



The effectiveness and impact of immigration detention casework

A joint thematic review by HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration

December 2012



The effectiveness and impact of immigration detention casework

A joint thematic review by HM Inspectorate of Prisons and
the Independent Chief Inspector of Borders and Immigration

December 2012

Crown copyright 2012

ISBN: 978-1-84099-578-7

Published by:
HM Inspectorate of Prisons
1st Floor Ashley House
2 Monck Street
LONDON
SW1P 2BQ

Independent Chief Inspector of Borders and Immigration
5th Floor Globe House
89 Eccleston Square
LONDON
SW1V 1PN

Contents

Acknowledgements	4
Glossary	4
Introduction	5
1. Summary and recommendations	7
2. Background and methodology	11
3. The decision to detain	17
4. Reviewing detention	21
5. Progressing cases	31

Appendices

I Frequency and authority required for detention reviews	39
II Interview pro forma	41
III Spreadsheet used for analysing UKBA case files	47

Acknowledgements

This report was prepared by:

Hindpal Singh Bhui

Team leader, Inspectorate of Prisons

Colin Carroll

Inspector, Inspectorate of Prisons

Gareth Elks

Inspector, Independent Chief Inspector of Borders and Immigration

Inspection team

HM Inspectorate of Prisons

Hindpal Singh Bhui	Team leader
Colin Carroll	Inspector
Steve Mason	Guest inspector
Alice Reid	Researcher
Amy Summerfield	Researcher

Independent Chief Inspector of Borders and Immigration

Mark Voce	Assistant Chief Inspector
Dr Rod McLean	Assistant Chief Inspector
Gareth Elks	Inspector
Chris Thompson	Inspection officer

Glossary

Article 3	European Convention on Human Rights article covering inhuman and degrading treatment
CCD	Criminal Casework Directorate
CID	UKBA casework information database
CIO	Chief immigration officer
EDT	Emergency travel document
EIG	UKBA enforcement and instruction guidance
ERS	Early release scheme
FTT (IAC)	First Tier Tribunal (Immigration and Asylum Chamber)
Hardial Singh principles	Removal of detained people must occur within a 'reasonable period'
ICIBI	Independent Chief Inspector of Borders and Immigration
IRC	immigration removal centre
IS91R	Reasons for detention form
LSC	Legal Service Commission
NOMS	National Offender Management Service
OASys	Offender assessment system
PTSD	Post-traumatic stress disorder
STHF	short-term holding facility
UKBA	United Kingdom Border Agency

Introduction

On any given day during the first quarter of 2012, around 3,500 people were detained under immigration powers, either in immigration removal centres or prisons. More than 40 people held in immigration centres had been held for over two years. While the courts have held that detention with a view to removal is only lawful if there is a realistic prospect of this occurring within a reasonable period, there is no statutory time limit on how long someone can be detained. A consistent finding of previous HMIP inspection reports and research is that detainees experience heightened levels of anxiety and distress as a result of their uncertain futures. Each individual detained costs nearly £40,000 a year.

Against this background our respective inspectorates worked together on this, the first thematic inspection conducted jointly by HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration (ICIBI). Inspectors from both organisations examined in detail the quality and effectiveness of immigration casework and the human experiences that lay beneath the files and targets. In total, 81 detainees were interviewed, and their case files assessed. They included people held under immigration powers for both under and over six months to obtain a representative sample of cases.

The most prominent themes to emerge from the interviews with detainees were physical and mental health problems, lack of contact with families, and the stress of long-term detention in the context of difficulties faced in accessing good quality legal services. An examination of case files helped us to understand the reasons for initial and continued detention.

In most cases we examined, the decision to detain was defensible and properly evidenced, and most were progressed diligently and in line with legal and policy guidelines. However, given the importance of the decision to remove a person's liberty, we were concerned to find that in a quarter of the cases we reviewed, insufficient progress had been made with the person's case. Most of our sample comprised ex-prisoners. Of these, we identified a number of instances where more could have been done to resolve their cases before the end of their custodial sentences. This is particularly disappointing given the ICIBI's finding in its report on the United Kingdom Border Agency (UKBA)'s handling of foreign national prisoners, that delays in decision making were potentially resulting in individuals being detained for longer than necessary.¹

In some cases, we also found that decisions to detain a person, or to maintain their detention, had not been made with reference to all relevant factors. In addition, monthly progress reports to detainees in some cases repeated information previously provided, rather than giving a meaningful update on what, if any, progress had occurred. Detainees experienced considerable difficulties in obtaining good quality legal advice and many had not applied for bail to an immigration judge.

Decisions to detain ex-prisoners were made at lower management level, while decisions to release had to be authorised by a member of the UKBA board. We remain concerned that UKBA has not implemented the recommendation in the ICIBI's report on foreign national

¹ <http://icinspector.independent.gov.uk/wp-content/uploads/2011/02/Thematic-inspection-report-of-how-the-Agency-manages-Foreign-National-Prisoners.pdf>

prisoners that it should change the level of authorisation required to release such individuals in line with its own policy, which presumes release at the end of their custodial sentences.

We were also disturbed to find cases where there was a failure to consider evidence of post-traumatic stress and mental disorder in case reviews. This is in the context of recent judgments against UKBA establishing that four people suffering from mental illnesses were unlawfully detained and subject to inhuman and degrading treatment under Article 3 of the European Convention on Human Rights. There was little evidence of the effectiveness of Detention Centre Rule 35 procedures, which are supposed to provide safeguards for vulnerable detainees, including those who have experienced torture and have mental illnesses. In one case a torture survivor was detained without it being at all clear what the exceptional circumstances were that led to his detention. We identified a similar case involving a victim of trafficking.

Despite much effort at improving the system, we believe that further work is required. It is questionable whether the length of detention in some cases was necessary or proportionate to the legitimate aim of maintaining immigration control. The evidence of poor casework needs to be addressed at every level; casework must be appropriately skilled and resourced, and subject to more effective quality assurance. Although all immigration detainees have a right to apply for bail to the courts, there is currently no routine independent system of reviewing cases that can identify and correct what we found during this thematic inspection. We have therefore recommended that an independent panel should be established to review the cases of all individuals who are held for lengthy periods. Where the panel recommends release, UKBA would be required to review the case and publish its response. We believe this would motivate change in the system, and ensure that some of the shortcomings that we have identified here are addressed.

1. Summary and recommendations

- 1.1 HM Inspectorate of Prisons has routinely inspected immigration detention since 2004 against independently set human rights standards. Since his role was established in 2008 the Independent Chief Inspector of Borders and Immigration has assessed the efficiency and effectiveness of the UK Border Agency (UKBA). Since March 2012, he has also been responsible for inspecting the new Border Force.
- 1.2 The decision to detain is an administrative power held by UKBA and Border Force officers and is not sanctioned by the judiciary. The law and UKBA's own policy make it clear that detention should only be used as a last resort, but both inspectorates have raised concerns that this is not always the case and that detention is not always subject to sufficiently rigorous governance. The inspectorates therefore decided to conduct a joint thematic review to explore the issues in depth. The primary objectives were to examine the efficiency of UKBA's immigration detention casework and the impact of that casework on people in detention.
- 1.3 On 31 March 2012 there were 3,034 detainees held in one of the three residential short-term holding facilities (STHFs), 10 immigration removal centres (IRCs) or the new pre-departure accommodation for families with children.² About two-thirds of the 6,870 people who left detention during this quarter were removed and the remainder were released into the community. Forty-two detainees had been held for more than two years.
- 1.4 UKBA can detain people in four broad circumstances:
- to effect removal
 - to establish someone's identity or the basis of their asylum claim
 - to fast-track an asylum claim
 - to prevent non-compliance with conditions of temporary release or admission.
- 1.5 Detainees are held not by judicial authority but by the administrative authority of UKBA or Border Force officials. There is no automatic judicial oversight, but detainees can apply for bail to an immigration judge. Unlike most European Union (EU) member states, there is no finite time limit on how long detainees can be held.
- 1.6 The two inspectorates interviewed a total of 81 detainees to establish the factors relevant to the decision to detain or maintain detention, and the impact that detention was having on them. They also analysed files, including locally held immigration files and the main UKBA files held by the relevant caseworking teams, local immigration teams or ports.

The decision to detain

- 1.7 On the whole we found that the initial decision to detain was properly authorised and the reasons for detention were recorded. However, in some cases it was clear that not all relevant factors were considered before someone was detained, including the age of the detainee and, in a particularly serious case, whether the detainee was a victim of trafficking.

² Home Office Immigration Statistics January to March 2012. These figures do not include those held under immigration powers in non-residential short-term holding facilities, police stations or those held in prisons under immigration offences.

- 1.8 About a quarter of detainees said that the reasons for detention were not explained to them. Indefinite detention was described by many detainees as a disproportionate punishment. In the case of ex-foreign national prisoners, case owners assessing the risks of reoffending did not take enough account of information available from the National Offender Management Service (NOMS), including pre-sentence reports and offender assessment system (OASys) assessments. Little effort was made to contact offender managers and take advantage of their expertise in risk assessment.

Reviewing detention

- 1.9 In 30% (n=24) of cases at least one monthly detention review was missed, conducted late or not on file. In 59% (n=48) of cases detention was not always reviewed at the right level of authority. Many reviews did not consider all factors relevant to the case, including family ties and health problems. Factors that might support a detainee's case for release were regularly under-recorded, while detrimental information was recorded in detail.
- 1.10 In our interviews, 67% of detainees said they had health problems, with 53% describing mental health problems, such as depression, stress and anxiety. Those held for more than six months were much more likely to describe such symptoms. Five detainees told us they had post-traumatic stress disorder (PTSD), and others mentioned experiences of torture and symptoms that might indicate PTSD. Some, with problems including post-traumatic stress and suicidal tendencies, were not dealt with in light of their individual circumstances or in accordance with UKBA's stated policy. The Rule 35 process did not provide the necessary safeguards for vulnerable detainees. In our sample, a torture survivor had been detained without a clear indication of the exceptional circumstances that had led to his detention.
- 1.11 A lack of coherence in the review process was demonstrated by the fact that detention was reviewed in isolation from previous reviews, and actions set previously were not checked for completion. There was inconsistent adherence by case owners to the Hardial Singh principles that removal of detained people must occur within a 'reasonable period'. Many monthly progress reports appeared to have been provided as a matter of bureaucratic procedure rather than as a genuine summary of progress, and some detainees found them difficult to understand.
- 1.12 Detainees reported difficulties with obtaining good quality legal advice and around a quarter (27%, n=22) told us they did not have legal representation. A fifth of those held for more than six months (19%, n=9) said they had not made a bail application. More restrictive Legal Service Commission (LSC) funding rules mean that there are now fewer providers in a position to take on detainees' cases.

