Notice for cases with limited appeal rights should say that an appeal on Human Rights or Race relations grounds must be made in writing, within 28 days, then it will have to ensure that all staff are vigilant in recognising when an applicant makes, by whatever method, comments that might be construed as an appeal on such grounds. **I recommend** that it reminds all staff of that requirement and provides appropriate expert training.

Family visits

73. The problem with inaccurate information applies also to Refusal Notices which give information on limited rights, when it should have been on full appeal rights because the applicant wished to visit a qualifying family member⁹. These cases should not be part of my sample as they are outwith my remit but are included in the files provided because the Refusal Notice provided inaccurate information.
74. UKvisas issued firmer, more detailed and more helpful guidance on qualifying family visits in May 2006. For the January to September 2006 sample, the error rate had fallen to 4.2% but for this file sample it rose slightly to 4.5%. I was especially concerned by cases from Suva, where 3 of the 4 (75%) had incorrect family visit appeal information. In Skopje, Oslo and Paris, although the applicant was interviewed none of the questions were about the claimed family relationship. In Victoria, detailed file notes set out the Entry Clearance Officer's view that the applicant was not related as claimed, none of which appeared in the Refusal Notice. The AECIP¹⁰ guidance said that Entry Clearance Officers should provide information on the full rights of appeal in cases of doubt, unless they had evidence that the relationship was not as stated. That evidence needs to be set out in the Refusal Notice, not remain inaccessible to the applicant in the file.

⁹ The Immigration Appeals (Family Visitor) Regulations 2003

¹⁰ AECIP 41/06

75. If there is a common theme to these failures, it is that the Entry Clearance Officer's mind is taken up by finding some fault with the application - a document verification check for example - and refusing on those grounds. That does not, however, remove full appeal rights if the intended visit is to a qualifying family member.
76. I returned 33 cases to UKvisas where I found that the applicant had not been advised of full appeal rights, all but one for a family visit. UKvisas agreed that 32 applicants should have been told they had full rights of appeal and I am satisfied with the explanation for the remaining case. It asked Posts to take action in 22 cases, by contacting the applicant and inviting him or her to re-apply without having to pay a fee if they still wished to travel. In 9 cases the applicant had already re-applied and 8 cases (88%) had had a visa issued and one was refused with correct information on full rights of appeal.
77. It is by chance that I see a faulty Refusal Notice and I repeat my concern that this is an arbitrary outcome and only benefits applicants who have not already re-applied but who still wish to travel.
78. The final case with wrong appeal information was a Work Permit refusal. Such cases are not within my remit, but the file was provided as a substitution - the Post was asked to re-issue the Refusal Notice with correct information on full appeal rights. I note that there is no independent check of refusals which might have had incorrect information, other than those within the Independent Monitor's remit.

Guidance for Entry Clearance Officers

79. I note that for the period under review, the Diplomatic Service Procedures, UKvisas' manual of guidance, remained seriously out of date and inaccurate. As an example, I found on my visit to Tokyo that a sensible Entry Clearance Officer had tried to look up the guidance relating to applicants who wanted to visit in order to marry in the UK. The number of well known people choosing to marry here in one of many scenic and historic UK locations, has raised Britain's profile as a marriage destination and I am sure that it brings much welcomed income to the businesses concerned. In the file sample, 1% of applications were to marry in the UK, and I emphasise that that is not the same as applying to settle in the UK. The guidance in the Diplomatic Service Procedures was, however, out of date and the Refusal Notice assessed the application only against the normal visit visa Immigration Rule 41. Another part of UKvisas' website contains part of the correct information:

You will need to have a visit-marriage or visit-civil partnership visa. Without this, the registrar will not be able to take your notice of marriage / civil partnership. This condition applies even if you are from a country where you would not normally require a visa to come to the UK.

but still not all that the Entry Clearance Officer needed to know, which was that the application should have been assessed under Immigration Rule 56D.

80. On a more positive note, UKvisas has tried to make its AECIP guidance and instruction notices more accessible by publishing an e-copy of recent ones on an intranet. I remain of the view that ALL guidance should be in ONE place, properly indexed and searchable and **I repeat that recommendation**. I cannot understand an organisation that expects frontline staff to make complex decisions without being supported by easy to access guidance. I also cannot understand why the updating of the Diplomatic Service Procedures is taking years and years - the section on the legislation that governs the Independent Monitor is, for example, at least 5 years out of date.

FILE SAMPLE FOR OCTOBER 2006 to MARCH 2007

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

Sample basis

82. In the last Report, I recorded that the sampling arrangements had improved. It is, therefore, disappointing that there have been problems this time round. My instructions to UKvisas at the beginning of April were:

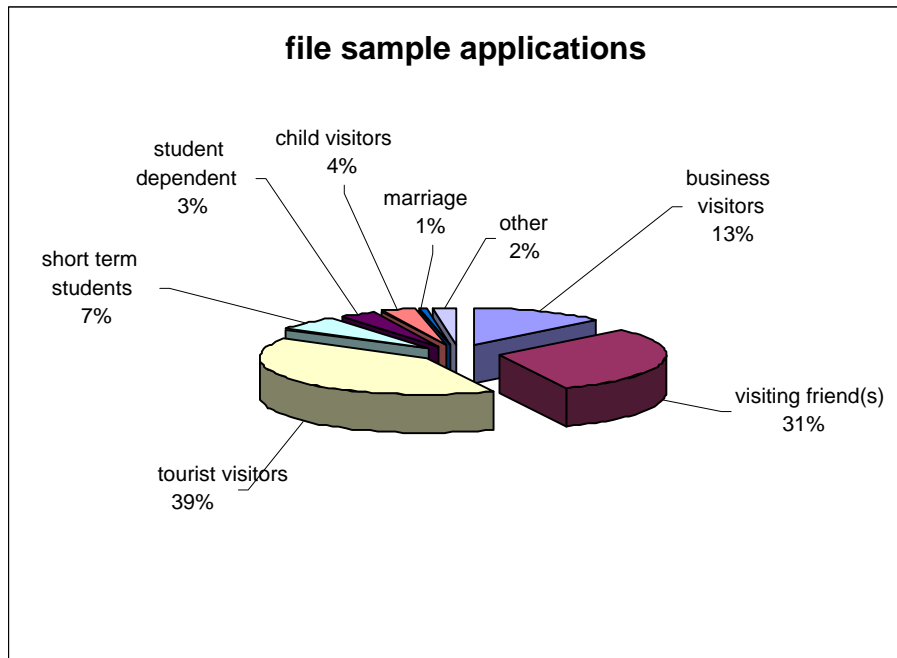
- There should then be a computer generated randomised selection of 0.75% of the cases that were determined and refused within the sample period, and at least 2 files per Post for each of 2 quarterly slices - October to December and January to March.
- The deadline for receipt of the files should be 30 June 2007 or sooner.
- I should appreciate it if Posts provided explanations for any files that miss the deadline, and for files that are substituted as a result of Entry Clearance Managers reviewing them before they are sent to me. Posts need to be reminded that in order to maintain the integrity of the sample, if a file is substituted then it is the *previous* relevant file that should be sent. Posts should be advised that the Independent Monitor Liaison Team may ask to see files that have been replaced by substitution.
- I find translation notes helpful for VAF¹¹s and documents that are not in English and thank Posts in advance for spending time doing that.

83. First of all, there was a delay in implementing these instructions, for which UKvisas has apologised. I have, however, been unable to secure an explanation of how UKvisas generated the sample that was provided. My calculations are that the 0.75% sample should have produced at least 772 files and adding on the additional files from the smaller Posts to bring their numbers up to 2 per quarter should have raised the total to at least 1,044. UKvisas asked Posts to provide only 582 files in total.

84. The sample does not appear to have included an accurate sample of cases relating to Prospective Students. At a late stage, UKvisas tried to provide me with information on this category but found that its management information system could not extract them. The file sample has in the past included them and UKvisas is already working on ensuring that the next sample is more accurate.

