



# Annual inspection of 'Adults at Risk in Immigration Detention' (2018–19)

November 2018 – May 2019

**David Bolt**

Independent Chief Inspector of Borders and Immigration

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# Foreword

In July 2018, following on from the two reviews by Stephen Shaw (in 2016 and 2018) of the welfare in detention of vulnerable persons, the then Home Secretary commissioned me to produce an annual report on “whether and how the Adults at Risk policy is making a difference”. This is my first annual report, focusing on 2018–19.

This first report is deliberately wide-ranging, since it seeks to place the ‘Adults at Risk’ process in context, drawing on other recent ICIBI inspections, in particular, those concerned with the Home Office’s overall understanding and response to vulnerability and its management of the non-detained population.

During the inspection, the Home Office and the Immigration Minister were keen to stress to me that Adults at Risk was a ‘work in progress’, something that Stephen Shaw acknowledged in his later review. It is clear that there has been progress, not least in the reduction in the numbers of persons detained, and Home Office managers and staff deserve credit for the efforts they have made and continue to make in this area.

The notion that this was a ‘work in progress’ led to some obvious questions. To what extent had the welfare of vulnerable persons in detention improved? What was the Home Office’s vision of the finished article? Was the pace of progress sufficient?

As this report shows, there is a lot more that the Home Office can and should do to make each component of the Adults at Risk process more efficient and more effective. Because there are so many moving parts to this, and because the available data and information is rudimentary at best, it has been hard to get a sense of where the Adults at Risk process is headed, and I believe everyone involved would benefit from clearer goals. This would also help to answer whether the Home Office is moving fast enough, although for those detained, and for the many stakeholders, the pace of progress is undoubtedly too slow, and the report points to some areas where this is certainly true, for example, in finding workable alternatives to detention.

I understand that the Home Office believes the report understates the challenges associated with managing Foreign National Offenders (FNOs), in particular, the difficult balance that caseworkers have to strike between ensuring that the public are protected from the risks posed by high-harm individuals and recognising that such offenders can be vulnerable. If so, this is unintended, and I am happy to acknowledge that these are amongst some of the hardest decisions that the Home Office has to make. Nonetheless, the inspection found that FNOs, particularly those detained in prisons under immigration powers, were at a disadvantage in terms of the working of the Adults at Risk process when compared with other immigration detainees, and that the Home Office needed to do more to understand the differences in treatment and to demonstrate that they were justified.

The Home Office has indicated that it recognises a large number of the observations and criticisms contained in the report and I believe that it is genuinely committed to making improvements. Over the course of the coming months and in preparation for the next annual review, ICIBI will look to work with the Home Office to ensure that the learning from this inspection is fully understood and applied.

I have made eight recommendations, each of them substantial. In keeping to this number, I was conscious of the many recommendations made by Stephen Shaw, by other reviews and stakeholders, and in other ICIBI inspection reports, which the Home Office is working to implement. My recommendations here are not intended to replace or supersede any of those earlier recommendations. However, I have set a deadline (31 March 2020) for the implementation of the recommendations that are specific to Adults at Risk both in order to encourage momentum and to be in a position in my next review to report on progress.

This report was sent to the Home Secretary on 29 July 2019.

**D J Bolt**

**Independent Chief Inspector of Borders and Immigration**



# 1. Scope and Purpose

- 1.1** This inspection examined how the Home Office’s ‘Adults at Risk’ process was working. The inspection was commissioned by the Home Secretary in response to a recommendation made by Stephen Shaw CBE in his report ‘Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons’,<sup>1</sup> which was published on 24 July 2018.
- 1.2** In an oral statement to the House of Commons made on the same day, the Home Secretary said:
- “the Shaw Review recommends how this government can improve the support available for vulnerable detainees. Mr Shaw describes the adults at risk policy as “work in progress”. We will continue that progress, ensuring that the most vulnerable ...
- And, today I have commissioned the Independent Chief Inspector of Borders and Immigration to report each year on whether and how the Adults at Risk policy is making a difference.”
- 1.3** On 11 January 2019, the Home Secretary wrote to the Independent Chief Inspector to ask that the report should cover:
- the efficacy of detention safeguards in identifying and protecting those who are vulnerable
  - the impact of these interventions
  - Home Office response to any changing requirements whilst vulnerable individuals are in detention
  - and the effectiveness of Home Office guidance to officers in considering and applying the Adults at Risk policy
- 1.4** The inspection sought to cover the points raised by the Home Secretary. Since this was the first annual review, it also looked to set the Adults at Risk process in context, by considering the stages of the detention ‘journey’ (prior to detention, leading up to the decision to detain; on first admission into detention; and while in detention awaiting removal or release) and at the opportunities and mechanisms for identifying that a person is vulnerable and responding appropriately.

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<sup>1</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/728376/Shaw\\_report\\_2018\\_Final\\_web\\_accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728376/Shaw_report_2018_Final_web_accessible.pdf)

## 2. Methodology

### 2.1 For this inspection, inspectors:

- reviewed relevant published reports and other open-source material, including:
  - Stephen Shaw’s two reports (and met with Stephen to discuss them)
  - previous inspection reports by the ICIBI and others
  - Parliamentary Committee reports
  - reports by professional bodies and by NGOs (non-governmental organisations)
  - the Home Office’s responses to the various reports
  - legislation, policies and guidance
- requested and reviewed evidence and data from the Home Office
- between November 2018 and May 2019, visited Brook House, Colnbrook, Harmondsworth, Morton Hall and Yarl’s Wood Immigration Removal Centres (IRC) and to HM Prisons (HMP) Brixton, Maidstone, Pentonville and Wormwood Scrubs
- between November 2018 and April 2019, observed eight Case Progression Panels (CPPs)
- observed the Detention Gatekeeper, the CPP Team, and case owners from the National Returns Command (NRC) and Criminal Casework (CC)
- on 25 January 2019, posted a ‘call for evidence’ on the ICIBI website seeking written submissions from stakeholders and interested parties
- examined and, where relevant, followed up with the Home Office 112 case records, comprising:
  - 50 cases flagged as ‘Adult as Risk’
  - 50 cases not flagged as ‘Adult at Risk’
  - 12 cases where immigration detention had lasted for more than 12 months
- conducted 86 interviews and/or focus groups with:
  - immigration detainees at IRCs and in HMPs
  - IRC supplier managers and detainee custody officers
  - prison governors, managers and officers
  - healthcare and mental healthcare teams and GPs
  - Chaplaincy teams
  - Independent Monitoring Boards (IMB)
  - Home Office staff working in IRCs and prisons
  - Home Office detained casework managers and case owners

- Detention Gatekeeper staff, CPP Team staff, Home Office Detention Policy staff, senior staff from the Home Office's Detention, Progression and Returns Command
- members of the South London Immigration Compliance and Enforcement (ICE) team and Becket House and Eaton House Reporting and Offender Management (ROM) teams
- met with the Prisons and Probation Ombudsman (PPO), the Independent Monitoring Board (IMB), HM Prisons and Probation Service (HMPPS), various NGOs, and attended the Immigration Law Practitioners' Association (ILPA) conference on Immigration Detention

**2.2** ICIBI created a new Adults at Risk stakeholder forum, the first meeting of which was held on 19 June 2019. The Terms of Reference for this new forum mirror those for the existing Refugee and Asylum, Aviation and Maritime forums:

- to inform and advise the Independent Chief Inspector regarding any issues of interest or concern to members or those they represent
- to assist the Independent Chief Inspector with the 3-Year Inspection Plan by proposing topics for inspection and advising on their relative importance and urgency
- to assist the Independent Chief Inspector with the scoping and evidence collection for individual inspections

## 3. Summary of conclusions

- 3.1** The stated intention of the ‘Adults at Risk in Immigration Detention’ guidance, first published in 2016, is to reduce the number of vulnerable people detained under immigration powers and to reduce the duration of detention before removal.
- 3.2** In his follow-up report in 2018, while welcoming an overall reduction in the size of the detained population, Stephen Shaw noted that it was not clear that the Adults at Risk guidance had yet made a significant difference to the numbers of vulnerable people in detention, and that it remained a ‘work in progress’. Throughout this inspection, the Home Office was keen to emphasise that the latter was still the case. Inspectors therefore looked to establish how far it had come, the current pace of progress and when it would be regarded as completed.
- 3.3** The inspection looked briefly at the “indicators of risk”, for example comparing them to the “vulnerability issues” identified in Detention Services Orders, noting concerns about the Home Office’s effectiveness in identifying potential victims of modern slavery, and “omissions” identified by stakeholders, such as LGBTQI+ individuals. However, it did not examine these or the Adults at Risk three levels of evidence in great detail. This was, in part, because much has already been written about these matters by those with more knowledge and expertise, and because the question of whether Adults at Risk Level 2 was too broad and might benefit from being subdivided was the subject of a separate ongoing review by a medical expert, but also because the focus here was on whether what was already in place was working.
- 3.4** The Home Office has pointed to the Detention Gatekeeper (DGK) and the Case Progression Panels (CPP) as two key protections introduced as part of the Adults at Risk process. The first focuses on preventing vulnerable persons, for whom detention would be harmful, from being admitted into detention; and the second acts as a safeguard against continued detention, when the circumstances of the case indicate that a person should be released. The inspection looked at both.
- 3.5** According to Home Office data, between November 2017 and October 2018 the DGK refused to authorise detention for 4.6% (1,053 out of 22,959) of the cases referred to it. Of these, 198 (18.8%) were rejected because the person was identified as an Adult at Risk. The Home Office pointed to the rejection rate as evidence of the impact of the DGK and argued that it had influenced the behaviour of referring units who now had to pay greater regard to vulnerability (and also to removability) as this would be scrutinised by the DGK. Frontline officers agreed but criticised the DGK for being inconsistent in terms of the information it required and in its decisions.
- 3.6** The Home Office was not collecting data that spoke to the quality of DGK decisions. However, following the Windrush scandal it did subject each initial detention decision (excluding Border Force referrals of persons stopped on entry to the UK and referrals of Foreign National Offenders (FNOs) who had completed their custodial sentence) to review by a Senior Civil Servant (SCS). The reviews had overturned only 0.3% of the original decisions, suggesting that senior management has a high degree of confidence in the quality of the DGK’s decisions.

- 3.7** Whatever the true quality of its decisions, inspectors found that the DGK process had two significant weaknesses. Firstly, DGK staff do not have direct contact with the person referred for detention and have to rely on forms completed by various referring units. As reported in ‘An inspection of the Home Office’s approach to the identification and safeguarding of vulnerable adults (February – May 2018)’, published in January 2019, the Home Office has yet to develop a consistent understanding of “vulnerability” in a BICS (Borders, Immigration and Citizenship System) context, and policies, guidance, training and practice have developed within the different directorates, while officers have different perspectives based on their individual experiences. The quality of the referrals is therefore variable, not helped by there being four different forms used for the purpose.
- 3.8** Even where the referring unit is meticulous in its completion of the referral form (according to the DGK, this is not done to a consistent standard), and where the DGK reverts for further information, there is still the problem that neither party has any professional medical knowledge and therefore both are resorting to internet searches to try to understand the significance of medication found with the person being referred. And, while persons with obvious physical disabilities might not be referred to the DGK (in fact, inspectors encountered a small number of disabled detainees, for example one who was blind and another who was a wheelchair user, where the IRC assessed it could manage their disability), stakeholders were concerned that “hidden” disabilities would go undiscovered.
- 3.9** Various stakeholders have argued for enhanced screening and assessment prior to detention, and the Home Affairs Committee (HAC) has written about the need for “a thorough, face-to-face pre-detention screening process to facilitate the disclosure of vulnerability”. The practicalities would be challenging, but the principle appears sound, not least because, while inspectors were given examples of where healthcare staff in an Immigration Removal Centre (IRC) had identified on arrival that a person should not be in detention and the DGK decision had been swiftly reversed, securing a detainee’s release on vulnerability grounds is generally a slow and uncertain process, except perhaps for those identified as an Adult at Risk Level 3.
- 3.10** The second weakness with the DGK process relates to Foreign National Offenders (FNOs) who are about to complete the custodial part of their sentence and whom Criminal Casework is seeking to have detained under immigration powers, in an IRC or in prison, pending their deportation. While these cases are put to the DGK, the decision rests with Criminal Casework.
- 3.11** This is just one of the ways in which FNOs are treated differently, essentially less favourably, than other detainees. Indeed, the different treatment is written into the Adults at Risk guidance, which notes that “the public interest in the deportation of foreign national offenders (FNOs) will generally outweigh a risk of harm to the detainee”, although it acknowledges the Hardial Singh principle<sup>2</sup> regarding what constitutes a reasonable period for detention.
- 3.12** For all detainees, but particularly for FNOs who have served the custodial part of their sentence, this raises the question of alternatives to detention. Responding to Stephen Shaw’s follow up report, the Home Secretary told Parliament in July 2018 that the Home Office would work with others to explore alternatives to detention. However, at the time of this inspection only one new scheme had been launched (for a small number of women who would otherwise have been detained in Yarl’s Wood) and, while it is undoubtedly important to get any such initiatives right, the scale and pace of progress on alternatives to detention clearly needs to increase significantly for it to be more than a token.

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2 R v. Governor of Durham Prison, Ex parte Singh [1984]. [https://www.refworld.org/cases,GBR\\_HC\\_QB,3ae6b6ce1c.html](https://www.refworld.org/cases,GBR_HC_QB,3ae6b6ce1c.html)

- 3.13** Whatever new alternatives to detention the Home Office might develop, there are serious problems with its current ability to manage a person it is seeking to remove in the community. The failings of the Reporting and Offender Management system, and in particular with the management of non-detained FNOs, are set out in three recent inspection reports.<sup>3</sup> These make the point that the way non-compliance with reporting restrictions is recorded and treated is inconsistent, and there is little evidence that effective action is being taken to locate the vast bulk of absconders. While around half of all FNOs are non-detained, where the Home Office has well-founded concerns about an FNO re-offending, causing harm and absconding, the option of release on reporting restrictions is therefore at best a gamble.
- 3.14** For a small number of FNOs, one of the National Probation Service’s (NPS) closely monitored Approved Premises (AP), which are “primarily a public protection measure for offenders released on licence”, might in theory be an option. However, beds are at a premium and stays are intended to be a short-term stepping stone to accommodation in the community. However, the inspection found that the Home Office does not have a sufficiently close relationship with the NPS, either strategically or operationally, for this or for the process of finding and approving any bail accommodation, which was both slow and erratic, meaning that releases are delayed, even where these have been ordered by a judge.
- 3.15** For those not rejected by the DGK, except for FNOs who are not transferred to an IRC, the next opportunity to identify that a person should not be in detention is the admission process, which extends up to 48 hours, during which time the person is seen by the Mitie escorting team that transports them to the IRC, by IRC supplier staff (on arrival), by the healthcare team (within two hours), possibly by a GP (within 24 hours), and by a member of the Home Office Detention Engagement Team (DET) (within 48 hours). Meanwhile, the DGK carries out a 24-hour review, again paper based, taking account of anything that has been recorded during the admission process.
- 3.16** The admission process can work as a fail-safe for the DGK, and inspectors heard of a few examples where this had happened, but it is not set up with this purpose. The inspection found issues with each stage of the admission process, including: differences and gaps in the training different staff had received; different methods of recording and reporting the process, and what it discovered about the detainee; a lack of time to explore vulnerabilities, exacerbated by a detainee’s state of mind on arrival, particularly if new to detention; and reluctance to talk about personal issues, especially traumatic experiences, such as having been trafficked or the victim of modern slavery or sexual abuse.
- 3.17** Once a person has been through the admission process their detention will be subject to review. While Case Progression Panels (CPPs) were created as part of the response to Stephen Shaw’s 2016 report (coming into operation in February 2017), periodic detention reviews (at 7, 14, 21, 28 days and every 28 days thereafter) are not new, nor are the ways that those working in IRCs are able to report their concerns about a particular detainee. The inspection showed that the former continued to make use of IS91RA Part C forms, while medical practitioners use Rule 35 reports (although almost exclusively for torture allegations), and that case owners make their own judgements about what weight to attach to any reports, seldom engaging with or feeding back to the originator on their usefulness. Whether because of the “failure” of Rule 35 reporting, the Home Office had seen an increase in medico-legal reports submitted in support of release.

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<sup>3</sup> ‘An inspection of the Home Office’s Reporting and Offender Management processes (December 2016 – March 2017)’, ‘An inspection of the Home Office’s management of non-detained Foreign National Offenders (December 2016 – March 2017)’, and ‘A re-inspection of the Home Office’s Reporting and Offender Management processes and of its management of non-detained Foreign National Offenders (October 2018 – January 2019)’.

- 3.18** The intention is that CPPs act as “internal independent assurance”<sup>4</sup> and ensure that the Adults at Risk guidance is being followed. For stakeholders, the notion of “internal independence” is a contradiction in terms. However, for the Home Office it is not unique to CPPs. It also operates in relation to Administrative Reviews, for example. Nonetheless, the Home Office recognises that an external presence would strengthen the CPPs but has struggled to get any organisation to agree to participate in the panels. Independence aside, inspectors identified a host of problems with the way CPPs were working and their relationship with case owners, particularly in Criminal Casework.
- 3.19** The findings in relation to CPPs are detailed in the body of this report and in correspondence between the Independent Chief Inspector and the Director General Immigration Enforcement at Annexes E and F. While there may not be a quick solution to finding independent panel members, a number of the other issues can and should be fixed as a matter of urgency.
- 3.20** As well as observing CPPs, examining cases and interviewing case owners, inspectors visited IRCs and prisons and spoke to detainees, and were struck that time is moving at different speeds for the Home Office and for those in detention. So, when a CPP decides, based on the paperwork alone, that a case should be reverted to another panel “in a couple of weeks” while some process plays out, this appears perfectly reasonable in terms of how quickly the Home Office normally operates. Meanwhile, for the detainee, with little to occupy their mind other than will they be released or removed, two (more) weeks in detention can seem like a very long time indeed, especially if they are vulnerable.
- 3.21** Stephen Shaw identified that paper-based decision making was limiting and recommended that all case owners should meet detainees, about whom they are taking decisions or writing monthly detention reviews, at least once, either face-to-face, by video link or telephone. This recommendation was partially accepted, with the Home Office pointing to the embedded Pre-Departure Teams, since re-launched as Detention Engagement Teams (DETs), as the bridge between case owners and detainees. The inspection identified that the DETs were under-resourced and ill-equipped in terms of training and IT connectivity to perform this function. Equally, it was unclear what level of contact they have with case owners and what influence they have over any decision that a case owner might make.
- 3.22** While the inspection did not set out to be an audit of the implementation of Stephen Shaw’s recommendations, in a number of places it reflected on what Stephen recommended and what inspectors found in relation to the issue he was addressing. However, one recommendation is worth highlighting, particularly as it was rejected. This was that “Rule 35 (or its replacement) should apply to those detainees held in prisons as well as those in IRCs”. The rejection cited Rule 21 of the Prison Rules (1999) as “broadly equivalent” and also stated that the “adults at risk policy applies to individuals held in prisons under immigration powers”.
- 3.23** This inspection has shown that, while there are serious shortcomings with the Rule 35 process, there is no equivalence, broad or otherwise, as Rule 21 is seldom if ever used. Meanwhile, prison staff operate their own systems and are largely unaware of the Adults at Risk guidance. The rejection is therefore based on a false premise, which the Home Office had done nothing to test. This is another example of FNOs being disadvantaged.

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4 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/797286/Detention-case-progression-panel-guidance-v2.0ext.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/797286/Detention-case-progression-panel-guidance-v2.0ext.pdf)

- 3.24** The issue of who ultimately decides whether a person is held in detention goes to the heart of the effectiveness of the Adults at Risk process, and the use of immigration detention more generally. Many have argued that the decision should be made by a judge rather than by a Home Office official.
- 3.25** Whatever the merits of the wider arguments, this inspection found that the key intervention mechanisms on which the Adults at Risk process relies (the DGK; reporting from within the IRC or prison by the IRC supplier, healthcare and GPs, embedded Home Office staff, NGOs and others; and the Case Progression Panels) are undermined by a lack of genuine empowerment, either because the decision rests elsewhere (such as with Criminal Casework) or because the business of releasing particular detainees is complicated by the shortage of suitable accommodation, facilities and support and the Home Office's limited influence over these.
- 3.26** In summary, the Home Office has made progress since the Adults at Risk guidance was first introduced in 2016, and as Stephen Shaw observed, the overall reduction in the numbers detained is a positive step, with the reduction in the number of women having now caught up in percentage terms with that for men as Stephen hoped it would. The extent to which the creation of the DGK and its influence on the frontline is responsible for this change is impossible to gauge, not least because the Home Office has not done enough to measure it.
- 3.27** Meanwhile, there is clearly a lot more that the Home Office can and should do to make each component of the Adults at Risk process more efficient and more effective, and it is reasonable therefore to continue to describe it as a "work in progress". However, because there are so many moving parts to this, and because the available data and information is rudimentary at best, throughout this inspection it has been hard to get a sense of the Home Office's vision for the finished article and therefore to judge whether it is moving fast enough (undoubtedly not, for those who are detained), in the right direction (probably, although some stakeholders argue that Adults at Risk has made things worse) and when it will have gone as far as it can (which is possibly never, given the complexities of what it is trying to manage but everyone involved would benefit from clearer goals).



## 4. Recommendations

### Note:

The recommendations below are not intended to supersede previous recommendations from Stephen Shaw's two reviews, from reviews and reports by other statutory bodies concerning immigration detention, and from inspection reports by the ICIBI, specifically those relating to non-detained Vulnerable Adults, Reporting and Offender Management and Foreign National Offenders.