Case progression and reasons for prolonged detention

- 1.13 Time-consuming asylum claims and problems with travel documentation were commonly cited reasons for prolonged detention. Our file analysis showed that in about two-thirds of cases (65%, n=53), a travel document was not available. In a third of cases (33%, n=27) there was no travel document and it was considered difficult to obtain one. Most detainees (77%, n=62) in our interview sample said they did not have a travel document. In most cases travel documentation problems could not easily be resolved by UKBA action, but there was a lack of strategic approach to managing cases where there was, or was likely to be, a problem in obtaining travel documents. Many detention reviews accused detainees of failing to cooperate

and, if this was the case, prosecution for non-compliance should have been considered under section 35 of the 2004 Asylum and Immigration (Treatment of Claimants) Act.

- 1.14 We found a number of cases where asylum claims were not dealt with efficiently, leading to periods of detention that were not the fault of detainees. In a quarter of the file sample (20 cases), inefficiencies in casework were the main explanation for ongoing detention, and in a further 10 cases there were delays in removing people. Files were in poor condition, making cases hard to understand, and missing information could have included documents to establish the validity or otherwise of unlawful detention claims.
- 1.15 Ex-prisoners could be detained under immigration powers for long periods even after serving lengthy prison sentences. The high level of authorisation needed to release ex-prisoners was inconsistent with the presumption in favour of release. None of the ex-prisoners dealt with by the Criminal Casework Directorate (CCD) were released, but a quarter of the non-CCD cases were released. Detention of ex-prisoners appeared to have become the norm rather than as a rigorously governed last resort.

Main recommendations

- 1.16 **The UK Border Agency should conduct detention reviews on time and with the appropriate level of authority. All factors for and against detention should be recorded in detail and carefully considered. Progress on previous actions should be monitored by the authorising officer by way of a continuous action plan.**
- 1.17 **The UK Border Agency should only detain torture survivors in exceptional circumstances, which should be clearly documented on file and explained to the detainee.**
- 1.18 **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.**
- 1.19 **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.**

Recommendations

Decision to detain

- 1.20 **The UK Border Agency and Border Force 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.**

- 1.21 The UK Border Agency and Border Force should not detain or maintain the detention of anyone without full consideration of all relevant factors, and this should be documented on file.

Reviewing detention

- 1.22 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.
- 1.23 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.

Case progression

- 1.24 The UK Border Agency should decide detainees' asylum claims in a timely manner.
- 1.25 The UK Border Agency should keep files in an orderly manner and implement a file review regime.

2. Background and methodology

- 2.1 On 31 March 2012, there were 3,034 people in immigration detention centres, held in one of the three residential short-term holding facilities (STHFs), 10 immigration removal centres (IRCs) or the pre-departure accommodation for families with children, which opened in 2011.³ Just under two-thirds (62%) of the 6,870 people who left detention during this quarter were removed, and the rest were released into the community. Forty-two detainees in the detention estate had been held for more than two years. There are no regular statistics on the number of detainees held in prisons, but the most recent available information showed that 595 foreign nationals were held under immigration powers in prisons at the end of August 2012.⁴ The financial cost of detention has been calculated at £102 per person a day, or £37,230 a year.⁵ There is clearly a public interest in using detention efficiently in these economically challenging times, as well as a moral responsibility to ensure that it is not used unnecessarily.
- 2.2 The Immigration and Asylum Act 1999 conferred on HM Inspectorate of Prisons the responsibility for the inspection of the treatment of immigration detainees and the conditions in immigration detention centres. The first inspections took place in 2002 and routine inspection began in 2004 against independently set expectations based on human rights standards. Since that time, the concern reported most consistently by detainees has been the lack of progress on their cases, which for most means longer periods in detention.
- 2.3 The UK Borders Act 2007 led, in 2008, to the establishment of the Independent Chief Inspector of the UK Border Agency, now the Independent Chief Inspector of Borders and Immigration. His remit is to assess the efficiency and effectiveness of UKBA and Border Force. The Independent Chief Inspector has published a number of reports relevant to detainees, notably one that assessed UKBA's management of foreign national prisoners.⁶ Published in 2011, it noted that a significant number of appeals were allowed against decisions to deport, suggesting that initial decisions to detain and subsequently maintain detention were not sufficiently robust.
- 2.4 It is in this context that the two inspectorates agreed to conduct a joint thematic review to examine the effectiveness and efficiency of UKBA's immigration detention casework, and explore the human impact of that casework on people in detention. The respective remits and expertise of the two inspectorates allowed a more thorough examination of these issues than each could have achieved alone.

The legal and policy framework for detention

- 2.5 The UK Border Agency's power to detain comes from several sources, including the 1971 Immigration Act, the Nationality, Immigration and Asylum Act 2002 and the UK Borders Act 2007. Detention is an administrative decision taken by UKBA or Border Force officers and is not sanctioned by the judiciary. The way that immigration staff should apply their powers to

³ Home Office Immigration Statistics January to March 2012. These figures do not include those held under immigration powers in non-residential short-term holding facilities, police stations or those held in prisons under immigration offences.

⁴ [Management](#) information received from the National Offender Management Service.

⁵ *Hansard*, House of Lords [HL10229]:

<http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/110629w0002.htm>.

⁶ A thematic inspection of how the UK Border Agency manages foreign national prisoners, February-May 2011.

The effectiveness and impact of immigration detention casework: a joint thematic review

detain is set out in chapter 55 of UKBA's Enforcement and instruction guidance (EIG).⁷ The guidance allows detention for four broad reasons: to effect removal; to establish a person's identity or basis of claim; when there is reason to believe a person will fail to comply with temporary admission or release conditions; and to process an asylum application through the detained fast-track procedures at Yarl's Wood or Harmondsworth. There is 'a presumption in favour of temporary admission or release' and, wherever possible, alternatives to detention are to be used.⁸ Detention should be 'used sparingly, and for the shortest period necessary'.⁹ The following factors *must* be considered before making a decision to detain or to continue detention, and if they are not, detention may be unlawful:

- the likelihood of the detainee being removed and the timescales
- evidence of previous absconding
- evidence of a previous failure to comply with conditions of temporary release or bail
- the detainee's immigration history
- the detainee's personal ties to the UK, including family and employment ties or settled address
- any outstanding appeals
- for those with a criminal record, the risk of reoffending or harm of reoffending
- the physical and mental health of the detainee
- whether they have survived torture.¹⁰

2.6 As well as legislation and policy, UKBA must adhere to the common law. In the 1983 High Court case of *R (Hardial Singh) v Governor of Durham Prison [1983] EWHC 1 (QB)*,¹¹ Mr Justice Woolf formulated important principles that must be considered when making and reviewing the decision to detain, which were endorsed by the Supreme Court in March 2011.¹² They state, in essence, that the Secretary of State can only detain someone if the intention is to remove them and that this objective should be achieved with 'reasonable diligence and expedition'. If it becomes apparent that removal is not possible within a 'reasonable' period then detention is not lawful. These principles do not apply where UKBA detains someone to establish their identity or basis of their claim, or uses the detained fast-track procedures. Should UKBA detain further, the principles apply. There is no defined limit on the length of detention in the UK. What is 'reasonable' depends on the individual facts of the case,¹³ although the Bail Guidance for Immigration Judges (2011, paragraph 18) provides the following benchmarks:

'... it is generally accepted that detention for three months would be considered a substantial period of time and six months a long period. Imperative considerations of public safety may be necessary to justify detention in excess of six months.'

⁷ <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/enforcement/>

⁸ EIG 55.1.1

⁹ EIG 55.1.3

¹⁰ EIF 55.3.1

¹¹ <http://www.bailii.org/ew/cases/EWHC/QB/1983/1.html>

¹² *R (Lumba & Mighty) v Secretary of State for the Home Department* [2011] UKSC 12.

¹³ In the Supreme Court case of *Walumba Lumba*, Lord Dyson did not give an exhaustive list of factors relevant to determining a reasonable period, but noted the following: the length of detention; the obstacles to deportation; the diligence, speed and effectiveness of the steps taken to surmount such obstacles; the conditions in which the detained person is being kept; the effect of detention on the individual and on their family; the risk of absconding on release; and the risk of criminal offending if released. The Supreme Court held that relevance of a detainee's willingness to return to their country of origin voluntarily is minimal.

The effectiveness and impact of immigration detention casework: a joint thematic review

- 2.7 Most other EU member states are signatories to the EU Returns Directive, which limits immigration detention to six months to achieve removal, and this can be extended by a further 12 months if necessary.¹⁴ Many have set limits of under 18 months, including France (one and a half months), the Netherlands (one and a half months), Spain (two months) and Italy (six months), while Germany and Greece allow the full 18 months.¹⁵
- 2.8 UKBA should regularly review detention to ensure that it is for the minimum possible time and remains lawful. The frequency of the review and grade of the officer authorising detention depends on the unit managing the case and the length of detention (see Appendix I). Criminal Casework Directorate (CCD) cases are reviewed once a month, third country unit (TCU) cases essentially once a week, and all other cases once a month but with additional checks in the first month. A failure to conduct the review accurately, on time or with the correct level of authority could render detention unlawful.

Access to legal representation

- 2.9 More restrictive Legal Service Commission (LSC) funding rules and the closure of the two national organisations that provided the bulk of immigration legal representation (Refugee and Migrant Justice and the Immigration Advisory Service), means that there are now fewer providers able or willing to take on detainees' cases. The LSC funds a detention duty advice scheme (DDAS) in all centres. Although this provides detainees with access to advice, it is limited to half an hour (including interpreting time) with no guarantee of ongoing representation. Legal representatives can only represent a detainee substantively if the case passes a merits test. HM Inspectorate of Prison inspection reports routinely describe problems with access to sufficient legal advice and representation, with regularly oversubscribed surgeries.

