

## **Universities UK and GuildHE Response to:**

### **Independent Chief Inspector of the UK Border Agency- Inspection of Tier 4 of the Points Based System**

#### **Background**

This response is submitted to the Independent Chief Inspector of the UK Border Agency in response to his letters to the representative bodies, Universities UK (UUK) and GuildHE, inviting views and comments to inform the Inspection of Tier 4.

Universities UK (UUK) is the representative organisation for the UK's universities and has 134 institutions across the UK. The full list of member institutions can be found at: <http://www.universitiesuk.ac.uk/ABOUTUS/WHOWEARE/Pages/Members.aspx>

GuildHE has 34 members/associate members. These include publicly funded higher education providers including universities, university colleges, and specialist higher education institutions a smaller number of private providers of higher education plus some further education colleges offering higher education programmes. The full list of members is at: <http://www.guildhe.ac.uk/en/members-list/>

The comments below address the points raised by Independent Chief Inspector of the UK Border Agency in his letters of 12 March 2012 to Universities UK (UUK) and GuildHE. In formulating this response, UUK and Guild HE have sought the views of members. UUK and many of our members also contributed to the earlier response submitted to the Independent Chief Inspector by UKCISA and we would both wish to support the points made in that submission. We have also drawn on comments received in response to earlier consultations conducted both by UKBA itself (for example on the introduction of new requirements for Highly Trusted Sponsor [HTS] status in summer 2011) and by the National Audit Office in its study of the student route in autumn 2011. We would be happy to share copies of earlier consultation responses if that would be helpful.

We are very pleased to have the opportunity to contribute to the inspection into Tier 4 and would be glad to discuss further if wished. Any enquiries should be addressed to Jo Attwooll, Policy Adviser, Universities UK ([jo.attwooll@universitiesuk.ac.uk](mailto:jo.attwooll@universitiesuk.ac.uk)) or Helen Bowles, Policy Adviser, GuildHE ([helen.bowles@guildhe.ac.uk](mailto:helen.bowles@guildhe.ac.uk)).

#### **Introductory comments**

In putting our comments in context, it may be helpful to stress the diversity of the HE sector in the UK. Our membership ranges from small specialist higher education institutions with, in some cases, less than a thousand students to larger universities with well over 30,000 students. The extent of involvement in the recruitment of international students similarly varies in scale. The largest recruiters of international students process a very significant number of Certificates of Acceptance for Study (CAS) over the course of the year. Our understanding is that higher education providers are the highest volume users of Tier 4. Whatever the scale of the operation, international students are important not only for the income that they bring but for their significance in maintaining a global reputation for excellence on the part of the UK higher education sector.

We would also wish to stress the extent to which higher education institutions are used to working with long lead times. They work on the basis of the academic year. Recruitment for both home based and overseas students is carried out over the course of the year for a start date the following September. Material and

documentation to inform potential applicants would normally be expected to be ready well in advance of starting recruitment – 18 months or so before the academic year in which the student starts. The reliance that can be placed on the accuracy and completeness of the information that higher education providers make available to potential students is scrutinised as part of the institutional review processes that examine quality and standards. Within the recruitment and admissions cycle there are peaks and troughs over the course of the year but frequent or late changes that affect both the information given to students and the systems used for processing applications present significant problems for staff and students.

Figures are available elsewhere for the value of international recruitment to the UK as a whole. We would wish to emphasize that higher education institutions want – and need – to get the processes right. However, because of the volumes in which HEIs work and because of the cycle of activity over the year relating to recruitment and admissions, HEIs find it very difficult to deal with frequent and short notice changes in the visa requirements for international students. The impression has been that UKBA officials also struggle to keep pace. That in turn leads directly to charges of inconsistency and, in some cases errors, in the advice given to HEIs by UKBA officers at an operational level.

We recognise that policies as determined by Government can change at short notice. We also acknowledge that there is often a political imperative behind the timing of changes which can drive the speed of implementation. While the UKBA's Statements of Intent are helpful in indicating future policy changes, they are not sufficiently detailed to enable institutions to anticipate the operational impact and practical application of the changes. Institutions are therefore not always able to plan in advance how changes will impact internal resources, IT systems and existing policies and procedures.

