



An inspection into the extent to which the police are identifying and flagging arrested foreign nationals to the Home Office and checking their status

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**An inspection into the extent to which the
police are identifying and flagging arrested
foreign nationals to the Home Office
and checking their status**

Presented to Parliament pursuant to Section 50 (2) of the UK Borders Act 2007

October 2016



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Foreword

Under section 50(1)(b) of the UK Borders Act 2007 the Home Secretary may request the Independent Chief Inspector of Borders and Immigration to report *'in relation to specified matters'*.

On 29 January 2016, the Home Secretary wrote to request that I review *'the extent to which the police are identifying and flagging foreign nationals arrested to the Home Office and checking status'*.

The review took the form of a standard inspection. The inspection found that not all foreign nationals arrested in the UK by the police were referred to the Home Office for an immigration status check. It was not possible to say how many arrested foreign nationals went unchecked. Home Office data indicated that the level of referrals varied across the UK. It was much higher in the Metropolitan Police Service (MPS) area, where Operation Nexus (initiated in 2012) had led to closer and smarter working between the police and the Home Office. In general, joint working, including embedding Immigration Officers in police stations, produced the best results.

Data and systems access issues hampered overall efficiency and effectiveness, and restrictions on data sharing in relation to previous offences committed overseas reduced the effectiveness of joint efforts to target 'High Harm' individuals who should be prioritised for removal from the UK.

This report makes three recommendations for improvement. It was sent to the Home Secretary on 19 August 2016.

1. Scope

- 1.1 The inspection examined the current arrangements for checking the immigration status of foreign nationals who have been arrested by the police. It did not look at the performance of the police force, or the effectiveness of any enforcement action taken by the Home Office after a foreign national had been referred by the police.

2. Methodology

2.1 Inspectors:

- reviewed management information and other data provided by the Home Office and the ACRO Criminal Records Office¹ relating to numbers of foreign nationals arrested by the police and referred to the Home Office during 2015;
- sampled 120 Home Office case records² where individuals had been referred to the Home Office's Command and Control Unit (CCU) for status checks (40 each from the Metropolitan Police Service (MPS), West Midlands Police (WMP), and West Yorkshire Police (WYP))³;
- made familiarisation visits to Immigration Enforcement at Becket House, to CCU in Manchester, and to the Nexus Joint Operations Centre (JOC), on 15, 26 and 27 April 2016; and
- (between 9 and 17 June 2016) interviewed Home Office immigration and police officers at the Nexus JOC, Croydon and Freshwharf custody suites in London, the Perry Barr custody suite in the West Midlands, and the Normanton custody suite in West Yorkshire.

¹ The ACRO Criminal Records Office manages criminal record data on behalf of the police, including requesting criminal record checks for foreign nationals arrested in the UK, known as 'ACRO checks'.

² The sample included only cases where a foreign national was identified as an immigration offender as a result of the status check. The cases sampled were for status checks requested between 1 June 2015 and 30 November 2015.

³ The police forces visited were selected on the basis of their differing rates of use of CCU for status checks, to allow a comparison of the efficiency and coverage provided by use of CCU or embedded IOs for these checks.

3. Foreign national offenders

Background

- 3.1 Police data showed that between 185,000 and 193,000 foreign nationals were arrested by police forces in the UK between 1 April 2014 and 31 March 2015, with approximately a third of these arrests carried out by the MPS.⁴ Some foreign nationals encountered by the police will not have leave to remain in the UK, for example because they have overstayed a visa or have entered the country illegally.⁵ Identification of these immigration offenders may assist the Home Office in its objective of maintaining immigration control.
- 3.2 Before October 2012, police seeking to confirm the immigration status of a foreign national were able to call their local Home Office enforcement office during the day, or the Home Office Command and Control Unit (CCU) out of hours. An immigration officer (IO) would check Home Office records and, if the arrested individual was recorded as an immigration offender, an IO from the local Immigration, Compliance and Enforcement (ICE) office⁶ could attend the police station to detain the individual or to begin other immigration enforcement actions, e.g. direct the individual to report to a Home Office Reporting Centre. This process was referred to as a 'police call-out'.