Safeguards for detainees with mental health problems

- 2.10 The way that UKBA manages detainees with mental health problems has recently come under increased scrutiny. On four recent occasions, the High Court has ruled that people with mental illnesses have been unlawfully detained.¹⁶ Their treatment was found to be inhuman and degrading, and breached Article 3 of the European Convention of Human Rights. In the first of these cases, the judge found UKBA policy in relation to those unsuitable for detention¹⁷ 'was not properly understood by those authorising detention and was certainly not properly applied and that the decision and subsequent reviews failed to both understand and assess the impact of detention on S's mental condition.'¹⁸ In the second case, the court found that 'there was a deplorable failure, from the outset, by those responsible for BA's detention to recognise the nature and extent of BA's illness ... I ... consider that there has been a combination of bureaucratic inertia, and lack of communication and coordination between those who were responsible for his welfare. The documents disclosed by the Secretary of State have also shown, on one occasion, a callous indifference to BA's plight...'¹⁹ In the third case,²⁰ a clearly

¹⁴ <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm091102/text/91102w0017.htm>

¹⁵ The EU Agency for Fundamental Rights, 'Detention of third-country nationals in returns procedures', September 2010, and can be found at:

http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2010/pub_detention_en.htm. See also <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/1097&type=HTML>

¹⁶ At the time of writing, the Home Office are seeking to appeal one of the three judgments.

¹⁷ Chapter 55 of the Enforcement Information and Guidance.

¹⁸ Paragraph 182, S v Secretary of State for the Home Department [2011] EWHC 2120 (Admin).

¹⁹ Paragraph 236, R (BA) v Secretary of State for the Home Department [2011] EWHC 2748 (Admin)

<http://www.bailii.org/ew/cases/EWHC/Admin/2011/2748.rtf>

The effectiveness and impact of immigration detention casework: a joint thematic review

disturbed detainee held at Brook House IRC and then Harmondsworth IRC refused to wash, slept in a toilet for months, and ate very little. He was placed in segregation and accused of non-compliance,²¹ before eventually being sectioned under the Mental Health Act. His condition improved in hospital, but he was returned to Harmondsworth against the advice of the psychiatrist. In the fourth case,²² the High Court found that a detainee's Article 3 rights were breached from February 2011 until November 2011 while detained at Brook House and Harmondsworth. The High Court judge found that at all material times the detainee was 'suffering serious mental illness' and that the treatment at Brook House and Harmondsworth 'exacerbated, D's mental suffering'.

- 2.11 Detention Centre Rule 35 relates to special illnesses and conditions (including torture claims). It states that medical practitioners should report to managers 'on the case of any detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention... any detained person he suspects of having suicidal intentions ... any detained person who he is concerned may have been the victim of torture ... [and] pay special attention to any detained person whose mental condition appears to require it'.
- 2.12 Rule 35 does not provide for a detainee's release, but places an obligation on the centre's health care team to report concerns to UKBA, which requires the responsible case owner to consider 'whether continued detention is appropriate'.²³ The case owner is required to respond using a pro forma, copies of which are sent back to the IRC and the detainee's legal representative. Where there is independent evidence that they have been tortured, detainees should normally be detained in only very exceptional circumstances (chapter 55.10 of the EIG, 'Persons considered unsuitable for detention'). Rule 35 is intended to be a major safeguard and the way that it is applied is crucially important to ensuring protection for some of the most vulnerable people in detention.

Methodology and structure of this report

- 2.13 This report is based on interviews with 81 detainees in five immigration removal centres (IRCs) (and one prison where we found only a single detainee), and analysis of their on-site UKBA files and of the more detailed UKBA files held by case owners.

Table 1: Location of interviewees

IRC/prison	Date of fieldwork	Number of detainees
Tinsley House	February 2011	12
Campsfield House	May 2011	18
Haslar	June 2011	18
Yarl's Wood	July 2011	16
Brook House	September 2011	16
HMP Rye Hill	June 2011	1

²⁰ The Queen on the application of (HA (Nigeria)) v Secretary of State for the Home Department [2012] EWHC 970 (Admin)

<http://www.bailii.org/ew/cases/EWHC/Admin/2012/979.html>

²¹ In HA (Nigeria) v SSHD, the honourable Mr Justice Singh found at Paragraph 83, 'it would appear that the inability to secure an interview with the Claimant, which may well have been due to his medical condition or difficulties arising from it, was being regarded at this time as wilful non-compliance and therefore further "proof" that he would not comply with any conditions of release.'

²² D v Secretary of State for the Home Department [2012] EWHC 2501 (Admin).

²³ The UK Border Agency's Rule 35 procedure section 3.

Total		81
--------------	--	-----------

- 2.14 We selected two random samples of detainees. The first sample was of detainees held for six months or more in a particular IRC, and the second was of those held for less than six months. We sought an even split between the two groups to avoid presenting a distorted picture of UKBA's caseworking by focusing on the most difficult longer-term cases. However, this objective was hindered by the fact that UKBA could not provide us with detainees' accumulated length of detention across different establishments. Instead, we were given the length of detention in each particular establishment²⁴ and were only able to establish their total length of detention once we had ourselves analysed their individual files. This meant that some detainees, initially identified as being held for less than six months, had in fact spent more than six months in detention because they had been held elsewhere in the past, as outlined in the following table. This is concerning. The amount of time the individuals in our file sample had been detained under immigration powers is set out in the table below:

Table 2: Proportion of sample held for more and less than six months

Length of detention	Number in sample
More than six months	48
Less than six months	33

- 2.15 In our sample, 53% (n=43) of detainees were ex-prisoners²⁵ and much of this report therefore relates to this same group. Most of the sample (83%, n=67) was male, and ages ranged from 18 to 67 years. There were 31 different nationalities, the most prevalent being Pakistani (n=12), Indian (n=11), Jamaican (n=6), Ghanaian and Nigerian (both n=5), Chinese and Vietnamese (both n=4).²⁶ The average length of detention at the time of the case file analysis was just over 10 months. The longest detained person had been held for nearly five years after spending almost eight months in prison for burglary.
- 2.16 Prison inspectors conducted structured interviews with people in detention to elicit two sets of information: the factors relevant to decisions to detain or maintain detention, such as family life in the UK, immigration status, length of time in the UK and employment or academic history; and the human impact that detention had on individuals.
- 2.17 Prison inspectors and Border and Immigration inspectors then examined files held by the centre's contact management team. These files only contained documentation served on detainees since their arrival at the particular centre, and were primarily useful to examine detainees' monthly progress reports and to see if they had been served promptly. The main UKBA files were held by the relevant caseworking teams, local immigration teams or ports. These files were sent to UKBA offices in Croydon and both inspectorates examined them in August and October 2011. A file sampling spreadsheet was used to determine whether UKBA had considered all material facts when authorising and reviewing detention and whether detention reviews were conducted on time and with the correct level of authority.

²⁴ Since the completion of our fieldwork, UKBA has produced data for detainees' accumulated length of detention across the immigration estate. This information is kept by the Detainee Escorting and Population Management Unit. It does not include time spent in police stations under immigration powers.

²⁵ Nearly all of this group were in the sample held for over six months.

²⁶ On some data there is a slight variance between our interview and case file data. This is inevitable given that detainees and UKBA disagreed over some facts, such as nationality and age. Where there are such discrepancies the specific source of the data is described.

- 2.18 Systematic data were not gathered on other aspects of the case files, some of which were so large that it took a day to go through each of them and find relevant information. Instead, inspectors identified any case studies that illustrated particular points, whether positive or negative. In total, we identified seven case studies that helpfully illustrated positive UKBA practices and detainee outcomes, and 31 that we considered to illustrate negative practices and outcomes. Supplementary data on some cases were obtained from UKBA's casework information database.
- 2.19 The substantive part of this report is set out in three sections, covering the quality of the initial decision to detain, the effectiveness of procedures to review detention, and the efficiency with which cases are progressed. The impact of detention on individuals is considered throughout, with reference to interviews with detainees and case file information.
- 2.20 This report does not examine the detail of detainees' substantive asylum or immigration cases and we make no judgements as to whether or not they should stay in the UK, although we do comment where delays have caused detention to be prolonged. We do not examine bail applications to First Tier Tribunal (Immigration and Asylum Chamber) (FTT (IAC)) or decisions in any detail, as this would be beyond the statutory remit of both inspectorates. Finally, we did not inspect the detention of children. None were held in the centres where the fieldwork was conducted.

3. The decision to detain

3.1 In the majority of cases, the initial decision to detain was properly authorised and the reasons for detention recorded. In some cases, not all relevant factors were considered before the decision to detain, including factors such as age and being a victim of trafficking. About a quarter of detainees said that reasons for their detention were not explained to them. Indefinite detention was described by many detainees as a punishment. In the case of ex-foreign national prisoners, assessment of risk of reoffending by case owners did not take sufficient account of information available from NOMS.

3.2 The initial decision to detain has to be authorised by a chief immigration officer (higher executive officer in the civil service grading structure) or above, and the EIG states that 'robust and formally documented consideration should be given to the removability of the detainee ... [and] ... to all other information relevant to the decision to detain.' The policy is to presume in favour of release. Alternatives to detention should be considered and each case should be considered on its individual merits.²⁷

3.3 UKBA routinely provides written reasons for detention by way of a tick box pro forma (the IS91R) in English, and these should be explained using interpreters wherever necessary. Our analysis of UKBA files indicated that, on the whole, the initial decision to detain was authorised at the correct level and a file minute recorded the reasons for detention. We found four cases where the authorisation was not clearly recorded. In our interviews, a quarter (26%, n=21) of detainees said that the reasons for their detention were not explained to them, or if an attempt was made, it appears that they did not understand the explanation. Only two of those who said they did not understand the reasons specifically mentioned a lack of professional interpreting.

3.4 Detainees repeatedly described their detention as a punishment, equivalent or even worse than imprisonment, and the lack of a limit on detention caused particular anxiety. The following comments were typical:

'Detention is the same as prison. I'm still serving a sentence. Still being punished.'

'Uncertainty makes me depressed. At least in prison I knew what was happening.'

3.5 In most cases in our sample, we considered that the decision to detain was reasoned and defensible. However, in a small number (n=9) there was doubt about the robustness of the decision to detain as not all factors that appeared relevant seem to have been considered by the detaining officer. The following examples were highlighted during our file analysis.

Case study: Detention of a 19-year-old

Mr K entered the UK as an unaccompanied minor and attended the asylum screening unit when he was 14. He was granted discretionary leave until he was 17-and-a-half. Mr K worked part time in a supermarket, studied at college, and was in a relationship with an EU national. His former foster parents wrote to UKBA stating that he 'is part of our family and we need him

²⁷ Chapter 55.3 of the EIG.

around us. We love him very much and it seems he had always been part of us.' After his 18th birthday, steps were taken to remove him and he was detained in August 2011.