In June 2011 it was estimated that since the introduction of Tier 4 in 2009 there had been 14 iterations of the sponsor guidance, meaning that new versions were being released approximately once every 12 weeks. The pace and frequency of changes means it is difficult for sponsors to keep track of their responsibilities and to fully assess each change as it is being introduced. The fixed nature of the criteria for renewal of HTS and the critical importance of retaining HTS accentuate these concerns on the part of HEIs. The frequency of changes both in the broader policy areas (for example in relation to post study work) and in the detail of implementation (for example the wording that needs to be recorded on the SMS in respect of academic progression or the use of overseas agents) creates confusion for both HEIs and for UKBA officers.

### **Assessing the quality and consistency of decision making for Tier 4 (General) Applications**

Concerns expressed by our member institutions relate to both the time taken and the quality of decision making. Some specific points are flagged below.

- i) There is wide variation in visa extension processing times; from 5 weeks to 6 months with the UKBA unable to provide any explanation or expedite applications that are meeting with inordinate delay. Examples include biometric residence permits being issued weeks apart for student and dependent family members who applied at the same time, student applications made in September 2011 being delayed by 6 months when all

other applications subsequently sent had generally been decided within a couple of months.

- ii) Variations in the times within which students receive their biometric enrolment invitation letters; delays often lead to uncertainty and anxiety on behalf the applicant as to how their application has been dealt with and when it would eventually be decided, especially as they are often aware of their peers' applications being sent at the same time and being dealt with much quicker.
- iii) Administrative errors in biometric enrolment invitation letters and biometric residence permits such as; incorrect names, incorrect sponsor licence number, incorrect gender. Errors in documents and decision letters being addressed and returned to incorrect addresses despite the correct address being clearly stated as required within the application.
- iv) The Tier 4 (G) leave to remain application form is unnecessarily complex and contains erroneous sections. For example, Section L includes the erroneous instruction at L20 to go to L22 (should read L24) which has been brought to the UKBA's attention numerous times over the years to no avail. The complexity and unclear wording compounds the confusion for applicants and adds to the risk of mistakes being made.
- v) Although service level agreements exist, institutions tell us that these only come into play once an application is logged – and at busy times it can apparently take weeks for applications to be logged onto the system.
- vi) A particular issue raised with us by institutions in Northern Ireland relates to the decision apparently made in late 2011 to require additional criminal records checks for students who have lived in Northern Ireland. We have been told that institutions had no prior notice of this and were thus not in a position to advise students on the process. In addition it appeared that there was a lack of communication on timescales between the Police Service of Northern Ireland and the UKBA. In some cases Tier 4 applications were refused on the grounds of the checks not having been done whereas in fact the relevant information was still pending.
- vii) Scope for appeals or administrative review where there has been a refusal of a visa or of a visa extension is very limited and can be extremely stressful for the students concerned especially when the passport is held with no indication of when it might be returned to the student.

**Assessing the quality and consistency of decision making for sponsorship applications, including (i) the management of sponsorship status for education establishments and (ii) the impact on students and education establishments when sponsorship or leave is curtailed.**

**(i) the management of sponsorship status for education establishments**

In their responses to the publication of the draft criteria for HTS status at the end of July / early August both UUK and GuildHE in their responses expressed a number of concerns about the criteria – as did the many institutions that were able to comment in the time available. (Copies of UUK and GuildHE responses to the draft HTS criteria are available on request.) However the criteria were published virtually unchanged on 5 September with immediate effect. A number of institutions were due for imminent renewal of HTS at the time the new requirements were announced and had spent considerable staff time analysing student data in anticipation of making an application on the basis of the requirements in situ pre-September 5<sup>th</sup>. The fact that the new process came into effect immediately for renewals as well as for new applicants for HTS meant time and resources were wasted.