¹¹ Visa Application Form

85. My findings in this Report cannot be compared with those in previous Reports because the sampling basis is so different. For this Report, the overall sample is biased too far in favour of smaller Posts: for example, for my last Report, which was also based on a 0.75% sample, I saw 60 files from Lagos for a 6 month period, but for this report only 19. The global findings, therefore, are sound for small to medium Posts, but less so for the Top 10 Posts by application numbers.
86. In addition to the sample from across all Posts, I asked to see 100% of the applications that had been refused within my remit from 4 medium sized Posts: Ashgabat, Hanoi, Riga and Rio de Janeiro, totalling 198 files. These in depth samples allow a fuller picture to emerge and I am grateful to staff at all these Posts for responding to the additional demands made on them. My more detailed comments on these Posts are in the separate report for UKvisas' Balanced Scorecard.
87. The file sample for cases within my remit was as follows, the categories are what I found from the evidence, rather than as recorded by the Post:



88. Of the files supplied:
- 0.6% (down from 1%) of the sample files could not be found - that is **administrative error** but no specific Post caused concern;
 - 1.7% (down from 2.4%) of the sample were cases that had had full appeal rights notified correctly - that is **data entry error**;
 - 1.7% (up from 0.8%) of the sample files were missing without any reason being provided. A further 2.0% had missing papers, such as the Refusal Notice or interview notes. As Entry Clearance Managers are supposed to check the files before dispatch, these files cannot have been checked adequately and I class these as **managerial error**.

Problems with providing the files

89. UKvisas notified Posts on 23 May 2007 that they should extract files in accord with a list that had been generated randomly and that the files must reach UKvisas by 30 June. For the 2005 file sample, only 45% of the files requested arrived within the set deadline. In 2006, late arrivals had dropped to 21%, but this time 31 Posts, 24%, sent files that arrived after the end of June and 15% were more than two weeks late, requiring a reminder. Posts were asked to provide an explanation. In Riyadh, Athens and Tashkent, the problem was put down to a lack of an ECM. Geneva, Wellington and Prague were busy and Rome overlooked the instruction during the move to working with a Commercial Partner. New Delhi and Santa Domingo did not get the original instruction. By way of contrast, files from Rangoon arrived first, within a week of the request and I appreciate that efficiency.
90. In only a third of packages was there clear evidence that the files had been checked by an Entry Clearance Manager, as required. There were particularly helpful cover letters from Managers in Copenhagen, Beirut and Dubai, and Posts in India and Jeddah provided general context information. I was impressed by how much work some Posts put in to preparing the files: Bogotá and Beijing, both places that I have visited, deserve special commendation in that regard. In other Posts, it looked as though papers had simply been stuffed into a flimsy envelope.
91. In my last Report, I recommended that UKvisas investigated why files from some Posts arrived back with them rather than reaching UKvisas in London, or had been sent but did not arrive anywhere. UKvisas responded initially to only the missing, rather than the misdirected, files. I pressed the point because I had examined some files in Nairobi so knew that these had gone to the Asylum and Immigration Tribunal which had eventually returned them. UKvisas undertook a more thorough review and found that vague addressing had been the most likely cause. This year, I have been unable to review files from Shanghai and Harare.
92. UKvisas has now notified the Foreign & Commonwealth Office Post room and the Asylum and Immigration Tribunal for an alert if they received files addressed to UKvisas. It sent even clearer instructions to Posts on how they should address packages. It reminded regional Directors of Visa Services of the importance of correct addressing. I remain concerned about files going astray as they do include sensitive personal data, but believe that UKvisas headquarters is doing all that is reasonably possible to prevent problems.

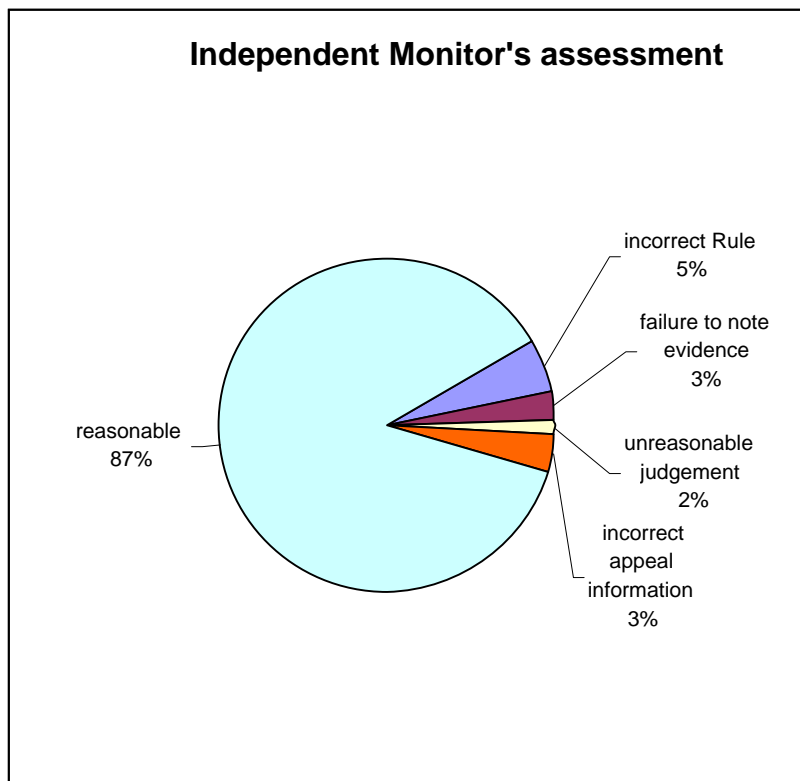
UKvisas' overall performance

93. I have reviewed 713 files within my remit, 33 files that I consider should have been notified of full appeal rights and 42 files that were associated with cases within my remit. I am satisfied that, overall, I have assessed a sufficient number and range of files to allow me to draw conclusions though these are not directly comparable with conclusions in my previous Reports.

94. Assessing UKvisas' performance overall 83% of Refusal Notices were reasonable and provided correct information about the rights of appeal. This is a slight fall from the first part of 2006 when the overall rating was 86%. Two factors apply; the sample bias toward smaller Posts and failures in providing accurate appeal information in cases with limited appeal rights.

Cases within the Independent Monitor's remit: Judgement, evidence and Rules

95. In order to make an assessment of whether decisions are being made fairly, I classified each of the 713 cases that should not have attracted full rights of appeal as either **reasonable**, or that it was significantly faulty in terms of **judgement**, the use of **evidence** or the **Immigration Rules**.



These categories are best illustrated by examples.

Reasonable

96. I have recorded that 87% of the Refusal Notices were reasonable, lower than the sample for the first 9 months of 2006. That's not the same as saying that Entry Clearance Officers made the right decision in all these cases. The Independent Monitor's assessment is not a review by an independent tribunal so I do not substitute my own judgement in the cases I look at. A reasonable Refusal Notice is one which is in accord with the Immigration Rules, Diplomatic Service Procedures and AECIP guidance, *and* where the decision is not perverse *and* has been based, even loosely, on the evidence.

97. The Independent Monitor's role is not an easy one to grasp so I emphasise that if these "reasonable" cases had had full appeal rights, a different view of the evidence and a different use of judgement by the appeal body may have led to the refusal being overturned. Conversely, the decision in a poor quality Refusal Notice could be the right decision even if it failed to meet best practice.

Poor judgement

98. For me to record concern about use of **judgement**, the decision has to border on the perverse - a decision that no reasonably competent and fair Entry Clearance Officer would make.

case study

In Freetown, the sponsor friend for a 2 week visit supplied a detailed bank statement covering a 3 month period. It had modest, but healthy, balances throughout and said a great deal about the sponsor's lifestyle. He paid his bills, including a TV licence, contributed to a charity, had insurance, saved regularly into two separate accounts (statements also provided) and funded all that from a regular income. He provided evidence of his accommodation. He had sent £1,300 to pay for his friend's travel costs. He sent documents to confirm he was a British Citizen. The Entry Clearance Officer said that "these documents alone do not provide sufficient evidence of your financial sponsor's circumstances". I find it very hard to understand what else could be required and found the decision unreasonable given the evidence.

99. To show that judgement is subjective, no matter how clear the underpinning rules and guidance, I note a case where I thought carefully about whether the decision had been reasonable.

case study

The applicant in Port of Spain had been accepted on a full time degree level course at a University in the UK but applied for a Prospective Student Visa because she was not sure that she wanted to attend that University. I was pleased to see that the Entry Clearance Officer noted that having secured unconditional acceptance, the applicant met the requirement to be accepted on a full time course within 6 months of arrival in the UK. The Entry Clearance Officer took into account that the applicant had originally applied for a 3 year student visa the previous week and had had the fee refunded on being told that the visa could not be issued until a month before the start of the degree course, some months away. On balance, I found the decision to refuse to be just about reasonable as it would have been possible for the applicant to enter as a student and apply to switch to a different course provider. There was no trace of a subsequent student application.