Operation Nexus

- 3.3 In October 2012, a joint operation between the Home Office and the MPS was initiated in London, with a view to *'more effectively tackle offending by foreign nationals ... through ... closer working and smarter use of police and immigration interventions.'*⁷ Under Operation Nexus, MPS refer all arrested foreign nationals (or those whose nationality is unclear) to CCU. CCU conducts a status check and informs the police of the individual's immigration status.
- 3.4 If an immigration offender is identified, the case is referred by CCU to the Nexus Joint Operations Centre (JOC) where it is assessed. If further enforcement action is possible, it is passed to an IO to progress. Police and IOs in the JOC also assess cases referred by CCU against 'High Harm' criteria.⁸ Individuals who meet the 'High Harm' threshold are referred to a joint specialist team. The team prioritises immigration enforcement action, including deportation proceedings, against foreign nationals who have previous convictions in the UK or in their countries of origin, who are persistent low-level offenders, or who are judged to pose a particular threat to the public because of criminal or gang activity.
- 3.5 In London, IOs are embedded in some 'hub' police custody suites. Embedded IOs deal with cases referred from the JOC. They liaise with local police to ensure that case management is co-ordinated between police and IOs, and they review the population of local custody suites to ensure that all foreign nationals are identified and their status checked.

⁴ Data provided by the ACRO Criminal Records Office from local police databases and historic central police records for indicative purposes only.

⁵ Both overstaying and illegal entry are criminal offences that render an individual liable to arrest.

⁶ As at July 2016, there were 18 Immigration Compliance and Enforcement teams located around the UK.

⁷ Source: Immigration Enforcement presentation, April 2016.

⁸ Nexus 'High Harm' Casework Teams assess criminal convictions, criminal history, criminal associations including ties to gangs and/or criminal organisations, and level of harm posed to the public. The 'High Harm' criteria cover arrest on this occasion, or a previous conviction for: Grievous Bodily Harm (or above); Human Trafficking; Sex offences. Firearm offences; Knife offences; Other weapon offences; and/or 'prolific robber or burglar', which Nexus defines as having been convicted of robbery or burglary three or more times.

- 3.6 At the time of the inspection, the Nexus model had been extended to many UK police forces, adapted to suit local circumstances. Where police checks of previous convictions identify a foreign national as meeting the 'High Harm' threshold, the police refer the case to the Home Office for immigration enforcement action. For immigration status checks, some forces ask local IOs to carry them out or to refer cases to CCU; many others follow the London model and themselves refer all cases to CCU. Outside London, CCU refers immigration offenders identified through a status check to the local ICE team, who co-ordinate any follow up with embedded or non-embedded IOs.
- 3.7 Other adaptations mainly affect the location or emphasis of IOs' work, including changes to the IO role to focus more on working with local communities and Neighbourhood Policing Teams, or operating with non-embedded IOs or a mix of embedded and non-embedded IOs.

4. Inspection findings

Identification of foreign nationals

- 4.1 Not all foreign nationals arrested by the police are identified as such. Some misrepresent themselves as UK citizens or as nationals of a country within the European Economic Area (EEA), with the hope of evading immigration checks. Meanwhile, police are less likely to refer genuine EEA nationals for an immigration check, assuming that they are free from immigration control in the UK.⁹ Where found, identity and other documents may confirm nationality¹⁰, as will comparison of fingerprints taken in a custody suite with Home Office fingerprint databases.¹¹
- 4.2 Immigration and police officers thought that in London police were identifying nearly all arrested or encountered foreign nationals, both from EEA and non-EEA countries. The improved liaison between the Home Office and MPS brought about by Operation Nexus had led, they believed, to an increase in the number of EEA nationals referred because of increased awareness among police officers that immigration enforcement action could be taken against EEA nationals who were not exercising Treaty rights in the UK. IOs did not have direct access to the MPS custody database (NSPIS), but were able to work with the Nexus police officers in 'hub' stations to confirm that all foreign nationals had been identified. MPS officers were also aware of the need to check the status of individuals who claimed to be UK nationals where there was room for doubt about the accuracy of this self-identification.
- 4.3 In the West Midlands, immigration staff said it was likely that West Midlands Police (WMP) was not identifying all foreign nationals and referring them for status checks either to CCU or directly to an embedded IO. When embedded IOs were able to check lists of people in custody, they routinely found that 5-10% of the foreign nationals detained had not been referred. Both EEA nationals and those self-declaring as UK citizens were likely to be missed. IOs were reliant on police custody sergeants to give them access to the custody database to ensure that all foreign nationals were identified and referred for a status check, but when the custody suite was busy this was not always possible.
- 4.4 WMP officers confirmed that there was a lack of knowledge within the force about the need to refer EEA nationals or self-declared UK citizens. Officers might not realise that checks were necessary or think they were not worthwhile. In the case of EEA nationals, in particular they might assume that the offender was unlikely to have committed an actionable immigration offence, so would not see any advantage in involving immigration officers.