When Highly Trusted Sponsor status was first introduced late in 2010 it was presented to the sector as a categorisation which would be of significant benefit to the most compliant Tier 4 sponsors, affording them more flexibility, a lighter touch in terms of monitoring and audit and the benefit of having a designated account manager. Those institutions that have been able to work with an account manager have for the most part found that relationship beneficial. Other institutions have noted that, for them, the intended benefits of HTS never materialised. A number have reported they were never notified of an account manager and that the benefits of HTS are minimal. Meanwhile, under the arrangements announced in March 2011, HTS status is becoming, from April 2012, mandatory for all educational providers wishing to sponsor students under Tier 4. Our understanding is that there will be no additional benefits therefore to institutions with a better track record in compliance.

The concerns about the handling of decision making for sponsorship applications, relate both to the timescales and to the criteria themselves.

In our response to the draft criteria as published last summer, UUK and GuildHE both queried the need for annual renewal. As we see it, the insistence that HTS renewal must remain an annual process for all sponsors creates an unnecessary regulatory burden on an already highly regulated higher education sector. It also sits very uneasily with the business model as it operates in the higher education sector and restricts long-term business planning. As noted above, the recruitment and admissions cycle for higher education institutions operates under long lead times – institutions need to be able to plan ahead. A cycle of annual renewal for HTS where the ability to recruit international students depends on retaining HTS is, in itself, problematic. However, those problems are compounded by the difficulties that UKBA is apparently encountering in dealing with applications for HTS renewal in a timely way. Delays of up to 6 months are not uncommon.

One institution has noted, 'Our application cost £410, was posted on 22 September 2011 and acknowledged on 27 September 2011. Since then we have heard nothing despite raising the matter with our Account Manager on numerous occasions. It seems incongruous to have an annual renewal which has now taken almost 6 months to process, without result.' It is extremely likely that due to significant delays in the processing of their HTS renewal application, institutions will receive confirmation that their application has been only a few months before they will need to submit a new application for renewal.

In respect of the HTS criteria, the requirements appear to make no allowance for the diversity of institutions sponsoring international students particularly in relation to the numbers of international students being sponsored. The reliance on use of thresholds expressed in percentages that must be met in various categories of activity are problematic for institutions with smaller cohorts of international students. Queries over just a small number of students can mean targets are missed. Although UKBA have given assurances that they will take a holistic view, a number of institutions have told us that they are not confident that will apply in practice and that they have been warned that their renewal of HTS may be at risk if they fail to meet percentage thresholds.

For all institutions, there is a real difficulty in being able to judge how well they are performing against the HTS criteria. The information which would enable institutions to monitor their own performance is not readily available through the Sponsor Management System (SMS) Sponsors are considered to be responsible for students

from the point at which they issue a CAS but have no mechanism at present which would enable them to accurately track the outcome of visa applications made by students or their visa refusal rates overall. In some cases changes in policies have predated changes in the SMS which would facilitate reporting under the required fields. This adds to the uncertainties about exactly what is wanted. But – as institutions have pointed out - the stakes for them are very high if mistakes are made either by institutions or by UKBA, or there are misinterpretations of the guidance putting HTS status at risk.

The need to confirm academic progression of all students applying for further leave to remain in the UK on all CAS assigned (where the HTS criteria introduced in September 2011 require a 100% compliance rate), illustrates the point being made. Institutions were willing to seek to comply but felt that UKBA requirements were not fully explained. There was confusion about whether or not it would apply retrospectively. Changes to the SMS to facilitate the reporting of the information needed have lagged behind the implementation of the policy. Institutions were advised to use the 'comments' facility to report academic progression – but there remained considerable confusion. Some institutions did not make explicit confirmation of academic progression where they believed it to be obvious – and are now concerned that they will miss the 100% target.

Similarly there has been confusion around the advice from UKBA that students whose visas have been refused should be reported via the SMS as both a visa refusal and as a failure to enrol. There were queries about the requirement to log a student as having failed to enrol on a programme where that student had been already refused a visa to enter the country. And despite UKBA's assurances to the contrary, institutions remain concerned that the same student may be counted twice for the purposes of meeting HTS criteria i.e. under both visa refusals and failure to enrol.