Evidence

100. In the file sample, 7% of Refusal Notices did not mention any of the evidence provided by the applicant. Bland, routine sentences with nothing that is specific to the applicant, do not inspire confidence that the application has been even been read, let alone assessed properly.

101. For me to register concern about the use of **evidence**, the Entry Clearance Officer has to have set out reasons that flew in the face of the evidence provided, or made a decision that took no notice of material evidence obtained at interview or in supporting documents.

case studies

In Karachi the Refusal Notice for a visit visa was refused on the grounds that "Without documentary evidence I am unable to determine your financial and social circumstances". But the applicant had included a print out of 6 months banking transactions showing regular activity and healthy balances. The wording of the Refusal Notice made it appear that the Entry Clearance Officer had not seen the bank statement. If he had seen it, then the Refusal Notice should have made that clear and explained why the statements were insufficient to determine whether the applicant met the requirements of the Immigration Rules.

Some very relevant information is ignored - in Dakar, the applicant ticked the box to say that he intended to set himself up in business, but that was not mentioned in the Refusal Notice. That alone would have been a sound reason for refusal as holders of visit visas are not allowed to do that.

Immigration Rules

102. In the file sample 5% of Refusal Notices referred to the wrong Rule.

case study

In Khartoum, the applicant said that he was going to the UK for 12 weeks as student-tourism-other. He enclosed a letter of acceptance from a School of English in London, and the Entry Clearance Officer confirmed that it was on the DfES Register, though not at the address on the letter. That discrepancy was not mentioned in the Refusal Notice and the applicant was refused under the visit visa Rule 41, with the Notice saying that the application had been considered under that Rule. In addition, the Refusal Notice quoted the 1999 Immigration and Asylum Act, saying that there was no right of appeal.

103. The commonest errors were failing to assess against Rule 46A for children and Rule 56D for marrying in the UK. I am puzzled why so few Entry Clearance Officers picked up and applied the new child visit Immigration Rule, aimed at protecting children, which came into force in February 2006. Entry Clearance Officers need to be satisfied that there are satisfactory arrangements for the care of children when in the UK, whether the child is travelling alone or accompanied by a named adult. UKvisas, in response to my previous Report, has issued a reminder but this was such an important measure of child protection that I am surprised it received so little attention. Lack of knowledge was not limited to UKvisas; in a child visitor case referred to the Home Office, the reply, with recommended decision wording and Rules, referred to Rule 41 and not the additional requirements of Rule 46A. The Refusal Notice simply copied the recommended wording.

104. It is incorrect under the Rules for a child visitor to be refused on the grounds seen in Amsterdam - "I have refused your mother's application therefore I refuse yours." In Algiers the Refusal Notice for the child read " You have failed to declare your immigration history" but there was no indication of the alleged failure or whether this applied to the parent and/or the child. Ulaanbaatar was one of the few places that correctly, and effectively, referred to Rule 46A in a child visit application.

No Rules at all

105. Applicants have a right to know that the Entry Clearance Officer is making a decision not on a personal whim, but by assessing the application against a set of Rules provided by Parliament. In the file sample 6% of Refusal Notices made no mention at all of the Immigration Rules.

case study

In Kuwait, the very short Refusal Notice said "You have applied for entry clearance to the UK as a dependent of your husband. Your husband's entry clearance has been declined, thus obviating your need to travel". The applicant had applied as a visitor and there is no visa category for "Husband Dependent"; she may have been financially dependent on her husband, but that's a different issue. The husband's application for a visit visa had been refused on the grounds that he had not provided documentary evidence of employment. It would, therefore, have been easy to construct a Refusal Notice for the wife using Immigration Rule 41 (vi) - you have not provided evidence that you could, without your husband being present, maintain and accommodate yourself adequately out of resources available to you.

106. In a delightfully honest letter from Beirut, the Entry Clearance Manager noted that not all the sample files quoted the Immigration Rule under which the application had been considered and refused. She explained that they had already noted the failing and amended the local template accordingly. In Baku, whilst earlier Refusal Notices made no mention of the Rules at all, more recent ones follow the recommended style and structure and were of a far better quality.
107. The proportion of Refusal Notices that made no mention at all of a Rule did not include the commonly seen *I am not satisfied that your application meets the requirements of paragraph 41*. Although there was a brief mention of something (paragraph 41 of what?), I do not find that is an adequate way of explaining that the Entry Clearance Officer has assessed the evidence provided to support the application against the UK's Immigration Rule 41 applicable to visit visas. The new standard template introduced in February 2007 should make sure that the Rules' requirements are made clear, but Entry Clearance Officers do need to keep up to date to make sure they assess against the right one.

Maladministration

108. I have added an extra assessment category for this Report, that of significant maladministration. This is a separate issue from the quality of decision making and Refusal Notices, but it can lead to grounds for refusal which are not the applicant's fault. Two cases stood out:

case studies

The applicant in Ashgabat wanted to attend a friend's engagement party. She applied on 18 April, was interviewed in translated Turkmen that same day and, according to the interview record, referred to attending a wedding. The Refusal Notice, by a different Entry Clearance Officer, was dated 2 November and the ground for refusal was that the wedding date had passed.

There were a number of problems with this application. Why was there a 7 month gap from interview to decision? The Entry Clearance Officer in April had emailed the UK based sponsor to ask, amongst other things, for details of his immigration status. There was no reply on file and it looks to me as though the application was then overlooked (the immigration status of the sponsor was not, in any event, wholly relevant to the application). This poor administration was not the applicant's fault. When the decision was finally made, where was the evidence that a wedding date had passed as the only document referred to an engagement party on 25 April? I recommended that UKvisas should either offer a further application without charge or refund the fee if the applicant no longer wishes to travel.

In Stockholm, the application reached UKvisas on 23 August. Stockholm says that the application was withdrawn and replaced with a different application number on 26 September when an interview took place and biometric data was taken, but there was no new application form and the only fee taken was in August. The grounds for refusal, not issued until 24 November, were that investigations had shown that the applicant's employment ended in September and the Entry Clearance Officer was not satisfied that the applicant had given an accurate account of his personal and financial circumstances.

But he had. The July salary slip provided in August was the most recent one available and he provided the August one when he was interviewed. His account, both on the VAF and at interview, was correct. It was not his fault that it took 2 further months, by which time he was not in work, to issue the Refusal Notice and there is no reason on the file or in the Notice to explain that delay. I recommended that UKvisas should offer a further application without charge.

Application forms

109. Recent visits, where I spent time at the front counter, showed just how many application forms have not been fully completed. Whilst the VAF is a hard form to follow, even for an English speaker, I do think that applicants can be reasonably expected to complete it. Where the Form is unhelpful or misleading, then Entry Clearance Officers need to be able to see through the answers - typical mistakes are applying as a Family Visitor when the intention is to have a family holiday rather than to visit a family member. I am

sympathetic to the applicant who answers "holiday" to Question 5.3 *Why are you going to the UK?* and find it unfair if a visit visa is refused because someone has not listed some standard tourist sights on the Form. There's only a short line space for the answer and no indication that more than a single word is expected.

110. I do, however, take a tougher line when whole sections of the Form have not been completed. I commend Kuwait for good practice on this point. "You have failed to complete Sections 4, 5 and 6 on your application form. This is particularly unhelpful in assisting me to decide this application in your favour because it is your responsibility to demonstrate that your circumstances are such that you will leave the UK at the end of your proposed visit, and you have not done that."

Quality pointers

111. In addition to recording the major points of Rules; Evidence and Judgement, my quality assessment awards points if the Refusal Notice:
- indicates correctly the purpose and proposed duration of the visit;
 - includes specific evidence from the applicant, rather than standard paragraphs;
 - is balanced and proportionate;
 - looks as though it was produced by a professional organisation.
112. Although a high proportion of Refusal Notices were reasonable, these assessments highlight issues that could, if properly addressed, improve the quality of decision making further. I include examples of good practice so that there is practical guidance of use to Entry Clearance Officers.