The initial minute authorising detention stated 'there are no mitigating circumstances preventing the detention'. A decision to detain checklist recorded 'no close ties to the UK'. The IS91R given to Mr K stated 'you do not have enough close ties (e.g. family or friends) to make it likely that you will stay in one place' and 'you have not produced satisfactory evidence of your identity, nationality or lawful basis to be in the UK'. There is no evidence that Mr K's family and private life were considered. He was eventually released after a successful bail application to the FTT (IAC) in October 2011.

This case relates a failure to take into account key information that would probably have resulted in this young man not being detained at all. In the event, he was held for two months, with consequences for him, his partner and his foster family, before he was released by an immigration judge.

Case study: Detention of a 67-year-old

A 67-year-old man had been detained for 10 months when interviewed, and said he found the uncertainty about his future very stressful. He told us that his relationship with his partner had deteriorated, that he had developed asthma in detention and had high blood pressure. Neither the initial decision to detain nor subsequent reviews demonstrated consideration of his age or any other factor. The file minute recording the decision to detain simply noted, 'there are no known compassionate factors'.

Case study: Detention of a young trafficking victim

An organised gang trafficked Mr L into the UK when he was 16 and forced him to work in cannabis production. In August 2009, at the age of 17, he was convicted of the production of a class B drug. He received a 20-month sentence. In September 2009, a competent authority through the national referral mechanism (which identifies, protects and supports victims of human trafficking) confirmed that Mr L was a victim of trafficking. However, in March 2010, on completion of his criminal sentence, Mr L was detained. UKBA's policy is to detain victims of trafficking in only the most exceptional circumstances.²⁸ No mention was made in the initial detention minute or subsequent detention reviews that Mr L was a trafficking victim, or what exceptional circumstances justified his detention. By the time Mr L was interviewed by us in June 2011, he had been in detention for 15 months. He told us, 'I feel my life is passing me by. I want to set up my own life. Until now it has been controlled by traffickers and prison staff'.

This case shows a failure to consider the circumstances of a vulnerable detainee, who was a confirmed victim of trafficking.

These case studies illustrate a failure on the part of UKBA to consider all relevant factors when making decisions to detain and when subsequently reviewing detention. This is a matter of particular concern given that all three individuals were vulnerable.

²⁸ EIG Chapter 55.10

Recommendations

- 3.6 **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.**
- 3.7 **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.**

Consideration of the risk of reoffending in the decision to detain

- 3.8 In relation to foreign national prisoners CCD case owners must consider the risk of reoffending and the harm to the public. To assess risk, case owners should follow chapter 55 of the EIG, at 3.2.6, which states that:

'Risk of harm to the public will be assessed by NOMS unless there is no offender assessment system (OASys) or pre-sentence report available. There will be no licence and OASys port where the sentence is less than 12 months. NOMS will only be able to carry out a meaningful risk assessment in these cases where a pre-sentence report exists (details of which can be obtained from the prison) or where the subject has a previous conviction resulting in a community order. Case owners should telephone the offender manager for an update in cases where the risk assessment has been obtained less than six months before (for example in a bail application).'

And at 3.2.8:

'Where NOMS are unable to produce a risk assessment and the offender manager advises that this is the case, case owners will need to make a judgement on the risk of harm based on the information available to them.'

- 3.9 We found few copies of OASys or pre-sentence reports on detainees' files. Although they may not always have been available, there was little evidence of telephone calls or contact with offender managers to establish what information could have been provided. We were concerned to find that where there were pre-sentence and OASys assessments on file these were, on occasion, ignored, despite offender managers' substantial expertise and training in assessing risk (see recommendation 5.19).

Case studies: Assessment of the risk of reoffending

Mr K was given a 16-month sentence for benefit fraud, eight of which were spent in prison. His pre-sentence and OASys reports were in UKBA's possession and on file. The probation officer noted:

'Mr [K] is assessed as posing a low risk of harm to others ... It is my assessment that he would be suitable for a community order providing he is able to provide the court with an address he can be released to. His risk of harm and of reoffending can both be managed in a community setting'.

Despite this, the officer authorising detention noted on file that 'there is no NOMS [sic]

available, therefore assessed his risk of reoffending by the evidence available'. The detaining officer concluded that the detainee posed a risk of reoffending. This assertion was repeated in the monthly detention reviews. When we interviewed Mr K he had been held for 18 months under immigration powers, more than twice the length of time he had spent in prison.

In a similar case, Mr D had been convicted of a drugs supply offence and his pre-sentence report stated 'I am unable to offer the court any community-based alternatives to custody because [Mr D's] risk of reoffending is too low to meet the ... evidence-based targeting criteria.' This man had been in the UK for almost 40 years and had been detained for over a year post-sentence. It was unclear why, given that the risk of reoffending was assessed as being low, UKBA detained him and continued to use this as a reason for his continued detention. It was particularly difficult to follow UKBA's reasoning because a large number of detention reviews were missing.

- 3.10 The examples above are concerning because NOMS had assessed the individuals as posing a low risk of reoffending. UKBA did not take account of this information, which may have contributed to the prolonged nature of immigration detention in both cases.

4. Reviewing detention

- 4.1 Detention reviews were carried out on time in less than a third of the cases we reviewed. Forty-one per cent of cases were consistently reviewed at the right level of authority. The officer reviewing detention often did not consider actions from previous reviews. The principle of people only being detained if they were removable within a 'reasonable' period was inaccurately applied in some cases. Over a third of those held for over six months said they had not made a bail application, and detainees complained that they were unable to exercise their legal rights. Monthly progress reports often appeared to be provided as a matter of bureaucratic procedure rather than as a genuine summary of progress, and some detainees found them difficult to understand. Many reports did not consider all factors relevant to the case, with information that might support a detainee's case for release recorded less rigorously than information that might prevent it. Over a third of interviewees said that separation from family was a significant impact of detention. In our interviews, two-thirds reported health problems and 53% described mental health problems, notably depression, stress and anxiety. Five detainees told us they had post-traumatic stress disorder (PTSD), and others mentioned experiences of torture and symptoms that might indicate PTSD. Some detention reviews did not adequately consider family life or health problems. The Rule 35 process did not provide the necessary safeguards for vulnerable detainees.

Detention reviews

- 4.2 In our sample, all detention reviews were carried out on time, as specified in the policy, in only 27% of cases (n=22). In the remaining 73% of cases (n=59), we found that detention had not been reviewed or had been reviewed later than required at least once. The average time that detention was unauthorised was 40 days (ranging from one day to over six months). In total 1,007 reviews should have been completed across the 79 cases where we could make a judgement.²⁹ We found that 79% of all reviews were completed on time (n=797), with the remaining 21% (n=210) conducted late or not at all, an average of 3.7 per case.
- 4.3 As well as being conducted on time, detention must be authorised by staff of an appropriate grade. We found that all reviews had been authorised by a member of staff at the level required by UKBA's policy in 42% of cases (n=45). In the remainder (39 cases), we found that detention had not been authorised by a member of staff, as required by UKBA's policy. There was no standard practice for storing detention reviews on file (see Section 5, File management), making retrieval difficult.
- 4.4 Detention reviews were often completed in isolation from previous reviews. In some cases, detention was authorised but specific actions were required from case owners. However, as the same authorising officer was unlikely to review detention two months in a row, due to the requirement for different levels of authority, there was no mechanism for checking whether any actions had been set, or if they had been followed, unless the case owner specifically mentioned them in the current detention review.

²⁹ Two cases were excluded from this calculation as the case studies were too confused to establish the number of detention reviews required and/or conducted.

Recommendation

- 4.5 **The UK Border Agency should conduct detention reviews on time and with the appropriate level of authority. All factors for and against detention should be recorded in detail and carefully considered. Progress on previous actions should be monitored by the authorising officer by way of a continuous action plan.**

Assessing removal within a ‘reasonable period’

- 4.6 According to the Hardial Singh principles, detention can only occur when a detainee can be removed within a ‘reasonable period’ (see Section 2, Background and methodology). Case owners were clearly alert to this test and reviews often spoke of reasonable periods in which the detainee could be removed or deported. However, we had concerns in some instances about the approach taken to the assessment of whether removal would take place in a ‘reasonable’ period of time. This is illustrated by the following example:

Mr K had been detained for 17 months when we interviewed him. His detention review stated: ‘Subject to the outcome of the appeal hearing of the further representation/new claim being refused and he becomes appeals rights exhausted, his removal can be made within a reasonable timescale when the Iraqi authorities resume referrals for agreeing removal on an EU letter’. [sic]

- 4.7 In this case it was decided that it was reasonable to continue to detain Mr K. This was despite the fact that the decision maker did not know how long it would take for the further representations and/or a new claim to be considered and determined, or whether or when the Iraqi authorities would resume accepting travel document application referrals.

Bail applications

- 4.8 Detention is not reviewed automatically by a judicial authority, but detainees may apply for bail to the FTT (IAC) if they have been in the UK for more than seven days.³⁰ Thirty-seven (46%) detainee files showed that they had applied for bail to the FTT (IAC), many more than once. The average number of bail hearings for these detainees was three. Our interviews gave slightly higher figures, with 45 (56%) detainees saying they had made at least one bail application.³¹ In eight case files, the detainee had been released on immigration judge bail.
- 4.9 During our interviews, we were surprised that of those detainees held for more than six months, nine (19%) said they had never made a bail application.³² This may have been because detainees were unaware of bail processes and/or had poor legal advice. A number of detainees said they did not know how to apply for bail or clearly needed help to navigate the

³⁰ Paragraph 22(1B) of Sch. 2 to the Immigration Act 1971. Note that Article 15(3) of the European Returns Directive also states: ‘In every case, detention shall be reviewed at reasonable intervals of time either on application by the third-country national concerned or ex officio. In the case of prolonged detention periods, reviews shall be subject to the supervision of a judicial authority.’ (*Emphasis added*)

³¹ It is not possible to tell the reason for this discrepancy but the most likely explanation is that some file records were incomplete.

³² As above, the file analysis provided a different figure, with no evidence of a bail application in 38% of cases where people had been held for over six months. The self-report figure is more reliable as recording in the files may have been inaccurate.

process. In the three examples below (all detained for more than six months), detainees were wrong in believing they could not make a bail application or that it was bound to fail.

'I was about to make the bail application but they made the deportation order so bail is impossible.'

'I don't know [why I haven't applied for bail]. I don't think I have a chance of being successful. I have a big criminal sentence. They refused my asylum case, so I don't think I have a chance.'

'I don't have sureties or an address to stay at.'

