

UK Border Agency response to the joint HM Inspectorate of Prisons / Independent Chief Inspector of Borders and Immigration report – thematic review of immigration detention casework

Ref	Recommendation	Accept/ reject	Comments/action
Main recommendations			
1.16	The UK Border Agency should only detain torture survivors in exceptional circumstances, which should be clearly documented on file and explained to the detainee.	Accept in part	It is existing policy that victims of torture should only be detained in very exceptional circumstances. Detaining officers' consideration of the exceptional reasons for detaining those not normally considered suitable for detention should already be recorded on file. The guidance will, however, be made more explicit in this regard. Reasons for detention are given on form IS91R, which is served on the detainee and its contents explained.
1.17	An independent panel should be established to examine all cases of detainees held for lengthy periods (the exact period to be defined by the panel after consultation) to establish if prolonged detention is justified for exceptional and clearly evidenced circumstances only. It should publish its findings annually. UKBA should expeditiously review all cases in which the panel recommends release and publish its response.	Reject	We do not consider the establishment of such a panel to be necessary or appropriate. Detention is a matter for the Secretary of State. Decisions to maintain detention are kept under regular review at successively higher levels in the UK Border Agency, with cases involving particularly lengthy detention being reviewed at Director level. The UK Border Agency's detention policies and procedures are in line with the established legal principles regarding length of detention. The legality of detention can be challenged in the Courts, as well as the individual having the right to apply for bail at any time.

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1.18	<p>The UK Border Agency should resolve the cases of foreign national prisoners before the end of their sentences unless there are very exceptional and clearly evidenced circumstances to prevent this. Case owners should obtain from NOMS all relevant risk information and take account of in their assessments, noting when it is not available. The detention of ex-prisoners should be reviewed by officials who have the authority to release, and adhere to the presumption in favour of release.</p>	Accept	<p>The precedent set by the case of Chindamo 00TH2345 (TH388300) still applies, meaning that no deportation action (or the service of a decision) must be taken until 18 months prior to the earliest date on which the offender might be released from custody. Within this constraint, CCD always endeavours to make deportation decisions as early as possible during custodial sentences. CCD will, where possible, aim to serve deportation decisions 18 months ahead of the ERS (Early Removal Scheme) date. This is not always possible where foreign national offenders are serving short sentences, or where there are other barriers preventing the service of such a decision. Delays to deportation can also occur where there are legal challenges (such as Judicial Reviews and appeals) and where there are difficulties establishing nationality and identity.</p> <p>CCD is currently reviewing its internal working practices as part of the transformation programme and plan to move away from the current case ownership model, compartmentalising the decision making process to ensure that deportation decisions are made as early as possible and that staff specialise in particular aspects of case work, such as decision making, detention and identity issues.</p> <p>The requirement to consider the NOMS risk assessment (NOMS1) to assess risk of harm and reoffending in detention reviews is specified in CCD's detention process instructions. Case Owners will be reminded of this requirement.</p> <p>The UK Border Agency is currently undergoing a full review of decision making levels.</p>
Recommendations			
Decision to detain			

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1.19	The UK Border Agency should tell detainees the reasons for their detention in a language they understand, and give them this in writing. The information should be repeated at the UKBA induction at immigration removal centres.	Accept in part	Form IS91R (reasons for detention) is issued to detainees in English but its contents must be explained, using interpreting services if necessary. On-site UKBA staff repeat the information during detainees' induction at immigration removal centres, using interpreting services if necessary.
1.20	The UK Border Agency should not detain or maintain the detention of anyone without full consideration of all relevant factors, and this should be documented on file.	Accept	The UK Border Agency's published guidance on detention makes clear that all relevant factors, arguing both for and against detention, must be considered in deciding whether to detain a person and requires that consideration to be formally documented on file. The detention review document (ICD.3078) has been amended to ensure all relevant factors are taken into account. Case Owners fully complete each section of the review which is then approved by a more senior officer. Reviews are, at the least, stored on the Document Generator of CID, and copies placed on Home Office files. Detention reviews are also subject to quality checks. Case Owners will be reminded to ensure that all detention reviews are displayed on file.
Reviewing Detention			
1.21	The UK Border Agency should ensure that all detainees are informed of their legal right to apply for bail, and how to do so, with each monthly progress report.	Accept in principle	Detainees are informed on their initial detention of their right to apply for bail and information on how to do so is available in places of detention. Information on bail is not currently provided in monthly progress reports and we will explore how this recommendation might best be achieved.

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1.22	UK Border Agency progress reports should provide an update on the last report rather than repeating information from previous reports. They should be written clearly and in a language that detainees can understand.	Accept in part	<p>Under the new operating model of the National Removals Command (NRC), UKBA will introduce a performance framework that will manage cases from entry into detention until release or removal. This will include clear management of planned removal activities against an agreed timeline. Quality checks will be in place to ensure that staff update reviews accurately in line with these plans. This will be underpinned by a new IT case monitoring system.</p> <p>Progress reports (IS151F) used in CCD now contain a section titled 'progress since last review' which requires the Case Owner to demonstrate all steps taken to progress the case. The progress review documents are sampled by managers in accordance with the CCD Quality Assurance Framework and feedback is provided on the standard of the report. Progress reports used by other areas of the Agency are being reviewed to bring them in line with those used in CCD.</p> <p>Progress reports are written in English but will be explained by on-site staff on request, using interpreting services if necessary.</p>
Case progression			

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1.23	The UK Border Agency should decide detainees' asylum claims in a timely manner.	Accept	<p>The National Asylum Command seeks to make initial asylum decisions within 30 days of an applicant claiming asylum, claims from serving prisoners are included within this target. However, the factors contributing to delay listed below are also relevant to cases progressed by the National Asylum Command. The use of video conference facilities to conduct asylum interviews has previously been utilised to help ensure cases are progressed as quickly as possible.</p> <p>CCD employs a number of staff who process asylum claims on behalf of case owners. The teams, of which there are three (Leeds/Liverpool/Croydon) work to and endeavour to meet the UKBA Asylum rules and standards. However, there are factors that can mean that some cases will be protracted, e.g. serving prisoners being unable to respond quickly to requests for supporting evidence, gaining access to high category prisoners, the need to conduct interviews through operational teams located in prisons, restrictions imposed by prison visiting regimes, and the need to comply with the Chindamo ruling. Nevertheless, CCD asylum staff endeavour to process claims as quickly as is possible.</p> <p>CCD is currently working with the National Asylum Command to transfer to them responsibility for all initial asylum decisions.</p> <p>The detained fast track process has clear timescales for deciding asylum claims, with the maximum being 14 days from induction.</p>

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1.24	The UK Border Agency should keep files in an orderly manner and implement a file review regime.	Accept	The UK Border Agency's Record Management & Modernisation Programme has a range of projects underway to improve the Agency's overall record keeping. In September 2012, the file tracking system was replaced by a new system to barcode and track records that will incorporate wireless scanning technology plus the ability to scan and email images of documents rather than needing to move the entire paper file. This should greatly reduce the number of files and sub-files that are lost in future. In tandem with the immigration case work programme (ICW), the programme is also producing guidance to better define what is the primary record and what documents qualify as 'valuable' and need to be retained on file. Senior managers will be tasked to engender improvements in file discipline, reducing duplicates and generally get more care taken over our customers' records. File sampling could be part of localised compliance regimes.