Appearance

113. Looks matter. A messy Refusal Notice does not give the impression of a high quality organisation, whereas a neat and tidy one suggests that overall quality is important. In my quality assessment, I give one point for appearance. To gain that point a Refusal Notice needs to be well presented with one set of margins, a single font style and size, written in plain English with no more than two spelling errors or typos. As in my last Report, Karachi did not come out well but, overall, there is a significant improvement compared with the files I reviewed for 2005. In this sample, 87% of Refusal Notices earned the appearance quality point.

Balance

114. A decision and the accompanying Refusal Notice should be fair and reasonable. The Regulations say that the Notice should give the reasons for the decision and that does not mean that only the adverse points should be included. Entry Clearance Officers should demonstrate that they have considered all of the

circumstances and that might mean showing that the adverse points outweigh ones that confirm that an applicant meets the requirements of a particular Rule or sub section.

115. Only 17% of the file sample Refusal Notices contained any comment that was at all positive. When they did, the impression of fairness and reasonableness improved considerably.
- Amsterdam: "In your favour, I considered the fact that you were previously issued with a visa in 2002, however, I am satisfied that there has been a change in your circumstances".
 - Cairo: "Whilst I am satisfied that you have been accepted on a course of study, I am not satisfied that you are intending to follow this course of study . . . In favour of your application, you have provided a print out from your bank account, but this does not show the account history."
 - Guangzhou: A file note said that there was evidence to confirm that the applicant met the requirements for maintenance and accommodation but that was not mentioned in the Refusal Notice.
 - Dublin: A previous application was refused on grounds that the applicant had failed to submit evidence of attendance at college. He re-applied with evidence of 85% attendance, but this was not mentioned in the new Refusal Notice - he was just criticised for still doing basic English after 3 years and not demonstrating progress.

Document verification

116. I am wholly supportive of measures to sift out applications founded on false documents or false identities because, if managed fairly, the genuine traveller will have an easier passage. In the file sample, 5% of Refusal Notices made specific mention of a document verification check. AECIP 172/2004 issued in October 2004, provided guidance on refusing on the grounds that a document is thought to be false: that became possible when Immigration Rule 320 (21) was introduced, covering documents such as bank statements, letters from employers, educational certificates and similar. The guidance does focus rather too strongly on what would need to be demonstrated to what is now the Asylum and Immigration Tribunal, but of course the same principles apply to demonstrating fairness to an applicant with limited rights of appeal.
117. UKvisas' more recent emphasis on verification has led to an increase in firm statements that a particular document has been found to be non-genuine. In the past Entry Clearance Officers had a hunch that all is not well, but then bolstered the hunch with flimsy reasons. Expertly conducted verification checks are, in my view, a sounder basis for decision making. It is vital, however, that there is proper evidence on the file to show how a check has been conducted, and by whom. A post-it note (seen on files from Ashgabat amongst others) is not acceptable. **I recommend** that UKvisas issues instructions on how document verification checks should be recorded, and note this is an issue that I have commented on in my visit reports. I commend the Document Verification Report used in Chennai and the level of detail it includes such as the language

used in a phone call, how many attempts were made, and what was the background noise. The report has the Entry Clearance Officer's name and assessment of the weight that s/he placed on the Assistant's findings. All very re-assuring.

118. Such findings do have to be included in the Refusal Notice in sufficient detail to allow the applicant to understand fully the grounds for refusing, and to understand the thoroughness of UKvisas' verification checks. The AECIP confirmed that if an Entry Clearance Officer thinks that false documents have been used this must be addressed in the Notice with as much information as possible. The document must be relevant to the application and that means linking the allegation with an Immigration Rule.

case studies

The applicant in Quito wanted to attend the World Travel Market for 9 days. The Refusal Notice stated that the visa section had been provided with a list of all those taking part officially and the named company was not on that list. The visa section had checked with the Ecuadorian equivalent of Companies House, which confirmed that the named company had gone into liquidation and had not paid taxes since 2001. The visa section had called the bank to confirm account details and had been told that the balance was \$0, and not the \$8,000 that appeared on the statement supplied; the Entry Clearance Officer concluded that the statement had been altered.

Verification has to be taken in context. In Lilongwe, visa staff visited the applicant's business premises, finding it to be a car spare parts shop and noting that it was evident that beauty products and cosmetics were not being sold. The applicant had, however, said that plans had been concluded to *go into* the purchasing and marketing of cosmetics, which is why he wanted to attend a 10 day workshop. The verification evidence was not, therefore, conclusive. In a detailed and well presented Refusal Notice, the Entry Clearance Officer noted two cancelled interviews caused by the death of a mother and then an aunt, insufficient funds in business bank accounts to pay for the trip and no savings or assets owned by the applicant: the decision to refuse was entirely reasonable.

119. UKvisas' guidance is that, as a general rule, Immigration Rule 320 (21) should not be used on its own where possible, nor is it a preliminary issue. This means that an application should also be determined on the basis of the general Rule that applies, for example Immigration Rule 41 for visit visas. Not all Posts are following that guidance.

case study

In St Petersburg, the Refusal Notice, after carefully explaining that an employment document was relevant to the visa application, said that the phone number given had been checked but the person answering had no knowledge of the claimed company, visa staff had also visited the address and found no sign of a legitimate business operating there. The application had not been considered under any other Immigration Rule.

120. Being specific means that the applicant can challenge by way of complaint if a genuine error has been made, and that is especially important when there are limited appeal rights.

case study

I recommended that UKvisas should refund the further application fee for a visitor from Moscow where on his first application a verification check had been made to the wrong branch of a company. The applicant re-applied with an explanatory letter confirming that he was who he claimed to be and the visa was issued but I do not think that he should have had to pay a repeat fee. I am also concerned that there is, apparently, no facility to remove the "refused" stamp from an applicant's passport when there has been a genuine mistake. The UK visa system is not alone in taking into account refusals by other countries and an applicant might be unfairly penalised as a result of a mistake.

121. The AECIP provided guidance on how to handle information about false documents that UKvisas does not wish presented in the public domain during an appeal. There is, however, no matching guidance on how such information should be presented in a Refusal Notice where there is no full right of appeal. **I recommend** that UKvisas provides such guidance.

Family visits

122. If the applicant ticks the Family Visit box on the VAF, Entry Clearance Officers do need to explain in the Refusal Notice why the application does not qualify if that is the case. In Georgetown, careful interviewing established that a godmother/fostermother would not qualify, but there was no mention of that in the Refusal Notice. As an example of good practice, I noted a Refusal Notice from Tel Aviv which said "You state on your application form that you have immediate family in the UK. That is not correct. The man you name is your sister's fiancé's brother. You confirmed in interview that you do not have immediate family in the UK".
123. The paper version of VAF simply asks about family in the UK, and then asks how is the person related. That is more helpful than the visa4UK on-line system which expects applicants to say whether a family member is *immediate* or *distant*. The terms "distant relative" and "immediate relative" are insufficiently precise to confirm whether a family member is included in the relevant Regulations. **I recommend** that the wording is changed to help applicants provide accurate answers that help Entry Clearance Officers determine the correct information on appeal rights.

case studies

In Helsinki, using the on-line application system the applicant said that he had distant family in the UK. He did not specify the relationship, but said that he would be staying with immediate family. The Entry Clearance Officer decided that because the applicant had not specified the nature of the relationship, and because the applicant's mother had described the relationship as distant, the application was not for a family visit. I thought that was wrong. If in doubt, find out, or give the benefit of the doubt. There was no invitation to interview, nor call to the claimed relative.

I noted good practice in Port of Spain, where the Refusal Notice said that at interview the applicant had been asked again what his relationship was with someone claimed on the VAF as a cousin. The applicant had stated "mother's cousin's son". This was inconsistent with information provided in interview in an earlier application (mother's brother's son), and in interview on arrival in the UK (just a friend). The Entry Clearance Officer was not satisfied that the applicant was related to the sponsor as claimed and I was satisfied that the grounds for that view were set out fully in the Refusal Notice.

I was satisfied that the Entry Clearance Officer in Hanoi acted correctly in a potentially sensitive case where the applicant wanted to visit to UK after the murder of a relative-in-law. The Officer found that the applicant had a brother in the UK, although that was not declared on the Application Form. He further established that the applicant was not intending to visit this brother, claiming not to know his whereabouts. The Officer made a file note to explain why he thought that the application did not attract full appeal rights. Whilst I would have preferred that reasoning to be in the actual Refusal Notice, I do commend the care taken.