⁹ Under the Immigration (EEA) Regulations 2006, an EEA national who has entered the UK for the first time has an initial right to reside for three months from the date of entry to the UK. After that time, they are entitled to remain in the UK as a 'qualified person' through exercising a Treaty right as a jobseeker, student, or worker, or as a self-employed or self-sufficient person. An EEA national found not to be exercising Treaty rights may be subject to enforced removal.

¹⁰ Both police and immigration officers have powers to search for identity documents. Section 18 of the PACE 1984 provides the police with the power to search any premises occupied or controlled by a person under arrest. Section 44 of the UK Borders Act 2007 provides the police or an immigration officer with the power to enter and search premises for evidence of nationality.

¹¹ The automation of the process whereby fingerprints taken by police are compared with the Home Office fingerprint database assists with identification in many instances, but does not provide complete coverage as many foreign nationals have not been fingerprinted by the Home Office. Since 11 December 2000, illegal entrants, where encountered by immigration officials, and asylum applicants over the age of 14, are fingerprinted under Section 141 of the Immigration and Asylum Act 1999. Biometric information, including fingerprint scans, has been required for all visa applicants, and for those applying for naturalisation in the UK since the implementation of the Immigration (Biometric Registration) Regulations 2008. EEA nationals and 'non-visa nationals', who do not need a visa for a visit to the UK of less than 6 months, are not required to provide biometric information. Those entering undetected, or who arrived in the UK legally before 2008, will not have had fingerprints or fingerprint scans taken.

- 4.5 Immigration officers in West Yorkshire had direct access to the WYP custody database, and were able to check for foreign nationals who had been arrested but had not been referred to the Home Office. However, due to pressure of work, they would not always be able to check all the custody suites in the area. IOs thought that EEA nationals were the most likely not to have been referred, particularly those arrested for minor offences, because the police officers concerned did not understand the potential for immigration enforcement action.
- 4.6 WYP officers stated that because IOs had access to the custody database, and to the results of ACRO checks, they would in practice be sighted on all foreign nationals who had been arrested or encountered, even if there had been no referral either to CCU or to an IO at the custody suite.

Immigration status check procedures

- 4.7 Under the agreed Nexus process, police in London are required to refer all foreign nationals or suspected foreign nationals, encountered or arrested, to the Home Office's Command and Control Unit (CCU) for a status check. Outside London, practice varies, with some forces using CCU for status checks and others doing so only when no IO is available at a custody suite.
- 4.8 Data provided by the Home Office, comparing the number of status checks recorded by CCU with the number of arrests of foreign nationals recorded on police databases for each police force, showed that rates of referral to CCU varied widely between forces. Overall, more than half of all arrested foreign nationals were referred to CCU, but this figure reduces to less than 30% if MPS arrests and referrals are excluded.¹²
- 4.9 Home Office staff and MPS officers confirmed that police officers in London custody suites were well aware of the requirement to call CCU. In addition, a recent change to the custody database required an officer making an entry after an arrest to fill in a section confirming that an immigration status check had been requested before the record could be completed, and this encouraged compliance. Some embedded IOs in London commented that the need to refer all cases to CCU for a status check, and wait for JOC to refer them back to an embedded IO could create delays in progressing a case.

¹² The data provided by the ACRO Criminal Records Office for foreign nationals arrested by police was for the period 1 April 2014 to 31 March 2015, while the referral rate provided by CCU was for the calendar year 2015.