- 4.10 In such circumstances, swift access to good quality legal representation is vital. In common with HM Inspectorate of Prison reports, we found that detainees were often unhappy with the quality and amount of legal representation. Just over a quarter told us they did not have a legal representative at all (27%, n=22); for those held for more than six months the proportion was similar (25%, n=12).

Recommendation

- 4.11 **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.**

Monthly progress reports

- 4.12 Detainees do not receive copies of their detention reviews, but should all receive a monthly progress report. We found that most progress reports were served on time, with only occasional delays of a few days, with on-site teams often diligently chasing late reports. However, local monitoring systems were not always effective. For example, in Brook House IRC, although the on-site team recorded 31 letters as being overdue, the database was not kept up to date, and UKBA staff estimated that half of these reviews had already been served.³³
- 4.13 The initial report set out the reasons for detention, often in detail. However, subsequent reports regularly repeated the first report with little or no additional information about case progression. The reports were generally two to three pages long with the final paragraph updated each month. Errors were sometimes repeated from month to month. For example, in one case a report incorrectly stated that the detainee had been detained in January 2010 when she had, in fact, not been detained until June, and this reappeared in every subsequent report. Detainees noticed the repetition of errors in the reviews. For example, one commented that:

'... factual errors that haven't been rectified are reproduced on each review; for example, no contacts in the UK.'

- 4.14 Detainees told us they wanted to be told about progress since their last report, and the repetition of information caused some irritation. The comment below was typical:

³³ HMIP (2011) Report on an unannounced full follow up inspection of Brook House IRC, 12-23 September 2011. *The effectiveness and impact of immigration detention casework: a joint thematic review*

'It repeats the same information, that removal is imminent. They've said that for the last two years.'

- 4.15 Reports were all issued in English so detainees who spoke little or no English could not understand them. Some of those who did speak English also said they were hard to understand as they were not written in plain English:

'I read them because I can understand them but when they start using sections of immigration acts I get lost. They are not in layman's terms. They can be detrimental to my case but I don't understand them.'

- 4.16 We were concerned by what we found. It is clearly unacceptable that detention reviews should contain errors and fail to provide detainees with accurate information on the progress of their cases.

Recommendation

- 4.17 **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.**

Consideration of relevant factors

- 4.18 Detention reviews must consider all factors that may be relevant to the decision to maintain detention, including factors supporting further detention, such as offending history and poor immigration record, and others that should weigh towards release. In all cases, the authorising officer relies on the case owner to provide an accurate and balanced summary of the relevant facts. Our interviews identified that family contact and health were important issues for detainees. In some cases, these factors should have been part of the consideration of continued detention.

Contact with families

- 4.19 A third of detainees said they were either married (n=21) or cohabiting (n=7) with a partner before entering detention. Of these, five were married to and six were cohabiting with British citizens. Twenty-two per cent (n=18) said they had children in the UK.
- 4.20 In the detainee interviews, 38% (n=32) said that separation from their families was a significant impact of detention. Fourteen specifically mentioned separation from their children as an issue, with relationships commonly described as suffering as a result. For example, one detainee held for over six months told us his children were displaying behavioural problems while he was in detention:
- '[Being separated from my] babies ... make me upset. [They] keep asking me "where are you Dad?" I keep telling them I'm in hospital.'* (See case study of Mr M, below.)
- 4.21 A lack of visits was a commonly mentioned difficulty, often because the place of detention was too far from the detainee's home, or travel costs were prohibitive. A third of detainees (n=26) said they found it difficult to maintain contact with their family and friends. Some were only able

to sustain intermittent phone contact. Lengthy detention and its indeterminate nature were factors in the weakening of family relationships:

'Detention puts a big strain on relationships. Visits get fewer as time goes by.'

'I haven't heard from my wife and children for years. I have no idea what has happened to them. I can't do anything from detention.' [In detention for two years.]

'It could destroy my relationships. I don't know when I'll come out.'

- 4.22 Two detainees said they felt guilty for being in detention and that they had let their families down. One told us:

'I feel I've lost so much ... my family doesn't say it but [they are] disappointed in me. My family see that I'm not able to make the most of my life. I feel that I'm letting my family down, especially my father.' (See full case study of Mr O, below.)

- 4.23 The reviews we inspected rarely reflected these concerns and were much more likely to focus on recording issues that were detrimental to the detainee, such as offending history. File evidence confirmed that, in some cases, there had not been a balanced consideration of factors, meaning that higher grade staff did not have all the necessary information to make an informed decision.

Case studies – Consideration of family life in reviews

Mr M, a failed asylum seeker, had lived in the UK for 18 years. Following custodial sentences for motoring offences, UKBA served him with a deportation order. He was in a long-term relationship with a foreign national with indefinite leave to remain. The couple had two children together, both born in the UK. While the detention reviews recorded in detail the detainee's immigration and offending history, they paid little attention to his family life. They did not mention how long the couple had lived together, the number of their children or their age. As these factors were not included, the official authorising detention did not have a full understanding of the case. We interviewed the detainee when he had already been held for 20 months, and he was concerned about maintaining his relationship with his children.

Mr K was a failed asylum seeker and ex-prisoner, having served eight months in prison for a fraud offence. He was detained while UKBA considered whether to deport him. He was the father of a British citizen and in a relationship with a British citizen. When we interviewed him after 18 months in detention he said he was worried about his family: 'My child's behaviour is deteriorating. I feel guilty because I can't be with my family'. The UKBA reviews noted, 'UKBA believe that he has no close ties in the UK that could provide him with any incentive to remain in one place' and 'there is no evidence of close ties with the UK'.

In our view, UKBA should have given much greater weight to the family ties the two detainees had developed in the UK when undertaking detention reviews.

Health issues

- 4.24 In our interviews, 67% of detainees (n=54) said that they had health problems. Reported health problems among detainees held for more than six months were more prevalent, with

79% (n=38) saying they had problems, compared with 48% (n=16) of those held for less than six months. Of the 54 detainees who told us they had health problems, 46% (n=26) reported physical problems. The most common physical health issues were heart or blood pressure conditions (n=7) and back problems (n=3), and eight of the detainees with these problems had been held for more than six months. Half (n=5) of this group reported that their conditions had developed or worsened after being detained.³⁴

- 4.25 A small number (n=4) said they had a disability and felt that this made their experience of detention worse. For example, one man who used crutches told us that he had been raped, shot and tortured in his home country and experienced both physical pain and stress. He said that detention 'makes it worse; you can't do anything. If you're outside you can be taken to a hospital and get better treatment. Here you're told "you'll be okay" and just given painkillers'. In our file analysis, this man's detention reviews made no mention of his mobility issues.

Mental health problems

- 4.26 Fifty-three per cent (n=43) of all detainees described mental health problems, notably depression, stress and anxiety. Detainees held for more than six months were much more likely to report such issues (65%, n=31) than those detained for under six months (36%, n=12). Reported symptoms included difficulty sleeping, flashbacks, self-harm and headaches. A small number of detainees said their mental health problems developed only after arriving in detention, but most described existing conditions that had deteriorated in detention. One man with a diagnosed mental health condition vividly described the impact of prolonged detention (see case study below). He had been detained for two and a half years under immigration powers when we spoke to him, having already spent 18 months serving a custodial sentence for drugs offences.

Case study: Consideration of mental health problems

Mr M spent 18 months in prison after being convicted of a drugs offence and was detained under immigration powers thereafter. When we interviewed him, he had been in detention in IRCs for two and half years after his sentence. He told us he had difficulty concentrating, was lethargic and apprehensive about what was to happen to him, and had 'feelings of hopelessness' about his situation. He felt 'out of touch with the world' after so many years in prison and detention. He had diagnosed mental health problems and was taking medication daily.

After being detained under immigration powers for approximately two years, health care staff at the IRC, who were concerned for his welfare, tried unsuccessfully to have him sectioned under the Mental Health Act. The case owner recommended that he be released. However, there was no evidence that the impact of continued detention on Mr M's mental health had been considered by the official who authorised his continued detention.

As this individual had been diagnosed with mental health problems, we would have expected his mental health to have been considered by UKBA when reviewing his detention.

³⁴ Few detainees told us anything significant about treatment by health care staff in particular, and generally focused on the negative impact on their health of the overall experience of detention and ongoing immigration cases.

Post-traumatic stress disorder

- 4.27 Five detainees told us they had post-traumatic stress disorder (PTSD), and a number of others mentioned experiences of torture and other traumatic events alongside symptoms that might indicate PTSD, such as flashbacks, anxiety, problems sleeping and depression. They described a variety of experiences, including torture and assault. At the time of our file analysis, of the five people who said they had PTSD, one had been granted discretionary leave to remain, one had been bailed by an immigration judge and three remained in detention. One case (see below) showed a reluctance to consider repeated medical recommendations.

Case study: Consideration of post-traumatic stress disorder

Mr O was detained in 2010 on completion of a one-month prison sentence. He had been in the UK for 15 years and had a British child and numerous family members in the country. He told us: 'I feel I've lost so much ... My mother was murdered in Africa in 2009 ... I find a confined environment is stressful ... I was in prison back in Africa due to my student activities. I feel morbid, depressed ... When I get attacks and hallucinations, I can't make out what is real and what isn't ... I can't control my emotions.'

Three months after he was detained, a psychotherapist wrote to UKBA stating that Mr O was suffering from PTSD and depressed mood and needed to be back in the community to access longer-term psychotherapeutic trauma therapy. He also wrote a similar letter to the IRC's medical team, and this was treated as a Rule 35 report. UKBA responded that 'In the report the psychotherapist makes no recommendation that your detention is detrimental to your health'. The psychotherapist wrote a further three letters to the IRC's medical team recommending release and stating that Mr O could not be effectively treated in custody: 'I believe he will become increasingly disturbed while he is in detention' ... he 'remains a suicide risk'.

A UKBA progress report served on Mr O after these letters had been received said that detention was being maintained, but made no mention of his mental health problems. A suicide and self-harm monitoring (ACDT) booklet for Mr O was then opened as he was considered to be at risk of self-harm. A senior executive officer in UKBA reviewing detention in the same month noted: '... there are concerns over his mental state but am satisfied that this is being properly monitored and there is no indication that Mr [O] is not fit to be detained'. A few days later a consultant psychiatrist wrote to the CCD case owner stating:

'Mr [O] suffers from post-traumatic stress disorder and depression which is worsening as a result of his detention. He is becoming increasingly suicidal and I feel he now presents a real risk to his life. Because of his previous traumatic experiences in custody the detention appears particularly harmful to him ... I would ask that the UKBA consider releasing him on compassionate grounds.'