Immigration history

124. I dislike the use of a standard paragraph - *if you have immigration history this may have been considered*. Either someone has an immigration history, or they haven't. Either the immigration history has been considered, or it hasn't. There should not be any *ifs* and *mays*. There was, however, much improved use of relevant immigration history in this file sample, with adequate detail included in the Refusal Notice.
125. Having an immigration history is not a reason for refusal, but failing to disclose one when there are specific questions on the application form, can reasonably give rise to concerns about openness and honesty. In my visit to Copenhagen, I noted that 6% of the sample cases had been refused after finding a matched fingerprint which confirmed an undisclosed immigration history - this was set out in appropriate detail in the Refusal Notices.

Interviews

126. In the file sample, 41% of the applicants had been interviewed. I suspect that is higher than the current global average given the sample bias toward smaller Posts which are less likely to have moved to paper based decision making. UKvisas tried to confirm interview percentages for limited appeal rights cases but identified several errors whilst conducting the exercise which could have an affect on the results.
127. I am in favour of targeting interviews to applications where oral evidence is likely to tip the balance one way or the other - though just how it might be tipped is not always known at the outset:

case study

In Istanbul, the applicant wanted to go to the UK for a 1 month business visit. He declared on the VAF that he was not intending to set himself up in business in the UK. In interview, when asked if he had brought any documents he wished to show, he provided a set relating to registering a UK restaurant business and explained that the purpose of the visit was related to his ownership of a UK restaurant. He admitted to misleading the Entry Clearance Officer when he applied for an earlier visit visa, explaining that he had spent 3 months in the UK on one visa, and then 6 months on a further visa - this information was shown by the Turkish Immigration stamps in his passport. The decision to refuse was reasonable - but it was information provided voluntarily at interview that disclosed the true purpose of the proposed visit.

128. There is some blurring between questions asked by an Entry Clearance Assistant at the counter and the more formal interview by an Entry Clearance Officer. I have noted on visits that not all Entry Clearance Officers start the interview by explaining who they are and what their role is. **I recommend** that UKvisas should require that. **I further recommend** that where Refusal Notices are founded on interview information, the Notice should be clear on which grade of staff conducted the interview.
129. The recording of interviews has improved considerably over the past 2 years so I note the following as a simple reminder to be careful and accurate:
- Abuja: "I can only make my decision based on the evidence before me at the time of my decision". This sounds as though the Entry Clearance Officer is not allowed to decide that an interview may be necessary.
 - Ashgabat: The Refusal Notice said "during the interview" but a handwritten note said "no formal interview" held.
 - Geneva: A handwritten note explained that the sheet of paper was "a few questions asked on the phone". It did not say who did the asking.
130. I am concerned when there are errors in the evidence base set out in the Refusal Notice. Poor use of templates leads to the Entry Clearance Officer stating that s/he has "*considered the application on the basis of the passport, application form and papers provided*" when it is clear that there has also been an interview. That makes it look as though the interview evidence was not important. This mistake also happens the other way round, when the Officer claims to have interviewed someone, but did not. Either way, a simple carelessness can undermine confidence that the application has been handled fairly. It is also not acceptable for Entry Clearance Officers to say "you have been unable to explain" if there has not been an interview and the question is not asked on the VAF.

Money

131. Under Immigration Rule 41, the requirements to be met by a person seeking leave to enter the United Kingdom as a visitor include that he: *will maintain and accommodate himself and any dependants adequately out of resources available to him without recourse to public funds or taking employment; or will, with any dependants, be maintained and accommodated adequately by*

relatives or friends; and can meet the cost of the return or onward journey. It is the commonest reason for refusal:

- Abuja: "I do not find it credible that you would spend over one year's salary on a trip to the UK for the reasons given." I find that reasonable, as it was an 8 day holiday and the applicant's bank account showed a closing balance of £23.
 - Kuala Lumpur: A simple sentence to say "the financial outlay is not commensurate with your current social and economic circumstances" is not adequate - what outlay and what circumstances?
 - Stockholm: The applicant claimed that he had £10 for a proposed 10-15 day vacation. Surprisingly, the Entry Clearance Officer did not mention that as a reason for refusal.
132. Applicants on business visits do not understand - or are not provided with information - that they are expected to provide evidence of their own means even when their employer has confirmed full funding for the visit. For example, a business visitor in Colombo, with an extensive history of travelling and complying to the UK, USA and Australia was refused on those grounds. The information for applicants does need to make document requirements very clear, and I am not satisfied that this aspect is given adequate attention.
133. Many Posts ask applicants for six months' bank statements, and the same from a UK based sponsor. If such statements are provided, the Entry Clearance Officer has to examine them as a whole. I find it unfair, for example, for an Entry Clearance Officer to state that a closing balance of £74.80 is a *true reflection* and therefore *insufficient to pay for travel ticket and living expenses* when the sponsor's bank statements showed regular monthly incomes of around £750 plus £430, and there was a separate savings account of more than £6,000, and a statement that the mortgage had been cleared and evidence of transfers of funds to the applicant.
- Kingston: A savings account opened in 2004, with a closing balance of £1,300, a 3 month average balance of £1,600 and a single Christmas time withdrawal of £340, was not thought to be "consistent" with someone earning £1,000 per month. That is plainly wrong.
 - Kolkata: the Refusal Notice confirmed that the applicant's bank statement showed a balance of £2,682. The leader of the proposed business group visit confirmed that the hotel accommodation booked would be £35 per person per night, for a 7 day visit. The Refusal Notice, however, calculated that as there were 17 people going, the accommodation costs would be around £3,000. There was nothing to suggest that this applicant would be paying for everyone and her own bank balance could easily meet the £245 needed for her own accommodation.

Out of date

134. Chicago, Lusaka, Nairobi, Sana'a, Havana, Tallinn, Tirana and Belgrade were accepting applications on the 2003 version of the VAF, but not all of the time. It might be that agents are using an out of date version of the form but,

whatever the cause, I think it reasonable to ask an applicant to complete the most up to date version, at no extra cost. **I recommend** that UKvisas should decline to accept an application on an out of date form and, before doing that, make sure that all of its Posts and Application Centres destroy older versions so they cannot be handed out by mistake.

Separate Refusal Notices

135. In my Report for 2005, I said that each application must be dealt with on its own merits, with its own reasons related to the Rules. As each applicant has to pay an administration fee, it is fair that each has a Refusal Notice in their own right and I recommended that was established as policy. In January 2007, UKvisas formally agreed with this recommendation and I note it again because Mumbai were still issuing joint Refusal Notices in March and April 2007. Joint Notices are a particular problem when applicants may require to be assessed under different Immigration Rules - parents and children, for example.

Sponsors: friends

136. In the file sample, 31% of applications were for a visa to visit a friend in the UK. I do not think that the term Sponsor accurately describes the role of the person in the UK who is expected to support a visa application. However, it is the term used, despite the overtones of financial support when that is not always the case. Sponsors are, in many Posts, expected to provide six months bank statements even when they are not paying for the visit other than by normal hospitality. I agree with one sponsor who said that that was an invasion of his privacy; he did not mind providing his bank statements direct to a British official, but he did mind having to provide them to the friend to be attached to the visa application. In any event, as it is hard to quantify how much money is actually needed to feed an extra mouth or two, and wash an extra pair of sheets, I find the 6 months of sponsor's bank statements requirement to be excessive and unreasonable for a short visit.

Students English in the UK

137. UKvisas accepted my recommendation that the existence of English language courses in the home country was not in itself a reason for refusal. It was still being used as reason in Rabat, though there were more examples of good practice:

- Amman: The Refusal Notice confirmed that the applicant had not taken any previous English qualifications or study. Noting that the applicant intended to stay with a friend whilst in the UK, the reason for refusal was "As you are not staying in the UK with a host family to immerse yourself in the language, attending the British Council in Jordan would be both cheaper and more convenient". Combining lack of evidence of any prior study of English with the absence of the immersion benefits of studying in the UK added up to reasonable reasons.

- Ulaanbaatar: “You say that English is necessary for the job you have been doing for 3 years but you have made no attempt to learn English in Mongolia during that time, which you could have done much more cheaply. You were unable to explain why you have not done so. You could not name any of the English speaking companies that you say you have to deal with. I do not find it plausible that you would undertake considerable personal expenditure for your employer's benefit. You could not tell me the start date of the course, or explain why you chose the college, or tell me about the facilities it offers.” This too added up to reasonable reasons for refusing.