### The Home Office should:

#### In relation to detention overall

- 4.1 Continue to implement the recommendations from previous reviews and reports relating to vulnerability and the management of non-detained and detained persons, ensuring that this work is properly prioritised, resourced and coordinated, with an overall Action Plan setting out actions, responsibilities, delivery dates, intended outcomes and review/evaluation mechanisms.
- 4.2 Convene all of the government departments and agencies that have a role in reducing the detained population and, in particular, the number of vulnerable persons and Foreign National Offenders who are detained and the time they spend in detention and agree a cross-government strategy for achieving this, with roles and responsibilities for delivery, hand-offs, and obstacles and solutions clearly defined.
- 4.3 Review the various definitions and indicators of risk and vulnerability used throughout Home Office guidance, processes and forms (not solely related to Adults at Risk guidance) and in the Detention Centre Rules and Detention Services Orders, and (with input from relevant experts) ensure that they are clear, consistent and comprehensive, and that all staff (Home Office, supplier and prison) are fully trained to understand and comply with them.

#### Specifically, in relation to the Adults at Risk process, by 31 March 2020

- 4.4 Review where the authority not to detain/to release should sit, and at what level/grade, at each of the three key stages of detention: prior to admission to an Immigration Removal Centre (or detention under immigration powers in a prison); during the admission process; and once a person has been in detention for more than 24 hours and is into the cycle of reviews.
- 4.5 Produce and implement an improvement plan for the three key stages of detention, including as a minimum:
  - a. Prior to admission
    - i. provide the Detention Gatekeeper (DGK) with real-time access to professional medical advice
    - ii. identify in what circumstances and how enhanced screening might work, at least for some of those being considered for detention.

- b. During the admission process – rationalise the process, with the aim that the detainee is seen by all parties (IRC supplier, healthcare and GP, and embedded DET) within 24 hours of arrival, and that the staff who have had contact with the detainee meet and agree a joint report that includes an assessment of whether the person is suitable to be detained and which forms the basis for the 24-hour DGK review (which would also serve as a quality assurance check on the DGK).
- c. Once in detention (after the 24-hour point)
  - i. ensure that the DETs are adequately resourced, trained and equipped (with effective IT connectivity and immediate access to case owners) to perform the function for which they were created
  - ii. ensure that case owners engage (directly or through the DETs) with IRC staff, healthcare and GPs regarding 'Part C' and Rule 35 reports, as a minimum providing feedback on their usefulness but also seeking clarification on any points that are not clear
  - iii. (without waiting to see if an independent party will agree to participate) revisit the staffing, functioning and minuting of the Case Progression Panels (CPPs) and ensure that they are operating firstly as effective meetings, before determining whether they are a robust and reliable review mechanism, with sufficient authority.

- 4.6** (Without waiting for Atlas) produce and share with stakeholders a statement about the data the Home Office considers is essential to a thorough understanding and assurance of the effectiveness of the Adults at Risk guidance (and any related policies, guidance, processes), and overhaul the forms and other methods by which data and information about the detained population is collected, to ensure that this data is collected consistently and comprehensively.
- 4.7** Review the Policy Equality Statement (PES) produced in 2016 to accompany the Adults at Risk guidance and confirm that the statements and assessments, in relation to unlawful discrimination, remain valid in the light of experience.
- 4.8** Produce a comparative analysis of the treatment and conditions (covering Rules, policies, guidance, and practice) of detainees and of Foreign National Offenders detained in prison under immigration powers, and ensure that there is a clear and evidenced justification for any differences, particularly where one group is demonstrably disadvantaged compared to the other.

# 5. Background

## Immigration detention powers and policy

- 5.1** Persons subject to UK immigration controls may be detained while they wait for permission to enter the UK, or before they are deported or removed from the country. Immigration detention is an administrative process and powers to detain are exercised by officials acting on behalf of the Home Secretary.
- 5.2** The powers to detain are set out in different pieces of immigration legislation, principally:
- the Immigration Act 1971 (as amended), Schedule 2, paragraph 16 (2) sets out the power to detain an illegal entrant or person liable to removal
  - the Nationality, Immigration and Asylum Act 2002, section 62 sets out the power to detain in cases where the Home Secretary has the power to set removal directions
  - the Immigration Act 1971, Schedule 3, paragraph 2 and the UK Borders Act 2007, section 36 set out powers to detain a person liable to deportation
- 5.3** The Home Office’s ‘Enforcement Instructions and Guidance’ (Chapter 55 – ‘Detention and Temporary Release’)<sup>5</sup> notes that:
- “To be lawful, detention must not only be based on one of the statutory powers and accord with the limitations implied by domestic and Strasbourg case law but must also accord with stated policy.”
- 5.4** Chapter 55 also sets out when “detention is most usually appropriate:
- to effect removal;
  - initially to establish a person’s identity or basis of claim; or
  - where there is reason to believe that the person will fail to comply with any conditions attached to a grant of immigration bail.”
- 5.5** Chapter 55 is clear that “detention must be used sparingly, and for the shortest period necessary ... [it] may only continue for a period that is reasonable in all the circumstances for the specific purpose”. Once it has been authorised, detention “must be kept under close review to ensure that it continues to be justified”.
- 5.6** A “reasonable period” is not defined, but a distinction is drawn between persons who have been convicted of a serious criminal offence and others. Under “More serious offences”, Home Office caseworkers are reminded that “what constitutes a ‘reasonable period’ for these purposes may last longer than in non-criminal cases, or in less serious criminal cases, particularly given the need to protect the public from serious criminals due for deportation.”

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<sup>5</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/804785/Chapter-55-detention-v26.0ext.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/804785/Chapter-55-detention-v26.0ext.pdf)  
last updated on 29 May 2019 according to GOV.UK

**5.7** The decision to detain (or to maintain detention) must be supported by “a properly evidenced and fully justified explanation of the reasoning behind the decision”, which must be recorded. The “relevant factors” include:

- What is the likelihood of the person being removed and, if so, after what timescale?
- Is there any evidence of previous absconding?
- Is there any evidence of a previous failure to comply with conditions of immigration bail (or, formerly, temporary admission or release)?
- Has the subject taken part in a determined attempt to breach the immigration laws? (For example, entry in breach of a deportation order, attempted or actual clandestine entry).
- Is there a previous history of complying with the requirements of immigration control? (For example, by applying for a visa or further leave).
- What are the person’s ties with the UK? Are there close relatives (including dependants) here? Does anyone rely on the person for support? If the dependant is a child or vulnerable adult, do they depend heavily on public welfare services for their daily care needs in lieu of support from the detainee? Does the person have a settled address/employment?
- What are the individual’s expectations about the outcome of the case? Are there factors such as an outstanding appeal, an application for judicial review or representations which might afford more incentive to keep in touch than if such factors were not present? (See also 55.14).
- Is there a risk of offending or harm to the public (this requires consideration of the likelihood of harm and the seriousness of the harm if the person does offend)?
- Is the subject under 18?
- Is the subject an adult at risk? See the separate guidance in Adults at risk in immigration detention.”<sup>6</sup>

## The non-detained population

**5.8** Chapter 55 makes it clear that “there is a presumption in favour of immigration bail and, wherever possible, alternatives to detention are used.” This was echoed by the Home Secretary in a statement to the House of Commons on 24 July 2018 in response to Stephen Shaw’s ‘Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons’:<sup>7</sup>

“... let me be absolutely clear that the government’s starting point, as always, is that immigration detention is only for those whom we are confident that other approaches to removal will not work.

Encouraging and supporting people to leave voluntarily is of course preferable. I have asked the Home Office to do more to explore alternatives to detention with faith groups, NGOs and within communities.”

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<sup>6</sup> ‘Enforcement Instructions and Guidance’ Chapter 55.3.1.

<sup>7</sup> <https://www.gov.uk/government/publications/welfare-in-detention-of-vulnerable-persons-review-progress-report>

- 5.9** The Home Secretary went on to describe a “pilot scheme to manage vulnerable women in the community who would otherwise be detained in Yarl’s Wood.” At the beginning of December 2018, the Immigration Minister announced the launch of the pilot, working with Action Foundation, a charity that provides support to asylum seekers, migrants and refugees, which “will see up to 21 women supported in the community who would otherwise be detained at Yarl’s Wood Immigration Removal Centre. The pilot, called Action Access, will last 2 years and will support up to 50 women during that time.”<sup>8</sup> The announcement referred to “further pilot schemes” that were being developed and “will begin in the New Year”. But, as at the beginning of June 2019, the Home Office had not announced any further schemes.<sup>9</sup>
- 5.10** In practice, however, at any one time there are more people living in the community under Home Office reporting restrictions than are in detention. In 2017, ICIBI published ‘An inspection of the Home Office’s Reporting and Offender Management processes (December 2016 – March 2017)’.<sup>10</sup> This noted that in 2016 the reporting population was around 80,000, the majority of whom were required to report monthly at a Reporting and Offender Management (ROM) centre or police station, where the expectation was that staff would look to persuade them to return voluntarily to their country of origin.
- 5.11** The report identified that in most instances “meaningful” conversations were not taking place, due largely to the volumes, but also because of poor internal communications between case owners and ROM staff. It also identified that where a reporting event was missed (around 9% of cases) this was inconsistently recorded and treated, and there was little evidence that effective action was being taken to locate the vast bulk of those declared as “absconders”.
- 5.12** A parallel inspection, ‘An inspection of the Home Office’s management of non-detained Foreign National Offenders (December 2016 – March 2017)’,<sup>11</sup> noted that just over 5,000 of the reporting population “had a criminal case type on CID” (indicating that they were a Foreign National Offender). Again, the inconsistency of the Home Office’s response to missed reporting events was found to be an issue, and the report also recommended that the Home Office should monitor and analyse re-offending rates for FNOs, in particular for those released to “no fixed abode”. This recommendation was rejected as it would “partly duplicate work by MoJ [Ministry of Justice] who already monitor re-offending rates.”<sup>12</sup>
- 5.13** A re-inspection of the ROM process and of the Home Office’s management of non-detained FNOs,<sup>13</sup> published in May 2019 found that significant efforts had been made to improve the efficiency and effectiveness of the reporting process, principally through technology-enabled smarter working, and that a good deal of analysis and review work had been done in relation to the management of “out of contact” cases. However, at the time of the inspection (October 2018 – January 2019) much of this had either been newly introduced or was yet to be put into practice and could not be properly assessed.
- 5.14** The Home Office had been more successful in implementing the recommendations from the FNO inspection than those relating to the ROMs. The former included ensuring that its records for non-detained FNOs were accurate. The re-inspection report noted the figures for

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8 <https://www.gov.uk/government/news/new-pilot-schemes-to-support-migrants-at-risk-of-detention>

9 At the factual accuracy stage, the Home Office reported that “a market engagement day for Pilot 2 was held on 12 June [2019]”.

10 <https://www.gov.uk/government/publications/inspection-report-on-the-reporting-and-offender-management-system>

11 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/656584/An\\_inspection\\_of\\_non-detained\\_FNOs.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/656584/An_inspection_of_non-detained_FNOs.pdf)

12 <https://www.gov.uk/government/publications/the-home-office-response-to-the-independent-chief-inspectors-report-an-inspection-of-the-home-offices-management-of-non-detained-foreign-national>

13 <https://www.gov.uk/government/publications/a-re-inspection-of-the-home-offices-reporting-and-offender-management-processes-and-of-its-management-of-non-detained-foreign-national-offenders>

non-detained and detained FNOs from January to October 2018. This showed that the total FNO population hovered around 14,000. Up to June 2018, slightly more than half of these FNOs were detained, including those still serving a custodial sentence. From July 2018, the balance shifted towards non-detained and by October 2018 it stood at 52% to 48% non-detained to detained.

- 5.15** The original FNO report acknowledged that implementation of the recommendations would not change some of the underlying challenges or risks surrounding the monitoring and removal of non-detained FNOs, but that it was important nonetheless, in terms of retaining parliamentary and public confidence, that the Home Office was able to demonstrate that it was doing as much as it possibly could to manage them.
- 5.16** The re-inspection report made four recommendations (three of which were “accepted” and the fourth “partially accepted”). The accepted recommendations included that the Home Office should revisit its rejection of the recommendation regarding FNOs released to ‘no fixed abode’, but also that it looked to ensure that the moves towards smarter working at the ROMs did not have the unintended consequence of reducing the Home Office’s ability to safeguard vulnerable individuals. Specifically, it recommended that:
- “The Home Office should expand the ‘First Reporting Event Questionnaire – Form FRE1’ question set to ensure that all vulnerabilities are captured and used to inform the future frequency of safeguarding conversations.”
- 5.17** This recommendation is also relevant in those cases where the Home Office decides to detain a person who has previously been reporting.

## The detained population

- 5.18** According to Home Office data, between 2009 and 2017 the total number of detentions under immigration powers in any year ranged between 25,904 (in 2010) and 32,447 (in 2015).<sup>14</sup> The total was 259,379, making an average of 28,820 a year. The figure of 24,748 for 2018 therefore represented a significant reduction on that 9-year average and was 9.5% lower than the previous year.
- 5.19** Substantially fewer women are detained than men. Over the period from 2009, the ratio has been approximately 1:5. However, in the second of his reports into vulnerable persons in detention, published in July 2018, Stephen Shaw expressed disappointment that at that stage the reduction in the detained population was more marked for men than for women.<sup>15</sup> The full-year figures for 2018 showed that the number of women entering detention had fallen by 10.3% compared with the previous year.

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<sup>14</sup> The figures include those detained in Immigration Removal Centres and in HM Prisons.

<sup>15</sup> <https://www.gov.uk/government/publications/review-into-the-welfare-in-detention-of-vulnerable-persons>

<b>Figure 1: People entering detention (2009 2018)<sup>16</sup></b>			
<b>Year</b>	<b>Male</b>	<b>Female</b>	<b>Total</b>
2009	22,622	5,379	<b>28,001</b>
2010	21,375	4,529	<b>25,904</b>
2011	22,800	4,289	<b>27,089</b>
2012	24,481	4,424	<b>28,905</b>
2013	25,754	4,664	<b>30,418</b>
2014	25,728	4,636	<b>30,364</b>
2015	27,813	4,634	<b>32,447</b>
2016	24,810	4,093	<b>28,903</b>
2017	23,289	4,059	<b>27,348</b>
2018	21,107	3,641	<b>24,748</b>

**5.20** Home Office data for the outcomes from immigration detentions for the period from 2010 to 2018 shows that the number of removals has reduced each year since a high in 2012 of 17,246. The percentage of those detained who were removed dropped from 64% in 2010 to 44% in 2018. The bulk of those not removed were released on immigration bail, in most cases by a person acting on behalf of the Home Secretary, but with the proportion of grants of bail made by an Immigration Judge increasing over the period.

<b>Figure 2: Total numbers leaving immigration detention 2010 2018<sup>17</sup></b>							
<b>Year</b>	<b>Total detainees</b>	<b>Number returned from the UK</b>	<b>% returned from UK</b>	<b>Granted leave to enter/ remain</b>	<b>Bailed (SoS)</b>	<b>Bailed (Judge)</b>	<b>Other</b>
2010	<b>25,959</b>	16,577	64%	141	7,345	1,596	300
2011	<b>27,181</b>	16,836	62%	175	8,088	1,820	262
2012	<b>28,575</b>	17,246	60%	152	8,991	1,944	242
2013	<b>30,030</b>	16,933	56%	214	10,931	1,707	245
2014	<b>29,674</b>	15,673	53%	354	11,275	2,111	261
2015	<b>33,226</b>	15,106	45%	180	14,330	3,210	400
2016	<b>28,677</b>	13,473	47%	59	11,934	2,837	374
2017	<b>28,255</b>	13,178	47%	168	10,565	3,982	362
2018	<b>25,487</b>	11,152	44%	47	10,198	3,747	343

<sup>16</sup> The figures are taken from published Home Office immigration statistics for the year ending March 2019 'People entering detention by age, sex and place of initial detention.'

<sup>17</sup> The figures are taken from published Home Office immigration statistics for the year ending March 2019 'People leaving detention by reason and age'.

# The detention estate

## Immigration Removal Centres and Short-Term Holding Facilities

**5.21** Most of those detained under immigration powers are held in an Immigration Removal Centre (IRC). As at 31 October 2018, there were eight IRCs in the UK (this became seven in early 2019 when Campsfield House was closed), plus a further four Short-Term Holding Facilities (STHFs) where individuals may be detained for up to one week. The combined capacity of these 12 facilities was 3,074 – see Figure 3.

**Figure 3: Name, location and size (number of beds) of IRCs as at 31 October 2018, broken down by type(s) of detainee (male, female, mixed, family)**

Name of centre	Location	Size (beds)	Breakdown
Borders accommodation (STHF)	Gatwick estate	6	Family <sup>18</sup>
Brook House	Gatwick estate	448	Male
Campsfield House <sup>19</sup>	Oxfordshire	282	Male
Colnbrook	Heathrow estate	339	312 Male 27 Female
Dungavel	Scotland	249	235 Male 14 Female
Harmondsworth	Heathrow estate	726	Male
Larne House	Northern Ireland	19	Mixed
Pennine House, Manchester (STHF)	Manchester Airport	32	Male 5 beds can be used for females or an adult family
Morton Hall	Lincolnshire	391	Male
Pre-departure accommodation (STHF)	Gatwick estate	10	Family
Tinsley House	Gatwick estate	162	Male
Yarl's Wood	Bedfordshire	410	304 Female 68 Family 38 Male

## The Detention Centre Rules 2001 and Detention Services Orders

**5.22** The operation of IRCs is governed by secondary legislation. The Detention Centre Rules 2001 came into force on 2 April 2001. They set out the “Purpose of detention centres” and how they should function, including provisions relating to the welfare and healthcare of detainees, detention reviews, and the duties of detainee custody officers. In March 2019, the Home Office opened a targeted consultation on draft Removal Centre Rules 2019. The consultation closed on 4 June 2019.

<sup>18</sup> Families may be detained for up to 72 hours prior to removal.

<sup>19</sup> On 9 November 2018, the Government announced that Campsfield House IRC would be closed. During the course of this inspection, the Home Office was in the process of reducing the detainee population at Campsfield House and the last detainee was expected to leave Campsfield House in January 2019, ahead of the contract end date with Mitie Care & Custody in May 2019.



- 5.23** Detention Services Orders (DSOs)<sup>20</sup> outline the procedures to be followed by Home Office staff and others operating in IRCs. The set of 56 DSOs, updated on 23 April 2019, is accessible on GOV.UK.

## Oversight of IRC “suppliers”

- 5.24** Immigration Removal Centres are run under commercial contracts agreed between the Home Office and a number of “suppliers”, mostly large supply and services companies. In the case of Morton Hall, the supplier is HM Prison and Probation Service (HMPPS).
- 5.25** For this inspection, ICIBI requested copies of all current contracts. The Home Office directed inspectors to the publicly available redacted versions of the contracts and, over a period of months, repeatedly declined to share unredacted versions on grounds of commercial confidentiality. It stated that having agreed with the suppliers not to share details of the contracts it was legally bound not to do so.
- 5.26** In discussion, the Home Office was concerned that the UK Borders Act 2007 did not permit the Home Secretary to make redactions in relation to the terms of the contracts should reference be made to them in the inspection report. The Independent Chief Inspector was not prepared to commit in advance of seeing them to not referring to the terms of the contracts. As a result, the inspection findings in relation to the oversight and assurance of IRC suppliers are heavily caveated.
- 5.27** ICIBI understands that supplier performance is assessed under the performance evaluation schedule for each contract, which sets out the expected performance standard with an assessment of the severity (low, medium, high) of a delivery failure. The contracts are largely self-reporting, with performance overseen by a Detention and Escorting Services (DES) team, based in each IRC, whose primary responsibilities were ensuring that detainees were held securely and safely and that escorts were arranged to effect removals.
- 5.28** Inspectors were told at one IRC that the DES teams met with the manager of the IRC daily, and contract monitoring was discussed at weekly meetings between the DES Higher Executive Officer (HEO) and the IRC Assistant Director. A list of issues was submitted to the DES in advance, with mitigations setting out why the supplier should not be penalised. The meeting was an opportunity to discuss and apply the performance points. Escalation mechanisms were available but rarely required.

## BBC Panorama

- 5.29** The 2017, a BBC Panorama documentary ‘Britain’s Immigration Secrets’<sup>21</sup> revealed bullying and abusive behaviour by supplier staff at Brook House IRC. In 2018, an independent review, commissioned by the supplier, G4S, found gaps in oversight and assurance. The report noted:

“Home Office managers also acknowledged that the Home Office monitoring of the performance of the contract at Brook House tended to be based on consideration of the individual elements of contract performance and compliance and that they had not taken an approach that examined and questioned the wider concerns of the care and welfare

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<sup>20</sup> <https://www.gov.uk/government/collections/detention-service-orders>

<sup>21</sup> BBC Panorama, Undercover: Britain’s Immigration Secrets, first broadcast on 4 September 2017. At the time of this inspection, the events at Brook House were subject of a Prisons and Probation Ombudsman (PPO) investigation and court action. <https://ukhumanrightsblog.com/2019/06/19/investigation-into-abuse-at-brook-house-irc-fails-to-meet-requirements-of-article-3/>

of detainees, their quality of life and experience of being detained in Brook House. ... We believe the Home Office should take greater responsibility than they appear to have done in the past for monitoring the overall experience of detainees at Brook House.”

## Foreign National Offenders held in prisons under immigration detention powers

- 5.30** Upon completion of the custodial part of their sentences, some Foreign National Offenders (FNOs) who are subject to a Deportation Order (DO) may continue to be held in prison under immigration powers. This is normally where they have been risk assessed by the Home Office<sup>22</sup> as “unsuitable” to be transferred to an IRC. The risk assessment process is explained in DSO 03/2016 ‘Consideration of Detainee Placement in the Detention Estate’.<sup>23</sup>
- 5.31** The Home Office has a Service Level Agreement (SLA) with HM Prison and Probation Service (HMPPS)<sup>24</sup> under which HMPPS will make available 400 places in prisons across England and Wales for immigration detainees.<sup>25</sup> Two prisons, HMP Maidstone (Kent) and HMP Huntercombe (Oxfordshire) are designated as “Foreign National Offender prisons”, but FNOs may be detained under immigration powers at other prisons.
- 5.32** According to Home Office data, of a total of 1,794 persons detained under immigration powers during the week ending 7 April 2019, 319 were held in a prison. Figure 4 shows the main distribution of FNOs held in prisons under immigration powers as at April 2019.