This was supported by the UKBA contact management team who wrote to the CCD case owner saying that a care plan could be drawn up to enable community rehabilitation. The psychiatrist wrote to the IRC again, stating: 'I reviewed him again yesterday ... My impression was that ... If he was released I think it is probable that his symptoms would improve'.

Detention was reviewed again by a senior executive officer with no mention of the letters from

the psychotherapist or the psychiatrist. Further representations were made by Mr O's legal representatives and a response was issued a month later, citing treatment from the psychotherapist and psychiatrist as reasons for maintaining detention. This is despite both of them recommending release and saying they could not effectively treat Mr O in detention.

In a detention review issued two months later, reference was made to Mr O's vulnerability: 'Mr [O] remains on ACDT watch following threats of suicide. He is taking strong medications for PTSD'. No mention was made of the psychotherapist or psychologist's recommendations for release.³⁵ At the time of our file analysis, Mr O remained in detention.

- 4.28 Given that Mr O had been diagnosed with PTSD by medical professionals and that they consistently recommended release, it is unacceptable that UKBA failed to take proper account of the medical evidence when reviewing his detention.

Rule 35 and protection of detainees who are unfit to detain

- 4.29 In our sample for this report, nine Rule 35 applications were submitted. None led to release. Four were not responded to within the time limits set out by UKBA's policy,³⁶ taking from two days to over seven weeks (the longest was 51 days), and on average 13 days. In two of these cases, continued detention appeared defensible on the basis of file data. In five cases, we had insufficient information to make a judgement. One of the remaining two (the case of Mr O) is discussed above, and in the other (see case study of Mr TM, below) insufficient attention was paid to the evidence.

Case study: Application of Rule 35 protections

Mr TM's asylum appeal was dismissed in January 1998. Despite not finding a risk of future persecution, the immigration judge³⁷ found Mr TM to be a torture survivor: 'The marks on his body do suggest that he has suffered physically and those marks do therefore point to past persecution'. The allegation of torture was subsequently raised in a Rule 35 report after Mr TM was detained in October 2009. UKBA did not release him and the Rule 35 response failed to make reference to the immigration judge's findings or explain what the exceptional circumstances were that justified detention.

- 4.30 This case illustrates a common theme in HM Inspectorate of Prison inspection reports, which routinely review a sample of Rule 35 reports and case owners' responses. The Rule 35 reports are often perfunctory and contain no objective assessment of the illness, condition or alleged torture. The replies are often cursory and dismissive and, as in this case, it is extremely rare for a Rule 35 report to lead to release.³⁸

³⁵ Mr O was diagnosed with PTSD and depression at a time when UKBA's policy was to detain those experiencing 'serious mental illness' in 'only very exceptional circumstances'. The policy changed in August 2010 and now states that 'those suffering serious mental illness which cannot be satisfactorily managed within detention' will be detained only in very exceptional circumstances.

³⁶ The time limit for case owners to respond to Rule 35 reports is no later than two working days starting from the following working day that the report was received.

³⁷ At the time the determination was promulgated, immigration judges were known as special adjudicators.

³⁸ See IRC reports at: <http://www.justice.gov.uk/publications/inspectorate-reports/hmi-prisons>

- 4.31 UKBA's instructions³⁹ state that after a Rule 35 report is submitted, the case owner should open a new entry on the Agency's electronic casework information database (CID), detailing whether the basis of the report relates to health, suicide risk or a torture allegation. The instructions go on to say that after the report has been considered, the case owner should close the CID entry and record whether the detainee had been released, or detention had been maintained. Capturing the information in this way should allow UKBA to monitor centrally the number and basis of Rule 35 reports, how quickly they are they are responded to, and the frequency with which they result in a detainee being released. We were, therefore, concerned to find that of the nine cases where a Rule 35 report had been submitted, eight had not had a new entry created that detailed the Rule 35 application, its basis or whether the person had been released or continued to be detained. While a separate entry had been created in the remaining case, it had been done incorrectly, not completed as the instructions required and had not been 'closed' to record whether or not detention had been maintained.

Recommendation

- 4.32 **The UK Border Agency should only detain torture survivors in exceptional circumstances, which are clearly documented on file and explained to the detainee.**

³⁹ Detention Rule 35 Process Instruction: <http://horizon.gws.gsi.gov.uk/portal/site/horizon-intranet/menuitem.5e9fdfa5b28a104a43757f10466b8a0c/?vgnnextoid=e9850aa87ded4210VgnVCM2000003cb1a8c0RCRD>

5. Progressing cases

- 5.1 Time-consuming asylum claims and problems with travel documentation were commonly cited reasons for prolonged detention. In most cases, travel documentation problems could not easily be resolved by UKBA action. However, there was a lack of a more strategic approach to the management of such problems. In a quarter of the file sample (n=20), inefficiencies in casework were the main explanation for ongoing detention, and in a further 10 cases there were delays in removing people. In some cases, asylum claims were not dealt with efficiently, leading to periods of detention that were not the fault of detainees. Prosecution for non-compliance had not been used in any cases and in some it appeared that detention was used as a default rather than a rigorously governed last resort. Ex-prisoners could be detained for long periods even if their prison sentences had been short. The high level of authorisation needed to release ex-prisoners was inconsistent with the presumption in favour of release. Files were in poor condition, and missing information could have included documents to establish the validity or otherwise of unlawful detention claims.

Outcomes of sampled cases

- 5.2 Of the 81 people sampled, our file analysis showed that two months after their interview with prison inspectors the outcomes were as follows: 42 remained in detention, 21 people had been removed, 10 had been released by UKBA, and eight had been bailed by an immigration judge. Of the 60 who had not been removed, we concluded that there were 21 cases where the lack of an emergency travel document (ETD) was the main barrier to removal (see travel documents section, below). In the other 40 cases, we were satisfied that the lack of an ETD was not the main factor preventing removal. A significant finding was that UKBA had failed to progress 20 cases adequately. Ongoing legal challenges were the reason for delay in 10 cases, and in a further 10 cases, UKBA had progressed the case adequately but had not yet been able to remove the detainee. Common reasons for failure to progress a case adequately included lengthy, unexplained decision making about asylum, initially applying incorrect deportation provisions and then taking too long to rectify the mistake, and incorrect caseworking decisions leading to avoidable delays.

Processing of asylum claims

- 5.3 Foreign nationals can claim asylum at any time in the UK. They may claim while in detention for a variety of reasons, including a fear of persecution, not necessarily by the state. For example, one detainee told us he feared returning to China as he was still in debt to the traffickers who had brought him to the UK. Two other detainees similarly mentioned fear of traffickers as the main reason for not wanting to return home. Other reasons for claiming asylum may simply be because detainees have followed bad advice or they may be attempting to frustrate removal.
- 5.4 Whatever the reasons behind the asylum claim, UKBA is expected to interview the person and process the claim efficiently. Our file analysis showed that 49 detainees (60%) had made asylum claims at some point before or during detention, most of which (88%, n=43) had been resolved and refused. Nine cases were ongoing, with six awaiting a decision and three subject

to appeal. The average length of time between the date of an asylum claim and its resolution was approximately eight months (232 days);⁴⁰ the total time between the date of a claim and its resolution ranged from five days to almost five years. We identified one case study where an asylum claim was dealt with efficiently and effectively, and several where claims were processed slowly and decisions delayed. Delays were more prevalent among CCD cases.

Case studies: Processing of asylum claims

Ms D overstayed her visa and was found during the search of a property. She was served with papers notifying her that she was an overstayer and asked to report to UKBA. She failed to do so and was eventually detained at Yarl's Wood in August 2010. She did not claim asylum until 14 June 2011. The claim was refused and certified as 'clearly unfounded' on 29 June 2011. She was removed two weeks later.

Mr G, an ex-foreign national prisoner, entered immigration detention in February 2010 following completion of a custodial sentence, when an emergency travel document application was progressing. He claimed asylum in September 2010, which meant he could not be deported until the application was decided. He was interviewed in mid-October 2010 in relation to his asylum claim. However, by the time we interviewed him in June 2011, no decision had been made on his claim – a delay of seven and half months. There were unexplained delays between each file note by UKBA staff, and no evidence that the human impact of detention was considered. Mr G told us that he did not understand what was happening because of language problems, and that he had lost contact with his family because of the difficulties of maintaining contact from detention. He told us he had been a victim of trafficking in 2006.

Mr CR, an ex-prisoner, entered immigration detention in February 2009. He appealed against the Secretary of State's notice to make a deportation order. This was dismissed and he exhausted his right of appeal in May 2009. A month later, in June 2009, he claimed asylum which prevented his deportation while it was being considered. UKBA promptly interviewed Mr CR in June 2009 but failed to decide the case until August 2010 – a delay of 14 months. He was deported at the end of September 2011 after spending two years and seven months in detention.

We consider that such delays in considering asylum claims are unacceptable.

Recommendation

5.5 The UK Border Agency should decide detainees' asylum claims in a timely manner.

Travel documents

5.6 A detainee must have a travel document to return to their country of origin and many detainees were held while UKBA sought a travel document. It is not uncommon for detainees to have lost their document, never had one, or destroyed it in an attempt to frustrate removal. Our file analysis showed that in about two-thirds of cases (65%, n=53), a travel document was not

⁴⁰ This is based on 38 cases as there was no clear date recorded for the original asylum claim in one file.
The effectiveness and impact of immigration detention casework: a joint thematic review

available, and most detainees interviewed (77%, n=62) also said they did not have a travel document. In a third of cases (33%, n=27) there was no travel document and we concluded that it was difficult to obtain one.

- 5.7 We found that in most cases UKBA had been taking appropriate action to obtain a travel document. In our file sample, there were 21 cases where the lack of a travel document was identified as the main barrier to removal. In two of these, UKBA had not been making efficient progress with the ETD application; in one case it took a month for the written ETD interview to get from the interviewer to the case owner. In the other 19 cases, UKBA had taken adequate steps to secure an ETD, but in two it was making inefficient progress with the rest of the immigration casework. Overall, in 17 of the 21 cases, it was difficult to see what UKBA could have done to progress matters more quickly.
- 5.8 Detainees who did not have a travel document fell into one of three broad categories. The first group comprised detainees who cooperated with the re-documentation process but could not obtain documents, often because the issuing authorities for home countries delayed or refused to issue a document. Twenty per cent (n=16) of detainees told us that they wanted to return to their country of origin. The following cases studies are typical of cases in this group. In the first case UKBA was not at fault. In the second, delays in obtaining a travel document were due to a mixture of UKBA inefficiency and bureaucratic requirements from the authorities of the detainee's home country.