Templates

138. In February 2007, UKvisas introduced the long awaited new Refusal Notice templates which introduced a standard style and structure. Technical hitches caused further delays and early attempts to use the template produced some very poor quality Refusal Notices with page breaks in inappropriate places. Quality began to improve but there is too much duplication in some of the recommended paragraphs. I recommended that there should be a standard structure so that all Refusal Notices looked alike and followed a routine of *Evidence: Rules: Decision: Supporting reasons*, but the paragraphs that Entry Clearance Officers are expected to slot in are not of my making. I generally find them too wordy and without great care there can be irritating repetition.
139. I have noted, on recent visits and from the file sample, that sensible Posts are following the template style and using some of the standard wording, but in a way that has beaten it into shape. I commend both Seoul and Singapore in this regard, where Refusal Notices look smart and professional.
140. Templates are undoubtedly a good idea; they improve consistency and can save time, but they do need to be used with care. Simple proof reading would have corrected a number of instances where the delete key should have been used to take out words and phrases that did not apply.
 - Accra: “I am not satisfied on the balance of probabilities that you have strong family social or economic ties to Ghana to demonstrate that you intend to leave the UK on completion of the your visit, or that you would not seek to remaining the UK in an other capacity if admitted now as a visitor. I therefore refuse your application. Further reasons may be given”. The sentence is too long and covers two separate points. There is no evidence set out to support the reasons. Worst of all, the Entry Clearance Officer had not deleted the guidance note, meant for internal prompting, that s/he can give further reasons.
141. When the standard paragraph includes a possible list, Entry Clearance Officers need to delete the ones that do not apply. That prevents such sillinesses as “your passport and the original documents that you provided, including, there were no documents provided”.

CHECKS, COMPLAINTS and EXTERNAL SCRUTINY

Internal review

142. By March 2007, I had visited 15 Posts and looked at around 3,000 case files. I had sufficient evidence to convince me that the 2005 requirement¹² for Entry Clearance Managers to review all non-appealable (*sic*) application refusals within 24 hours of the decision was not being properly implemented and was not effective. Taken literally of course, the cases that should be reviewed are those without any appeal rights, rather than those with limited rights.
143. Although in Lagos I found that the review process was given more attention than I have seen elsewhere, I used my visit report to make a formal recommendation to UKvisas more widely. It seemed to me that the review system mixed up two separate processes:
1. Managers should be assessing the quality of work undertaken by staff for whom they have line management responsibility, as part of performance appraisal and development.
 2. Organisations should be assessing the quality of their outputs by sampling mechanisms that are fit for a particular purpose.
144. I think it does little for Entry Clearance Officers' sense of responsibility for their own work if the organisational sample is 100%. That suggests that all Entry Clearance Officers are such poor performers that all of them have to have all of their work checked - and from my experience that is not true. From the quality assessment perspective, the focus on Entry Clearance Manager review is a narrow process and means that UKvisas is not capturing an adequate breadth of quality indicators. I recommended therefore, that the Entry Clearance Manager review requirement was removed and be replaced by two different mechanisms with different aims:
- **A line manager's assessment of competence.** This would be risk and development based so the Entry Clearance Manager for a new or temporary duty Officer would review all decisions before issue until such time as s/he was confident of the Entry Clearance Officer's abilities. That period would vary according to the officer's speed of development. The Entry Clearance Manager would include in the *assessment of competence basket* observations of interviews, handling of correspondence etc, to give a rounded picture of the Officer's abilities.
 - **An organisational Quality Assurance programme.** This would be a basket of measures covering the ground that I do on a monitoring visit. Entry Clearance Managers would need to review a sample of decisions

¹² AECIP 112/2005

setting a risk based percentage that would vary according to the Post's circumstances and staff capabilities. As a minimum it should be 5%, and for some Posts it might be 100%. The Balanced Scorecard would be a useful indicator to help Posts set an appropriate sample based on appeal outcomes, Independent Monitor assessments and control factors. In addition, the Manager would review a sample of Port Queries, Facilitations, pre-application correspondence, post decision correspondence (whatever the source) once again setting a sampling rate that was appropriate for the Post's circumstances.

145. Much to my surprise, UKvisas, after consulting carefully given previous undertakings, agreed to conduct a pilot in a limited number of places¹³. I notified UKvisas that the AECIP guidance limited the pilot programme to reducing the level of Entry Clearance Manager oversight without the balancing mechanism of adding in other audit measures, nor did it separate out competency oversight from quality assurance. What was needed was fewer reviews but conducted in more depth: my visit to Guangzhou confirmed that in order to conduct a proper review, the Manager has to read all the papers, and not just the Refusal Notice. I therefore counted the recommendation as one that was accepted, but was not being implemented in full.
146. Since then, UKvisas has worked further on a Business Assurance Model and I am now more satisfied that it understands fully what needs to be done to implement the recommendation fully. I note, for example, that UKvisas recognised that a recurring theme in my visit reports is the data that Posts are required to record on various registers. These registers include: complaints; facilitations; decisions reversed by Entry Clearance Managers and Port enquiries. UKvisas agrees that these registers can be a useful source of management information, however the quality and consistency of these records varies considerably, as I well know. It is time to refresh what is necessary to provide an organisational quality assurance programme and UKvisas is doing that.

Complaints and post decision correspondence

147. For applicants without full rights of appeal, being able to make a complaint about inadequate service or an unreasonable decision is their main route of grievance. UKvisas began to pay attention to good complaint handling practice in the middle of 2006. In early 2007, it appointed a Manager in its Customers & Communications Programme, with specific responsibility for improving complaint handling.
148. As a former member of the British and Irish Ombudsman Association, I provided him with its Guide to the Principles of Good Complaint handling, which emphasise clarity of purpose, accessibility, flexibility, openness and transparency, proportionality, efficiency, and quality outcomes. I support BIOA's view that in many cases, it is not possible to satisfy completely the

¹³ AECIP 73-2007

needs and wishes of complainants but incorporating the principles into the complaint-handling process will minimise unresolved issues or feelings of grievance. It may also make the organisation complained against less defensive, and increase the likelihood of achieving both resolution and organisational learning for the future.

149. Although Posts and UKvisas now keep records of complaints received, they are not classified into cases with full or limited appeal rights. I can, therefore, only report that from October 2006 to March 2007 UKvisas in London received 83 recorded complaints, 17% from applicants and 51% from sponsors, whilst overseas Posts received 253 recorded complaints from January to March 2007. I do think that 83 complaints to headquarters in a 6 month period looks a low figure when 21 people have made a written complaint to me in a similar period.
150. Of all complaints to its headquarters, UKvisas upheld 18% in full or in part. That contrasts sharply with complaints about UKvisas determined by the Parliamentary Ombudsman in her most recent reporting year, in which all 6 were upheld¹⁴.

case study

I noted an exemplary response from both UKvisas in London and the Entry Clearance Manager in Cairo to a complaint by the applicant's friend and sponsor. The immediate emailed response was clear, well presented and courteous but set the boundaries for when a substantive response would be provided and the limits to what it would cover. That helped to manage the complainant's expectations. The Entry Clearance Manager in Cairo replied the very next day, thus exceeding expectations, with sufficient detail to show that the specific complaint had been looked into. Excellent.

151. In my visits to Posts, I count the level of post-decision correspondence. I use that term specifically as I find that UKvisas' version of what constitutes a complaint is unreasonably narrow. Typically I find that post-decision correspondence is on file in 1% to 2% of cases within my remit but in this file sample it was considerably higher, at 4.4%. Of these, 26% were requests for the decision to be reconsidered, sometimes with additional evidence, and 74% constituted service complaints; of rudeness, of the application centre refusing to accept documents, of factual errors, or of ignoring evidence provided.
152. In 26% of the file sample cases with post decision correspondence, the reply was a standard letter from "Visa Section" or "Correspondence Unit". Entry Clearance Officers replied to 9% of letters, and Entry Clearance Managers to 30%.
153. A common failing is to reply to the letter, but simply confirm that the decision has been looked at again, and stands, without responding to the specific complaints.

¹⁴ OPHSO Annual Report 2006-07

case study

In Valletta, the Entry Clearance Manager's response to a detailed complaint failed to comment on a series of issues raised. The applicant complained that during all the conversation at interview, the Entry Clearance Officer worked with a computer and did not concentrate on the applicant. Some Entry Clearance Officers explain that they will be typing up the interview notes as they go along so applicants understand that - and they also maintain eye contact with the applicant. I don't know whether that good practice applies in Valletta, but it would have been easy to explain in response to the complaint why the Officer used a computer. The applicant made specific complaints about evidence provided that had been overlooked and about factual errors, but the response made no comment on those either. The decision was reasonable in the circumstances, but the Refusal Notice was not, nor was the response to the complaint.