Figure 1: Case Study

Sequence of events:

- in December 2010, a non-EEA national entered the UK on a family visitor visa valid from 16 November 2010 to 16 May 2011, after the expiry of which the individual remained in the UK and worked illegally using false papers;
- on 16 July 2013, the individual was arrested by the police for possession of a false instrument and remanded in custody pending a court appearance; the police referred the case to the Home Office Command and Control Unit (CCU) for an immigration status check;
- on 23 July 2013, the individual was served with removal papers as an overstayer;
- on 4 October 2013, the Home Office began an interview for an Emergency Travel Document (ETD) while the individual was in prison, which was halted when he claimed asylum;
- from 16 October 2013 to 19 November 2013, the individual was held in immigration detention after completion of his prison sentence;
- on 19 November 2013, he was released from detention on reporting restrictions, pending assessment of his asylum claim;
- on 15 April 2014, the Home Office refused the asylum claim;
- on 18 April 2014, the individual ceased reporting to the Home Office;
- on 1 May 2014, the individual was listed by the Home Office as an absconder;
- on 11 May 2016, the individual submitted a claim for leave on human rights grounds;
- on 22 May 2014, he was arrested by the police for fare evasion, and referred to CCU for a status check, which resulted in him being issued with new reporting directions and a date for a Home Office interview to obtain an ETD, which did not take place as the individual did not report;
- on 19 June 2014, he was re-listed by the Home Office as an absconder;
- on 6 November 2015, he was arrested by the police for possession of cannabis and referred to CCU for a status check;
- on 7 November 2015, he was re-arrested after he ran away from police, and was again re-referred to CCU, as a result of which the Home Office issued him with further reporting directions;
- on 7 May 2016, he was arrested again for possession of cannabis and referred to CCU for a status check, and the Home Office requested the police to detain him as it intended to remove him;
- on 8 May 2016, the Home Office placed the individual into immigration detention;
- on 26 May 2016, the Home Office refused a claim for leave on human rights grounds;
- on 31 May 2016, the individual submitted a Pre-Action Protocol against removal;
- on 2 June 2016, the Home Office completed an ETD interview in detention and set removal directions for 26 June 2016, which were subsequently deferred because;
- on 24 June 2016, the individual requested a Judicial Review of the removal directions.

Chief Inspector's comments

In this case the police followed the agreed procedure for checking immigration status on each occasion that they arrested the individual. The case illustrates the importance of status checks in enabling the Home Office to keep track of foreign national immigration offenders who fail to comply with conditions of temporary release. It also shows the limitations of the process, in that removal cannot take place without a travel document and persistent offenders may repeatedly frustrate removal by their non-appearance and/or by making new claims or appeals.

- 4.10 In the West Midlands, the agreement in place between WMP and the Home Office is that all status checks are referred to CCU. However, referral rates in 2015 indicated that only just over a third of foreign nationals arrested by WPM were referred to CCU. Managers thought the referral rate for 2016 would be higher. Both immigration and police officers confirmed that cases were being routinely passed directly to the embedded IOs for status checks because this was convenient and efficient.

Figure 2: Case Study

Sequence of events:

- on 8 November 2011, the individual, an Indian national, who held a student visa valid until 11 April 2012, was granted leave to enter at London Heathrow Airport (LHR);
- on 21 June 2015, the individual was encountered by West Midlands Police when they attended a call relating to a domestic dispute. No further action was taken in relation to the domestic dispute, but the individual was arrested on suspicion of being in the UK illegally and referred to the Home Office Command and Control Unit (CCU) for an immigration status check. This resulted in the individual being interviewed by an Immigration Compliance and Enforcement (ICE) team and admitting to having overstayed. He was served with a notice of removal and detained pending removal;
- on 26 June 2015 the Home Office applied to the Indian High Commission for an Emergency Travel Document (ETD) and this was received on 3 July 2015;
- on 5 October 2015, the individual was removed under escort, having frustrated two earlier unescorted attempts to remove him.

Chief Inspector's comments

In this case, West Midlands Police followed the correct procedure and requested an immigration status check from the CCU, which identified him as an overstayer. Ultimately, this led to the individual's enforced removal.

- 4.11 The CCU data for West Yorkshire referrals showed that less than 15% of foreign nationals arrested were referred to CCU for status checks. As in the West Midlands, immigration staff explained that police officers normally refer a case to an embedded officer directly for a check, rather than calling CCU. In other cases, calls were made to the local enforcement office. This had been the procedure under the previous 'police call-out' model, which had worked well and so was still preferred by many police stations. In 2015, 2,920 foreign nationals had been referred directly to local Immigration Enforcement by WYP, while 881 referrals had been made to CCU.¹³
- 4.12 WYP officers stated that IOs used other avenues to monitor arrests of foreign nationals, as they had access to the police custody database and could see who was currently detained, and were able to see the results of ACRO checks by police for any previous criminal record in an arrested individual's home country. In their view, this was sufficient to ensure that immigration staff had coverage of any immigration offenders arrested.

