

# The mistreatment of international students

**Initial evidence from NUS**

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# A call for urgent action

## Action must be taken

The National Union of Students joins the calls for an inquiry into the actions of the Home Office following on from the revelations in February 2014 that a number of overseas students had cheated in their Test of English for International Communication (TOEIC). The now defunct TOEIC test was designated a 'Secure English Language Test' by the Home Office and it was provided by the Home Office's contractor, Educational Testing Services Limited (ETS).

There are serious questions that must be answered about the Home Office's response to the revelations, which led to the removal of thousands of students and the closure of around 100 educational institutions. All of these actions were taken on the basis of evidence that has since been thoroughly discredited by judges in the Upper Tribunal (Immigration and Asylum Chamber).

The Home Office must take urgent action in response to the findings of the Upper Tribunal, including:

- An immediate suspension of all Home Office action based upon ETS' findings, including reinstating leave to remain where necessary to enable students to continue studying and working pending the findings of an inquiry.
- A commitment by the Home Office to identify and review every case where ETS' findings have led to action being taken against individuals, including those who have left the UK.
- Calling a public inquiry into the situation.

## Any public inquiry should:

- Consider the appropriateness of the 'remove first, appeal later' system which applied in most cases, and how to ensure in the future that international students are afforded a fair hearing
- Determine what went wrong with the Home Office's response to the revelations and why, including how an issue of such magnitude was dealt with by two civil servants without relevant qualifications, credentials or expertise
- Determine the necessary steps to redress the detriment caused to students and others
- Recommend action to be taken and lessons to be learned for the Home Office.

**"The Home Office's handling of the whole saga has been a complete omni-shambles."**

**Mostafa Rajaai, International Students' Officer**

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# Key Information

# The ETS scandal

## Background

A Panorama programme in February 2014 revealed fraudulent activity at two TOEIC test centres whereby proxy test sitters would sit the speaking and listening elements and invigilators read aloud the answers in reading and writing elements. These TOEIC certificates were then used to obtain student visas.

In response to the revelations, the Home Office commissioned ETS to investigate and identify the cheats. ETS ran tests on the voice recordings and identified two groups: (1) the cheats, and (2) the 'questionable' group (in respect of whose TOEIC test ETS had 'limited confidence'). ETS cancelled the TOEIC certificates for those in both groups.

A staggering number of individuals were identified very quickly: 33,000 supposed cheats were identified between March and June 2014. Subsequently, the number of supposed cheats has increased to 33,725 and the number of those with 'questionable' tests stands at 22,694.

On receiving ETS' findings the Home Office began taking action against students and educational institutions. On 24 June 2014 it was announced that the Tier 4 licences of 57 private colleges and three HEIs had been suspended. Since that date around a hundred private colleges lost their Tier 4 licences, affecting many thousands of students who were not linked to the TOEIC scandal in any way.

Students also began receiving notices under section 10 of the Immigration and Asylum Act 1999 informing them that they had been identified as cheats and telling them that they must leave the UK immediately with most being given only a right of appeal from their home country. Some were detained in dawn raids and removed. The Home Office's most recent Temporary and Permanent Migration Data (from February 2016) reports that, so far:

- 'More than' 28,297 refusal, curtailment and removal decisions have been made in respect of ETS-linked cases
- 'More than' 3,600 enforcement visits have been made

- 'More than' 1,400 individuals have been served with removal notices and detained.
- 'More than' 1000 have been removed from those encountered.
- 'More than' 4,600 total removals and departures have taken place in respect of ETS-linked cases.
- 176 private colleges' Tier 4 licences were suspended, of which 89 surrendered their licences, and 87 had their licences revoked (only 7 licences were reinstated, 2 remain suspended).

This aggressive action from the Home Office towards students who were paying thousands of pounds to study in the UK has been widely reported in the international press.

This not only has significant personal implications for the international students, who are unable to complete their education, but also to the British economy and the reputation of our higher education system. International student numbers are in decline. Most higher education providers rely on international student fees to keep them financially stable and this mistreatment of international students has not gone unnoticed by the global community discredited evidence and how the Home Office intends to rectify this.

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## Legal Action

### Judicial reviews

A series of legal challenges were brought by students with assistance from Bindmans LLP and other firms, with expert evidence and support provided by NUS.

The first judicial review case issued in the High Court was *R (Ali) v Secretary of State for the Home Department* [2014] EWHC 3967, concerning a student, Mr Ali who was represented by Mayfair Solicitors. Mr Ali had been given a 'section 10 notice' informing him that ETS had identified him to be a cheat and telling him to leave the UK immediately. By way of evidence, the Home Office provided witness statements from two civil servants explaining the TOEIC scandal and the Home Office's response to it (the same two generic witness statements were used by the Home Office against all supposed cheats). Mr Ali argued that he should not be subject to summary removal with only an appeal from his home country. However, he did not provide any evidence challenging the Home Office response as set out in the two witness statements. Mr Ali's case was unsuccessful in the High Court. The judgment was released in November 2014.

