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Immigration update Tier 4

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Content


- Policy objectives
- April 2011 and beyond
- Highly Trusted sponsorship
- Compliance – latest issues and tips
- Enforcement trends and case law
- Judicial review
- Other relevant changes



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Policy objectives

- Reduce net migration
- Eradicate abuse
- Attract the brightest and the best




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21 April 2011 and beyond

21 April 2011:

- **interim limits apply** - unless HTS and meet new educational oversight provisions
- new sponsors – 50% maximum CAS allocation
- B-rated sponsors unable to issue CAS to new students (specific issue in relation to new sponsors that are automatically B-rated)




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21 April 2011 and beyond (cont..)

21 April 2011:

- SELTS
- most CAS only to be issued for a single course
- partnerships and pathways
- new guidance and new sponsor duties introduced into guidance
- UKBA is investigating pre-21 April 2011 'spikes'




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21 April and beyond (cont..)

July 2011:


- work entitlement restrictions
- course changes - sponsor to vouch for academic progression
- local financial institutions - naming and shaming lists
- designated low risk countries - easier process
- restrictions in relation to dependants



21 April 2011 and beyond (cont..)

April 2012:

- all sponsors must be HTS or licence will be revoked
- interim limit extended for HTS sponsors that have not met the new educational accreditation requirement
- work placements 66:33 (exceptions)
- five years max for degree (exceptions)
- tier 1 post study work to close




21 April 2011 and beyond (cont..)

By the end 2012:

- all sponsors must meet the new educational oversight provisions
- legacy sponsors

Some other relevant changes:


- removal of appeals in PBS cases
- scrutiny based on nationality
- fees for changing courses



Highly Trusted Sponsorship

Key considerations:


- HTS application process for fresh applications & renewed applications
- review current data on students to whom a CAS has been issued
- check all information relating to sponsor licence is accurate
- ensure general compliance is up-to-date



Highly Trusted Sponsorship (cont..)


Key considerations:

- only submit the application if the criteria are met and there is overall compliance, deal with difficulties before submission
- ensure information is clear and can be supported
- dealing with breaches and students who do not have/cannot prove they have leave
- UKBA is reviewing the current criteria so expect changes
- further chances if the application is refused



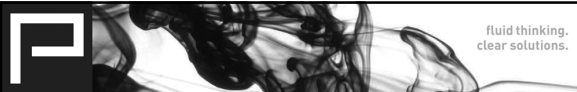
Sponsored students in the UK with visa	Highly Trusted	A (Trusted)	B (Sponsor)
% figure except "no shows" are cumulative against original number of students enrolled			
No shown (fail to enrol)	2%	4%	4-6%
Drop out by 33% course	1%	2%	2-3%
Drop out by 66% course	2%	4%	4-6%
Total drop out	3%	7%	7-10%
Overall	Not more than 5%	Not more than 11%*	Not more than 16%*

*Tier 4 sponsor guidance states that the percentage refers to total drop-out rate against original number of students enrolled across course duration.



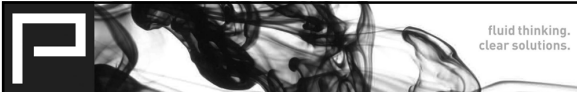
Compliance – key focus areas

- Principles of sponsorship
- Monitoring and reporting
- Record keeping
- Co-operating with UKBA
- Complying with the law
- Reporting changes of circumstances



Compliance (cont..)

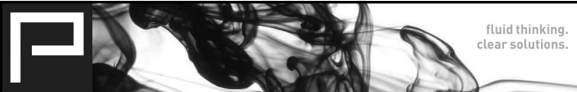
- UKBA recognised body – oversight/accreditation
- Students studying at other locations
- Work placements
- Sponsorship by other sponsors
- Non-sponsored students
- Student recruitment practices
- Assessment of student's ability and intentions



Compliance (cont..)

Key commercial issues

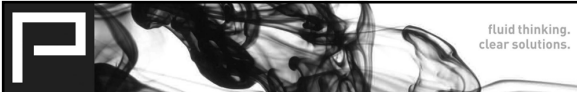
- Protection for the business in the event UKBA:-
 - suspends/withdraws licence
 - limits CAS
 - suspends entry clearance operations
 - requires withdrawal of specific CAS/termination of studies for any student
 - requires termination of 3rd party arrangements (agents/work placement providers/employees..)



Compliance (cont..)

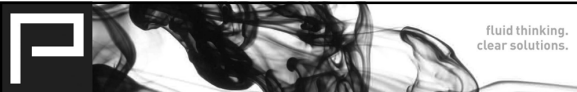
Key commercial issues

- Other commercial issues:-
 - planning permission
 - employment contracts (clear roles, etc)
 - contracts with third parties - agents, work placement providers, universities, etc. Set out key issues clearly (monitoring, responsibility for testing, etc)



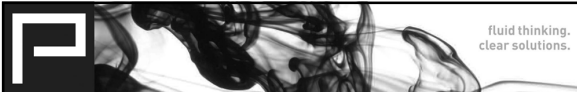
Enforcement trends and case-law

- Known triggers for enforcement activity
- UKBA enforcement letters
- Steps UKBA must take before initiating enforcement action
- Case-law round up to date
- Position on Article 1 Protocol 1 ECHR damages claims



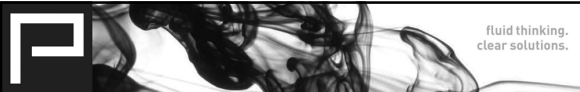
Challenging decisions - Judicial Review

- Illegality: error/misdirection of law, unlawful exercise of discretion, Ultra Vires
- Irrationality: Wednesbury unreasonableness **'so unreasonable that no reasonable authority could ever have done it'** *Associated Provincial Picture Houses Ltd v Wednesbury Corpn [1948] 1 KB*
- Procedural impropriety: duty to be fair, consult, give reasons, follow procedure, legitimate expectation



Judicial Review - what can be achieved?

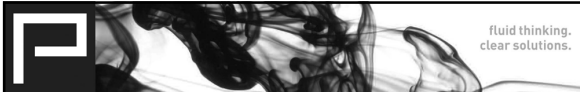
- Filing may push SoS into a compromise
- Order requiring SoS to quash or reconsider decision
- Urgent relief
- Warning: costs
- Damages - Article 1 Protocol 1 ECHR if licence is deemed to be a possession
- Media coverage



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Questions?


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Penningtons' services for education providers

- Immigration
- Contracts and terms & conditions of business (agents, students, business partners)
- Trademarks, franchise agreements, data protection
- Commercial property (leases, purchases, disputes, etc)
- Mergers & acquisitions including due diligence
- Employment law
- Dispute resolution
- Finance & tax



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