**Figure 4: Persons held in prison under immigration powers  
(taken from Home Office DEMI<sup>26</sup> pack for 7 April 2019)**

HM Prison	Number of FNOs
Pentonville (London)	22
Wormwood Scrubs (London)	17
Thameside (London)	15
Wandsworth (London)	14
Elmley (Sheppey)	12
Forest Bank (Salford)	12
Cardiff	11
Durham	10
Peterborough	10
Bronzefield (Ashford Middlesex)	9
Other	187
<b>Total</b>	<b>319</b>

22 Detainee Escorting and Population Management Unit (DEPMU) is responsible for carrying out the risk assessment for placing an individual in an IRC.

23 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/523428/DSO\\_Consideration\\_of\\_Detainee\\_Placement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/523428/DSO_Consideration_of_Detainee_Placement.pdf)

24 The SLA was signed with the Ministry of Justice’s National Offender Management Service (NOMS). HMPPS replaced NOMS in April 2017.

25 Inspectors were not informed of any SLAs with the Scottish Prison Service or the Northern Ireland Prison Service. However, as at 30 January 2019, Home Office statistics showed that one Foreign National Offender was detained under immigration powers in HMP Barlinnie (Scotland), one in HMP Perth (Scotland) and one in HMP Magilligan (NI).

26 Detained Estate Management Information. This information was internal management information provided by Immigration Enforcement. It had not been quality assured to the level of published National Statistics and should be treated as provisional and therefore subject to change.

## Stephen Shaw's 2016 Report

- 5.33** In February 2015, the Home Secretary commissioned Stephen Shaw CBE, a former Prisons and Probation Ombudsman for England and Wales, to “review the appropriateness of [the Home Office’s] policies and practices concerning the welfare of those who have been placed in detention, whether in an immigration removal centre or short-term holding facility, and those being escorted in the UK.”
- 5.34** The Terms of Reference stated:
- “The review will consider the appropriateness of current policies and systems designed to:
- identify vulnerability and appropriate action
  - provide welfare support
  - prevent self-harm and self-inflicted death
  - manage food and fluid refusal safely without rewarding non-compliance
  - assess risk effectively
  - transmit accurate information about detainees from arrest to removal
  - safeguard adults and children
  - manage the mental and physical health of detainees
  - other matters the review considers appropriate.”
- 5.35** Separately, in March 2015, the All-Party Parliamentary Group on Refugees and the All-Party Parliamentary Group on Migration published a report of their joint inquiry into the use of immigration detention in the UK.<sup>27</sup> The report’s key recommendations were:
- There should be a time limit of 28 days on the length of time anyone can be held in immigration detention.
  - Detention is currently used disproportionately frequently, resulting in too many instances of detention. The presumption in theory and practice should be in favour of community-based resolutions and against detention.
  - Decisions to detain should be very rare and detention should be for the shortest possible time and only to effect removal.
  - The Government should learn from international best practice and introduce a much wider range of alternatives to detention than are currently used in the UK.”
- 5.36** Stephen Shaw’s report, ‘Review into the Welfare in Detention of Vulnerable Persons’, was completed in September 2015 and published in January 2016.<sup>28</sup> It contained 64 recommendations – see Annex C.
- 5.37** The report dealt with the history and current structure of immigration detention, including the routes into detention and the legal and policy frameworks; the detention estate; and, the relevance of recent European Court of Human Rights (ECtHR) Article 3 rulings.<sup>29</sup>

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<sup>27</sup> Available at <https://detentioninquiry.com>

<sup>28</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/490782/52532\\_Shaw\\_Review\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf)

<sup>29</sup> Article 3 of the European Convention on Human Rights ‘Prohibition of torture’ states that “No one shall be subjected to torture or to inhuman or degrading treatment or punishment”.

**5.38** Shaw also discussed the concept of vulnerability, recommending that the Home Office “should consider introducing a single gatekeeper for detention”, he argued that:

“the presumption against detention should be extended to victims of rape and sexual violence, to those with a diagnosis of Post-Traumatic Stress Disorder, to transsexual people, and those with Learning Difficulties” and that “the presumptive exclusion of pregnant women should be replaced by an absolute exclusion”, and that the clause “which cannot be satisfactorily managed in detention” should be “removed from the section of the guidance covering those suffering from serious mental illness.”

**5.39** Shaw also drew attention to the dynamic nature of vulnerability and how it may change and increase over time spent in detention. His report included a literature survey on the relationship between detention and adverse mental health outcomes. He also noted that Rule 35 of the Detention Centre Rules 2001, which was designed to safeguard victims of torture or those whose health would be at risk from continued detention, was not working.

**5.40** Further parts of the report dealt with “the regimes and practices of the immigration estate”, including “prevention of self-harm and suicide, food and fluid refusal, deaths in detention, how information about risk is shared, room sharing risk assessment, allocation criteria, and safeguarding”; transfers and logistics; healthcare, including mental health services.

**5.41** The Government “accepted the broad thrust” of Shaw’s recommendations.<sup>30</sup> It subsequently used the Immigration Act 2016 to introduce a statutory requirement (Section 59) for the Home Secretary to “issue guidance specifying matters to be taken into account” by those “determining whether a person would be particularly vulnerable to harm if [that person] were to be detained or to remain in detention” and, if so, “whether [that person] should be detained or remain in detention”. The 2016 Act required that the Home Secretary lay a draft of the guidance before Parliament prior to it being issued.

**5.42** The Immigration Act 2016 also placed limitations on the detention of pregnant women (Section 60) and replaced a number of previous provisions under which a person who would otherwise have been held in immigration detention could be released or avoid being detained (generally known as temporary admission; temporary release; release on restrictions; and immigration bail) with “a new consolidated framework” (Schedule 10).

## Adults at Risk guidance

### Publication of the guidance

**5.43** ‘Guidance on adults at risk in immigration detention’ was laid in Parliament in draft on 21 July 2016. It came into force in September 2016. At the time, the Home Office explained that:

“The intention is that the guidance will, in conjunction with other reforms referred to in the Government’s response, lead to a reduction in the number of vulnerable people detained and a reduction in the duration of detention before removal. It aims to introduce a more holistic approach to the consideration of individual circumstances, ensuring that genuine cases of vulnerability are consistently identified, in order to ensure that vulnerable people are not detained inappropriately. The guidance aims to strike the right balance between protecting the vulnerable and ensuring the maintenance of legitimate immigration control.”

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<sup>30</sup> <https://www.gov.uk/government/publications/government-response-to-the-review-on-welfare-in-detention-of-vulnerable-persons>

## Scope

- 5.44** In all instances where consideration is being given to detaining a person or to the appropriateness of continued detention, the Home Office must first assess whether the person is an “Adult at Risk” according to its published guidance. The latter seeks to “recognise the breadth and dynamic nature of vulnerabilities and which will have a clear presumption against detention of vulnerable people, unless there is evidence that matters such as criminality, compliance history or imminent removal outweigh the vulnerability factors.”<sup>31</sup>
- 5.45** A person may be identified as an Adult at Risk if they declare they are suffering from a condition or have experienced a traumatic event that would render them vulnerable to harm in detention, or if identified as such if staff reviewing detention suitability become aware of medical or professional evidence, or through observations in the absence of self-declaration or other evidence.
- 5.46** Where a person is considered to be an Adult at Risk, the Home Office must make a further assessment of whether immigration factors (how quickly it can effect removal, the person’s risk of absconding based on their compliance record, and any public protection concerns, for example, by virtue of their criminal history) outweigh the risks identified. The guidance states that a person should be detained only if these immigration factors outweigh the risk factors.

## Levels of risk/evidence

- 5.47** The Adults at Risk guidance recognises three “Levels” of risk, based on the type of evidence that is available:

**Level 1** evidence is “a self-declaration of being an adult at risk” which the guidance states “should be afforded limited weight”.

**Level 2** evidence is “professional evidence (e.g. from a social worker, medical practitioner or NGO), or official documentary evidence, which indicates that the individual is an adult at risk” which “should be afforded greater weight”.

**Level 3** evidence is “professional evidence (e.g. from a social worker, medical practitioner or NGO) stating that the individual is at risk and that a period of detention would be likely to cause harm – for example, increase the severity of the symptoms or condition that have led to the individual being regarded as an adult at risk” which “should be afforded significant weight”.

## Indicators of risk under the Adults at Risk guidance

- 5.48** The guidance lists “conditions or experiences which will indicate that a person may be particularly vulnerable to harm in detention”. The list is “not intended to be exhaustive”, but includes mental health conditions, serious physical disability, health conditions or illness, having been a victim of torture, trafficking or modern slavery, or sexual or gender-based violence, including female genital mutilation, post-traumatic stress disorder, being aged 70 or over, pregnancy, and being transsexual or intersex.

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<sup>31</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/784634/adults-at-risk-policy-v5.0ext.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/784634/adults-at-risk-policy-v5.0ext.pdf)

## Revisions to the guidance

- 5.49** At the time of this inspection there had been five versions of the Adults at Risk guidance, the most recent of which (version 5) was published in March 2019.
- 5.50** The Home Office told inspectors that when developing the original guidance all relevant operational areas within the Home Office and various NGOs had been consulted. However, an NGO, Medical Justice, together with a number of victims of torture, sought a Judicial Review of the use in the guidance of the UN Convention on Torture (UNCAT), which focused on the perpetrator, defining torture as “pain or suffering inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”. In October 2017, the Judge agreed with Medical Justice that this “would require medical practitioners to reach conclusions on political issues which they cannot rationally be asked to reach”.
- 5.51** The Home Office stopped using the UNCAT definition in December 2016, pending the outcome of the Judicial Review, and subsequently amended the Adults at Risk guidance in line with an amendment to the Detention Centre Rules 2001 to add a new definition of torture.<sup>32 33</sup>
- 5.52** Revised guidance (version 3) came into force on 2 July 2018.<sup>34</sup> In response to feedback from case owners, who had indicated that they were finding it difficult to understand what constituted a serious health condition, the revised guidance also sought to clarify this. The Home Office told inspectors that it had again consulted NGOs before making the changes.
- 5.53** Under the revised guidance, case owners were asked to consider:
- “• does the individual take medication?:
    - do they need assistance in taking their medication?
    - what happens if they do not take their medication?
    - medicated conditions will be more likely to be serious, however, if the condition is well managed by the individual through medication, it may not fall within the ‘serious medical condition or illness’ indicator of risk
  - does the condition adversely impact on the individual’s mobility or significantly reduce their range of movement?
  - does the condition significantly hinder the individual’s ability to provide adequate self-care (for example, washing, dressing or eating), severe mobility issues are more likely to indicate that the condition is serious?
  - are there other related complicating conditions, such conditions may be an indication of a serious physical health condition?
  - where conditions fluctuate, or involve sudden attacks, such as asthma or epilepsy, how long ago was the most recent episode or attack?
  - how severe was it, did the last episode or attack require medical intervention, such as a change in medication or hospitalisation?
  - has the individual been hospitalised recently, if so, when?”

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32 <https://www.judiciary.uk/judgments/medical-justice-and-ors-v-secretary-of-state-for-the-home-department/>

33 <http://www.medicaljustice.org.uk/medical-justice-challenges-the-detention-of-victims-of-torture-in-the-high-court/>

34 <https://www.gov.uk/government/publications/draft-revised-guidance-on-adults-at-risk-in-immigration-detention>

**5.54** Version 3 of the guidance was also amended to reflect the Judicial Review finding that the “sweeping up” provision to capture persons who were particularly vulnerable, but were not covered by the listed indicators of risk, was not working as the Government had intended. The amended guidance made it clear that the list of indicators was not “exhaustive” and that:

“Any other relevant condition or experience that may render an individual particularly vulnerable to harm in immigration detention, and which does not fall within the above list, should be considered in the same way as the indicators in that list. In addition, the nature and severity of a condition, as well as the available evidence of a condition or traumatic event, can change over time.”

**5.55** Version 4 was published in February 2019 and was extant only until March 2019. The explanation on GOV.UK that accompanied the publication of version 4 was that: “A clarification has been added to the definition of torture contained within this guidance as a result of a commitment made as a part of legal proceedings.”

## Stephen Shaw’s 2018 Report

**5.56** In Autumn 2017, the Home Office invited Stephen Shaw to conduct a follow-up review to assess the progress made in implementing his original recommendations. His second report, ‘Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons’, was published on 24 July 2018.

**5.57** Shaw noted that “of the 64 recommendations, 56 were accepted or partially accepted, five were rejected, two were deferred and one remains under review. Of the 56 that were accepted or partially accepted, 31 have been implemented, and the rest are being delivered.”

**5.58** Shaw assessed that: “The provision of healthcare in IRCs had much improved” and noted that “plans were in place to continue this process”. However, he recognised that: “Almost all the bodies who submitted representations to the second Review asserted that the Rule 35 process was not working and should be replaced.”

**5.59** He also noted that: “Improved safeguards have been introduced, including the Detention Gatekeeper, Case Progression Panels, the development of an Adults at Risk Assurance Team. Automatic bail consideration had added a layer of judicial oversight.”

**5.60** Commenting on the length of detention and the detained population, he wrote:

“I have obviously been pleased to note a reduction in the average length of detention since 2015. I also welcome the substantial fall in the overall detained population since I conducted my first review. These are significant steps forward. Nevertheless, the number of people held for over six months has actually increased. The time that many people spend in detention remains deeply troubling.

Furthermore, over half of those detained are still subsequently released back into the community. And virtually all of the population reduction has been on the male side, while the number of women in detention (who do of course make up a far smaller proportion of the overall detained population) has fallen by a much smaller percentage. Given the levels of vulnerability amongst women detainees, I hope that their numbers can also follow a strong downward path. While there had been a reduction in the numbers of women held in immigration detention, this reduction was not as marked as would have been expected.”

**5.61** Shaw observed that much of his follow-up report concerned the Adults at Risk guidance, noting that:

“many of the NGOs who submitted evidence said that AAR had made matters worse and should be abandoned. And it is the case that in my visits to IRCs I found many people whom I felt should not be there. Indeed, I think every one of the centre managers told me that they had seen no difference in the number of vulnerable detainees (and, in some cases, that the numbers had actually increased.”

and

“Stakeholders were concerned that the AAR policy had had little practical effect, due primarily to the requirement that vulnerability is weighed against immigration factors, and these immigration factors generally carry more weight than vulnerability factors.”

**5.62** Nonetheless, Shaw’s view was that:

“it would be folly to give up on the Adults at Risk policy. It is best thought of as an exercise in cultural change, and like all such programmes it will take time to reach full fruition. The focus on vulnerability that AAR has engendered is a genuine one, although there is no doubt that the policy remains a work in progress. I have made recommendations to strengthen the protections of AAR.”

**5.63** Shaw’s follow-up report contained 44 recommendations (see Annex D). The recommendations were wide-ranging and included healthcare, caseworking, safer detention, training, staff culture, oversight, data, and alternatives to detention. He also recommended that:

“The Independent Chief Inspector of Borders and Immigration should be invited to report annually to the Home Secretary on the working of the Adults at Risk process.”

## Government response to “Shaw 2”

**5.64** The Home Secretary responded to Shaw’s second report with a statement to the House of Commons,<sup>35</sup> announcing that he had commissioned an annual review of Adults at Risk from ICIBI. Also, he had asked the Home Office to explore alternatives to detention. The Adults at Risk process would continue to be developed, including looking again at improving consideration of Rule 35 reports on possible cases of torture, piloting bail referrals at the 2-month point, reviewing training, and increasing the number of Home Office staff in IRCs. More data on immigration detention would be published, and there would be a “new drive on dignity in detention”, including stopping having three detainees accommodated in rooms designed for two, modernising toilet facilities, and piloting the use of Skype “so that detainees can contact their families overseas”.

**5.65** Amongst the evidence provided for this inspection was a grid produced by the Shaw Implementation Board in December 2018 and agreed by the Home Secretary with updates on Shaw’s recommendations. In the case of the three recommendations (Recommendations 11, 12 and 13) that dealt specifically with Adults at Risk policy, this noted that “options are being developed to respond to these recommendations in the round, given their interdependent nature.”

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<sup>35</sup> <https://www.gov.uk/government/publications/welfare-in-detention-of-vulnerable-persons-review-progress-report>



## The Joint Committee for Human Rights Report 2019

**5.66** On 7 February 2019, the Joint Committee for Human Rights (JCHR)<sup>36</sup> published its 'Immigration detention' inquiry report. This described the immigration detention system as "slow, unfair and expensive to run". It highlighted that some people, including Windrush individuals, had been wrongly detained, and that conditions in some IRCs were "below acceptable standards".

**5.67** The JCHR made "five key proposals", covering:

- Independent decision making: noting that the Gatekeeper function and Case Progression Panels introduced by the Home Office were "within the Home Office itself" and recommending that: "a judicial decision should be required for any detention beyond 72 hours."
- A time limit on detention: recommending that detainees should not spend more than 28 days in detention, other than in "exceptional circumstances, for example when the detainee seeks unreasonably to frustrate the removal process and has caused the delay, the Home Office would be able to apply to a judge who could decide whether to extend the detention for up to a further 28 days."
- Access to legal advice: noting "problems with the availability and timeliness of legal advice in detention", arguing that "there is urgent need for immigration legislation to be reviewed" and recommending that "the Law Commission should be tasked with simplifying and codifying the law on immigration."
- Vulnerable individuals: arguing that: "The Adults at Risk policy does not give adequate protection to individuals at risk of harm in detention either by way of policy or of practice. Both the AAR policy and other Home Office policies are silent on how to respond to the needs of those that lack mental capacity, which puts them at a clear disadvantage. More needs to be done to identify vulnerable detainees and treat them appropriately".
- Detention conditions: recommending that the Home Office should give consideration to improving the oversight and assurance mechanisms in IRCs and the wider detention estate to ensure that any ill-treatment is found out immediately, corrected and lessons learned, and that "more is done to make the detention estate less prison-like", and that "Consideration should be given to separating individuals who pose a risk of violence, such as those who have been convicted of serious offences from other detainees."

## The Home Affairs Committee Report 2019

**5.68** On 21 March 2019, the Home Affairs Committee (HAC) published its 'Immigration detention' inquiry report.<sup>37</sup> This focused on "the overall UK immigration detention process; recommendations made by Stephen Shaw in his two independent reports on immigration detention; how the Home Office currently identifies and addresses the welfare of vulnerable people in immigration detention; the management and independent oversight mechanisms of Immigration Removal Centres (IRCs) and the detrimental impact of prolonged periods of detention on individuals' wellbeing."

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<sup>36</sup> <https://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/inquiries/parliament-2017/inquiry10/>

<sup>37</sup> <https://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/inquiries/parliament-2017/immigration-detention-inquiry-17-19/>

- 5.69** “In the wake of the deplorable abuse scandal at Brook House IRC in 2017”, the HAC report also explored “some of the wide-ranging challenges and failings that exist in immigration removal centres across the UK, which if left unaddressed could lead to yet more catastrophic abuses taking place”.
- 5.70** The HAC had taken account of the JCHR’s report in developing its conclusions and recommendations. These focused on five key areas:
- Operation of the detention estate
  - Decision to detain
  - Treatment of vulnerable adults in detention
  - Length of detention
  - Immigration removal centres – management and resources
- 5.71** In relation to Adults at Risk, the HAC concluded that “[the] policy is clearly not protecting the vulnerable people that it was introduced to protect”. The report made a number of detailed points, including urging the Government “to abolish the three AAR levels of risk and to revert to its previous policy of a presumption not to detain vulnerable individuals except “in very exceptional circumstances”.”
- 5.72** It also recommended “a return to the previous category-based approach rather than “indicators of risk””, encouraging the Home Office to consult widely to develop “an agreed grouping of categories”. Where a vulnerability was self-declared, HAC recommended that this should “trigger a duty of inquiry into the asserted vulnerability”. The HAC reported that it was “extremely concerned” about the Rule 35 process and welcomed the Government’s commitment to review it.
- 5.73** The HAC also welcomed the commissioning of an annual review by ICIBI of progress in relation to the Adults at Risk process, noting that:
- “This reporting should assess the operation of the entire AAR framework, including the Detention Gatekeeper Team and the Rule 35 process to ensure that the Government’s system to protect vulnerable people is effectively and robustly monitored, and so that accurate data can be published.”

## The current inspection

### Home Secretary Commission

- 5.74** The original request from the Home Secretary to ICIBI to carry out an annual review of the working of the Adults at Risk process was made in July 2018, and inspectors began gathering evidence from October 2018. The Home Secretary’s formal commissioning letter was dated 11 January 2019. In it, he asked that the first inspection should cover:
- the efficacy of detention safeguards in identifying and protecting those who are vulnerable
  - the impact of these interventions
  - Home Office response to any changing requirements whilst vulnerable individuals are in detention
  - and the effectiveness of Home Office guidance to officers in considering and applying the Adults at Risk policy.

## ICIBI 'Call for evidence'

**5.75** On 25 January 2019, ICIBI published a 'call for evidence' for the first annual review of how the Adults at Risk process was working.<sup>38</sup> Twenty written submissions were received in response, the majority (12) from NGOs.

**5.76** All of the submissions were critical. One statutory body stated:

"whilst welcoming the overriding presumption created by the Adults at Risk policy, [we] share the unease of other observers about its operation. [Staff] often come across people in detention with varying degrees of vulnerability, who are not properly looked-after, and/or whose conditions deteriorate dramatically during the course of their detention."

**5.77** The failure of the Adults at Risk guidance to identify and protect vulnerable adults was a common theme. As one stakeholder reported:

"Our case work strongly indicates that AAR is not fulfilling its statutory purpose, indeed in key respects the AAR significantly and deliberately weakened the existing protections and in its practical application has not reduced the numbers of AAR being detained nor secured their prompt release once identified ...