154. In over a third of cases there was, on the file supplied to me, no reply at all to the letter of complaint or request for reconsideration.

case study

In Jerusalem, the applicant who, had he had his passport would not have needed a visa and who had travelled to the UK in the past, wrote asking for the decision to refuse to be reconsidered as he wished to visit a sick friend. Eleven weeks later, the Entry Clearance Manager noted that the letter had been mislaid and, in a file note, thought that if the applicant could provide the financial evidence that had been missing the application could be reconsidered. The Manager arranged for a call to be made to the applicant; a family member replied to confirm that the applicant had, in the meantime, travelled to the UK. The file note recorded that the applicant had probably obtained a new passport, and so the planned letter was not sent. Although there would have been a long delay in responding to the applicant's letter, I do think that it would have been courteous to acknowledge it and apologise for mislaying the letter in the first place.

Complaints to the Independent Monitor

155. Although it's not especially easy to find my contact details (c/o UKvisas), people do write to me even though many know that I have no power to investigate their case or their complaint. On average, it takes 3 days for the letter to get to me (unopened) from UKvisas and I take a further 2 days to reply, the longest gap being when I am away on a visit when the letter has to wait until I return.
156. Half of the letters are about cases not within my remit and a third have already lodged an appeal with the Asylum and Immigration Tribunal. Of the latter, some people think that I can deal with their appeal faster, and others complain about UKvisas not implementing an Asylum and Immigration Tribunal determination.
157. Of the letters about cases within my remit, 75% raised concerns about the quality of service and 25% solely about the decision without providing any service related comment. The service related concerns included that evidence was overlooked; that there were errors in the Refusal Notice; that calls were not

returned. I reply to all, explaining the limits to my remit and that I have no power to investigate complaints. If I can see that the writer has not contacted UKvisas, I suggest that they might like to do that, emphasising that the Director will ask a member of staff to look into the complaint but that UKvisas headquarters does not have the power to overturn a decision.

158. From time to time, someone sends me a copy of correspondence addressed elsewhere, to an MP for example. I do not respond to, or record, letters that are not addressed to me.

Appeals

159. UKvisas does not, at present, know how many applicants with limited appeal rights appeal against a refusal, nor whether such appeals are considered valid in that they raise Human Rights or race relations grounds. I think it should know and I am pleased to hear that the problem will be partially solved by amendments to the case recording system. Applicants can, however, appeal direct to the Asylum and Immigration Tribunal so UKvisas would need to be able to gather information from that source too. I have asked the Asylum and Immigration Tribunal for its records on such appeals, but have not had a response.
160. In the file sample, just 2 cases (0.28%) included evidence to show that an applicant had lodged an appeal. In both, the Asylum and Immigration Tribunal had ruled that the appeal was not valid as no human rights or race relations grounds had been made out.

The Ombudsman

161. The Parliamentary and Health Service Ombudsman investigates complaints of maladministration. The Ombudsman does receive cases from complainants based overseas and who do not, therefore, have ready access to a MP. In practice, such complainants are normally referred to the Chair of the Public Administration Select Committee which has generally been willing to refer them on for the Ombudsman's consideration. UKvisas is not aware of any complaint about an application with limited rights of appeal being made to the Ombudsman in the period covered in this Report.

Judicial Review

162. The exercise of powers by public authorities, including Ministers and officials, is always open to challenge in the Courts by way of Judicial Review; the Courts do not assess the merits of the decision but rule upon its lawfulness. Where an applicant does not have full rights of appeal, s/he can seek to challenge the Entry Clearance Officer's decision through Judicial Review. When considering whether a body such as UKvisas has been acting outwith the law, the Court will look at the relevant statutory provisions and the purpose of the statute. Public

authorities must also act with reason and the Courts have defined unreasonableness as "conduct which no sensible authority acting with due appreciation of its responsibilities would have decided to adopt" so the Court would assess if a decision was "so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it." The Court would also look for consistency in the decision-making process.

163. UKvisas now keeps information on how many Judicial Reviews have been raised by applicants with limited rights of appeal, recording 13 as being notified from October 2006 to March 2007. The outcomes were:

- 5 (56%) were conceded by UKvisas
- 4 (44%) were defended, 3 being refused permission to proceed
- 4 are in progress.

case studies

In Lagos, the applicant was refused a visit visa because the claimed 'aunt' sponsor was not related to applicant but just a good family friend and there were concerns about bank statements. The Entry Clearance Officer concluded that the applicant would not leave the UK at the end of his visit. UKvisas conceded on advice from its solicitors who considered that a judge would not find the refusal reasonable.

In Lagos, the applicant challenged the refusal of visit visa. The grounds for refusal were maintenance and accommodation and the situation of the sponsor. UKvisas defended on the grounds that the Secretary of State has discretion to refuse if the applicant does not fulfil criteria set out in the Immigration Rules. Permission for paper hearing was refused and permission for an oral hearing was not renewed.

CONCLUSIONS

164. In its Annual Report, UKvisas confirmed that the majority of applicants are legitimate travellers. It is important to keep that in mind because the growing global need to identify people who wish to travel in order to break immigration rules or engage in terrorism or crime can lead to control becoming the sole preoccupation. Britain still needs to appear welcoming to the genuine visitor, and the first contacts with British officials set the scene.
165. UKvisas is, in my view, successfully maintaining a delicate balance between good service and adequate control. The major changes in application processes - dedicated application centres, a risk assessment basis for decision making, and biometric data capture - all benefit the genuine visitor.
166. I can confirm that the overall quality of Refusal Notices is improving. This file sample is free from the crass and inappropriate comments that have, in the past, undermined UKvisas' reputation for fairness. I commend its front-line staff for such a significant improvement in a short space of time.
167. In my visits and in the file sample, I have identified a number of issues for UKvisas to address. I summarise them under key headings:
- provide adequate training on human rights and race relations;
 - improve knowledge of and guidance on the undoubtedly complex and constantly changing Immigration Rules;
 - provide accurate information on appeal rights;
 - continue to improve the handling and recording of complaints and post decision correspondence process, and learn from the outcomes.
168. I am accountable to the Secretary of State and do not, therefore directly represent the interests of visa applicants with limited appeal rights, but rather Parliament's interests in having a fair and balanced system. I see my role as Independent Monitor as being truly independent but with a core aim of guiding UKvisas on how it can learn and develop in order to do the best possible job. Some of my findings undoubtedly sting, but UKvisas continues to handle them constructively and with an open mind. It is a good organisation to work with.

L M Costelloe Baker
Independent Monitor
21 September 2007

APPENDIX 1 : The relevant Immigration Rules

Visitors: Requirements for leave to enter as a visitor

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

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

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

Requirements for leave to enter as a child visitor

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

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

Visitors in transit: Requirements for admission as a visitor in transit to another country

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

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

Visitors seeking to enter or remain for private medical treatment: Requirements for leave to enter as a visitor for private medical treatment

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

- (d) the likely duration of his visit; and
- (e) sufficient funds available to him in the United Kingdom to meet the estimated costs and his undertaking to do so.

Visitors seeking to enter for the purposes of marriage: Requirements for leave to enter as a visitor for marriage

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

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

Students: Requirements for leave to enter as a student

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

- (i) has been accepted for a course of study which is to be provided by an organisation which is included on the Department for Education and Skills' Register of Education and Training Providers, and is at either;
 - a) a publicly funded institution of further or higher education; or
 - b) a bona fide private education institution which maintains satisfactory records of enrolment and attendance; or
 - c) an independent fee paying school outside the maintained sector; and
- (ii) is able and intends to follow either:
 - a) a weekday full time course involving attendance at a single institution for a recognised full time degree course at a publicly funded institution of further or higher education; or
 - b) minimum of 15 hours organised daytime study per week of a single subject, or directly related subjects; or
 - c) a full time course of study at an independent fee paying school; and
- (iii) if under the age of 16 years is enrolled at an independent fee paying school on a full time course of studies which meets the requirements of the Education Act 1944; and
- (iv) intends to leave the United Kingdom at the end of his studies; and
- (v) does not intend to engage in business or to take employment, except part time or vacation work undertaken with the consent of the Secretary of State for Employment; and
- (vi) is able to meet the costs of his course and accommodation and the maintenance of himself and any dependants without taking employment or engaging in business or having recourse to public funds.