In May 2015 judgment was handed down in the case of *R (Gazi) v Secretary of State for the Home Department* [JR/12120/2014] which was heard by Mr Justice McCloskey, the President of the Upper Tribunal (Immigration and Asylum Chamber). Mr Gazi was a computing student, with only a semester left to complete his degree when he received a 'section 10 notice' from the Home Office informing him that he had been identified by ETS to be a cheat and that he should immediately leave the UK. He was told that he could only appeal from Bangladesh.

Mr Gazi brought judicial review proceedings in the Upper Tribunal in October 2014 challenging the Home Office decision, attacking the ETS evidence and the unfairness of having been deprived of any opportunity to respond to the allegations before action was taken against him. The Home Office provided the two generic witness statements as evidence against him. NUS funded the expert, Dr Harrison, to examine the Home Office's evidence. Dr Harrison was critical of ETS' approach in identifying supposed cheats. His report was served on the Home Office on 5 February 2015 and it was made widely available for use by students in their individual cases.

Giving judgment Mr Justice McCloskey expressed concerns about Dr Harrison's evidence but, critically, due to the procedural differences between judicial reviews and appeals, he considered that he was unable to enter into a 'fact finding' process in respect of the evidence. Mr Gazi's case was unsuccessful, with the conclusion that he should return to Bangladesh to bring his appeal. Mr Gazi sought permission to appeal to the Court of Appeal and this application.

In July 2015, Mr Ali's appeal was heard in the court of Appeal which in effect adopted the Mr Justice McCloskey's position in Gazi. This remains the position in respect of 'section 10 notice' cases, i.e. that these students must return to their home country to pursue an appeal. It remains to be seen what impact, if any, the recent case of Qadir will have on students who received 'section 10 notices' with only an appeal right from their home countries.

### Immigration appeals

In contrast to Mr Ali and Mr Gazi some accused students were given appeal rights in the UK (the procedure is different for, amongst others, people accused on re-entering the UK, for example having been visiting home during the holidays). These 'port cases' have UK appeals which are heard in the First Tier Tribunal and subsequently the Upper Tribunal.

It is a feature of appeals that evidence is examined and conclusions are drawn on the facts. Many hundreds of students have been through the appeals process since the Home Office began taking action in 2014. They have instructed legal representatives at their own cost, presented evidence about their English capability including giving oral evidence to try to persuade the Tribunal that they did not cheat. It is understood that ETS provided the voice recordings in only a single case, following an order by the Tribunal.

Each appeal is considered and decided separately by an Immigration Judge on the evidence available. Some students' appeals were successful. Others were not. Where the First Tier Tribunal found that a student had not cheated, the Home Office appealed to the Upper Tribunal. Where the Upper Tribunal agreed that the student did not cheat, the Home Office had no further appeal. However, it is understood that Home Office policy has been to put these cases on hold and not to implement the decision of the Tribunal (i.e. by reinstating their leave to remain). It is understood that Home Office policy is 'to fight ETS cases as far as possible'. **This is an abuse of power and a failure of justice.**

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## Recent legal development

### **Qadir v Secretary of State for the Home Department**

On 23 March 2016 the Upper Tribunal gave judgment in an appeal case, brought by a student, Mr Qadir (Qadir v Secretary of State IA/36319/2016) who was represented by AWS Solicitors. Mr Qadir had also received a notice from the Home Office informing him that he had been identified by ETS to be a cheat. He was given a right of appeal in the UK.

The appeal case was heard over five days before Mr Justice McCloskey and Upper Tribunal Judge Saini. Since it was an appeal, a fact-finding process was undertaken and there was oral evidence and cross examination of witnesses. Dr Harrison appeared for Mr Qadir. The two Home Office civil servants appeared for the Home Office and in the course of cross examination it was admitted that neither had considered Dr Harrison's report until several days previously, despite it having been served a year previously.

The Upper Tribunal accepted Dr Harrison's expert evidence and conclusions without hesitation, and it was highly critical of the Home Office's approach to the February 2014 revelations. It found that the civil servants tasked with the Home Office response did not possess any relevant qualifications, credentials or expertise. The judgment was also critical of the fact that ETS did not provide any evidence.

Ultimately, it was found that the Home Office's evidence (the two generic witness statements that had been used to justify action against countless students) were not sufficient evidence of cheating. The summary judgment concluded:

**"The legal burden of proof falling on Secretary of State has not been discharged."**



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# Ongoing cases

A snapshot

# Evidence of mistreatment

What follows is a small snapshot of evidence of the extensive mistreatment of international students throughout this saga.

## Waqas Ahmed

### Level 6 Higher Diploma in Management

Waqas was detained by the Home Office for more than three months at an Immigration Removal Centre, the Verne, Portland, Dorset. This was hundreds of miles away from his friends and family in Bradford, where he lived.

In April 2013, Waqas submitted a visa extension application to progress to a Level 6 Diploma. In September 2014 Waqas' College had its licence revoked. The Home Office wrote telling him to find a new institution or leave the UK. He had 90 days to do so.