... The AAR Guidance and policy still sanction the detention of vulnerable people, even where there is evidence that detention is causing harm to the physical and/or mental health of the detainee and creates an unacceptable risk of breaches of Articles 5 and 3 of the ECHR. Particularly significant is the loss of the "exceptional circumstances" threshold for detaining very vulnerable people."

**5.78** Respondents raised concerns about the guidance measuring the level of evidence of vulnerability detainees were able to provide, not their actual vulnerability. They argued that it was unrealistic to require vulnerable detainees to provide medico-legal reports when it was problematic even to access GP medical records. One organisation that provided support to detainees noted:

"The problems are exacerbated by the rarity with which the Home Office recognises individuals as exhibiting a "level 3" vulnerability. It is very difficult for detainees to obtain evidence which the Home Office considers to be "professional evidence stating that the individual is at risk *and* that a period of detention would be likely to cause harm".

**5.79** Most respondents believed that effective screening of individuals to identify vulnerability was lacking. Although this applied to anyone who might be detained, the impact on particular groups was highlighted, for example potential victims of modern slavery (PVoMs):

"some of the women we have spoken to have been arrested during immigration raids on brothels or massage parlours ... so there is evidence from the circumstances of their arrest that they may be victims of trafficking. In spite of this, though, they haven't been referred into the National Referral Mechanism (NRM), and they have been detained."

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<sup>38</sup> <https://www.gov.uk/government/news/call-for-evidence-adults-at-risk-in-immigration-detention>

**5.80** Provision of mental health services in IRCs was another concern, especially because of the risk that time spent in detention would exacerbate existing mental health problems or trigger new ones. One respondent commented:

“[The inability of AAR to identify vulnerable individuals created] extended periods of detention during which the individual’s mental health deteriorates ... those individuals whose vulnerability and risk are identified, but not adequately addressed, are more likely to experience a deterioration of their mental health whilst in detention ...”

**5.81** Meanwhile, describing a particular IRC, another respondent stated:

“Inadequate facilities or accommodation suitable for the care of detainees with mental health problems and other vulnerabilities add to the difficulties of managing such a challenging detainee population. The physical constraints and the lack of facilities make it unsuitable to house the number of detainees it does. They also make it unsuitable to hold any detainee for more than a few weeks.”

**5.82** A number of other issues were raised by several of those responding to the call for evidence. They included the wording of the guidance, which it was argued directly reduced the amount of protection for vulnerable individuals, primarily because of the “balancing” of vulnerability and immigration factors, but also the removal of “exceptional circumstances” from Chapter 55 of the Enforcement Instructions and Guidance. Also: inconsistencies across the Home Office in understanding vulnerability and the impact on certain groups, particularly LGBTQI+ detainees; problems with accessing legal representation; the need for a time limit to detention (most argued for 28 days); and greater use of alternatives to detention.

**5.83** In this first annual review of the working of the Adults at Risk process it has not been possible to examine every area or concern in detail, not least because the information and data required to support such an examination is not currently collected. However, ICIBI will aim to do so in future reviews or in other inspections, where relevant.

## ICIBI’s related work on vulnerability outside the detention setting

**5.84** The ICIBI report ‘An inspection of the Home Office’s approach to the identification and safeguarding of vulnerable adults (February – May 2018)’<sup>39</sup> was published in January 2019. This inspection examined how well the Home Office’s Border, Immigration and Citizenship System (BICS) directorates understood vulnerability, focusing on encounters with non-detained adults.

**5.85** The Foreword to the report noted that there was “no doubt that the BICS Board, senior management, and the majority of staff are serious about improving the protection provided to vulnerable individuals”. The report also acknowledged that work was ongoing across BICS to improve training on vulnerability, raise awareness, and to capture relevant information.

**5.86** A number of points from the report are relevant to the current inspection, particularly the fact that the Home Office found it challenging to define vulnerability. The report noted that several definitions existed, and that the term “vulnerable adult” was itself contentious, since “the label can be misunderstood, because it seems to locate the cause of abuse with the victim, rather than placing responsibility with the actions or omissions of others.”<sup>40</sup>

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<sup>39</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/769849/ICIBI\\_inspection\\_of\\_the\\_Home\\_Office\\_safeguarding\\_of\\_Vulnerable\\_Adults\\_Feb-May\\_2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/769849/ICIBI_inspection_of_the_Home_Office_safeguarding_of_Vulnerable_Adults_Feb-May_2018.pdf)

<sup>40</sup> Association of Directors of Adult Social Services (ADASS).

**5.87** Reliable and systematic record keeping was recognised as the key to consistent identification of vulnerability. Numerous inspection reports have commented on the poor standards of record keeping across BICS, and inspectors found information about vulnerability “generally poor, and certainly not good enough to provide reliable management information about vulnerable adults across BICS.”

**5.88** The 2018 inspection of non-detained vulnerable adults made four recommendations, all of which were accepted by the Home Office. They included that BICS looked to partner with organisations that were more expert in identifying and managing vulnerable individuals, such as the NHS, police, social services and NGOs. The Home Office responded:

“The Department has good connections with local authorities, strategic migration partnerships and NGOs and engages regularly through stakeholder forums. We will continue to use these opportunities to identify and catalogue best practice for inclusion in the BICS work and ensure that we are signposting vulnerable individuals to the appropriate statutory body. Alongside this we are already seeking new ways to engage our key partners, for example by providing improved access into the BICS via a dedicated 24-hour contact point for local authorities; ongoing outreach programmes to the Association of Adult and Children’s services; and encouraging stakeholders to support us in the development of training packages and awareness sessions.”<sup>41</sup>

## Home Office management, oversight and assurance of the Adults at Risk process

### Operational and policy responsibility for the Adults at Risk process

**5.89** Immigration Enforcement’s Detention, Progression and Returns Command is responsible for all of the central functions that support the Adults at Risk process. These include the Detention Gatekeeper, the Case Progression Panel Team (Secretariat), the Detention Engagement Teams, a Rule 35 pilot team and an Adults at Risk Assurance Team (AARAT).

**5.90** The policy owner for Compliance and Enforcement policies, which encompass Adults at Risk guidance, sits in the BICS Policy Directorate. Their policy responsibilities include voluntary and enforced returns, detention time limits, safeguards and vulnerability and other areas covered in Stephen Shaw’s reports, and the resultant ministerial commitments, such as bail referrals at the two month point.

### Adults at Risk Assurance Team

**5.91** The Adults at Risk Assurance Team (AARAT) was established in September 2017. At the time of this inspection, the AARAT comprised a Grade 7 (who was also responsible for Case Progression Panels), an SEO (Senior Executive Officer) and an EO (Executive Officer).

**5.92** Inspectors were told that AARAT’s primary function was to support detained casework teams in managing detainees identified as Adults at Risk and other vulnerable detainees, such as those at risk of suicide who do not fall within the guidance. This relied on caseworkers seeking advice. When they did, AARAT found them generally receptive to the advice they gave.

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<sup>41</sup> <https://www.gov.uk/government/publications/response-to-an-inspection-report-on-identifying-and-safeguarding-vulnerable-adults>

**5.93** The list of AARAT’s responsibilities and functions appeared challenging for a team of three. In addition to providing support and advice to casework teams and other BICS stakeholders, it was responsible for ensuring appropriate quality-assurance products were in place and being used by the business, conducting second line assurance checks on Rule 35 responses, delivering training to business areas when new or amended policies were introduced, producing weekly management information reports to identify trends, data-quality anomalies and any irregularities in case progression, and supporting and linking teams with non-detained safeguarding teams and stakeholders. The AARAT EO’s main role was to reconcile the data held by the Home Office and by IRC suppliers of those identified as an Adult at Risk and their level.

## Data collection

**5.94** For this inspection, ICIBI made its initial evidence request to the Home Office in October 2018. This was much earlier than is normally the case for inspections, specifically to give the Home Office time to ensure that information and data collection in relation to Adults at Risk was in place when the inspection team began in earnest (in January 2019) and, where it had not been collected hitherto, that it would be available to inform future annual reviews.

**5.95** Between October 2018 and February 2019, the Home Office undertook a major data cleansing exercise to ensure that the Adults at Risk levels of detainees were correctly recorded on CID.<sup>42</sup> Despite this, when inspectors began examining CID records in March 2019, they found inconsistencies. Some had different Adults at Risk levels recorded in different parts of the CID record, for example the “Special Conditions” flag showed the person as Level 1, while the Detention Review had them as Level 2.

**5.96** AARAT agreed that Adults at Risk (AAR) recording on CID was: “Convoluting. A mess. Things don’t get updated where they should be.” In March 2019, the AARAT Risk Register had identified data quality risks as “High Impact, Significant Likelihood, and Close Proximity”. The Risk Register listed amongst the consequences:

“Potential failure to appropriately identify and adequately safeguard vulnerable adults in detention to either a safe return or release. This could result in a level of harm to the individual and reputational damage to the team and Home Office, especially in light of the findings/recommendation in both of Stephen Shaw’s reports into the detention of vulnerable individuals.”

## Data and information “gaps”

**5.97** ICIBI’s original evidence request was extensive and inspectors expected that the Home Office would need to set up new management information systems to capture certain data. Nonetheless, the department’s initial response suggested some surprising gaps in its existing data sets. For example, ICIBI asked for the “Number and details of compensation payments made to detainees as a result of their detention in the immigration estate, with reasons”. The Home Office responded:

“It is not possible for the Home Office to provide further detail around unlawful detention as such information is not collated in a way that can be easily provided in a simple format. An individual review of each case in which damages have been awarded would be required.”

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42 Case Information Database – the Home Office immigration caseworking system

- 5.98** The Home Office also told inspectors that it did not collect data about “the number of LGBTQI persons detained, because this information was not centrally recorded on Home Office systems” or “the number of family splits, as this information was not held in a reportable format.”
- 5.99** Without this data it is hard to see how the Home Office is able to assess the quality of its decisions to detain or the impacts of detention on specific groups, which stakeholders have argued are particularly vulnerable.
- 5.100** Inspectors were told that: “The Home Office does not currently have a single measure of ‘success’ of the Adults at Risk policy. However, considerations will be made as to how this might be measured in the future. It is expected that any such measure would need to be qualitative and holistic.”
- 5.101** The Home Office explained that Atlas, its new person-centric casework IT system, would enable it to provide much better data on Adults at Risk, and about detainees more generally, and this would enable it to evidence the impact of the Adults at Risk process. The planned roll-out of Atlas was given as a reason why certain data was not currently collected or was in a format which made it difficult to analyse at present. However, the Home Office was unable to provide a definite timeline for the roll-out of Atlas, which had already slipped, as reported in the re-inspection of ROMs and non-detained FNOs.

## Complaints data

- 5.102** Immigration Removal Centre (IRC) suppliers are responsible for responding to complaints received from detainees. The complaints process is overseen by Detention Services Customer Services Unit (DS CSU). In parallel with this inspection, ICIBI carried out an inspection of complaint handling by BICS, which included the performance of DS CSU.<sup>43</sup>
- 5.103** The Complaints inspection includes evidence from Liberty who, since March 2018, had been assisting detainees at Brook House, Tinsley House, Colnbrook and Harmondsworth with making complaints about their treatment and conditions. The Liberty submission argued that the detention complaints system was “ineffective”, “lacked transparency” and that “Individuals in detention lack confidence in the system or knowledge of the policies set to protect and empower them”, while their views were “not given sufficient weight compared to those in positions of power.” It stated that the number of complaints that were upheld was “worryingly low” (“only 15% of complaints filed” in 2016–17”).
- 5.104** The Home Office provided the Adults at Risk inspection team with data for complaints received at IRCs divided into the three complaints categories:
- Service complaints<sup>44</sup>

43 <https://www.gov.uk/government/organisations/independent-chief-inspector-of-borders-and-immigration> Publication of the Complaints inspection pending

44 ‘Complaints guidance for UK Visas and Immigration, Immigration Enforcement and Border Force’ notes that service complaints “can relate to the actual service provided and/or the day-to-day operational policies behind them” and that they are usually categorised and recorded under headings such as: delay (for example, in delivery of a service); administrative/process error (failings in the process, administrative error, poor service or failure to meet service standards); poor communication (failure to keep customers informed; failure to answer correspondence, return calls etc); wrong information (provision of poor, misleading, inadequate or incorrect advice); lost documents (for example, passports or birth certificates submitted by customers that have been mislaid); queues; damage; customer care – physical environment (complaints relating to tangible, physical aspects of the service such as access, up-to-date equipment and accommodation as well as the ease and convenience with which it can be used); customer care – availability of service (loss of access to services, for example IT or other equipment breakdown); customer care – provision for minors (failure to take the particular needs of children into account); customer care – complaint handling (failure to respond to a complaint or dissatisfaction with the response).

- Minor misconduct complaints<sup>45</sup>
- Serious misconduct complaints<sup>46</sup>

**5.105** In 2018, 464 service complaints were recorded across the IRC estate, 309 minor misconduct complaints and 35 serious misconduct complaints. The Home Office was unable to provide any further breakdown of the nature of the complaint or the complainant, including the length of time the latter had spent in detention, “as this would involve a manual search of each individual complaint”.

**5.106** Complaints about healthcare staff are raised with the head of healthcare at an IRC or directed to the NHS. These complaints are shared with the NHS Commissioners. Healthcare staff at one IRC told inspectors that they had received three complaints in December 2018, concerning medication and waiting times. None was upheld. The healthcare staff told inspectors they were under no obligation to share information about upheld complaints with the Home Office, but they might provide an overview of any lessons learned.

**5.107** The Home Office told inspectors:

“There is a complex relationship between the Home Office, National Health Service, healthcare commissioners and healthcare providers in IRCs and prisons. There are also numerous avenues available for complaints to be made including i) through IRC or prison drop boxes, ii) through direct submission to NHS complaints and iii) through the healthcare ombudsman. There is also a broad definition to what constitutes a complaint. No single party collects this information and an individual manual trawl of cases to then be consolidated would be required to answer the question as it is posed. Neither the Home Office or NHS are resourced to undertake this trawl.”

**5.108** However, NHS England provided the Home Office with an annual report on complaints. This showed that for 1 December 2017 to 30 November 2018 there had been just four, one each at Brook House, Colnbrook, The Verne<sup>47</sup> and Yarl’s Wood. None of these complaints related to safeguarding.

## Training in Adults at Risk

**5.109** Inspectors saw evidence that Home Office policy and operational teams had collaborated to develop, deliver and support training in the Adults at Risk process to Home Office staff. This included classroom training, e-learning and refresher training. Meanwhile, staff from the Compliance and Enforcement policy unit continue to work with AARAT to provide advice to caseworker queries.

**5.110** However, perceptions of the quality of the training were mixed. Immigration Compliance Enforcement (ICE) teams told inspectors that the training was inadequate for their needs and they required more clarity on vulnerability. And, it appeared that changes to the Adults at Risk

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<sup>45</sup> Complaints about the professional conduct of Home Office staff and/or contactors that are not serious enough to warrant a formal investigation. If substantiated, they would not normally lead to discipline (misconduct) proceedings. Home Office guidance gives some examples: incivility, brusqueness, isolated instances of bad language, an officer’s refusal to identify themselves when asked, poor attitude, for example, being unhelpful, inattentive or obstructive.

<sup>46</sup> Serious misconduct complaints, if substantiated, could lead to serious or gross misconduct proceedings and formal management action such as written warnings, dismissal or other penalty. Home Office guidance refers to: criminal assault, criminal sexual assault, criminal theft, criminal fraud or corruption, racism or other discrimination, unfair treatment (for example, harassment), other unprofessional conduct (including any behaviour likely to bring the Home Office into disrepute; or which casts doubt on a person’s honesty, integrity or suitability to work for the Home Office).

<sup>47</sup> The Verne has since closed as an IRC.



guidance were not communicated effectively. For example, some ICE team members were unaware that the guidance had been revised in 2018 as a result of the change to the definition of torture.

## Shaw Implementation Board

- 5.111** In response to Stephen Shaw’s second report, in November 2018, the Home Office set up the Shaw Implementation Board. The purpose of the Board, chaired by the Director General for Immigration Enforcement, was to ensure there was senior management oversight of progress in implementing Shaw’s recommendations and to “set the strategic direction for the cross-cutting programme of work to deliver more humane and effective use of detention, as part of the Home Office’s wider approach to enforcement.” It also looked to take account of the commitments made by the Home Secretary when responding in Parliament<sup>48</sup> to the report and other relevant strategic commitments and priorities.
- 5.112** The Shaw Implementation Board was scheduled to meet every six weeks. From the minutes seen by inspectors, there were over 20 attendees, including representatives from HM Prisons and Probation Service (HMPPS), the Department of Health and Social Care (DHSC) and NHS England.
- 5.113** Some of Shaw’s recommendations were proving more challenging to implement. For example, the removal of the “exceptional circumstances” principle from Chapter 55 of the ‘Enforcement Instructions and Guidance’ had proved problematic, and the Home Office was now looking at whether it could be considered in the Adults at Risk guidance in a future iteration.
- 5.114** The Home Office had acknowledged Stephen Shaw’s concerns about the breadth of Adults at Risk Level 2, which were echoed in the evidence provided to this inspection by stakeholders. In response, the Home Office had commissioned a medical professional with experience of the detained estate to consider potential subdivision of Level 2. Their report was not due to be finalised before end of June 2019.

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<sup>48</sup> And by Baroness Williams in her statement to the House of Lords.

## 6. Inspection findings: The decision to detain

### Pre-detention encounters

- 6.1** Before a person is placed in immigration detention, they will have had a face-to-face encounter with someone from the Home Office's Borders, Immigration and Citizenship System (BICS). This may be Border Force in the case of those stopped at the border when attempting to enter the UK, or UK Visas and Immigration where the person presents themselves to the Home Office to make an asylum claim, for example, or Immigration Enforcement where the person is discovered in the UK without leave. In the case of a Foreign National Offender (FNO) who is not known to the Home Office before they are arrested, it is likely to be a member of Criminal Casework's Prison Operations and Prosecutions (POP) team.<sup>49</sup>
- 6.2** This initial encounter is the first opportunity for the Home Office to identify and respond to any signs of vulnerability. 'An inspection of the Home Office's approach to the identification and safeguarding of vulnerable adults (February – May 2018)', published on 10 January 2019, found that while a good deal of effort was targeted at particular, well-delineated "cohorts", such as children or Potential Victims of Modern Slavery (PVoMs); and other vulnerability-focused work was going on across BICS to improve training, raise awareness and capture information; much remained to be done to develop a consistent understanding of what is meant by vulnerability in a BICS context and the appropriate response. The report found progress was slow.
- 6.3** For those not detained on first encounter, there may be further opportunities for BICS staff to identify and respond to vulnerabilities. For example, when a person reports at a Reporting and Offender Management (ROM) centre.
- 6.4** Here again, previous inspections<sup>50</sup> found that Home Office guidance was clear that these reporting events must have some value beyond compliance, primarily to encourage voluntary departure, carry out interviews to progress Emergency Travel Document (ETD) applications, and resolve barriers to removal. The volumes of people reporting and the brief nature of each reporting event made this extremely difficult, and the value of these encounters was further reduced by poor internal communication and coordination between the ROM staff and the case owners.

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<sup>49</sup> Prison Operations and Prosecutions teams are part of Criminal Casework. Their responsibilities include monitoring and ensuring that immigration cases were being processed to coincide with the end of an FNO's custodial sentence.

<sup>50</sup> 'An inspection of the Home Office's Reporting and Offender Management processes (December 2016 – March 2017)' and 'A re-inspection of the Home Office's Reporting and Offender Management processes and of its management of non-detained Foreign National Offenders (October 2018 – January 2019).

## Enforced removals and detention

- 6.5** Through a combination of incentives, including various schemes offering financial assistance and sanctions, principally the compliant environment measures introduced in the Immigration Acts 2014 and 2016, the Home Office aims to encourage those with no legal right to remain in the UK to depart voluntarily. This is less complex and less costly than enforced removals, and because the volumes were beyond its enforcement capacity.
- 6.6** In principle, therefore, the decision to enforce a person's removal is a "last resort", where the person has exhausted any appeal or other rights that might enable them to remain in the UK and where other return options have been explored and rejected. This inspection did not examine in any detail how far this is true in practice, but ICIBI will aim to do so when it next inspects the removals process.
- 6.7** The decision to detain does not flow automatically from the decision to enforce a person's removal. As the then Home Secretary made clear in response to Stephen Shaw's second report, "immigration detention is only for those whom we are confident that other approaches to removal will not work." He went on to refer to "alternatives to detention" and said he had asked the Home Office to explore this with faith groups, NGOs and within communities.
- 6.8** Again, this inspection did not examine the Home Office's work to find alternatives to detention except to note that by June 2019 the only new initiative that had been announced was the pilot partnership with Action Foundation to support 21 women in the community who would otherwise be detained at Yarl's Wood IRC. The next annual review of the Adults at Risk process will aim to establish what progress the Home Office has made in identifying and making use of alternatives to detention.

## The Detention Gatekeeper

- 6.9** Where a frontline BICS officer encounters a person, whether as a result of a planned arrest, intervention or chance encounter, and wishes to have them transferred to an Immigration Removal Centre (IRC), they will need to seek authority to have them detained pending removal.
- 6.10** At the time of Stephen Shaw's first review the process involved a National Removals Command (NRC) Gatekeeper. ICIBI examined the NRC Gatekeeper function in 2014–15, when its role was explained to inspectors as to:
- “• decide whether to authorise detention based on Immigration Enforcement strategic priorities;
  - optimise use of detention bed space;
  - identify barriers to removal not identified by ICE teams or Reporting Centres, e.g. difficulty of obtaining travel documents, or complex medical issues;
  - ensure the correct paperwork had been served on detained persons; and
  - ensure that detention was lawful.”<sup>51</sup>
- 6.11** At that time, the NRC Gatekeeper was relatively new, and Immigration Compliance Enforcement (ICE) team managers and staff were generally critical of its decisions. They believed that the previous system, where they had managed their own detention bed space

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<sup>51</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/547681/ICIBI-report-on-Removals-December-2015.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/547681/ICIBI-report-on-Removals-December-2015.pdf)

allocations, had worked well, and could not understand why the NRC Gatekeeper had been set up. They claimed that removals performance had deteriorated as a result, although inspectors found that data to substantiate this claim was not available.