Organisational models

- 4.13 In London, deployment of IOs¹⁴ is organised under a 'hub and spoke' model that mirrored the MPS's geographical organisation.¹⁵ IOs are embedded in 'hub' police stations and go to 'spoke' stations as required. Under a recent agreement with MPS, foreign nationals identified through status checks as immigration offenders, and against whom there were no criminal matters

¹³ These figures cannot be directly compared, as the figure for direct referrals is for individuals (who may have been referred more than once), while that for calls made to CCU includes all calls, some of which may be repeat requests for status checks on the same individual.

¹⁴ In February 2016, there were 52 IOs in London.

¹⁵ This model, based on MPS division of geographical areas into seven 'clusters', was implemented in April 2015. Previously, IOs were embedded in police stations, unaligned with how MPS was organised.

outstanding, will be taken directly to 'hub' police stations rather than to a local police station so that they can be seen by immediately by an IO. Meanwhile, embedded IOs will travel to 'spoke' police stations to interview a foreign national who has been identified as an immigration offender but is being held for a criminal matter.

- 4.14 Specialist Nexus police officers and immigration officers are co-located in the JOC and in some 'hub' police stations. Both believed that having IOs embedded in police stations with a dedicated Nexus police officer improved their ability to identify foreign nationals who had committed immigration offences and subject them to enforcement actions. Embedded IOs were able to forge effective working relationships with police counterparts, and to exchange knowledge and expertise.
- 4.15 Police and immigration officers expressed concern that the gains made as a result of liaison between the Home Office and MPS at the local level might be threatened if the number of dedicated Nexus police officers were reduced because Nexus did not feature in the Local Police Model.¹⁶ At the time of the inspection, some reductions had already happened and others were thought to be imminent. Home Office managers and staff agreed that the Nexus model delivered considerable benefits over the previous 'police call-out' model, both in terms of the number of foreign nationals identified and measured by effective enforcement action taken against immigration offenders.
- 4.16 In the West Midlands, the 40-50 IOs on the local ICE team covered two large custody suites on a rota basis. Foreign nationals identified as immigration offenders through status checks, and who were not subject to a criminal charge, are taken to one of these two suites rather than being taken to a local station. Other police stations were covered as required by these IOs or by others based at the ICE office. IOs liaised directly with police custody sergeants. There were no dedicated police Nexus officers.
- 4.17 Initially, the London Nexus model, with IOs embedded at several police stations, had been extended to the West Midlands, but Home Office managers said that the number of foreign nationals found to be immigration offenders did not justify having locally-embedded IOs. The 'police call-out' system had worked well and embedding IOs locally had not increased the rate of referrals, or of removals of immigration offenders.
- 4.18 WMP officers viewed the current model as having improved both efficiency and their relationship with the Home Office, as embedded IOs were immediately available to process an immigration offender, whereas under the 'police call-out' system they had experienced long delays before an IO arrived to progress a case. They commented that WMP would benefit further from a dedicated Nexus team, comprising both police officers and a smaller pool of IOs. Currently, the large number of IOs rotating through the two custody suites made it harder to build up close working relationships, and the former's effectiveness in identifying and processing immigration offenders was dependent on individual custody sergeants.
- 4.19 West Yorkshire Police operated a mixed model, with nine IOs working on a rota basis at a single custody suite where foreign national immigration offenders were taken upon arrest, and one IO embedded in a local police station. Immigration and police officers said there were advantages in terms of efficiency in having a single location where all foreign national immigration offenders were taken when arrested.

¹⁶ The Local Police Model is a centrally produced framework that defines priorities and resourcing at the local level.