In order to get a visa for a new course, Waqas needed to update his English Language test certificate. The Home Office requires any test centre to see original identification documents of every student. However, the Home Office still had all of Waqas' documents as they were still processing the visa application he made in April 2013. When Waqas phoned the Home Office to ask for their help, they said they could not assist by phone and that he must email them, which he did. When he phoned to check that his email had been seen, the Home Office denied having received it. Waqas phoned the Home Office to seek their help a total of six times. He booked three separate language tests, hoping the Home Office would return his passport in time.

Waqas was unable to comply with the Home Office's deadline to extend his visa because the Home Office refused to give him his passport, to sit the new English Language test that the Home Office required. Waqas had done nothing wrong, yet he found himself locked up in a detention centre. He was lucky to have support to challenge his detention in courts. There are many who have not been so lucky.

## Mr Gazi

### BSc (Hons) Applied Computing

Mr Gazi came to the UK in 2007. Before arriving he passed an International English Language Test, run by the British Council. Since then he has taken, and passed two more IELTS tests, a Person PTE English test and a 5 week pre-session English course. Needless to say, his English is excellent.

He was told by the Home Office in August 2014 that they had information from ETS that showed he had cheated on his test. Mr Gazi was not allowed to see the evidence against him.

Mr Gazi had dreams of studying a PhD in IT in the UK, before returning home to Bangladesh to work and look after his family. After spending thousands of pounds in the UK, he has nothing to show for it but a debt of £30,000. Nearly two years on, Mr Gazi remains in the UK, in limbo and trying to clear his name and return to his plans.

His first name is not used here because he is too ashamed and distressed to tell his parents in Bangladesh of these shameful allegations.

## Mr Ahmed

### BA Business Management

Mr Ahmed arrived in the UK in 2010. He took a 6 month English course before studying for a BTEC HND in Business. On completing these courses Mr Ahmed was accepted onto the BA Business Management course. He completed another pre-session English course in August 2013.

To extend his visa for the course, Mr Ahmed needed to update his English Language certificate. He took a TOIEC test in March 2013.

In addition to this, Mr Ahmed worked in a customer facing role at his local Tesco since 2010. He was promoted to a managerial position in 2013, managing and training around 50 staff. This role required extensive and high level English language skills. There is no reason at all to believe Mr Ahmed would need to cheat on an English test that he could easily pass himself.

In September 2014 Mr Ahmed was told by the university that he did not meet the requirements of the course. Eventually he was told that he had been identified as cheating on his TOIEC test.

Mr Ahmed was not given sight of any of the evidence against him and was given no opportunity to challenge the accusations or decisions. He was not directly contacted by the Home Office about their decision to remove him from the UK, despite having been at his current address since May 2014.

The personal cost to Mr Ahmed is high – both monetarily and emotionally. His parents have spent almost £20,000 on education in the UK and he faces being sent home with nothing. The stress and shame means Mr Ahmed has not told his parents of his terrible situation and this has taken its toll on his mental health. Mr Ahmed has been signed off by his GP with depression. His first name has not been used, to protect his identity.

## Mohammad Mohibullah

### BA (Hons) Business Studies

Mohammad came to the UK in 2009 to study a HND in Business. Since then he has steadily progressed up the educational ladder.

He completed and took the assessments for his top-up degree at a private college, which was due to finish in September 2014. However in August 2014, Mohammad was informed that despite having finished his teaching and his assessments, that he was being withdrawn from the course due to TOEIC fraud. He had only one exam remaining to obtain his degree.

The college's sponsor licence was subsequently revoked and it went out of business.

Between 2009-2014 Mohammed took and passed three English Language tests – two IELTS and one TOEIC. He used the IELTS certificates to apply for his visas, and only had the TOEIC because he had trouble finding an IELTS slot at the time he needed to make his application to the college for admission onto the course. By the time he made his visa application he had sat and passed a new IELTS.

Because he did not use his TOEIC test to obtain a visa the Home Office was unable to issue a 'section 10 notice' asking him to leave the UK. Instead, the Home Office instructed the college to withdraw sponsorship from Mohammad and others who had been identified by ETS to be cheats.

The effect of having his sponsorship withdrawn in this way was that Mohammed had no right of appeal whatsoever, not in the UK or from his

home country. Therefore, Mohammad has no means of challenging the accusation other than by bringing judicial review proceedings.

Mohammad was given 90 days by the Home Office to find another institution but he has been turned down by every single institution he has approached. No institution will accept anyone who has been accused of TOEIC fraud. Now most institutions will also reject anyone who comes from a revoked college.

Mohammad's judicial review is ongoing. His case is of note because he had no appeal right of any kind. His case is that the Home Office bullied his college to withdraw him.

Like most, Mohammad has been left with nothing except significant debt.

## Conclusion

This is only the tip of the iceberg of injustice for international students. There are thousands of other stories.

We hope this initial evidence is helpful to decision makers in government to identify a significant need for these issues to be investigated further.

International students are vital to the health and growth of our higher education sector, and we mistreat them at our peril. There is both an economic and moral imperative to resolve the mistakes that have been made to so many students. Our international reputation depends on being able to rectify these wrongs.

## Further information

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