- 6.12** Based on a small (46) sample of cases from the first half of 2014, where the NRC Gatekeeper had rejected the proposal by an ICE team to detain, the main reason for rejection (27 cases or 59%) was that the person could not easily be documented (and therefore removed). The other reasons were that the case did not fit a strategic priority or was not a “charter flight national” (six cases), a lack of detention space (five cases), an outstanding police interest (four cases), the person’s appeal rights were not exhausted (four cases). None of the 46 cases was rejected because the person was identified as vulnerable.
- 6.13** In his first report, published in January 2016, Stephen Shaw recommended that the Home Office “should consider introducing a single gatekeeper for detention”. In response, the Immigration Minister, Rt Hon James Brokenshire MP, stated the Home Office would introduce “a more rigorous assessment of who enters detention through a new gate-keeping function”.<sup>52</sup>
- 6.14** In September 2016, the Home Office created the Detention Gatekeeper (DGK) function. At the time of the current inspection, the DGK sat in Immigration Enforcement’s Detention, Progress and Removals Command. It operated 365 days a year, between 07:00 and 21:00 on weekdays and 07:00 and 19:00 on weekends and public holidays.
- 6.15** Outside of these hours, the DGK function was fulfilled by the Detainee Escorting Population Management Unit (DEPMU). According to Detention Services Order (DSO) 03/2016, issued in April 2016, “DEPMU will risk assess a detainee’s suitability to be detained within the detention estate, and in which centre, as part of the initial referral process undertaken by the detaining officer.”
- 6.16** Although at the time of this inspection DSO 03/2016 had not been amended since it was issued. It appeared that, with the creation of the DGK, DEPMU’s role in assessing a person’s suitability for detention was limited to determining where that person should be detained not whether they were suitable for detention, although in the case of FNOs it could decide that the person posed too great a risk (to themselves and others) to be transferred to an IRC.

## Staffing

- 6.17** As at November 2018, the DGK comprised 50.2 full-time equivalent (FTE) staff – see Figure 5.

Figure 5: Detention Gatekeeper staffing (November 2018)	
Grade	Number (FTE)
Grade 7	1
Senior Executive Officer (SEO)	10.3
Higher Executive Officer (HEO)	11.3
Executive Officer (EO)	27.6
<b>Total</b>	<b>50.2</b>

<sup>52</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-01-14/HCW5470/>

## Responsibilities

**6.18** According to the DGK draft Operating Manual,<sup>53</sup> the role of the DGK is to:

- ensure that the decision to detain is both lawful and appropriate at the time it is taken
- make more efficient use of the detention estate<sup>54</sup>
- protect potentially vulnerable individuals from being detained when it is not appropriate to do so
- support the Home Office strategies to reduce the illegal population and the harm it causes
- introduce an element of independence into the detention decision-making process
- contribute to a process by which the most appropriate method of return is pursued for each individual
- provide a mechanism for delivering elements of the Immigration Act 2016 that relate to detention

## Public awareness of the DGK function

**6.19** In April 2017, in a written response to a Parliamentary Question (PQ), the Immigration Minister, Rt Hon Robert Goodwill MP, stated:

“The cross-system Detention Gatekeeper has now been introduced to scrutinise all proposed detentions independently of an arresting team. Individuals can now only enter immigration detention with the authority of the Detention Gatekeeper, who will ensure that there is no evidence of vulnerability which would be exacerbated by detention, that return will occur within a reasonable timeframe and check that any proposed detention is lawful.”<sup>55</sup>

**6.20** On 24 July 2018, in his statement to Parliament in response to Stephen Shaw’s follow-up report, the Home Secretary referred to the DGK:

“We’ve also strengthened the checks and balances in the system. Setting up a team of special detention gatekeepers to ensure decisions to detain are reviewed.”<sup>56</sup>

**6.21** As at June 2019, there was mention of the DGK function in two DSOs, available on GOV.UK. DSO 08/2016 ‘Management of Adults at Risk in Immigration Detention’, dated July 2018,<sup>57</sup> stated:

“Details of any vulnerability must be highlighted on the Detention Gatekeeper referral form to ensure that detention is only authorised on the basis of full awareness of the case. At the point of detention (upon service of the IS91 and once the case is accepted by the Detention Gatekeeper) the Detention Gatekeeper, case owner or referring officer (out of hours) must make a referral to DEPMU for a detention bed, providing details of the suspected or confirmed vulnerability.”

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53 November 2018 draft.

54 Inspectors were told that in early 2018 the DGK had had to balance the decision to detain against available space in the detention estate, but at the time of this inspection the estate was operating under capacity and therefore space was not a consideration.

55 <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-04-21/71612/>

56 <https://www.gov.uk/government/speeches/home-secretary-statement-on-immigration-detention-and-shaw-report>

57 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/721802/DSO\\_08\\_2016\\_Management\\_of\\_adults\\_at\\_risk\\_in\\_immigration\\_detention.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721802/DSO_08_2016_Management_of_adults_at_risk_in_immigration_detention.pdf)

**6.22** There was also reference to the DGK in DSO 05/2016 ‘Care and Management of Pregnant Women in Detention’, last updated in November 2016.<sup>58</sup> This stated:

“Where detention of a pregnant woman is being planned in advance or is being requested by Border Force or ICE teams the detention gatekeeper must be notified and included in the planning. At the point of detention, either service of the IS91 or acceptance by the detention gatekeeper, the caseworker must open a ‘DS: Pregnant’ special condition on CID confirming that the Home Office is satisfied that the detained woman is pregnant.”

**6.23** On 21 March 2019, the Home Office published (on GOV.UK) a blog ‘Fact sheet: Detention’.<sup>59</sup> This included the statements:

“There are also a number of safeguards underpinning detention decisions: an internally independent a [sic] Detention Gatekeeper who reviews decisions to detain someone”

and

“Any decision to detain someone is reviewed by a Detention Gatekeeper who acts independently from referring and case working teams to ensure an individual’s suitability for detention has been fully assessed, and any vulnerabilities have been considered.”

**6.24** While these public statements describe the purpose of the DGK, stakeholders were concerned about the lack of detail about how the DGK worked. One submission to this inspection argued that:

“...very little information is available as to who the DG [detention gatekeeper] team consists of, what their training and qualifications are and to what extent they operate in practice at an arm’s length to immigration enforcement teams. There is also no publicly available information about what the DG is required to have regard to when considering whether a person may be particularly vulnerable to harm in detention so that detention powers should not be exercised.”

**6.25** Home Office senior management told inspectors that they would like to make the role of the DGK more transparent but generating data from the current caseworking system (CID) made this difficult.

## DGK training

**6.26** In its written evidence, the Home Office informed inspectors that on joining the DGK team all staff receive an induction which includes an overview of Immigration Enforcement and of the DGK’s role. Their training is a mixture of e-learning and on-the-job mentoring.

**6.27** The mandatory elements include:

- Adult at Risk guidance
- Modern Slavery (National Referral Mechanism)
- Disability awareness
- Equality and Diversity Essentials

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<sup>58</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/564431/DSO\\_05\\_2016\\_-\\_Pregnant\\_Women\\_In\\_Detention.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/564431/DSO_05_2016_-_Pregnant_Women_In_Detention.pdf)

<sup>59</sup> <https://homeofficemedia.blog.gov.uk/2019/03/21/fact-sheet-detention/>

- Chronology Training (writing detention reviews in accordance with policy)
- a visit to an IRC/HM Prison<sup>60</sup>

## DGK Draft Operating Manual

**6.28** In February 2019, inspectors were provided with a DGK draft Operating Manual dated November 2018. This had been produced by the DGK, working with Removals and Detention Policy. The Operating Manual contained an overview of the DGK’s processes, including clear instructions about what must be recorded on caseworking systems by DGK staff. When authorising detention, for example, the DGK must record on CID:

Figure 6: DGK checklist for CID	
IS91R <sup>61</sup> or equivalent served	Y/N
Adult at Risk	Y/N (indicate level if Y)
Ex-armed forces personnel	Y/N (Director approval sought if Y)
Document required <sup>62</sup>	Y/N
Previous T1 <sup>63</sup> application refused	Y/N

## Referrals

**6.29** The DGK receives referrals for authorisation to admit a person into immigration detention from units spread across the three BICS operational directorates. Figure 7 shows the intake by case owning unit for the week ending 7 April 2019 and the four-week average at this date.

Figure 7: Detention Gatekeeper intake by case owning unit for the week ending 7 April 2019		
Unit	Week ending 7 April 2019	Four-week average
Border Force	80	86
Criminal Casework	67	126
Detained Asylum Casework	0	0
National Returns Command	183	184
Operation NEXUS <sup>64</sup>	2	2
Third Country Unit	4	8
Others	51	49
<b>Total</b>	<b>387</b>	<b>455</b>

60 It was unclear whether this was either or both.

61 Form IS91R (notice of reasons for detention).

62 A travel document.

63 Tier 1 is an immigration route under the UK’s points-based visa system available to individuals from outside the European Economic Area (EEA). Up until March 2019, it covered applications for investors, entrepreneurs and individuals with exceptional talent. The Tier 1 (Entrepreneur) route closed on 29 March 2019 and was replaced by the Innovator visa and the Start Up visa.

64 According to GOV.UK “Operation NEXUS aims to improve the management of foreign nationals and foreign national offenders and focuses on strengthening cross-organisational working between the Home Office and police.” <https://www.gov.uk/government/publications/operation-nexus-high-harm>

- 6.30** Referring units are required to complete a proforma and send it to the DGK’s central inbox. At the time of this inspection, four different forms were in use:
- a pre-verification form; used by ICE teams and ROM teams to refer a person in advance of a planned detention – if the DGK rejects a pre-verification form the planned arrest might not proceed, but if it has accepted a pre-verification form the referring team still had to submit a referral form once the person is in custody
  - a referral form; used by ICE teams, ROM teams, Immigration Enforcement’s caseworking units and UKVI’s Asylum Intake Units, to seek authority to admit a person into immigration detention
  - a referral form; used by Border Force to seek authority to admit a person into immigration detention
  - a ‘Detention and Case Progression Review’ (DCPR) form; used by Criminal Casework when referring a Foreign National Offender (FNO) for detention under immigration powers at the end of their custodial sentence
- 6.31** DGK staff told inspectors that their training directed them to read all of the case notes on CID in order to reach a decision. However, “CID is over complicated” and there are “lots of streams of information DGKs may miss”. They also pointed out that some individuals had a paper file in addition to their CID record and they would not have access to any paper files. Therefore, they needed all relevant information to be included on the referral form.
- 6.32** Guidance requires referring officers to make full notes on CID and specifically to record that the IS91R has been served. However, while observing the DGK at work, inspectors saw an example of the DGK having to make the decision about detention based on the referral form alone as no case notes had been made on CID.
- 6.33** The referral forms ask broad questions, for example, “Are there any factors falling under ch55.10 of the EIG?”<sup>65</sup> They also ask about “known” or “claimed” medical conditions. The Border Force form asks: “Is the passenger considered unsuitable for detention under the Border Force Operations Manual (Detention at Port)?” However, only the DCPR form asks directly whether the person is known or believed to be an Adult at Risk. Nor does the pre-verification form ask whether the person is “ex-armed forces” or has previously been refused a Tier 1 application, despite the DGK being required to record this on CID, and despite these being planned detentions where the operational team might reasonably be expected to know their intended target.
- 6.34** There was no accompanying guidance about how to complete the forms, and DGK staff told inspectors that they were not completed consistently. They believed there would be benefit in a uniform approach. In March 2019, inspectors were told by the head of the DGK that “these referral forms are currently all subject to refinement; to provide consistency and to prepare for eventual IT changes that Atlas<sup>66</sup> will bring”. DGK managers said that the new form(s) would reflect issues, such as mental capacity, which were not currently being recorded.

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<sup>65</sup> Chapter 55.10 of the Enforcement Instructions and Guidance (EIG) document asks caseworkers to refer to the Adults at Risk in immigration detention policy and guidance on the detention of pregnant women. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/721605/Chapter-55-detention-v25..pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721605/Chapter-55-detention-v25..pdf)

<sup>66</sup> Atlas is the Home Office’s new “person-centric” caseworking system which will eventually replace CID.



- 6.35** The Border Force referral form asks for details of how the person was encountered, but the form used by ICE teams does not. The latter exercised stakeholders who were concerned about PVoMs and argued that the forms should “contain a question relating to indicators of trafficking”. The Home Office told inspectors that although the form used by ICE teams did not ask for details of the encounter, teams were including them where relevant.
- 6.36** Stakeholders also argued that “Detention Gatekeepers should receive specialised training on indicators of trafficking to ensure a more effective screening process that identifies people before entering detention.” Inspectors were told that all DGK staff received training on modern slavery and were aware that if there were any indicators of this they should revert to the referring team and ask more questions, for example, when ICE teams raided brothels with the police the DGK would ask the police “first responder” whether the National Referral Mechanism (NRM)<sup>67</sup> had been pursued.
- 6.37** Some ICE team members were critical of the DGK’s apparent lack of confidence in their professionalism. They told inspectors they were experienced in recognising vulnerability and the DGK should understand that if the team had had any such concerns about a person, they would not have referred them to the DGK for detention or would have noted their concerns on the form. They also observed that it was not clear what information the DGK required from them as this appeared to vary from case to case.
- 6.38** Inspectors were told that the DGK and the London ICE teams had a forum for senior managers. This enabled the DGK and the London teams to discuss any cases that had been rejected and any other areas of tension. Inspectors were told that the DGK did not have the capacity to hold similar forums for other referring units. However, it did have a Single Point of Contact (SPoC) for each ICE team with whom there was regular engagement.

## DGK decision making

- 6.39** The DGK’s central inbox is accessible to all DGK staff. The authorisation process involves Executive Officers (EOs) selecting referrals from the inbox and reviewing them. The workflow is monitored and triaged by a duty team, comprising one HEO and one EO, who also deal with phone calls from referring teams and from DEPMU.
- 6.40** At the time of the inspection, the DGK aimed to make the decision to authorise or reject detention within one hour of receipt of the referral for “straightforward” cases and within two hours for cases involving an Adult at Risk. However, there was no formal Service Level Agreement (SLA) in place and a DGK manager acknowledged that the timeliness of responses was not closely monitored, and the DGK could not be sure it always responded within these timescales. Although it made decisions as quickly as it could, the DGK recognised this may not seem quick enough for referring teams but this was down to DGK resourcing.
- 6.41** As an additional safeguarding measure, the detention of a person identified as an Adult at Risk requires a higher level of authorisation – see Figure 8.

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<sup>67</sup> <https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms/guidance-on-the-national-referral-mechanism-for-potential-adult-victims-of-modern-slavery-england-and-wales>

Figure 8: Detention Gatekeeper authorisation levels		
Grade	“Straightforward” referrals	Adults at Risk
EO	All, except Criminal Casework and Border Force referrals	N/A
HEO	Criminal Casework and Border Force <sup>68</sup> referrals	Level 1
SEO	N/A	Level 2 Initial detention, prior to Senior Civil Servant approval
Grade 7	N/A	Level 3 and pregnant women

## DGK decisions

**6.42** The Home Office provided inspectors with internal management information (MI) for authorisations and rejections, by the DGK, of referrals for admission into detention of persons “in the community”<sup>69</sup> for the 12 months from November 2017 to October 2018.<sup>70</sup>

Figure 9: DGK decisions on referrals for detention November 2017 to April 2018							
	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18	Apr-18	Total
<b>Total referrals</b>	<b>2,269</b>	<b>1,609</b>	<b>2,113</b>	<b>1,778</b>	<b>1,951</b>	<b>1,845</b>	<b>11,565</b>
<b>Detention authorised</b>	2,147	1,505	2,042	1,710	1,913	1,798	11,115
<b>Detention rejected</b>	122	104	71	68	38	47	450
<b>% rejected</b>	5.4%	6.5%	3.4%	3.8%	1.9%	2.5%	3.9%
<b>Rejected because AAR</b>	17	4	21	16	12	17	87
<b>% rejections because AAR</b>	13.9%	3.8%	29.6%	23.5%	31.6%	36.2%	19.3%

Figure 10: DGK decisions on referrals for detention May to October 2018							
	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Total
<b>Total referrals</b>	<b>1,923</b>	<b>1,823</b>	<b>1,867</b>	<b>1,836</b>	<b>1,819</b>	<b>2,126</b>	<b>11,394</b>
<b>Detention authorised</b>	1,838	1,700	1,757	1,752	1,729	2,015	10,791
<b>Detention rejected</b>	85	123	110	84	90	111	603
<b>% rejected</b>	4.4%	6.7%	5.9%	4.6%	4.9%	5.2%	5.3%
<b>Rejected because AAR</b>	14	27	19	14	12	25	111
<b>% rejections because AAR</b>	16.5%	22%	17.3%	16.7%	13.3%	22.5%	18.4%

**6.43** In this 12-month period, the DGK authorised detention for over 95% (21,906 out of 22,959) of those persons referred to it. Of the 1,053 referrals where the DGK rejected detention, 198 (18.8%) were rejected because they were identified as an Adult at Risk.

**6.44** As Figures 9 and 10 show, rates of referral, rejections, and rejections due to the person being an Adult at Risk fluctuated from month to month, making it difficult to draw any firm conclusions from the data alone.

<sup>68</sup> Inspectors were told that the fact that Border Force referrals were authorised by an HEO was a reflection of EO numbers and capacity rather than the complexity of these cases.

<sup>69</sup> That is excluding Foreign National Offenders detained under immigration powers immediately on completion of their custodial sentence.

<sup>70</sup> This information was internal management information provided by Immigration Enforcement. It had not been quality assured to the level of published National Statistics and should be treated as provisional and therefore subject to change.

**6.45** However, DGK management was keen to point to the lower numbers in detention (see Figure 11 below) and the rejection rate for referrals as evidence of the impact the DGK had had on detention practice. DGK management also argued that the DGK had influenced the behaviour of referring units as they now had to consider whether their referral would “get through” the DGK and this had increased scrutiny of vulnerability. Frontline officers agreed but criticised the DGK’s inconsistency.

<b>Figure 11: Numbers entering detention in 2017 and 2018<sup>71</sup></b>	
<b>Quarter</b>	<b>Number detained</b>
2017 Q1	7,356
2017 Q2	6,419
2017 Q3	6,945
2017 Q4	6,628
2018 Q1	6,568
2018 Q2	6,074
2018 Q3	5,791
2018 Q4	6,315

## Foreign National Offenders

- 6.46** In his follow-up report, Stephen Shaw recommended that “the Home Office should ensure casework management processes allow for the detention gatekeeper to make decisions on all FNO cases entering immigration detention, including those transferring directly from prison at completion of a custodial sentence.” (Recommendation 25)
- 6.47** At the time of this inspection, Criminal Casework (CC) cases where the FNO was still serving their custodial sentence were referred to the DGK using a ‘Detention and Case Progression Review’ form up to 35 days prior to the FNO’s conditional release date. However, the decision whether to detain an FNO is taken by CC. Where the DGK disagrees with this decision it informs the case owner, giving its reasons. In such cases, the case owner drafts a release referral and sends it to the Strategic Director of Returns (Grade 3, Senior Civil Servant) to make the final decision. If the FNO is detained, the DGK carries out a full review after 24 hours, as it does for all newly detained persons.
- 6.48** Home Office senior management, including the Strategic Director of Returns, told inspectors it was satisfied that the DGK provided sufficient assurance of the process. It was resolute that the decision must remain with CC. Reinforcing this, CC staff told inspectors they liked the challenge that came from the DGK as “you had to set out a clear plan and present well evidenced decisions”. CC senior managers added that the DGK helped to achieve consistency in detention decision making.
- 6.49** In early 2019, inspectors were told that the Home Office had recently committed to inform FNOs 30 days before the end of their custodial sentence, where the sentence length permits, that they would not be released but would be detained under immigration powers. Previously, it had agreed with HM Prisons and Probation Service to do this within seven days of the conditional release date, although inspectors were told by prison staff that some FNOs had

<sup>71</sup> <https://www.gov.uk/government/publications/immigration-statistics-year-ending-december-2018/how-many-people-are-detained-or-retained>

been informed on the day they were supposed to be released. The longer period was intended to mitigate the negative impact of receiving this news and to enable Home Office caseworking to proceed more efficiently.

- 6.50** DGK staff told inspectors that fewer FNOs were being detained beyond the end of the custodial part of their sentence and POP teams referred to “more sensible decision making”, with far fewer people detained and for shorter periods. According to Home Office data:
- in Q4 2017, 1,869 FNOs completed the custodial part of their sentence, there were 6,231 FNOs who were non-detained and 1,283 who were detained under immigration powers
  - in Q4 2018, 2,260 FNOs completed the custodial part of their sentence, there were 6,948 FNOs who were non-detained and 944 who were detained under immigration powers
- 6.51** Although the data demonstrates that fewer FNOs were being detained, DGK staff spoke of a “culture to detain” FNOs, reflecting the reputational risks associated with this cohort of detainees and the Home Office’s concern to “prevent people from getting out there and re-offending again”.