Institutions are also not confident that where a student has a visa refusal decision overturned on appeal or administrative review, that student would no longer count against that institution's record of visa refusals. Institutions who have challenged decisions made by UKBA or have asked for lists of students which UKBA judged to be incorrectly recorded have identified a number of errors or areas of confusion. In at least one case an institution was told that students already enrolled and studying on a programme whose application for a visa extension had been refused (and then approved on a second application) should have been recorded on the SMS as having 'failed to enrol'.

There is a separate set of concerns about the extent to which institutions will be judged on areas such as visa refusal rates which may be to a large extent out of their control. Visas may be refused for example for reasons which relate to errors made by potential students in submitting the documentation rather than because of any threat to the security of the borders. Such errors occur despite the best efforts of institutions to recruit appropriate students and to ensure that they are given the necessary advice and guidance on the visa application process. Similarly there may be a number of reasons why students fail to complete their course – not all of which are manageable by the institution.

Institutions have pointed out that given that the HTS criteria are so strict, they need complete confidence that UKBA data is correct. They also require clear guidance on what needs to be reported under which heading so as to ensure consistency in approach and to meet policy objectives without the risk of inadvertently falling foul of requirements.

**(ii) The impact on students and education establishments when sponsorship or leave is curtailed.**

We do not have any evidence to offer about the impact on member institutions where sponsorship is curtailed although all of our institutions are acutely aware of the need to be able to maintain HTS and of the risks attached to withdrawal of that status. We are also aware of the potential damage that can arise in a situation where genuine students find, that through no fault of their own, the institution where they are studying has lost, or is under threat of losing, its HTS position on the sponsors register. We would like to see better arrangements in place to protect the interests of those students.

In respect of the curtailment of student leave, the arrangements for dealing with this present considerable challenges. Again this comes back to issues around transparency and use of the SMS. Institutions have pointed out for example that timeframes are unpredictable. It has been noted that following submission of a SMS report about a change of circumstances it can take the UKBA up to 12 months to inform the student about curtailment. Institutions report that it is not uncommon to submit information on students who have exited their courses early or withdrawn completely and hear nothing back from the UKBA.

Similarly institutions report that they have not been given any feedback on their handling of non-compliant students reported via the Sponsor Management System (SMS), making it extremely difficult to advise students and their dependants of the implications of their not complying and being reported.

Institutions can advise them to return overseas as their visa will be curtailed but in reality the visa may not be curtailed - or institutions may not be informed whether or not it has been curtailed. It is also unclear what action UKBA will take against students reported for missing 10 consecutive attendance points. Greater transparency regarding UKBA processes on handling non-compliant students would be very helpful.

If a student has left the UK during a period of leave of absence, neither the HEI nor the student knows whether the UKBA has reacted to the withdrawal of sponsorship reported by the HEI on the SMS. As a result it would not be clear whether a new CAS is required for a student to re-enter the UK or whether the original visa is still valid. Institutions tell us that there have been cases where a new CAS has been issued so that students can apply for fresh entry clearance only to find that Entry Clearance Officers have advised students to travel on the old visa. In addition to the expense and inconvenience for students (who may need to travel to have biometric details taken for a second time), this creates difficulties for institutions in knowing how to manage the reporting requirements.

Institutions also have concerns about the appropriate course of action when trying to enrol a student who has been studying elsewhere within the UK when it may not be clear whether or not the other institution has withdrawn sponsorship and whether or not the student has extant leave.

Institutions have suggested that if up to date information about any curtailment of leave to remain could be shared with institutions via the SMS, the position would be easier to manage.

## **Determining the quality of service provided and the management of customer correspondence**

Our institutions have been appreciative about the service provided by the Student Liaison Team in Sheffield and, for those who have account managers, about the support that those account managers have been able to offer. They also comment on the improvements in the Student Batch Scheme, particularly since it moved from Croydon to Sheffield. At least one institution has told us that the Entry Clearance Correction Scheme is excellent.