- 4.20 However, there were plans to embed more IOs locally in order to increase capacity for co-ordinated work with Neighbourhood Policing Teams and Offender Management Teams. Home Office staff believed that this would produce a more proactive approach to immigration offenders, in particular EEA nationals who were not exercising Treaty rights and who would therefore be liable to removal. Police officers agreed that an expansion of the embedded model, in the form of a specialised resource that focused on managing foreign offenders, and was available for face-to-face contact with local police, would bring benefits in terms of reducing and disrupting crime. They said that areas without an embedded IO were ‘missing out’ on these benefits.
- 4.21 In London, the West Midlands and West Yorkshire, police and immigration officers said that, despite closer liaison between the Home Office and police forces and greater availability of IOs to deal with immigration offenders, some foreign nationals who should be subject to immigration enforcement action were released before being seen by an IO. This was confirmed by file sampling data, which suggested that release from police custody before an individual had been seen by an IO was more likely if that individual had been arrested ‘out-of-hours’ when no embedded IOs were available.
- 4.22 Release from custody before any immigration matters had been addressed occurred mainly when an offender had to appear in court early the following morning before an IO was on shift, or when the police considered it was not proportionate to detain an offender overnight if the criminal matter that had led to their arrest had been resolved.¹⁷ The problem was understood by Home Office managers and staff to be most acute in London. In order to improve coverage there, an IO night shift was about to be piloted for some of the busiest MPS police stations. Managers expected that this would lead to an increase in removals.
- 4.23 In the West Midlands and West Yorkshire, managers and staff said that because management of immigration offenders was centralised into particular custody suites, while there might be a backlog of cases for IOs to deal with at the beginning of a morning shift, foreign nationals in these suites were unlikely to be released before being seen by an IO. It was still possible that offenders held at other police stations would be released without being seen by an IO, but centralising the detentions meant that there were fewer such cases than before.

Data access

- 4.24 Checking and recording the status of foreign nationals can involve a number of databases: Police custody databases; Home Office Case Information Database (CID); various fingerprint databases; ACRO Criminal Records Office; and Data Validation Application (DVA).

Police custody databases

- 4.25 Foreign nationals are entered onto the local police custody database when arrested. Different police forces use different systems, which do not necessarily interface fully with one another.
- 4.26 Access to police custody databases for IOs varied at the locations visited by inspectors. IOs in West Yorkshire have limited but direct access, IOs in London are able to review the information through a Nexus police officer in the police station where they are embedded, and IOs in the West Midlands rely on custody sergeants to show them who is in custody.

¹⁷ Under the PACE Act 1984, the police can only detain a person for 24 hours before they must either charge them with a criminal offence, release them from custody, or, in exceptional cases, request that a Superintendent approve for them to be detained for a further 12 hours. This time period, which begins when an individual is arrested, is known as the ‘PACE clock’. The PACE clock is suspended if an offender is granted bail pending further enquiries and will restart if they are re-arrested for the same offence.

Home Office Case Information Database (CID)

- 4.27 CCU call handlers use CID to confirm a foreign national's immigration status and, if an individual is identified as an immigration offender, to determine if the case needs to be referred onwards. IOs access CID for status checks where this is part of local processes, and update CID with any action taken as a result of a CCU referral. CID is also used to generate any paperwork needed, for example to provide an immigration offender who is being released from police custody with written instructions to report to the Home Office.
- 4.28 Police officers, other than those located in the London JOC, do not have direct access to CID. Nexus IOs embedded in MPS 'hub' police stations have access to CID via portable computers. IOs at the custody suite in Normanton, West Yorkshire, have access via two laptops but often have to use computers at the local ICE office as these are not sufficient. IOs do not have access to CID at the Perry Barr custody suite in the West Midlands and have to update CID at the local ICE office, or telephone the office to complete a status check or for any other information needed from CID. At the time of the inspection, the Perry Barr facility had just opened and managers hoped that IT would be made available to IOs in the future.

Fingerprint databases

- 4.29 Arrested foreign nationals are fingerprinted when 'booked in' at a police custody suite and their fingerprints compared with Home Office fingerprint records.¹⁸
- 4.30 Access to Home Office fingerprint records is limited for both the West Midlands and West Yorkshire IOs operating in custody suites due to the IT limitations at these locations.

ACRO Criminal Records Office checks

- 4.31 Police complete an ACRO Criminal Records Office check with the foreign national's country of origin for previous criminal convictions. In London and West Yorkshire, the police custody database had recently been updated to automate ACRO checks for all foreign nationals being processed in custody suites. Depending on the country in question, a response to the ACRO check may be received within days or weeks of the request, or in some cases not at all.
- 4.32 Where an ACRO check returns a positive result and it meets the criteria on the Home Office's Serious Offence List¹⁹, this is recorded on the Police National Computer (PNC). Such cases are also referred directly to the Immigration Enforcement Criminal Casework Directorate for deportation action.²⁰ PNC records are visible to immigration officials considering whether a foreign national's criminal history meets the criteria for deportation or administrative removal. However, IOs are not made aware of offences identified through an ACRO check that do not meet this threshold.
- 4.33 Police and immigration officials in London saw the prohibition against sharing ACRO data as a significant obstacle to the identification and removal of EEA nationals with criminal records, and to effective liaison between the Home Office and MPS. They believed ACRO checks were an important way of identifying 'High Harm' individuals, particularly EEA nationals whose criminal history might make them liable for removal.