## Quality assurance

- 6.52** Neither the DGK’s rejection rates nor the numbers of persons detained speak directly to the question of the quality of DGK decisions.
- 6.53** Detention Gatekeeper HEOs are responsible for routinely quality assuring the work of their direct reports and feeding back any concerns during monthly coaching sessions. However, from May 2018, in the wake of the Windrush scandal, the Home Office decided that each initial detention decision, except for Border Force referrals or referrals of FNOs who had served the custodial part of their sentence, would be reviewed by a Senior Civil Servant (SCS). This exercise was designed to provide greater assurance, taking account of any wider issues. It was part of a broader set of measures named Operation Tarlo. In April 2019, DGK management told inspectors that 11,000 cases had had an SCS review and only 40 had been overturned.
- 6.54** In addition, the authorisation levels were raised for certain persons. Authorisation was required in advance from a Grade 7 (Assistant Director) for the detention of anyone who was 59 years old or older and for any “Caribbean Commonwealth national”.
- 6.55** In July 2018, the Home Office updated its Adults at Risk guidance, following which, it embarked on an extensive re-training programme for relevant staff.
- 6.56** It is reasonable to assume that these changes to the operating environment, to the process, and to wider policies and practice, had some effect on the efficiency, effectiveness, consistency and overall quality of decision making in relation to initial detention, not just by the DGK but also by referring units. However, while there was some monitoring of various published and internal data sets, inspectors found little evidence that the Home Office had sought to monitor or evaluate decision quality.

**6.57** In March 2019, DGK staff told inspectors that Operation Tarlo was “very resource intensive” and that the pressure on DGK resources had been compounded by the loss of staff to Border Force for EU exit preparation. Inspectors were told that the effectiveness of the SCS monitoring of DGK decisions was being reviewed to determine whether to continue with it as an additional line of assurance.<sup>72</sup>

## “Removability” as a factor in DGK decisions and the relevance of nationality

**6.58** Detention, Progression and Returns Command senior management saw increasing the proportion of removals from detention as a “strategic objective” for their wider command, with the DGK, the Detention Casework Oversight and Improvement Team (DCOIT), Detention Engagement Teams (DET) and the Operational Support and Certification Unit (OSCU) contributing to ensuring that the right cases enter detention, that processes are more efficient, that there is more engagement with detainees and that last minute representations are cleared. However, it felt it was unlikely it would ever remove more than 60% of those detained, since circumstances can change after someone is detained.

**6.59** According to its own statistics, in 2018, of those leaving detention, 44% were removed from the UK, 40% were released on Secretary of State bail and 16% were released for other reasons.<sup>73</sup> However, inspectors were told in early 2019 the figure for those removed was now 52%.

**6.60** The factors affecting whether a person can be removed are specific to that individual and are not static, since someone’s personal circumstances may change. However, some factors are common to nationals of a particular country, for example, the conditions in that country and whether it is safe to return someone, and the ability to obtain emergency travel documents from its authorities.

**6.61** Since the purpose of detention is to enable removal, it would be reasonable to expect the DGK to consider all the available data to take “removability” fully into account when deciding whether to authorise detention. However, this was not evident from the data. For example, in 2018 only 21% of Indian nationals who left detention were returned, while 78% were bailed. But, although the overall number of persons detained reduced, the number of Indian nationals detained was higher in Q4 of 2018 than it was in Q4 of 2017.<sup>74</sup>

**6.62** The Home Office produced a Policy Equality Statement (PES) in 2016 to accompany the publication of the Adults at Risk guidance. This considered a number of areas, including “Race (Race (includes colour, nationality and national or ethnic origins – section 9 of the Equality Act 2010)”. This noted that detention policy does not exclude any groups on the grounds of race or nationality, and that:

“The adults at risk policy and the wider detention policy contains no criteria directly relevant to detention or exclusion from detention on the grounds of race, ethnicity or nationality. Any such detention may in principle be appropriate, according to the particular facts of the case.”

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<sup>72</sup> At the factual accuracy stage, the Home Office informed inspectors that “Current data shows that the current SCS rejection rate is 0.3%, which demonstrates that decisions in respect of initial detention have improved.”

<sup>73</sup> <https://www.gov.uk/government/publications/immigration-statistics-year-ending-december-2018/how-many-people-are-detained-or-retained>

<sup>74</sup> At the factual accuracy stage, the Home Office commented: “Further context could be provided within this statement as circumstances change and a case which is assessed as removable on entry to detention may not be removable after they have been detained at which point release becomes appropriate. It is also of note that country situations and relationships with Embassies and High Commissions effect [sic] the availability of Emergency Travel Documents. In 2018 developments were made in securing Indian ETD’s which may have led to a higher number entering detention, given removability, when compared to the previous year.”

- 6.63** To inform the PES, the Home Office examined a random sample of 100 cases (50 managed under Chapter 55 of the Enforcement Instructions and Guidance (EIG) prior to the introduction of the Adults at Risk guidance, and 50 managed since the guidance was introduced). From these cases, it concluded that “broadly speaking, the adults at risk policy offers more protection based on race”, supporting this by quoting the numbers and percentages of persons of particular ethnicities (“South Asian”, “Sub-Saharan African”, “White European”) released under each regime. There were no “people of Caribbean origin” in the random sample, no comparative data for “Middle Eastern and North African individuals”, and only one “East and South East Asian” person released under Chapter 55, making comparisons difficult. For various reasons, including the sample size, the PES considered the figures “indicative rather than definitive”.
- 6.64** The PES also considered qualitative impacts and, along with the relevance of “ethnic/national origins”, the food a detainee will eat, what they wear, the willingness to be searched or undergo a medical examination by a person who is not the same sex, it noted:
- “The Home Office accepts that certain individuals are more likely to be victims of bullying by virtue of their particular national/ethnic origins. Such persons may be disproportionately affected by being detained in close proximity to other detainees who may, for example, hold racist views.”
- 6.65** As mitigation, the PES noted the existence of Detention Services Orders relating to bullying and to room sharing risk assessments, plus other obligations on IRCs to manage race relations. It concluded:
- “The need for travel documentation for removal may lead to certain nationalities being found more suitable for detention than others as removal can take place sooner in respect of those who have travel documents or whose documents can be obtained relatively quickly than in respect of individuals who require travel documentation that is difficult to obtain. However, the adults at risk policy is not expected to affect any given race or nationality in a disproportionate way and the anticipated impact in terms of race is therefore rated as low. Where there is an impact, it is likely to be a positive one in terms of the expectation that the policy will have the effect of raising the level of protection for vulnerable people generally.”
- 6.66** For this inspection, inspectors asked the Home Office for a wide range of data about the detained population, and about returns and releases, broken down by different characteristics, including by age, gender and nationality. In most instances, the Home Office was unable to provide the data in the detail requested, since it did not currently record it in this way. However, the published transparency data does show the numbers of “people in detention by country of nationality, sex, place of detention and age”.<sup>75</sup>
- 6.67** Compliance and Enforcement policy senior management told inspectors that they did review the statistics that were produced, including those generated from the Adults at Risk Assurance Team, but acknowledged the need to start putting further measures in place to assure the effectiveness of the DGK.

## Pressures on the DGK from referring units

- 6.68** DGK staff told inspectors that at times they came under significant pressure from referring units to authorise a detention. They said that Chief Immigration Officers (CIOs)<sup>76</sup> could be very forthright and make them feel they were an obstruction.

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<sup>75</sup> Age is broken down by “adult” and “child”.

<sup>76</sup> HEOs who authorise referrals from ICE teams to the DGK.

**6.69** However, DGK staff told inspectors they felt well supported by their own managers, adding that the Director General Immigration Enforcement had made it clear that he “wants to see the human face of the organisation.” One commented “we are rejecting cases now that we weren’t before”. He recalled a case where an ICE team had wanted to detain an individual with epilepsy. He had rejected the referral, and his manager had agreed with him.

## Assessing and reporting vulnerability

**6.70** The DGK’s role did not involve interacting with the person who had been referred for detention. However, referring units told inspectors they believed that the DGK should be doing more to investigate and assess vulnerability before making a decision. ICE and ROM teams suggested embedding a nurse in the DGK to assist with more complex cases, rather than them relying on the internet for an understanding of the purpose of particular medicines.

**6.71** IRC managers told inspectors that information about persons entering the detention estate was often insufficient, particularly about those encountered at a port. This was echoed by DGK staff, who in March 2019 mentioned recent Border Force referrals of persons who began displaying signs of serious mental illness soon after they were detained. With hindsight, DGK senior managers were clear that these detentions had not been appropriate, but this highlighted the shortcomings of the paper-based DGK process.

**6.72** The DGK was required to use the IS91 forms, particularly IS91RA, to inform an IRC of any vulnerabilities. IRC managers and healthcare staff told inspectors that the information on these forms was often out of date or was missing. For example, the fact a detainee had been arrested at a brothel, cannabis farm, or restaurant, could be an indicator that they are a trafficking victim, but this information was not recorded.

**6.73** One IRC manager suggested that it would be useful to have a “screening sheet” with questions about how the person communicated and other behavioural indicators, such as whether they made eye contact. Meanwhile, a stakeholder pointed out that the proforma the DGK completes for DEPMU, setting out its decision that a person is suitable for detention,<sup>77</sup> is “rarely to be found in medical notes and is therefore likely to be inaccessible to clinicians responsible for Rule 34 and Rule 35 reports”.<sup>78</sup>

## The case for enhanced screening

**6.74** On a visit to Yarl’s Wood, inspectors encountered a detainee who displayed signs of mental illness. Staff at the IRC said there had been other similar cases. In such instances, the IRC healthcare staff managed the person’s mental health, including identifying if they needed to be sectioned,<sup>79</sup> and arranging for their transfer to an appropriate NHS facility.

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<sup>77</sup> If a person is known to have a medical condition or to be taking medication the DGK should pass this information to DEPMU who prepare the movement order that accompanies them to the IRC.

<sup>78</sup> Detention Centre Rules 2001. Rule 34 concerns completing a physical and mental examination of each detainee within 24 hours of their admission to an IRC. Rule 35 concerns producing a report on the case of any detained person whose health is likely to be injuriously affected by continued detention or any conditions in detention.

<sup>79</sup> Kept in hospital under the terms of the Mental Health Act 1983. A person can be sectioned if their own health or safety are at risk, or to protect others.

## Case Study 1: Detention of a vulnerable person and failure to record as an Adult at Risk

### The case

In January 2019, the person arrived at Heathrow and claimed asylum. Border Force found evidence that they had claimed asylum in the country from which they had travelled and referred the person to the DGK, stating that they may be returned there.

The DGK initially rejected the referral stating “the subject has claimed asylum at port and is not suitable for the DAC [Detained Asylum Casework] process”

Border Force referred the case back to the DGK, who authorised detention “for 24 hours”. No medical issues were raised on the detention proforma.

The following day the DGK reviewed detention and noted:

“24 hour detention review agreed  
TCU case  
IS91R served.  
No AAR concerns  
Valid passport held  
Can be removed, RD to be set”

Removal Directions (RD) were set for five days later to the detainee’s point of departure but the removal failed due to the detainee’s “disruption”. The following day, seven days after the initial detention, the person was “deemed not fit to travel” by the mental health team at the IRC.

The Home Office received a Part C stating that the detainee was not fit to fly and would need a psychiatric review and possible hospital admission. It described the detainee as “very guarded, restless and paranoid ...”. The detainee was placed on a supported living plan pending the psychiatric review.

In April 2019, the detainee was transferred to the mental health estate. During their 11-week detention in the IRC, the detainee was at no point flagged as an Adult at Risk.

In June 2019, after they had withdrawn their asylum claim, the detainee was collected from a mental health unit by embassy officials from their country of origin and taken to Heathrow to board a flight to that country.

### ICIBI comments:

This was undoubtedly a difficult case, particularly once the person had been admitted into detention and the extent of their mental health issues became apparent and the practicalities of finding appropriate accommodation limited the Home Office’s room for manoeuvre.

However, it is arguable that a more extensive screening process prior to detention would have highlighted this person’s vulnerabilities, leading to a different decision by the DGK.

Once the person had been detained there was failure to flag them as an Adult at Risk even after the healthcare provider had recorded that they were not fit to fly and required psychiatric evaluation. This raises doubts about the accuracy of the Home Office’s reporting and records of detainees who are Adults at Risk.



**6.75** At one IRC, a senior healthcare professional told inspectors that “clearly people are brought here who shouldn’t be.” This was a reference to individuals who were undergoing drug and alcohol withdrawal treatment. Meanwhile, healthcare staff at Yarl’s Wood told inspectors about two transgender detainees. The healthcare staff used the Part C process to report that detention was not appropriate and the two were released.

**6.76** The need for enhanced screening before deciding whether to detain a person was a common theme in the submissions inspectors received from stakeholders. The general view was that Home Office staff were not competent to understand vulnerability and should reach out to those who were, such as social services and the NHS. Typical of the comments, one wrote:

“The Home Office should consider how best to develop processes which routinely screen people before they enter detention for vulnerabilities which leave them particularly susceptible to harm and explore the extent to which health professionals should be involved in this.”<sup>80</sup>

**6.77** Another commented:

“If there was proper screening before, with a presumption of liberty, that screening should be taken with a cautious view. If there is a possibility the person is vulnerable, they should think about alternatives. Screening and assessment is quite important.”

**6.78** In March 2019, the Home Affairs Committee report made a similar point:

“The introduction of the Detention Gatekeeper function is a welcome step forward, but the current approach still fails to provide sufficient safeguards to prevent inappropriate detention or the detention of vulnerable adults. As the latest Shaw report noted, large numbers of vulnerable people are still being detained. This indicates that vulnerable people are being wrongly routed into detention due to the Gatekeepers’ incorrect validations or misplaced challenges of Home Office caseworkers’ decisions. There needs to be a thorough, face-to-face pre-detention screening process to facilitate the disclosure of vulnerability. Where there is no deemed risk of absconding, this screening should be undertaken at the point of enforcement activity, for example, as part of the reporting process where UK Visas and Immigration officials or Enforcement officers should feedback any concerns they have about a person’s suitability for detention. Even a short period of detention for someone who, for example, has been a victim of torture could be extremely traumatic. Therefore it is essential that a proper pre-screening assessment is done.”<sup>81</sup>

## The Home Office view on enhanced screening

**6.79** Compliance and Enforcement policy senior management told inspectors that “if resource were no object we might design a medical screening” prior to detention, but healthcare staff in the IRCs were trained to look out for medical issues and the DGK did reject cases and had “a big impact on detention practice”. The policy team’s job was to help the DGK and others to ask the right questions.

**6.80** Meanwhile, the DGK, ICE and ROM staff, told inspectors they felt they could benefit from better access to healthcare information to understand what could and could not be managed in detention.

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<sup>80</sup> <https://www.bma.org.uk/collective-voice/policy-and-research/ethics/health-and-human-rights-in-immigration-detention>

<sup>81</sup> [https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/913/91306.htm#\\_idTextAnchor0322](https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/913/91306.htm#_idTextAnchor0322)

- 6.81** DGK managers said they were aware there were particular challenges in relation to mental health as individuals might not wish to self-declare. This was problematic because the Adults at Risk guidance required evidence, as emphasised in the DGK training materials, which stated that “evidence-based risk is predicated on the amount of evidence of risk”. While it also stated that “It is important to recognise that a person can be at risk with little evidence of risk” it did not provide guidance on what the DGK should do in cases where there was an indication of risk, but this had not been or could not immediately be evidenced.
- 6.82** Notwithstanding these difficulties, Compliance and Enforcement policy senior managers were confident that the DGK focused on the “right sort of things” and that DGK staff were “capable of picking up the warning signs” based on the Adults at Risk guidance. They believed that DGK staff did not need to be clinicians but rather needed to know where to go to understand the impact of detention on certain health conditions.

# 7. Inspection findings: Admission into detention

## Allocation, arrival, reception, screening and induction

### Allocation of a detention bed

- 7.1 Once the Detention Gatekeeper (DGK) has authorised that a person may be admitted into detention the Detainee Escorting and Population Management Unit (DEPMU), part of Immigration Enforcement, is responsible “for carrying out the actual risk assessment for placing that individual in an immigration detention facility” and for the “allocation of detention beds”, taking account of “all potential risks” including the “health and welfare needs” of the detainee (DSO 03/2016 ‘Consideration of Detainee Placement in the Detention Estate’ refers).
- 7.2 For a Foreign National Offender (FNO) who has completed their custodial sentence and is now to be detained under immigration powers, DEPMU may assess that they are not suitable to be detained in any Immigration Removal Centre (IRC), in which case they will remain within the prison estate.

### Arrival at an Immigration Removal Centre

- 7.3 Most detainees are escorted to an IRC via the detention services escort process. From 2011, detainee escorting services were provided under contract by Tascor, a subsidiary of Capita. In 2017, the new escorting contract was awarded to Mitie, who began delivering these services from May 2018. Mitie is also the IRC supplier at the Heathrow IRCs and was the supplier at Campsfield House IRC until it closed in early 2019.
- 7.4 Custody of the person to be escorted to the IRC is transferred to Mitie by the Immigration Compliance and Enforcement (ICE) team, or whichever other Home Office team has detained the person, together with the completed IS91 (Authority to detain) form.
- 7.5 DSO 01/2019 ‘Detention Escort Records’, published in March 2019, “provides instructions for ... escorting staff and DEPMU, on the requirement to accurately complete and maintain detainee escort records.” The purpose of the DSO is “to safeguard detainees, staff and members of the public” for which “it is essential” that a record of “any new or known risks or vulnerabilities” is “made available to those responsible for the detainee”.
- 7.6 DSO 01/2019 identifies “Form IS91RA Part C” (“Supplementary information”) as “the vehicle by which detention staff notify DEPMU of any changes to a detainee’s circumstances that impact on the initial risk assessment as reflected on the IS91 and movement order.” The DSO refers to DSO 08/2016 ‘Management of adults at risk in immigration detention’ and notes that “all changes to the physical or mental health of a detainee, or a change in the nature or severity of a previously identified vulnerability” must be raised by completing an IS91RA Part C and “including the reference ‘adult at risk’ on the first line of the form”.

- 7.7** This inspection did not look in any detail at the escorting of detainees to an IRC. ICIBI has previously reported on the outsourced contracts for escorted and non-escorted removals.<sup>82</sup> However, escorting, in particular escorted removals, has been the subject of regular inspections by HM Chief Inspector of Prisons (HMIP) who, under s.5 of the Prison Act 1952, is empowered to inspect and report on the “treatment of prisoners” in IRCs, Short-Term Holding Facilities and Pre-departure Accommodation, and “in relation to escort arrangements”, within the meaning of s.147 of the Immigration and Asylum Act 1999.<sup>83</sup>
- 7.8** One issue that HMIP has frequently identified is that detainees arrive at an IRC overnight. This is often done for reasons of operational convenience. In its report of an unannounced inspection of Colnbrook IRC between 19 November and 7 December 2018, HMIP noted that “about a third of detainees continued to arrive overnight”.<sup>84</sup>
- 7.9** In his first report, Stephen Shaw recommended that the Home Office should “negotiate night-time closures at each IRC, the times of which should reflect local circumstances.” This recommendation was one of just five that were “rejected”. The Home Office explained that “night time movements at IRCs used for removals from Gatwick and Heathrow” were “an operational necessity” and “Qualitative work has indicated there is a detrimental detainee impact associated with increased time in vans, holding rooms and police cells if this recommendation is accepted.”<sup>85</sup>
- 7.10** In his second report, Shaw continued to be concerned about this “given the impact of late arrivals on detainee wellbeing, on the quality of the information on vulnerability gleaned in the reception process, and on the availability of medical support.” He noted that Tascor was “rejecting 10 per cent of night-time moves on welfare grounds” and looked ahead to the new “partnership model” with Mitie, which should “facilitate welfare improvements”.
- 7.11** In its 2019 report, the Home Affairs Committee (HAC) referenced the British Medical Association’s (BMA) concerns about “the impact of night transfers on the effectiveness of the screening process” when detainees may be exhausted or disorientated after a long journey or scared and anxious about the prospect of being detained, thus inhibiting their ability or willingness to share detailed information.” Echoing the Independent Monitoring Board and others, HAC recommended that: “The Government should stop night moves unless exceptional criteria are met” and there should be a “7pm cut-off for arrival”.

## Reception

- 7.12** In his first report, Stephen Shaw indicated that the Home Office could learn from the Prison Service with regard to the reception of new detainees. He recommended that it “consider what learning there is for IRCs from the Prison Service’s experience of operating ‘first night centres’ for those initially received into custody.” (Recommendation 18). The Home Office reported that this recommendation was “implemented” with the issue of a revised version of Detention Services Order (DSO) 06/2013 in July 2016.

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<sup>82</sup> <https://www.gov.uk/government/publications/inspection-report-on-outsourced-contracts-for-removals-and-cedars-march-2016>

<sup>83</sup> <https://www.justiceinspectorates.gov.uk/hmiprisons/inspections?s&prison-inspection-type=detainee-escort-inspections>

<sup>84</sup> <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2019/04/Colnbrook-web-2018.pdf>

<sup>85</sup> See Home Office’s action plan response, Annex 5 ‘Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons’.

- 7.13** DSO 06/2013 ‘Reception, induction and discharge checklist and supplementary guidance’ contains “mandatory instructions” for “Home Office staff and suppliers operating in Immigration Removal Centres, Residential Short Term Holding Facilities and Pre-Departure Accommodation.”<sup>86</sup> Originally issued in November 2013, it was reissued in July 2016 and was due for review in July 2018. As at June 2019, the July 2016 version was still extant.
- 7.14** DSO 06/2013 provides “a mandatory checklist and supplementary guidance on specific areas which must be addressed by supplier reception and induction officers when admitting a new detainee”. It notes that: “Entering detention (or changing detention locations) can be a stressful time for detainees and this may impair a detainee’s ability to fully absorb important messages the first time they are delivered” so suppliers are “encouraged” to repeat important information at regular intervals and to use posters and leaflets, for example. Where language is a barrier, it states that “professional interpreting services must be used”.
- 7.15** DSO 06/2013 recognises that “Detainees who have never stayed in a custodial setting may be more vulnerable in their first night in detention and, as such, may require additional support.” Under “Identifying vulnerability/Assessment Care in Detention and Teamwork (ACDT)”, it requires supplier staff to:
- “make an initial assessment of the arriving detainee based on the documentary evidence that accompanies them, the information conveyed by escorting officers and information provided from third parties such as the police, the courts and families. Supplier staff should also make their own assessment of the detainee’s mood, behaviour and interactions.”
- 7.16** The DSO lists various “vulnerability issues”, making it clear that the list is not exhaustive. The issues listed overlap with the list of “indicators of risk in detention” (also not exhaustive) set out in DSO 08/2016 ‘Management of adults at risk in immigration detention’, but with some material “underlaps” and differences – see Figure 12 overleaf.