Case studies – Detainees wanting to return home but unable to obtain travel documents

Mr S, a 21-year-old, had spent five months in prison and a further two years and three months in detention at the time of interview. He wanted to return to his country and his Home Office file confirmed he had complied with the re-documentation process. Despite this, no document had been issued by the home authorities. For such a young man, this was a significant amount of time to spend in detention. The Home Office file noted that on two occasions consideration had been given to making a recommendation to the strategic director for release, without the case owner actually taking any such action.

Mr H had lived in the UK legally since 2000. In late 2009 he was convicted of cultivating cannabis and given a two-year sentence. After one year in prison, he was detained under immigration powers in December 2010. In February 2011, UKBA conducted an ETD interview with him and submitted an application to his embassy. This was refused twice because on each occasion one of the photographs in the pack was not attached to a relevant form. The application was submitted for a third time but had not been responded to by the time of our inspection. The detainee had been in detention for seven months when we interviewed him. Mr H told us that he wanted to return to his country of origin as soon as possible and could not understand why this had not happened. He told us he had no legal representation because of a lack of money to pay for advice, and no visitors or friends who could help him.

- 5.9 The second group involved detainees who refused to cooperate. In our file analysis, 13 detainees appeared to be refusing to assist in the re-documentation process. The third group of cases involved more complex and contentious issues: cases that appeared to show detainee cooperation but where no travel document was forthcoming. These invariably led to an impasse, with UKBA concluding the detainee had provided false information and the detainee blaming the issuing authority. In the following case, it was assumed that the detainee was providing false information, but his ongoing detention was questionable given the lack of progress in obtaining a travel document.

Case study: Detainees claiming to comply but considered to be obstructing re-documentation

Mr BGT, an ex-prisoner, had been in detention for 16 months and from his file appeared to be complying with the re-documentation process. He told us that he was cooperating with the re-documentation process and had spoken with the High Commission of his country of origin. He provided information which the UKBA returns liaison officer in his country of origin was using to confirm his nationality. UKBA worked on the case diligently but the case required verification visits to Mr BGT's home area and work by the authorities of his country. Instability and elections in the region of proposed return delayed these visits. A proposal for release was reviewed at executive board level of UKBA but was refused because it was believed he was providing false information.

This case illustrates the potential difficulties where an individual claims to be cooperating with re-documentation, but UKBA believes they are in fact seeking to frustrate the process with a view to preventing deportation.

Dealing with non-compliance

- 5.10 Given the evident lack of progress in the above case of Mr BGT, prolonged detention was not defensible without an obvious accompanying strategy for achieving progress. This case illustrates the lack of a consistent overall strategic approach to managing and progressing cases where people have been detained for long periods. It is particularly unclear what steps are to be taken when a detainee is apparently not complying with the re-documentation process. In some of the cases we examined, a Section 35 prosecution (see below) had been considered, but none had proceeded. Many detention reviews stated that the detainee was not complying with the re-documentation process, with comments such as:

'... he has been refusing to comply with ETD process for a long time.'

'I have noted the difficulties around establishing nationality and identity, compounded by [the detainee's] lack of compliance. That being so, he can hardly complain that his detention is continuing.'

- 5.11 In one case, an irregular migrant had been detained after serving six months in prison for document offences. He had exhausted his right to appeal and refused to cooperate with the re-documentation process. UKBA considered a Section 35 prosecution but this option was not pursued for reasons that were unclear. When we interviewed him, he had been detained for two years.
- 5.12 In some instances, a stalemate had arisen between the detainee and UKBA, with the latter prolonging detention as it tried to establish nationality and re-document in the face of the individual's non-compliance. In one instance, an individual we interviewed had been detained for two years and was still refusing to cooperate. Section 35 of the 2004 Asylum and Immigration Act (Treatment of Claimants) gives the Secretary of State for the Home Department the power to prosecute those who, without reasonable excuse, fail to comply with the re-documentation process. The offence, which came into effect in September 2004, is punishable by up to two years in prison and/or a fine. Non-compliance could be non-attendance at an ETD interview, refusal to answer questions or providing false information.

Detainees can give a reasonable excuse as a defence. It is for the Secretary of State to prove the excuse is unreasonable, but in 2007 the Court of Appeal found that a fear of persecution on return is not a reasonable excuse as that fear would already have been addressed in the asylum process preceding the prosecution. Given that Section 35 prosecution is a tool available to UKBA in cases where it believes an individual is not cooperating with the re-documentation process, we were surprised to find that in the financial year 2009/10, only six people were charged in England and Wales, all of whom were convicted and imprisoned.⁴¹ In the following year (2010/11), only eight were found guilty.⁴² Prosecution places the burden of proof on UKBA, which has to prove beyond reasonable doubt that the detainee is not cooperating. Prosecution would allow disputed cases to be scrutinised by an independent judge.⁴³ Furthermore, it might also encourage non-compliant detainees to cooperate given the considerable sanctions available.

- 5.13 This more robust approach is supported by a recent claim for unlawful detention in the High Court which indicated that, rather than extending immigration detention, prosecution should be pursued in cases of non-compliance. In the case of *The Queen (on the application of Amin Sino) v SSHD* [2011] EWHC 2249 (Admin), a High Court judge found that an Algerian man's five-year detention was unlawful. The detainee's failure to cooperate with the re-documentation process was:

'not justification in itself for any immigration detention. Such an individual's failure to cooperate without reasonable excuse renders him liable on conviction on indictment to up to 12 months imprisonment. Immigration detention may only be justified if there is a realistic prospect of removing an individual within a reasonable period taking into account his failure to cooperate. In this case there was no such prospect.'

- 5.14 While more Section 35 prosecutions would allow alleged non-compliance on the part of detainees to be tested in the courts, there is also a need for routine independent scrutiny of cases involving long periods of detention. Such independent and transparent oversight could act as a catalyst for improvement within UKBA by requiring it to provide clear evidence to justify continued detention.

Recommendation

- 5.15 **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**

⁴¹ UKBA response to a freedom of information request from the Northern Refugee Centre dated 3 July 2010. Bail for Immigration Detainee's Travel Document Project's 'Briefing on Cooperation & Removability' February 2012.

⁴² Ministry of Justice, Justice Statistics Analytical Services response to a freedom of information request from Bail for Immigration Detainees (BID) November 2011. BID Travel Document Project's 'Briefing on Cooperation & Removability' February 2012. It is not clear from the available information if in these particular cases the detainees were also imprisoned.

⁴³ Daniel Wilsher makes the same point in *Immigration Detention: Law, History, Politics*, Cambridge University Press, 2012, page 350: 'The most significant cause of such extended detention is the lack of documentation upon which to remove detainees. Some detainees clearly fail to cooperate with the documentation efforts ... [G]overnments continue to rely not on criminal law, but administrative discretion to extend detention for 'non-compliance' ... This approach is wrong in principle because it totally undermines the rule of law by leaving an overtly coercive power of imprisonment to the discretion of executive officers. The very concept of "non-compliance" is fraught with uncertainty. There have been successful challenges to such executive assessments in the United States and the United Kingdom ... Criminal prosecution is preferable because it puts the burden on governments to justify their non-compliance claims before independent forensic examination. Clear and exacting definitions of non-compliance, with notice given to the detainees under caution prior to any prosecution, are far more consistent with the rule of law.'

circumstances only. It should publish its findings annually. UKBA should expeditiously review all cases in which the panel recommends release and publish its response.

Ex-foreign national prisoner cases

- 5.16 Ex-foreign national prisoners may be detained on completion of their criminal sentence if they have been recommended for deportation by the sentencing court, are subject to the automatic deportation provisions of the 2007 UK Borders Act or have been served with a notice of a decision to make a deportation order. Just over half of the detainees we spoke to said they had served a prison sentence in the UK (53%, n=43), with an average sentence of 20 months, ranging from one month to eight years and five months. Most of those detained for more than six months were ex-prisoners (81%, n=39). Detainees told us that the average time actually served in prison was 10 months, ranging from one month to approximately five years and one month.
- 5.17 Ex-foreign national prisoner cases are managed by UKBA's CCD. NOMS is obliged to inform UKBA of any foreign nationals (or suspected foreign nationals) as they enter custody. As a result of the Chindamo judgment,⁴⁴ UKBA is not allowed to initiate deportation procedures more than 18 months prior to a foreign national prisoner's conditional release date. This is a considerable period of time in which to decide whether to pursue deportation, deal with any appeals and serve a deportation order. There has been a steady improvement in the rate at which ex-foreign national prisoners have been removed after completion of sentence in recent years. The average number of days taken to remove an ex-foreign national prisoner following completion of their custodial sentence was 131 in 2008, 119 in 2009, 95 in 2010 and, up to September 2011, 77.⁴⁵ However, 12 of those in our sample had spent 12 months or more in a prison before being detained, nine of whom had been in prison for 18 months or more. In the following case, an EU national served a six-year sentence, ample time for immigration matters to be resolved, but then spent nearly a month in detention for no obvious reason.

Case study: Deportation delayed despite a six-year sentence

A French national did not wish to fight deportation. His case file indicated that his sentence was changed from indeterminate to six years over a year before he became an immigration detainee. It was not clear why caseworking had not started at that point so that it could have been resolved by the time his custodial sentence came to an end. A valid passport was brought to the prison nine days after the end of his sentence but a deportation order submission took another six days. After the deportation order was served, it took another 11 days for the man to be removed. When we interviewed him, he said he had contacted UKBA himself two weeks before the end of his sentence and that he was 'frustrated at being in detention. I wanted to get on the early release scheme [ERS] but no one contacted me about it. I filled in one document about the ERS but didn't get a reply ... I just want to go back to France.'

There was no obvious justification for the delay in deporting the individual. He wanted to go

⁴⁴ In the case of Learco Chindamo, UKBA initiated deportation proceedings two and a half years into a life sentence. The then Asylum and Immigration Tribunal stated that it was not possible to assess all the relevant facts in the case so long before a possible release date. The UKBA policy is therefore not to start deportation proceedings until 18 months before end of sentence (appeal number 00/TH/2345).

⁴⁵ *Hansard* written answers for 24 October 2011. Data prior to 2008 were not considered to be sufficiently reliable. <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm111024/text/111024w0002.htm#11102438000310>
The effectiveness and impact of immigration detention casework: a joint thematic review

home, was cooperating with the deportation process, and UKBA should have arranged this before the end of his custodial sentence.