¹⁸ In certain circumstances—for example if an arrested individual is drunk or violent—fingerprints are not taken. This can make identification of an individual in Home Office records less certain or impossible.

¹⁹ Offences meeting the HOSOL threshold include murder, sexual offences and other offences, mostly involving violence, which either singly or together merited a significant custodial sentence. Unlike the Home Office's deportation criteria, HOSOL is based on the nature of the offence rather than the length of the sentence given.

²⁰ For non-HOSOL offences, current legislation prevents Immigration Enforcement acting on responses to checks requested by the Police. By law, Immigration Enforcement must request a second check for immigration purposes before initiating immigration action.

- 4.34 WMP said that more could be done with the ACRO check data in terms of identifying ‘High Harm’ individuals who would be suitable for immigration enforcement action, and that ACRO data was not currently being effectively shared with immigration officers due to the lack of a dedicated joint Nexus team.
- 4.35 In West Yorkshire all ACRO results are shared with the Home Office. Although an immigration official has to request another ACRO check to make a removal decision based on the information provided by ACRO (so that the data is owned by the instigator of the check), local ACRO management is content that IOs view ACRO checks conducted by the police. This helped to ensure both that the Home Office was aware of all foreign nationals who had passed through police custody and that ‘High Harm’ individuals were prioritised for action by IOs.

Data Validation Application (DVA)

- 4.36 If police or immigration officers suspect that someone claiming to be a UK citizen is in fact a foreign national, the individual’s details can be checked on DVA, a passport database owned by Her Majesty’s Passport Office (HMPO).
- 4.37 Police officers can have access to DVA, but IO’s do not, and have to call CCU for a DVA check. Home Office managers and staff said that access to DVA was restricted, and requests to CCU are closely monitored because of the cost of acquiring a licence and because each check is paid for individually.^{21 22}

21 CCU guidance to staff states that a DVA check will be run only if there is ‘reasonable doubt’ whether an individual is a UK citizen.

22 The Home Office subsequently commented: ‘Restrictions on access to DVA are not based on cost, but on the strict security policies applied to the database by its owner, HM Passport Office. DVA holds significant amounts of sensitive personal data and access is restricted to those with a genuine and on-going ‘need to know’. This ensure the security of the personal information held on the database, and ensures all requests for checks are a) auditable and b) scrutinised against a consistent set of criteria to determine the validity of the request. Widespread access to the system would dilute the necessary security controls which have been put in place to protect the data it holds.’

Conclusions

- 5.1 Currently, not all foreign nationals who are arrested by the police in the UK are referred to the Home Office for an immigration status check. The reasons for this vary: some offenders successfully misrepresent themselves as UK citizens or EEA nationals; police officers may not be aware that it is possible to take immigration action against some EEA nationals; and, the purpose and value of an immigration status check may not be evident to some officers.
- 5.2 The Home Office prefers all requests for immigration status checks to be directed to its Command and Control Unit (CCU), rather than to local Immigration Officers as previously, not least because this enables it to maintain a central record of foreign nationals who are arrested or encountered by the police UK-wide. However, the inspection found that outside London the majority of requests were still being made to local Immigration Officers (IOs), because the police found this quicker and more convenient.
- 5.3 Because of these different routes, it is not possible to say how many arrested foreign nationals are going unchecked. Home Office data indicates that the level of referrals varies across the UK and is much higher in the Metropolitan Police Service (MPS) area than in other police force areas. MPS has reinforced compliance by adapting its police custody database to make it difficult to complete a custody record for a foreign national without referring the case for an immigration status check.
- 5.4 Unsurprisingly, the inspection found that awareness of immigration imperatives was greater where police officers were working alongside IOs. In London, joint working in the form of Operation Nexus had been successful in creating 'closer working and smarter use of police and immigration interventions', and detaining foreign national offenders in designated 'hub' police stations where IOs were embedded maximised opportunities for effective immigration enforcement. Elsewhere, there was less joint or co-located working, and it was not coincidental that a number of foreign nationals were being released from custody without their status being checked.
- 5.5 Access to data and systems is inconsistent and hampers efficiency and effectiveness. In some areas, no or limited systems access means that embedded IOs are wasting time returning to their local offices to consult or update the Case Information Database (CID). Some IOs do not have access to local police custody databases, while access to the Data Validation Application (DVA) to check self-identified UK citizens against passport records is generally via CCU. Meanwhile, restrictions on sharing ACRO Criminal Records Office data reduce the effectiveness of joint efforts by the Home Office and the police to target 'High Harm' individuals who should be prioritised for removal from the UK.