However, they also point to inconsistent advice from telephone support lines and the difficulty of getting advice on specific student cases and of tracking progress on specific issues.

There have been a number of instances where institutions have received conflicting advice from different individuals within UKBA. Feedback from the strategic policy team has differed from advice received from account managers and from the customer call centres. At times customer call centre personnel appear to have been unaware of new policy developments. It remains to be seen what impact the recent decision to split the UKBA in two will have on the consistency of advice available to sponsors.

One institution has commented, 'our experience is that when you raise a query, UKBA staff usually just direct you to the manual (which we have read and are seeking clarification on points where the manual does not make it clear) rather than answering direct and specific questions. We don't usually contact UKBA for straight forward cases so we are often seeking advice on complicated matters - the impression we get is that the staff initially responding to the enquiries are probably not 'experts'.

They have noted that due to students being unable to track the progress of their appeal or obtain information on when their passport will be released by the UKBA, institutions face difficulties in predicting when they will receive the documentation to evidence that students have the correct permissions to study.

If some of the benefits originally envisaged for HTS, including a dedicated UKBA account manager and the introduction of a dedicated phone line and email address, cannot be delivered in the form intended, it would be helpful to have clear mechanisms in place for access to advice and support within UKBA with an understanding of the HE sector.

Institutions have noted also the apparent lack of any link between the visa application system and the employment checking service.

Other issues raised with us relate to inconsistencies in inspection visits and requests for information that is not consistent with the regulations in place at the time. Lack of feedback and/ or follow-up reports once visits have taken place makes it difficult for institutions to be suitably reassured that they are taking appropriate measures to protect against visa abuse.

Finally, as noted in the introductory comments, changes in policies can obviously impact on the quality of service that UKBA are able to provide when there is a mismatch between the introduction of a new policy and the guidance on implementation. A clear example of this can be found in the introduction of changes

in English language requirements for Tier 4 last year. Although changes were flagged in the UKBA Statement of Intent of late March 2011, full details of the changes were only made public at the start of April with publication of revised Tier 4 guidance. The changes took effect just three weeks later. HEIs could only then start to look at how to implement the changes. And given the speed with which the changes were introduced and the lack of opportunity for consultation with those most familiar with the detail of English language testing, the initial guidance proved inadequate. There was insufficient clarification on a range of significant elements relating to the new requirements and incorrect information was released to assist sponsors in understanding the changes.

The timing of the English language changes was particularly damaging for the higher education sector, in that it occurred at a point in the admissions cycle when many thousands of offers to prospective students had been made and accepted. This led to institutions having to review a huge volume of offers to check what was recorded in respect of the English language attainment of applicants, a task made more complicated by the fact that many institutions had to check offers manually as this information had not previously been stored electronically in the form in which it was now required.

The UKBA twice released incorrect information on what Secure English Language Test (SELT) scores would be acceptable under the new regime, which created considerable confusion within the sector. The implementation led to an increased workload amongst institutions with a number reporting that additional staff were sourced (either internally or on temporary contracts) to deal with the consequences of such rapidly executed changes.

In addition to causing huge problems for institutions domestically, the speed of implementation of the new English language regime appeared to cause difficulties at visa posts overseas with numerous reports of incorrect decisions and UKBA's own staff not appearing to fully comprehend aspects of the new policy. There are reports of inconsistent processing of visa applications as a result of visa posts interpreting visa requirements differently.

Clarification was repeatedly sought on a range of matters weeks by sector bodies such as UUK and the UK Council for International Student Affairs (UKCISA) but formal UKBA clarification, in the form of responses to 'Frequently Asked Questions' was not made available until early June, sometime after the new policy had taken effect. This pattern of initial guidance having to be corrected and re-issued has been repeated this year with the (otherwise welcome) introduction of the batch processing arrangements.

We appreciate the constraints under which UKBA officers are working and have welcomed the positive approach of individual members of UKBA. However, we would welcome the opportunity to work more closely with them so to get systems and processes right from the outset.

March 2012