The relevant requirement for leave to enter or remain as the spouse or civil partner of a student or prospective student

76. The requirements to be met by a person seeking leave to enter or remain in the United Kingdom as the spouse or civil partner of a student or a prospective student are that:

- (i) the applicant is married to or the civil partner of a person admitted to or allowed to remain in the United Kingdom under paragraphs 57-75 or 82-87;

The relevant requirement for leave to enter or remain as the child of a student or prospective student

79. The requirements to be met by a person seeking leave to enter or remain in the United Kingdom as the child of a student or prospective student are that he:

- (i) is the child of a parent admitted to or allowed to remain in the United Kingdom as a student or prospective student under paragraphs 57-75 or 82-87;

APPENDIX 2 : Memorandum of Understanding

Relevant sections of the MOU between The Independent Monitor and UKvisas

Both participants accept that:

Sample of Files for the Parliamentary Report

- UKvisas will request the sample from Posts as directed by the Independent Monitor, either using the Central Reference System (CRS) or any other acceptable system that the Independent Monitor chooses in consultation with UKvisas.
- UKvisas undertakes to generate the sample database within 2 weeks.
- UKvisas will give all assistance necessary to the Independent Monitor in choosing and collecting the sample, including technical support as required.
- The Independent Monitor may vary the files requested for the sample, and is permitted to request files not normally within the remit of the Independent Monitor, such as those with the full right of appeal and issued files.
- The Independent Monitor is permitted to request 100% sample of files without the full right of appeal from such Posts as she determines.
- UKvisas will request Posts to send the files within a period of two months from the date of request.
- Posts will send the files for the sample sealed to UKvisas, addressed to the Independent Monitor, with the name of the Post clearly marked on the outside of the package. UKvisas will not open any packages received for the Sample, unless authorised to do so by the Independent Monitor.
- Posts will supply the Independent Monitor with a letter indicating the reason why any file or collection of files cannot be provided within the two-month deadline.
- The Liaison Team will provide administrative support, as requested, in checking the files provided against the database of files requested.
- Posts will supply the Independent Monitor with a letter indicating the reason why any file identified as being in the sample cannot be supplied to the Independent Monitor, and will supply the Independent Monitor with the file should she request it.
- The Independent Monitor will have access to the CRS and will be permitted to interrogate any information held on the database.
- The Independent Monitor will provide the PROVISIO record number of files received as part of the sample, and will advise UKvisas of files held.
- The Independent Monitor will keep the files in a secure location and take appropriate steps to prevent unauthorised access to them.
- The Independent Monitor will return files to UKvisas when she has completed work on the sample.
- The Liaison Team will respond to the Independent Monitor's request for information or action to take in connection with the sample within two weeks of the request.

The Bi-annual Parliamentary Report

- The Independent Monitor has a statutory requirement to make an annual report of the review of a sample of files refused without the right of appeal.
- For the foreseeable future, it is accepted that the Independent Monitor will produce two reports annually, spaced at six monthly intervals.
- The Independent Monitor will provide a draft copy of the Report for UKvisas to comment, within ten working days of receipt, on what it considers are any factual

- errors. During that period, the draft report may be circulated to a limited number of people within UKvisas in order that any perceived factual errors may be identified.
- UKvisas will make it known that the draft version of the report is embargoed and the Independent Monitor is permitted to make any changes to the report before she presents the final version to the Secretary of State.
 - UKvisas is permitted to make notes on a hard copy of the draft version, which it will keep for continuity purposes for a period of not more than one year, after which it will be securely destroyed. No copies of the draft version, whether electronic or hard, will be archived in the Official Record.
 - The Independent Monitor may retain such draft versions as she wishes.
 - The Independent Monitor will send the final version of the report for publication directly to the Secretary of State.
 - On behalf of the Secretary of State, The Foreign and Commonwealth Office will acknowledge receipt of the final version of the report to the Independent Monitor within one week of receipt.
 - UKvisas will make a submission to the Secretary of State within one calendar month of receipt of the final version, requesting approval to publish the report.
 - UKvisas will publish the report on the UKvisas website once it has received the Secretary of State's approval. It will also arrange for a limited number of bound hard copies to be made available to members of the public on request and will provide the Independent Monitor with such copies as she requests.
 - UKvisas will arrange for the report to be laid before Parliament by Written Ministerial Statement and for copies of the report to be placed in the library of the Houses.
 - UKvisas will make a formal comment on the report, which it will publish on the UKvisas' website at the discretion of the Secretary of State.
 - The Liaison Team will co-ordinate follow-ups to the recommendations made in the Parliamentary Reports and accepted by UKvisas.

Review Visits by the Independent Monitor

- The Independent Monitor will spend three months of the year undertaking monitoring visits to Entry Clearance Posts.
- The Independent Monitor is permitted to decide which Posts she can visit. UKvisas will not influence the decision, although it may give advice, particularly if there is a security issue.
- Posts cannot refuse to receive a visit from the Independent Monitor, but may indicate inconvenient periods, for instance during key staff absence or high level visits.
- The Independent Monitor will provide UKvisas with a three-monthly forward schedule of proposed Posts to visit and may also make unannounced visits.
- The Liaison Team will provide the Independent Monitor with background information as requested, but as a minimum (where available):
 - contact information, an up to date UK Visas Post Report, a recent Operational Review, a recent Audit Report, Home Office country advice
- While at Post the Independent Monitor will focus on such areas as appear to be worthy of consideration. However, Posts should expect the Independent Monitor, as a minimum to:
 - review and comment on a sample of files, review the information that is available to applicants and examine complaint handling in accordance with the Independent Monitor's statutory remit
 - observe procedures from the customer's viewpoint including information in websites or on display, and waiting room and interview arrangements
 - visit organisations such as The British Council and Commercial Partners

- meet the Head of Mission or Deputy to explain the Independent Monitor's role and to provide feedback on her findings
- Whilst at Post the Independent Monitor is permitted to review files of issued cases and cases refused with full rights of appeal for the purpose of seeing a fuller picture of decision quality at Post.
- The Independent Monitor is permitted to make suggestions and recommendations to visa staff during the visit.
- UKvisas determines whether it accepts recommendations made by the Independent Monitor including those made orally. The ECM will consider whether a suggestion/recommendation made orally is in line with UKvisas' policy or is consistent with accepted best practice and may refer back to UKvisas for advice.

Reports on Review Visits to Posts by the Independent Monitor

- The Independent Monitor will send a copy of her visit reports to the Foreign & Commonwealth Office for the Minister, to the Director of UKvisas, and to the Head of Mission.
- The reports may include an overview report and/or specific reports for each Post.
- The Independent Monitor will not identify and name officers in the reports but may identify roles.
- UKvisas will circulate the reports to the Director of Visas Services for the specified Posts, other DVSs and the UKvisas Project Managers for comments. They will have a period of fifteen working days to respond.
- The Director of UKvisas or his deputy will comment on the overview and Post specific reports and respond to the Independent Monitor within one calendar month of receipt of the report, outlining any action UKvisas will take in respect of any recommendations.
- UKvisas will publish the overview report and its comments on the UKvisas website within 2 weeks of UKvisas response.

Thematic reports

- The Independent Monitor may, within her remit, undertake thematic monitoring exercises which may involve examining files handled by UKvisas headquarters.
- The Independent Monitor will send a copy of thematic reports to the Foreign & Commonwealth Office for the Minister and to the Director of UKvisas.
- The Director of UKvisas or his deputy will comment on thematic reports and respond to the Independent Monitor within one calendar month of receipt of the report, outlining any action UKvisas will take in respect of any recommendations
- UKvisas will determine on a case by case basis, and after consulting the Independent Monitor, whether these reports should be placed in the public domain by being published on its website.

This Memorandum of Understanding applies in addition to the terms and conditions as communicated by the Foreign & Commonwealth Office HRD in the letter of 6 April 2006, which will remain in force, and is paramount. It has been approved by the Secretary of State for Foreign Affairs, to whom the Independent Monitor is accountable. This Memorandum will come into effect on signature and will continue in operation until terminated by either participant giving written notice to the Foreign and Commonwealth Office.