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<sup>86</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/541369/DSO\\_06\\_2013\\_Reception\\_Induction\\_and\\_Discharge\\_Guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/541369/DSO_06_2013_Reception_Induction_and_Discharge_Guidance.pdf)

**Figure 12: Comparison of “vulnerability issues” from DSO 06/2013 with Adults at Risk “indicators of risk within detention” (DSO 08/2016)**

<b>Vulnerability issues</b>	<b>Indicators of risk</b>
Mental health issues	Suffering from a mental health condition or impairment
Noticeable medical conditions	Suffering from a serious physical disability
	Suffering from other serious physical health conditions or illnesses
Potential victims of trafficking or slavery	Having been a victim of human trafficking or modern slavery
Pregnancy	Being pregnant
Unusual behaviour	
Susceptibility to bullying	
Evidence of self-harm, remarks indicating desires to self-harm/take own life or other evidence of abuse	
Overt sexuality	
	Having been a victim of torture
	Having been a victim of sexual or gender-based violence, including female genital mutilation
	Suffering from post-traumatic stress disorder (which may or may not be related to one of the above experiences)
	Being aged 70 or over
	Being a transsexual or intersex person

**7.17** Where they “have concerns about a newly arrived detainee being at risk of self harm or suicide”, DSO 06/2008 supplier staff “should commence the Assessment Care in Detention Teamwork (ACDT) procedures (DSO 06/2008). All other potential vulnerabilities should be escalated as appropriate to determine the best course of management within the centre (e.g. individual care and support plan).”<sup>87</sup>

**7.18** DSO 03/2016 specifies that “Supplier staff are required to undertake mental health awareness training to assist them in identifying those who may be at risk of self-harm or suicide.” This echoes the Detention Services Operating Standards Manual,<sup>88</sup> which includes under “minimum auditable standards” that “all staff receive suicide awareness training to the standard delivered within the Prison Service”<sup>89</sup> and that “the Centre must ensure”:

“that staff employed in the admissions process have been trained to recognise behaviour and signs that indicate anxiety, distress or risk of self-harm”

“that all detainees are first assessed for risk of self-harm/suicidal behaviour within two hours of admission”

<sup>87</sup> DSO 06/008 ‘Assessment care in detention and teamwork’ can be found by searching for “ACDT” on GOV.UK but is not included in the collection of Detention Services Orders.

<sup>88</sup> <https://www.gov.uk/government/publications/detention-services-operating-standards-manual>

<sup>89</sup> All staff must receive basic and refresher training (at least every three years) in suicide awareness.

that “particular attention” is paid to the risk of self-harm/suicidal behaviour “on the first night of detention and in cases where the detainee knows he/she is subject to removal directions and immediately prior to removal”

“that staff are trained in the provisions of emergency aid following self-harm or attempted suicide.”

- 7.19** DSO 03/2016 notes that it operates “in addition to the Detention Services Operating Standards, the PDA<sup>90</sup> Operating Standards, the Detention Centre Rules 2001 and any contractual or service level agreement (SLA) requirements.” Inspectors were not provided with copies of the IRC supplier contracts and were therefore unable to establish whether supplier staff were required as part of the contract to undergo other training to recognise and respond appropriately to the different “vulnerability issues” listed in DSO 03/2016 and the “indicators of risk in detention” listed in DSO 08/2016, or whether the Home Office routinely reviewed the details of staff training which suppliers were required to record.

## Healthcare screening

- 7.20** Under Rule 34 ‘Medical examination upon admission and thereafter’, the Detention Centre Rules 2001 state:

“(1) Every detained person shall be given a physical and mental examination by the medical practitioner (or another registered medical practitioner in accordance with rules 33(7) or (10)) within 24 hours of his admission to the detention centre.”

- 7.21** Meanwhile, the Detention Services Operating Standards Manual, produced in 2011, states that:

“The Centre must ensure that all detainees are medically screened (this must include an assessment for risk of self-harm/suicidal behaviour) within two hours of admission.”

- 7.22** The Operating Standards make no reference to exceptions to the two hour standard, for example for admissions at night or at weekends but do refer to IRCs having to have in place “arrangements for access to 24-hour health cover”. The apparent contradiction is explained by the fact that the Detention Centre Rules are interpreted as referring to a doctor, while the Operating Standards are interpreted as referring to a member of the IRC’s healthcare team, typically a nurse. However, the draft Detention Centre Rules 2019 looks to reconcile this by revising Rule 34(1) to read “a detained person must be screened by a member of the health care team within two hours of admission to the removal centre”.<sup>91</sup>

- 7.23** At the time of the inspection, NHS (England) was contracted by the Home Office to deliver healthcare services at IRCs in England. The NHS further contracted out healthcare at each IRC. For example, G4S held the healthcare contract at Yarl’s Wood.<sup>92</sup> In Scotland (Dungavel) and Northern Ireland (Larne House) healthcare was commissioned directly by the supplier.

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<sup>90</sup> Pre-departure accommodation.

<sup>91</sup> From 26 March to 5 June 2019, the Home Office ran a consultation exercise in relation to the updating of the Removal Centre Rules (via a Statutory Instrument).

<sup>92</sup> Detention services at Yarl’s Wood are supplied by Serco.

- 7.24** In both of his reports, Stephen Shaw noted that nursing provision in the IRCs relied on temporary “bank”<sup>93</sup> and agency staff. And, in its 2017 report, ‘Locked up, locked out: health and human rights in immigration detention’, the British Medical Association (BMA) commented on the challenges of recruiting healthcare staff to work in IRCs.<sup>94</sup>
- 7.25** Inspectors therefore asked the Home Office for details of the contracted healthcare services, including staffing levels and use of agency staff, performance measures, oversight mechanisms, and information sharing arrangements used in each IRC. The Home Office responded that it was “unable to provide details of agency staff employed by its commercial suppliers at IRCs, as the suppliers are not asked to share this data.”
- 7.26** The Home Office staff embedded in IRCs to monitor the supplier’s contract, compliance and the non-clinical parts of the healthcare contract (security/ attendance/cleanliness), work with NHS England commissioners and healthcare supplier management. Inspectors were told at one IRC that members of the Detention and Escorting Services (DES) team attended quarterly meetings with the NHS and the healthcare team, and any problems would be escalated to the NHS.
- 7.27** Inspectors asked for information about the “Number of complaints made against medical staff at IRCs and prison by those detained under immigration powers, broken down by type of complainant, category of complaint, status of staff (agency/ contracted out) and outcome.” The Home Office responded that neither it nor the NHS was resourced to trawl manually through cases to find the answers.
- 7.28** A section of the “Reception Checklist” at Annex A of DSO 03/2016 is headed “Centre Healthcare Staff”. Question 1 (of 14) is “Has the detainee been seen within 2 hours of arrival for an initial health screening?” Question 13 is “Has a full initial assessment of vulnerability been undertaken via the healthcare screening questionnaire? If vulnerabilities have been identified have these been notified appropriately and action taken (e.g. ACDT opened)”.
- 7.29** Inspectors sought information on the number of detainees seen outside any Service Level Agreements for medical screening, and also for an appointment with the GP, since April 2016, broken down by IRC. The Home Office responded:
- “We are unable to provide a historic break down of the number of detainees seen outside of the SLAs for medical screenings or appointments as this information is not held by any party.”
- 7.30** However, the Home Office was able to supply inspectors with data from the healthcare provider at the Heathrow IRCs for GP appointments during 2018. Figure 13 shows the numbers of new detainees admitted to Colnbrook and Harmondsworth IRCs (“the Heathrow Estate”) in each month of 2018, and those given a GP appointment on arrival. The latter never rose above 43%. Of those given a GP appointment, the proportion actually seen within 24 hours in any month ranged from 52% to 64%. Overall, 7,636 (77%) out of 9,916 arrivals were not seen by a GP within 24 hours.

93 As well as permanent staff, the NHS employs staff on temporary contracts or through temporary staffing “banks” managed by third parties.

94 British Medical Association ‘Locked up, locked out: health and human rights in immigration detention’.



Figure 13: GP appointments at the Heathrow IRCs in 2018				
2018	Detainee receptions	Given GP appointment	Appointment within 24 hrs	Not given GP appointment
Jan	491	163 (33%)	98 (60%)	328
Feb	895	319 (36%)	167 (52%)	576
Mar	912	344 (38%)	210 (61%)	568
Apr	761	314 (41%)	195 (62%)	447
May	752	312 (41%)	166 (53%)	440
Jun	800	302 (38%)	188 (62%)	498
Jul	778	312 (40%)	196 (63%)	466
Aug	777	334 (43%)	199 (60%)	443
Sep	830	330 (40%)	175 (53%)	500
Oct	916	341 (37%)	198 (58%)	575
Nov	1,027	381 (37%)	245 (64%)	646
Dec	977	380 (39%)	243 (64%)	597
<b>Total</b>	<b>9,916</b>	<b>3,832 (39%)</b>	<b>2,280 (59%)</b>	<b>6,084</b>

- 7.31** Detainees at the IRCs visited by inspectors painted a mixed picture of their experiences of healthcare provision. Some were complimentary about the care they had received. However, many claimed that their health issues were not taken seriously, that the healthcare team was slow to respond and that they had had difficulty accessing services. Stakeholders also flagged concerns about the levels of understanding shown by healthcare staff of torture, sexual exploitation and other conditions related to trafficking, the challenge of getting a Rule 35 report completed, poor resourcing of mental health teams, and issues with the discharging of detainees from IRCs and their continued safety and care in the community.
- 7.32** The multi-layered approach to service provision was seen as having an impact on information sharing, and on the identification and safeguarding of vulnerable detainees. As one stakeholder commented: “lack of clarity about who is responsible for what as between NHS England, the healthcare providers, and the Home Office, can be a major cause of avoidable harm.”
- 7.33** Within the body of DSO 03/2016, under “Specific needs”, it appeared to recognise that a person may have been sent to an IRC who, “from a medical perspective”, cannot readily be managed in detention.
- “Where a detainee arrives at a centre and during the course of the reception process it becomes apparent that either the full extent of a disability has not been disclosed or that the detainee has an undisclosed disability, then the following steps should be followed:
- Healthcare must firstly make an assessment from a medical perspective as to whether the detainee’s condition can be appropriately managed within the centre”
- 7.34** From the context, and the examples provided, the focus is on the practical issues surrounding mobility and other physical disabilities; the assumption is that the IRC will make “reasonable adjustments” to manage the detainee, otherwise, another IRC will be found where this can be done, rather than these factors leading to the person being released.

- 7.35** The process for reporting reasonable adjustments already in place or that could be made, involves submitting an “IS91RA Part C” to “the Detainee Escorting and Population Management Unit (DEPMU), who will update the Casework Information Database (CID)” and provide a copy to the “onsite [Home Office Immigration Enforcement] HOIE team”.
- 7.36** DSO 01/2016 ‘The Protection, Use and Sharing of Medical Information Relating to People Detained Under Immigration Powers’<sup>95</sup> also refers to the use of IS91 Part C. This DSO provides “information” for “all Home Office staff, healthcare staff, medical practitioners and centre supplier staff” and “guidance” for “staff who work within or under contract to NHS organisations”.
- 7.37** In respect of “relevant factors be taken into account when considering the need for initial or continued detention”, DSO 01/2016 states that these:
- “include whether the person has a history of physical or mental ill health. Chapter 55.10,<sup>96</sup> persons considered unsuitable for detention, includes information about categories of people suitable for detention only in very exceptional circumstances including those suffering from serious medical conditions or serious mental illness which cannot be satisfactorily managed within detention.”
- 7.38** In addition to those suffering from “serious medical conditions”, “serious mental illness” and “serious disabilities” that “cannot be satisfactorily managed within detention”, Chapter 55.10 lists “children”, “the elderly”, “pregnant women”, “those where there is independent evidence that they have been tortured” and “persons identified by the competent authorities as victims of trafficking”.
- 7.39** DSO 01/2016 states that “Information may be volunteered to the Home Office on an IS91 Part C form”. The DSO does not refer explicitly to reporting the results of the initial health screening, but under “Procedures – fit to detain and fit to be removed/fly”, it states:
- “Any significant changes to the physical or mental health of a detainee that may impact on the decision to detain or remove must be notified to the Home Office case owner as a matter of urgency using the IS 91 Part C form by centre staff (supplier or Home Office).”
- 7.40** In his second report, Stephen Shaw noted that all of the healthcare teams he interviewed had indicated that they were achieving the targets of an initial healthcare screening by a nurse within two hours and by a GP within 24 hours, but that “nonetheless, health screenings are still often short, especially where multiple or late-night arrivals take place.” However, based on this inspection, it was not the case that detainees were seen by a GP within 24 hours, at least not at the Heathrow IRCs.

## Induction by the Detention Engagement Team

- 7.41** The induction of new arrivals at an IRC is conducted by an Engagement Officer from the Detention Engagement Team (DET) based at the IRC. Induction should take place within 48 hours of admission.

95 Originally issued April 2016, reissued May 2016. Due for review May 2018.

96 Chapter 55.10 of the Enforcement Instructions and Guidance.

- 7.42** DETs were created in 2017, originally as Pre-Departure Teams (PDTs), in response to Stephen Shaw’s first report and the Home Secretary’s undertaking to increase the number of Home Office staff working within the IRC estate. The name change, at the end of 2018, reflected the Home Office’s intention to have more meaningful engagement with detainees, rather than focusing solely on facilitating departures.
- 7.43** The responsibilities of Engagement Officers are set out in internal ‘Standard Operating Procedures for Detention Engagement Teams’. These include conducting the initial one-to-one induction of detainees.
- 7.44** The “DET induction note” lists the issues to be covered. There are 22 points. In addition to questions about legal representation, travel documents, interest in voluntary return, possible further submissions or protection claims, these include confirming that the detainee has had the reasons for their detention explained and has understood them; confirming that the IRC supplier’s reception process and healthcare initial screening have taken place and the detainee has had the opportunity to raise any health concerns; and confirming that the detainee has been offered a GP appointment. The DET officer is also required to confirm that “there is nothing else that the person wishes to tell me about their physical or mental health since being seen by healthcare on arrival (if NO, capture detail)”.
- 7.45** The list continues with questions about any indicators of trafficking, for example, forced prostitution, forced labour, or exploitation, and requires the DET officer to confirm “I have asked the person whether they are a victim of torture and/or sexual or gender-based violence.” If so, the detainee should be signposted to healthcare and the case owner notified. The final point is a catch-all:
- “In addition to the above I have identified the further potential safeguarding issues and/or vulnerabilities during the induction (for example, any concerns about the person’s wellbeing or ability to understand the induction and/or their rights)”.
- 7.46** According to Engagement Officers, induction is supposed to take 45 minutes, but they told inspectors that there was often insufficient time to explore potential vulnerabilities at the induction session and they felt rushed, especially when several detainees arrived together. The “induction note” therefore becomes little more than a tick list.
- 7.47** DET staff told inspectors that while the DGK had had a positive impact they still saw some people admitted into detention with poor mental health. They felt more could be done by referring teams to identify vulnerabilities. One DET officer highlighted that where the DETs identified that detention was inappropriate the DGK responded promptly, citing examples of two individuals who were released by the DGK.

## Stakeholder views

- 7.48** In response to the ‘call for evidence’ for this inspection, stakeholders raised concerns about the Rule 34 and DET induction processes, describing them as inconsistent in form, reliant on self-reporting by detainees and failing to take into account anxiety on arrival, or that the nature of a particular vulnerability may not be easily disclosed on first meeting.

**7.49** Delays in GP assessments were a particular concern. Stakeholders argued that if Rule 34 assessments were supposed to function as a second line of assurance for vulnerable persons not “screened out” by the DGK, delays meant they were not being identified at the earliest opportunity after admission to an IRC. According to one stakeholder, these delays were nothing new and predated the current arrangements for health provision.

## 8. Inspection findings: In detention

### Monitoring the detainees' well-being in detention

#### The make-up of an Immigration Removal Centre (IRC)

- 8.1** A range of people work full- or part-time at Immigration Removal Centres (IRC): embedded Home Office staff; staff employed by the IRC supplier, including Detainee Custody Officers (DCOs), a designated Safeguarding Lead and the Centre Manager; an embedded healthcare team and a visiting GP; a Chaplaincy team; Independent Monitoring Board (IMB) members; and volunteers from various NGOs.
- 8.2** Everyone has their own particular role and responsibilities, but the welfare of detainees relies on their individual and collective ability to recognise, share and act upon relevant information.

#### Inspection visits to IRCs and prisons

- 8.3** For this inspection, inspectors made visits to Brook House, Colnbrook, Harmondsworth, Morton Hall and Yarl's Wood IRCs. At each IRC, inspectors spoke with the embedded Home Office staff, IRC managers and staff, healthcare staff, and with detainees. Where they were present, inspectors also spoke to the Chaplaincy team and to IMB members.
- 8.4** Inspectors also visited four prisons: HMP Maidstone (one of two designated Foreign National Offender prisons), and HMPs Brixton, Pentonville and Wormwood Scrubs, and spoke with prison staff and with FNOs. The HMP Pentonville visit was at the invitation of an HM Inspectorate of Prisons team who were conducting their own inspection of the prison.
- 8.5** Inspectors found that each IRC and prison had its own "atmosphere", in large part derived from its physical characteristics (state of repair, layout, size and the amount of open spaces), and in the case of Yarl's Wood because it was a women-only establishment.
- 8.6** At the same time, the IRCs had a good deal in common (less so the prisons). Notwithstanding the IRCs' stated purpose<sup>97</sup> of providing "secure but humane accommodation of detained persons in a relaxed regime with as much freedom of movement and association as possible", the reduced occupancy levels and the availability of faith rooms, "cultural kitchens",<sup>98</sup> recreational and other facilities, IRCs are noisy and spartan environments, with little privacy, strict regimes, locked doors and high fences. And, with some detainees who are prison hardened. Anyone new to such an environment is bound to find it intimidating and a test of their resilience.
- 8.7** At the IRCs, inspectors asked detainees about their experiences of supplier staff. The responses were mixed. At one IRC, a detainee remarked "detention officers aren't as nice as they say they are, here there's a boundary and they make you feel that you are a prisoner". Detainees felt

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<sup>97</sup> Detention Centre Rules 2001.

<sup>98</sup> A place where detainees can prepare food for themselves and others.

the officers were not interested in developing relationships with them and one FNO said that relationships with their prison officers had been better. However, at another IRC a group of detainees referred to the DCOs as “friends”.

- 8.8** At Yarl’s Wood, detainees spoke about the intrusiveness of DCOs. One said that male DCOs entered her bedroom at night, ostensibly to check on her welfare, but in a way that felt like an invasion of her privacy. Another detainee said she had found a DCO searching her room in her absence and without her permission. Another told inspectors that she was suffering from PTSD and her extreme anxiety meant she was unable to go to the dining hall to collect her meals. Even though DCOs were fully aware of her condition, they would not bring any meals to her room. Inspectors asked DCOs about this particular case and were told that all detainees had to go to the dining hall themselves as they were not staffed to take food to individual detainees.
- 8.9** The Home Office informed inspectors that there was a complaints box in the laundry room at Yarl’s Wood for detainees to use or they could speak directly to staff. If the complaint was about the supplier, the detainee could speak to a solicitor or to the Home Office. According to the Home Office, most of the complaints “feature low level issues such as room searches”.
- 8.10** At Brook House, a Home Office senior manager told inspectors that the Home Office did not monitor IRC staff behaviour, but the supplier was obliged to advise the Home Office if an allegation had been made and if a member of staff was under investigation. Inspectors were told that the issues highlighted by the BBC Panorama documentary were being addressed, including managers being visible on the wings, and staff engaging positively and openly with detainees, and showing empathy. There was also more focus on employing the right people for the job.
- 8.11** At one IRC, a Detention and Escorting Services (DES) team member said that while they had less interaction with detainees since the Detention Engagement Teams had been created, they would still attend detainee forums in order to observe how supplier staff behaved with detainees and to assess whether they were effectively identifying vulnerable detainees.

## Supplier staff

- 8.12** Within the detention estate, Detention Custody Officers (DCOs) have the greatest exposure to detainees and therefore have a key role to play in identifying vulnerable individuals and monitoring their well-being.
- 8.13** Inspectors sought to establish to what extent supplier staff understood and made use of the Adults at Risk guidance to identify and report vulnerable detainees. They found that supplier staff (and others employed at IRCs, such as healthcare staff) relied on the training they had received from their employer and their policies, rather than on the Adults at Risk guidance. According to the custodial staff at one of the IRCs visited by inspectors: “The AAR policy hasn’t really changed what we do”. A Home Office manager embedded at the same IRC suggested that the Adults at Risk guidance was “confusing” for supplier staff.
- 8.14** Supplier staff (and others employed at IRCs) used internal processes to identify and manage vulnerable detainees, such as Assessment Care in Detention and Teamwork (ACDT) (suicide and self-harm reduction strategy), safer custody meetings, and internal meetings between detention staff and healthcare. Custodial staff in an IRC would pass any concerns “onto our managers and onto healthcare, not to the Home Office directly.” Where concerns about

vulnerable detainees were raised with the Home Office this was done using a “Part C”. However, inspectors were told that there was no real expectation that the Home Office would take any action as a result.

