

A (small) step in the right direction: MV response to new Home Office guidance on TOEIC cases

13 March 2020

On 6 March 2020, the Home Office published [updated guidance for its caseworkers](#) on dealing with cases involving an allegation of cheating on the English language test known as TOEIC. ([Read about the My Future Back campaign for justice here](#))

This document is the result of a [ministerial statement in July 2019](#) by former Home Secretary Sajid Javid, who, following significant reports by the [National Audit Office](#) and [APPG on TOEIC](#), announced that guidance on these cases would be updated.

It is unacceptable that the tens of thousands of students impacted by the unfair allegations made six years ago have had to wait more than seven months for this new guidance.

And while there are a few positive changes, which we hope will benefit many students, it's deeply disappointing that this document completely neglects the damning evidence revealed by the NAO, APPG and [Public Accounts Committee reports](#) published last year. These clearly show that the evidence used by the Government to accuse students of cheating in 2014 was fundamentally flawed.

It's also disappointing that so much of the document's content has been redacted prior to publication and that the remaining sections contain so little detail. There has been a lack of transparency regarding the Government's handling of this matter from the very beginning – and this document does little to rebuild trust among those affected that the Home Office will deal with their cases fairly and consistently in future.

To address the hopeful parts of the guidance:

1. If an applicant submitted a TOEIC certificate considered invalid or questionable in an earlier application, this will no longer automatically result in the current application being refused. Instead, this factor will be “balanced” against other factors. While there is a frustrating lack of detail about the relative weight of these different factors, this is a welcome change (and one that was trailed in Javid's statement last summer).
2. We know several students who have had their appeal dismissed in the tribunal on human rights grounds, even though the judge has ruled that they did not use deception to obtain their TOEIC certificate. They have then had to appeal that decision in the upper tribunal. However, according to the new guidance, students in this situation will be given 60 days

leave instead, in which they can make a new application. This is a very positive development.

3. If a caseworker is considering refusing an application from a TOEIC student, they must now let the applicant know that and allow them the chance to submit additional evidence (known as the “minded to refuse” process). This will likely not affect a large number of students, but it is a positive change.
4. The Home Office has always claimed that any students with tests considered “questionable” were offered the chance to resit the test or be interviewed when they submitted their next application to the Home Office. We understand that many were never given this opportunity, however, and had action taken against them. For those students, this guidance is good news, as it states that the allegation of deception should not be maintained where there’s no evidence of any attempt to interview them in the past.

These are steps forward, but the progress is not nearly as fast, as significant or as comprehensive as it needs to be. In a striking – and welcome – change of stance, the former Home Secretary said last summer that the Government has a “duty” to do more to help those students who were wrongly accused. Yet this guidance leaves many of them still stuck in a nightmare situation.

What will become of those who cannot afford the thousands of pounds for a human rights claim, lawyers’ fees and the tribunal hearing that will inevitably follow? What about those who fall victim to bad legal advice or the judicial lottery that means strong cases can be unfairly dismissed? And what about those who do win and are granted leave to remain, but can’t return to their studies as so many universities look at their immigration record and refuse to take them?

This Government must start taking responsibility for the unjust, unfounded actions it took against these students in 2014, and stop insisting that the only solution is the extortionately expensive, inordinately complex, case by case approach offered by the legal system.

They must offer all those affected the chance to sit a new test or attend an interview, and they must issue guidance to all colleges and universities to take these students back. Six years on, such actions are now long overdue.