Release of ex-foreign national prisoners

- 5.18 In relation to ex-foreign national prisoners managed by the CCD, the officer reviewing detention cannot authorise release and a referral has to be made to the UKBA's chief executive or a board member deputising in his absence.⁴⁶ In practice, the referrals go to the strategic director of crime and enforcement. This means that while a relatively low ranking UKBA official can detain ex-foreign national prisoners, they can only be released by someone at the top of the organisation. The requirement for such a high level of authorisation is clearly inconsistent with the presumption in favour of release, which applies equally to CCD and non-CCD cases. It is not surprising, therefore, that UKBA had not released any of the 42 CCD cases in our sample, even where the risk to the public was assessed as low by criminal justice professionals. In contrast, a quarter (26%, n=10) of the 39 non-CCD cases were released.

Recommendation

- 5.19 **The UK Border Agency should resolve the cases of foreign national prisoners before the end of their sentences unless there are exceptional and clearly evidenced circumstances to prevent this. Case owners should obtain from NOMS all relevant risk information and take account of this in their assessments, noting when it is not available. Ex-prisoners should be reviewed by officials who have the authority to release and adhere to the presumption in favour of release.**

File management

- 5.20 The overall management of files in our sample was poor. As many detainees had long immigration and detention histories, their files were very large and broken down into sub-files. In some cases, sub-files had gone missing. These may have contained original documents belonging to the detainee or vital information that could have helped to establish the validity or otherwise of unlawful detention claims. Many documents in files were duplicated, not in chronological order or missing. Many were not securely attached to files. In the case of Mr O (see case study, page 27), documents for different detainees were placed on his file, and three of the eight sub-files in this case had been lost.
- 5.21 It was not clear what UKBA's policy was on storing file minutes. In some files, minutes were printed from UKBA's CID and stored. In other files, they were not. The location of detention reviews in files also varied. Some were placed in the files chronologically, while others were placed behind the front cover.
- 5.22 We found no evidence that UKBA had a file review system regularly carried out by senior staff on a sample of files. A well-executed file review regime would improve file management which, in turn, would improve UKBA's efficiency.

⁴⁶ See EIG chapter 55.3.2.2: 'Any decision not to detain or to release a time-served foreign national offender on restrictions must be agreed at grade 7/assistant director level and authorised by the UK Border Agency's Chief Executive or board member deputising in her absence.'

Recommendation

- 5.23 **The UK Border Agency should keep files in an orderly manner and implement a file review regime.**

Appendix I

Frequency and authority required for detention reviews⁴⁷

Review of detention (non- Criminal Casework Directorate/third-country unit (CCD/TCU cases))

Period in detention

24 hours

7 days

14 days

21 days

28 days

2 months

3 months

4 months

5 months

6 months

7 months

8 months

9 months

10 months

11 months

12 months and monthly thereafter

Review authorised by:

Inspector/senior executive officer (SEO)

Chief immigration officer (CIO)/higher executive officer (HEO)

Inspector/SEO

CIO/HEO

Inspector/SEO

Inspector/SEO

Inspector/SEO

Inspector/SEO

Inspector/SEO

Assistant director

Assistant director

Assistant director

Deputy director

Deputy director

Deputy director

Director

Review of detention in TCU cases 1

Period in detention

24 hours

7 days

14 days

21 days

28 days

Weekly reviews between 28 and 40 days

40 days

Weekly reviews between 40 and 80 days

80 days

Weekly reviews between 80 days and 6 months

Weekly reviews between 6 and 11 months

12 months and over

Review authorised by:

CIO/HEO

CIO/HEO

CIO/HEO

CIO/HEO

Inspector/SEO

Inspector/SEO

Assistant director

Inspector/SEO

Assistant director

Inspector/SEO

Deputy director

Director

Review of detention in CCD cases

Period in detention

1 month

2 months

3 months

4 months

Review authorised by:

SEO/Inspector

Assistant director

HEO/CIO

SEO/inspector

⁴⁷ Taken from EIG chapter 55. 8, accessed in July 2012.

5 months	HEO/CIO
6 months	HEO/CIO
7 months	Assistant director
8 months	HEO/CIO
9 months	SEO/inspector
10 months	Assistant director
11 months	Deputy director
12 months	Director
13 months	SEO/inspector
14 months	Assistant director
15 months	Deputy director
16 months	SEO/inspector
17 months	Assistant director
18 months	Director
19 months	SEO/inspector
20 months	Assistant director
21 months	Deputy director
22 months	SEO/inspector
23 months	Assistant director
24 months	Director
24 months plus	Return to cycle beginning 13 months

Appendix II

Interview pro forma

HMIP detainee interviews

Introduction

HMIP is an *independent* organisation. We don't work for UKBA or the company running this removal centre. We are conducting *research* into the quality of UKBA's detention casework. We want to find out if UKBA have considered all the *relevant factors* in your case before deciding to detain you. We also want to assess the *impact of detention* on you. You will remain *anonymous*. We won't publish your name or any information that would identify you. Your responses will be *confidential*, we won't share your individual answers with the centre or UKBA. We cannot intervene or *influence your case*. This interview will purely be used as *part of our research* for a report to be published in 2012.

Centre	
Date	

Basic details

Name	
Nationality	
Date of birth	
Port ref ⁴⁸	
HO ref ⁴⁹	

Immigration detention

How long have you been detained under immigration powers in the UK?	
How many places have you been held under immigration powers in the UK?	

Detainee's background

- Do you understand spoken English? Yes No
- Do you understand written English? Yes No
- What is your marital status? Married Single
Co-habiting
- Is your wife or partner a British citizen? Yes No
- Do you have children in the United Kingdom? Yes No

Does anyone rely on you for support ⁵⁰ in the United Kingdom?	Yes		No	
--	-----	--	----	--

48 Port reference is usually three letters, slash and then seven numbers.

49 Home Office reference will usually be a letter (the initial of the detainee's surname) followed by seven numbers.

50 Spouse, children, elderly relatives etc...

Prompts: financial support, main carer, other support?

Comments:

What is your immigration status?

Indefinite leave to enter/remain

Exceptional leave to remain. Discretionary leave. Humanitarian protection.

Limited leave to remain as a refugee.

Overstayer

No leave

Other please state _____

Comments:

How long have you lived in the United Kingdom?	
--	--

Before entering immigration detention were you employed in the UK?	Yes		No	
If yes, what was your job?				
If yes, for how long were you employed?				
Before entering immigration detention were you in education in the UK?	Yes		No	
If yes, what were you studying?				
If yes, where were you studying?				
If yes, for how long were you studying?				

Do you have an outstanding immigration appeal? ⁵¹	Yes		No	
Comments:				

Have you served a prison sentence in the UK?	Yes		No	
If yes, how long was your sentence?				

⁵¹ For example, an appeal against deportation, asylum appeal, judicial review in the high court, etc.
The effectiveness and impact of immigration detention casework: a joint thematic review

How long did you serve in prison?	

Do you wish to return to your country of origin?	Yes		No	
Comments:				

Initial detention

Has anyone explained to you, in a language you could understand, why you are being detained?	Yes		No	
If yes, who explained this to you?				

Detention reviews

Your detention has been reviewed on a monthly basis. You should have received a letter every month, giving reasons for continuing detention.

Have you received a monthly letter?	Yes		No		Don't know	
Comments:						
Do you understand the contents of the monthly review letter?	Yes		No			
Comments:						
Has anyone explained the contents of the monthly review letter through an interpreter?	Yes		No			
Comments:						

Legal representation

Do you have an immigration lawyer?	Yes		No	

Bail

How many times have you applied for bail?

If you haven't applied for bail, why not?
Do you have friends or family that would attend your bail hearing and support you if released?
If you were released from detention where would you live? <i>With family, friends, Section 4 emergency accommodation or don't know?</i>

Health

Do you have any health problems?	Yes		No	
If yes, what are your health problems?				
Do you have a disability?	Yes		No	
If yes, what is your disability?				
How does detention impact on your disability?				
How has detention impacted on your health?				

--

Impact of detention

In what other ways has detention impacted on you?
<i>Prompts: family and relationships, employment?</i>

Use of force/segregation

Have staff used force on you since entering immigration detention?	Yes		No	
If yes, why was force used?				
Have you been in the segregation unit?	Yes		No	
If yes, do you know why you were located in the segregation unit?				
If yes, how long were you there?				

Travel documents

Do you have a passport or travel document?	Yes		No	
If no, have you applied for an emergency travel document (EDT) from your embassy?	Yes		No	
If yes, how long ago did you apply for an EDT?				

For those that have applied for an ETD, which of the following accurately reflects your situation?:

- The ETD application was refused
- I'm waiting for a reply to the ETD application
- I've been told my ETD will be granted but I'm waiting for it to be issued.

If you haven't applied for a travel document, why not?	
Have you assisted UKBA or your high commission in obtaining travel documents?	

Comments:

Appendix III

Spreadsheet used for analysing UKBA case files

	Count
Case identifier	Home Office / LIT / Port reference number
	Detained person's initials
	Date of HMIP Interview
Profile	Gender
	Nationality
	Date of birth
	Partner and/or children in the UK
Caseworking	Type of UKBA unit dealing with case
	Asylum case (?)
	Date of asylum claim (if applicable)
	Date of asylum case resolution (if applicable)
	Asylum case outcome (if applicable)
	HR applications (?)
	Date HR application outcome made (if applicable)
	Date of HR application outcome (if applicable)
	HR articles involved
	HR application outcome (if applicable)
	Other applications (?)
	Description (if applicable)
	Other applications outcome (if applicable)
	Travel document status
	Travel document compliance (if applicable)
Detention	Date of start of current detention
	Detention Rule 35 application?
	Detention Rule 35 application outcome (if applicable)
	Detention Rule 35 response time (if applicable)
	Number of detention reviews that should have been completed in line with policy
	Number of detention reviews that were actually completed in line with policy
	Total number of days where detention review authorisation was overdue
	Number of detention reviews not authorised at the correct level of authority in line with policy

	Total number of bail applications (full hearing where consideration took place)
	Number of bail applications refused
	If number of bail applications refused is one less than total number of bail applications made, what reason?
Case outcomes	Detention case outcome (2 months after interview)
	Date detention ended (if applicable)
Case study	Should this be used as a case study?
	Case study notes
Notes	Notes
Full data capture	
Reasons behind not 'full data capture' (if applicable)	
Sampler's initials	

HM Inspectorate of Prisons is a member of the UK's National Preventive Mechanism, a group of organisations which independently monitor all places of detention to meet the requirements of international human rights law.