Recommendations

The Home Office should:

1. Ensure that Immigration Officers (IOs) record, in a way that is centrally retrievable, where the police have requested an immigration status check locally rather than through the Home Office Command and Control Unit (CCU), in order:
 - a. to produce a more accurate picture of the levels of referrals of arrested or encountered foreign nationals by each police force; and
 - b. to work with those forces where immigration status check rates are low to improve compliance.
2. With police forces, review how available resources are best configured (for example, specialist ('Nexus') teams, embedded IOs, 'hub and spoke' arrangements) to promote effective joint or collaborative working between police and Immigration Officers in relation to foreign nationals arrested or encountered by the police.
3. With police forces, review and reach agreement on data and systems access requirements to support joint or collaborative working in relation to foreign nationals arrested or encountered by the police, including (but not limited to):
 - a. Immigration Officer access to the Home Office CID while working in police stations, so that status checks and other enforcement activities can be carried out efficiently;
 - b. the sharing of the results of ACRO Criminal Records Office checks, so that foreign nationals with previous convictions can be efficiently identified and assessed for enforcement action; and
 - c. Nexus Joint Operations Centre (JOC) direct access to HMPO's Data Validation Application, so that claims to UK citizenship can be checked where there is doubt as to such a claim.

Appendix 1 – Role and remit of the Chief Inspector

The role of the Independent Chief Inspector of Borders and Immigration (until 2012, the Chief Inspector of the UK Border Agency) was established by the UK Borders Act

2007. Sections 48-56 of the UK Borders Act 2007 (as amended) provide the legislative framework for the inspection of the efficiency and effectiveness of the performance of functions relating to immigration, asylum, nationality and customs by the Home Secretary and by any person exercising such functions on her behalf.

The legislation empowers the Independent Chief Inspector to monitor, report on and make recommendations about all such functions. However, functions exercised at removal centres, short-term holding facilities and under escort arrangements are excepted insofar as these are subject to inspection by Her Majesty's Chief Inspector of Prisons or Her Majesty's Inspectors of Constabulary (and equivalents in Scotland and Northern Ireland).

The legislation directs the Independent Chief Inspector to consider and make recommendations about, in particular:

- consistency of approach
- the practice and performance of listed persons compared to other persons doing similar activities
- the procedure in making decisions
- the treatment of claimants and applicants
- certification under section 94 of the Nationality, Immigration and Asylum act

2002 (c. 41) (unfounded claim)

- the law about discrimination in the exercise of functions, including reliance on section 19D of the Race Relations Act 1976 (c. 74) (exception for immigration functions)
- the procedure in relation to the exercise of enforcement powers (including powers of arrest, entry, search and seizure)
- practice and procedure in relation to the prevention, detection and investigation of offences
- the procedure in relation to the conduct of criminal proceedings

- customs functions have been appropriately exercised by the Secretary of State and the Director of Border Revenue
- the provision of information
- the handling of complaints; and
- the content of information about conditions in countries outside the United Kingdom, which the Secretary of State compiles and makes available, for purposes connected with immigration and asylum, to immigration officers and other officials.

In addition, the legislation enables the Secretary of State to request the Independent Chief Inspector to report to her in writing in relation to specified matters.

The legislation requires the Independent Chief Inspector to report in writing to the Secretary of State. The Secretary of State lays all reports before Parliament, which she has committed to do within eight weeks of receipt, subject to both Houses of Parliament being in session. Reports are published in full except for any material that the Secretary of State determines it is undesirable to publish for reasons of national security or where publication might jeopardise an individual's safety, in which case the legislation permits the Secretary of State to omit the relevant passages from the published report.

As soon as a report has been laid in Parliament, it is published on the Inspectorate's website, together with the Home Office's response to the report and recommendations.

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