## Prison officers (for Foreign National Offenders detained in prison)

- 8.15** Inspectors were told by prison officers that where they identified that a Foreign National Offender (FNO) who was detained in prison under immigration powers was vulnerable, they recorded this on “prison systems, the observation book, ACCT<sup>99</sup> document, and possibly referred it to the Chaplain.”
- 8.16** One set of prison officers in an “FNO-only” prison told inspectors that they had not received training in the Adults at Risk guidance. They said that in prisons, vulnerability and risk involved wider issues, including bullying, debt and drugs.

## Healthcare staff

- 8.17** Healthcare staff also play a key role in identifying vulnerable individuals and monitoring their well-being. Detainees may request to see healthcare staff or a GP at any time. At each IRC visited, at least one detainee complained to inspectors about the time it had taken them to get an appointment to see the nurse or a doctor, albeit the waiting times quoted for an appointment (typically two or three days) were significantly shorter than most people in the community would wait to see a GP for anything that was non-urgent.
- 8.18** Inspectors were told by healthcare staff that it was rare for anyone providing information about a detainee’s well-being to receive any feedback on how that information was used, making it hard to know if they had identified the “right” information to share, in sufficient detail and with the correct supporting evidence. Instead, the decisions made by Home Office case owners led healthcare staff to conclude that the case owners did not understand the information they provided about medical conditions and vulnerabilities. This included practical issues, such as the timescales for getting detainees sectioned and moved to mental health hospitals.
- 8.19** Healthcare staff told inspectors that if they had concerns about a detainee being a victim of trafficking, they would inform IRC supplier staff, most likely the Safeguarding Lead where one existed, rather than the Home Office.
- 8.20** In prisons, the escalation process for healthcare staff was to share the information with the Safer Custody team, and for an Assessment, Care in Custody and Teamwork (ACCT) plan to be opened if the person was suicidal. Limited use was made of the Part C process, and engagement with the Home Office was generally at a management level only.

## Training for supplier and healthcare staff

- 8.21** Stephen Shaw recommended that “IRC staff who have regular contact with detainees should receive mandatory safer detention training on an annual basis.” (Recommendation 36 – Shaw’s follow-up report). In response, the Home Office committed to “reviewing our existing training material to ensure consistent training for all staff.”

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99 Assessment, Care in Custody and Teamwork is the care planning process for prisoners identified as being at risk of suicide or self-harm.

- 8.22** Inspectors asked the Home Office for details of who had received training in identifying, monitoring and managing vulnerable individuals at IRCs. It was able to provide this information for Home Office staff only. According to the Detention Services Operating Standards Manual, IRCs “must maintain records of all individual training undertaken and when”. It is difficult to see how the Home Office is able “to ensure consistent training for all staff” without routine oversight of this information.
- 8.23** Inspectors found that the availability, provision and quality of Adults at Risk training varied at and between IRCs. At one IRC, one member of the healthcare team had not received any training, their colleague had received an informal presentation from local Home Office staff, while another colleague had had formal face-to-face training. At another IRC, healthcare staff told inspectors that the training provided by the Home Office had been comprehensive, although it had initially been focused on doctors. According to one supplier, the turnover of healthcare staff was an issue and meant that not all of the current staff had yet received the relevant training. Inspectors heard mixed views from healthcare staff about the quality of the training, particularly with regard to trafficking and torture.

## Stakeholder perspectives

- 8.24** Stakeholders who worked with immigration detainees reported that, in their experience, DCOs and healthcare staff lacked awareness of the Adults at Risk guidance and how it linked to their work. Citing a particular case, one stakeholder commented:

“There was a clear disconnect between the observations of staff and the information available to Healthcare. Even when brought to Healthcare’s attention, there was a further delay of a month in having [the person] undergo psychiatric assessment. [This] case also shows that the Adults at Risk policy has failed to embed in a dignified and protective culture among detention centre staff.”

## Other parties working within the detention estate

- 8.25** Inspectors found that other parties working in the detention estate who came into contact with detainees, such as members of the Chaplaincy, were aware of the Adults at Risk guidance but had not received any formal training on it. They told inspectors that if they identified that a detainee was vulnerable, they would engage with healthcare staff or with the supplier’s safeguarding lead. They would not go directly to the Home Office.

## Multi-Disciplinary Review meetings

- 8.26** In his follow-up report, Stephen Shaw recommended that: “Weekly multi-disciplinary Review meetings should be held at all IRCs to review and progress cases and ensure appropriate care for the most vulnerable individuals in each centre. These meetings should include a range of managers and staff, and crucially should involve the dialling in of the relevant caseworker for each detainee discussed.” (Recommendation 6)
- 8.27** In March 2019, staff at Yarl’s Wood and at Brook House told inspectors that these multi-disciplinary review meetings were now taking place. A senior Home Office manager clarified that the Home Office had standardised the process. However, the Home Office had decided that there was no need for case owners (mostly Executive Officers) to dial in to these meetings as any decision to release would be taken by a Higher Executive Officer or Senior Executive Officer manager.



**8.28** Healthcare staff at Yarl’s Wood and Brook House told inspectors that they regarded these meetings as a positive addition to the safeguards for identifying vulnerability, and healthcare staff at Brook House said they found the meetings useful as the Home Office DET attendees could provide information “on the spot” or commit to finding it out. However, as these meetings had only just started and were still “bedding in” it was not possible to measure their impact at this stage.

## Detention Engagement Teams

**8.29** The other group of staff employed within the detention estate, with a key role in identifying vulnerable detainees, are the Home Office’s Detention Engagement Teams (DETs).

**8.30** In May 2018, the Detained Casework Transformation Programme described the DETs (then known as Pre-Departure Teams, PDTs) as:

“the eyes, ears, and arms of detained casework commands and will engage with residents and healthcare providers to ensure that vulnerability issues are identified and managed at the earliest opportunity.

PDTs will be responsible for all contact with detainees and will work to identify and overcome barriers and concerns around return. The number of engagements and interventions will be vital to ensuring communication flows between the resident and case workers. Fully staffed, PDTs will operate 7 days a week, between the hours of 07:30 – 19:30 Monday to Friday and between 09:00 – 17:00 Saturday & Sunday (and public holidays).”<sup>100</sup>

**8.31** However, the staffing figures for the DETs in January 2019 suggested a gap between what was intended and what the DETs could realistically be expected to deliver – see Figure 14.

**Figure 14: Detention Engagement Team posts and filled posts as at 19 January 2019**

IRC	Posts					Total	Filled
	G7	SEO	HEO	EO	AO		
Brook House	1	2	1	8	6	51	13.75
Tinsley House			1	4	4		7.75
Colnbrook			1	6	5		10.75
Harmondsworth			1	6	5		9.75
Campsfield	1	2	1	4	4	45	1.25
Dungavel			1	4	4		1.75
Morton Hall			1	6	5		7.75
Yarl’s Wood			1	6	5		5.25
<b>Total</b>	<b>2</b>	<b>4</b>	<b>8</b>	<b>44</b>	<b>38</b>	<b>96</b>	<b>58</b>

**8.32** Since 2017, when the PDTs were created, the number of detainees has reduced. However, internal changes within the Home Office (the move of Detained Asylum Casework (DAC) and Third Country Unit (TCU) detained casework to the National Removals Command) have increased the number of detainees falling within the remit of the DETs and extended their functions to include, for example, Asylum Screening interviews.

100 Detained Casework Transformation Programme: Pre-Departure Teams staffing requirements 14 May 2018.

**8.33** The full duties of DET Engagement Officers are set out in the Standard Operating Procedures for Detention Engagement Teams.<sup>101</sup> As well as the initial induction of detainees on arrival at the IRC and explanation of the procedures for bail applications, these included promoting voluntary departures, serving immigration papers and answering queries about detainee’s immigration cases. The Detained Casework Transformation Programme referred to the DETs (PDTs) using:

“face-to-face interaction to build relationships with detainees and focus their thoughts towards return, promoting available incentives such as the use of the Voluntary Reimbursement Scheme and it is soon hoped the Incentivised Returns from Detention Scheme. This should reduce the number of nights detainees spend in detention, and lead to fewer disrupted removals – minimising costs and maximising efficiency whilst providing a safe and secure detention environment.”

**8.34** In relation to vulnerability, DETs were a conduit for Rule 35 Reports and the Home Office’s response, referrals to the National Referral Mechanism (NRM), referrals to the relevant healthcare providers, and the opening of ACDTs in cases of concern.

**8.35** At the time of the inspection, a number of DET Engagement Officers told inspectors that they were responsible for 40–50 detainees. While the IRCs were running at roughly 80% occupancy, the teams were at half strength. Even at full strength, however, the task of having regular and meaningful engagements with all detainees looked logistically challenging.

**Figure 15: Engagement Officer ratio to IRC detention beds**

Date	Beds	DAC & TCU beds	Beds for PDT/DET servicing	PDT/DET Engagement Officers (actual)	Ratio to beds
05/06/17	2,922	733	2,189	52	42
05/06/18	2,962	688	2,274	44	52
05/12/18	2,776	672	2,104	44	48
2019 proposed	2,375	*	2,375	52	46

\*DAC & TCU move to NRC

**8.36** Engagement Officers told inspectors that they felt rushed when engaging with detainees and did not have sufficient time to update people on their cases. Senior DET staff said they found that case owners were usually responsive to requests for information about a case and responded in a timely manner to concerns about vulnerability. But not all Engagement Officers agreed. One told inspectors:

“The ones that want to go home are the ones that are still here and it’s frustrating ... And we can’t give them information on when they are going. They say, “just tell me when I’m going” – and we don’t know”.

**8.37** The DETs job was made more difficult because of shortcomings in the communications infrastructure at the IRCs. Staff at Yarl’s Wood and Brook House IRCs complained to inspectors that they were unable to access the internet (and therefore CID) on the accommodation wings and residential areas of the IRCs. This meant that Engagement Officers could not access

101 Standard Operating Procedures for Detention Engagement Teams, Overview and Steps to Complete Tasks, February 2019 – an internal Home Office document.

information about immigration cases during surgeries and drop-in sessions for detainees. Staff at Yarl's Wood had no telephone in the room allocated for surgeries so could not access the contracted interpreting services, which they described as "embarrassing".

- 8.38** Both staff at the IRCs and detainees identified the difficulty of obtaining information about the detainee's immigration or asylum case as a major cause of stress, which could exacerbate other vulnerabilities. It also meant that detainees were frustrated with Engagement Officers and wanted instead to speak directly with their case owner.
- 8.39** Notwithstanding their workloads, their wide range of responsibilities and the practical difficulties of operating in the IRCs, DET staff told inspectors they felt well-placed and competent to identify vulnerable detainees. They had all received classroom training on the operation of the Adults at Risk guidance from the Adults at Risk Assurance Team (AARAT) and had completed the Adults at Risk e-learning. A number had extensive experience of IRCs and detainees prior to taking up the DET role.
- 8.40** Managers at one IRC highlighted the lack of training provided to new staff on "how to build trust and rapport" and "how to deliver difficult decisions". One manager told inspectors that suitable training had been identified but was too expensive and therefore not pursued. Nor had DET staff received training in asylum screening interviewing. According to one DET manager, "None of the team has had any interview training. This should be provided to them. Currently, the team just do e-learning, shadowing and 'lunch and learns' ... They are learning on the job". Meanwhile, another senior manager told inspectors that "more training is required for staff to mirror their additional responsibilities, such as asylum interviewing, and how to handle detainees, empathy skills."
- 8.41** Serving papers to detainees, often containing unwelcome news, is a large part of the DET role. Inspectors found that DET staff were well aware that this could have a detrimental effect on a person's vulnerability. DET staff at Yarl's Wood and Brook House told inspectors that they would check CID for details of any vulnerabilities, prior to serving papers, and would also inform the Detention Custody Officers (DCOs) that a particular detainee was about to receive "bad news". They were confident that they could identify any decline in the detainee's mental or physical health as a result and would report it.

## **Suspension of detainee surgeries at Harmondsworth and Colnbrook IRCs**

- 8.42** In December 2018, at short notice, responsibility for processing Detained Asylum Casework (DAC), including conducting the initial "screening" interview, moved from UK Visas and Immigration (UKVI) to Immigration Enforcement (IE). UKVI retained responsibility for the substantive asylum interview and for making the asylum decision.
- 8.43** Persons who have claimed asylum and have been detained are normally held at Harmondsworth or Colnbrook (the Heathrow IRCs) or Yarl's Wood. The DETs at these IRCs therefore took on the responsibility for carrying out the initial asylum screening interview. DET staff at the Heathrow IRCs told inspectors that they were required to process 52 DAC cases per week.
- 8.44** In light of this new responsibility, the DET team at Harmondsworth was increased from six Engagement Officers to 16 (with three posts yet to be filled as at 1 May 2019) and from five administrative staff to 12 (with five posts yet to be filled, also as at 1 May 2019). Despite the uplift in staff, DET staff felt that this new workload left them with less time for engagement with non-DAC detainees.

**8.45** In mid-April 2019, the Independent Chief Inspector visited Harmondsworth and Colnbrook IRCs. During the visit, it emerged that the Heathrow Estate DETs were not fulfilling the full range of their duties and this was causing tension between the supplier, other embedded Home Office staff and the DETs. Inspectors sought an explanation from the Home Office.

**8.46** On 24 April 2019, the Home Office responded:

“Daily “drop in” surgeries in the LHR IRC estate have been temporarily halted whilst physical changes are made to the Welfare Offices in both sites following concerns raised by DET staff and an incident involving a detainee around three weeks ago who threatened staff then proceeded to self-harm in front of them. DETs have been working with the supplier to provide a safer environment for staff to work from in the Welfare Offices based on health and safety risk assessments ... the creation of a walled off waiting area and separate exit door, a movement of desks to situate them next to panic alarm buttons .... This should now only take weeks to complete.

In temporarily halting the surgeries DETs have though looked to increase the methods in which detainees can contact them and to that end have created posters – which are displayed in detainee areas – and laminated prompt cards for DCOs highlighting that they can phone, SMS, email, fax or request a face to face meeting.

This does not affect planned or scheduled interaction such as inductions, serving of papers or individual requests to see Engagement Officers, all of which occur in legal visits, providing a personal space for those detained and a safe environment for DET staff. Numbers of detainees physically seen remains high – as an example last week there were over 370 face-to-face engagement events conducted by the DET in Harmondsworth and around 190 in Colnbrook.

Resourcing of the DET nationally is now at the highest level it’s been, and we are working to remedy local infrastructure issues. We know the temporary suspension of drop in surgeries is not ideal as the Home Office want to be engaging with those detained in as many arenas as possible, but we also need to ensure the safety and wellbeing of all of our staff and the way that we operate is it not dictated to be the resourcing demands that it places on the supplier.”

**8.47** Inspectors made a follow-up visit to Harmondsworth and Colnbrook IRCs on 1 May 2019. They were told that the DET surgeries at both Harmondsworth and Colnbrook were suspended and the DETs were having only limited engagement with detainees. DET managers and Engagement Officers told inspectors that surgeries had been suspended at both IRCs due to concerns about staff safety following “two recent incidents” and a longer history of verbal abuse directed against DET staff.

**8.48** The Colnbrook DET had suspended surgeries in December 2018 following an incident in which an irate detainee had picked up a chair and threatened an Engagement Officer. In February 2019, a second detainee had threatened an Engagement Officer during a surgery at Harmondsworth and had then cut his own wrists, resulting in severe bleeding and hospitalisation. After this incident, surgeries at Harmondsworth had also been suspended.

**8.49** The DETs in both IRCs had decided to suspend surgeries until the supplier (Mitie Care and Custody) had made changes to the areas where the surgeries were held. This included: partitioning rooms to restrict access to only those detainees speaking to an Engagement

Officer; removing potential hazards such as kettles and microwaves from the surgery space; installing panic buttons; and, creating safe exits from the rooms. DET staff also raised concerns that DCOs were slow to intervene during both these incidents.

**8.50** The DETs in both IRCs, and Immigration Enforcement senior management, were keen to point out that while surgeries had been suspended DET staff were still carrying out their engagement functions over the telephone and through an appointment-based system in the Legal Visits room.

**8.51** The supplier told inspectors that the suspension of immigration surgeries had had a serious impact on well-being within the IRCs. In his March 2019 report, the Mitie manager for the Heathrow IRCs stated:

“Operationally, the centre has noticed a significant change this month in most factors which are a measure of the centre temperature. While we are comfortable that the centre remains calm and there are no wider undercurrents, Assaults, Self-Harm, Food and Fluid refusals, Incidents, Relocation to CSU [Care and Separation Unit] have all seen a significant increase during March. We are currently undertaking analysis on the possible reasons behind this however we have noticed increasing detainee frustration at the lack of information from HO Representatives has been identified as their catalyst to some detainee behaviours. This has already been communicated to HO officials.”

**8.52** The report included statistics for the six months to March 2019. While there is some fluctuation in the monthly figures, these appear to confirm a general increase in incidents since the beginning of 2019, which the supplier was adamant was the direct result of the lack of face-to-face engagement with detainees by Home Office staff – see Figure 16.

**Figure 16: Supplier record of incidents at Colnbrook (C) and Harmondsworth (H) Immigration Removal Centres between October 2018 and March 2019**

	Self-harm incidents		Food & fluid refusals		Incidents		Care & Separation Unit relocations		Detainee on detainee assaults	Detainee on staff assaults
	C	H	C	H	C	H	C	H	C+H	C+H
Oct 18	5	13	0	2	108	144	13	19	9	3
Nov 18	8	6	2	1	78	118	9	17	7	5
Dec 18	5	9	2	8	77	106	9	4	5	4
Jan 19	9	6	6	13	126	104	15	17	5	0
Feb 19	8	10	2	18	61	92	16	6	6	1
Mar 19	19	8	15	24	139	128	24	22	10	7
<b>Total</b>	<b>54</b>	<b>52</b>	<b>27</b>	<b>66</b>	<b>589</b>	<b>692</b>	<b>86</b>	<b>85</b>	<b>42</b>	<b>20</b>

**8.53** Whatever the true impact of the DETs’ actions, it was evident that relations between the DETs, the IRC supplier and the embedded Home Officer DES team (responsible for monitoring contract compliance by the IRC supplier) had become strained. The supplier was scathing about the idea of conducting engagement work over the telephone, and the DES team agreed. Inspectors were told that detainees rarely knew who their Engagement Officer was, which was echoed by a number of the detainees who inspectors met, and that DET staff rarely answered their telephones. Inspectors were told of one incident when a member of the DET had hung up

during a conversation with a detainee, leading to the detainee becoming very distressed and self-harming. A DCO had calmed the detainee and had then contacted the DET himself. The DET hung up on him too.

- 8.54** During their visit to the Heathrow Estate on 1 May 2019, inspectors were told that the supplier had met senior Home Office officials earlier that day, and agreed a way forward that addressed the safety and accommodation concerns of DET staff and that immigration surgeries would be reintroduced as soon as the accommodation work was completed. This was expected to be by the end of May.<sup>102</sup>
- 8.55** The situation at the Heathrow IRCs and the evidence from DET teams and detainees raises questions about how well the Home Office has equipped its Engagement Officers to operate efficiently, effectively and safely within IRCs, and what requirements have been placed on IRC suppliers regarding accommodation and support for the DET officers, while they go about their business.

## Legal advice for immigration detainees

- 8.56** All IRC detainees are able to receive 30 minutes' free legal advice, through the Detention Duty Advice Service funded by the Legal Aid Agency.
- 8.57** During focus groups with detainees at Yarl's Wood and at Brook House, inspectors were told that the law firms to whom detainees had access were variable in terms of the quality of their advice and their efficiency, but often they charged a lot of money and did very little. Some detainees believed that these law firms were in collusion with the Home Office.
- 8.58** Based on what they heard from detainees about the high costs and poor service, Home Office staff at the IRCs shared the same opinion of the general standard of those offering legal advice. They said they encouraged detainees to complain and signposted them to relevant oversight bodies. However, detainees indicated to inspectors that they were reluctant to complain, fearing the consequences for their case and also having little faith that anything would be done.
- 8.59** In their responses to the ICIBI's 'call for evidence', two stakeholders highlighted particular concerns about the need for specialist legal advice for Potential Victims of Modern Slavery (PVoMs) to aid identification and safeguarding. The ability of the most vulnerable to seek legal advice, such as those who lack mental capacity, was also raised as a concern.
- 8.60** According to one stakeholder, limited or poor access to legal advice impacts the Rule 35 process, since this is usually triggered by the detainee's lawyer, or by an NGO visitor or other detainee, rather than by the supplier, healthcare, or Home Office staff. Meanwhile, another stakeholder made the point that it might be only after a detainee has received legal advice that they understand that there are grounds for an asylum claim. Case studies provided by stakeholders highlighted the importance of prompt legal advice in identifying already vulnerable individuals in detention and taking steps to have them released.
- 8.61** The Detention Duty Advice Service free legal advice is not available to Foreign National Offenders (FNOs) detained in prisons under immigration powers. Their access to specialist NGOs, who may be able to fill this legal advice gap, is also problematic due to the inability

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102 On 14 June 2019, the Home Office informed inspectors that surgeries at the Heathrow IRCs had recommenced in early June.

of NGOs to visit all of the prisons in which FNOs are held. Research by Bail for Immigration Detainees (BID), published in July 2018, found that detainees in prisons are also less likely to be able to find a legal aid lawyer to help them apply for bail.<sup>103</sup>

**8.62** Stakeholder submissions to this inspection pointed out that “the detention of vulnerable people [in prisons] contrary to the AAR policy is less likely to be reviewed by a lawyer and drawn to the attention of the Home Office or challenged in a court.” Stakeholders said this was also made problematic as those in prisons had restricted access to communications.

**8.63** The Home Affairs Committee (HAC) report highlighted issues with detainees’ access to legal advice. It concluded that:

“It is evident ... the Government’s Detention Duty Advice scheme is flawed and is failing to provide adequate legal safeguarding to those who need it most.”

**8.64** HAC recommended that FNOs:

“... should be afforded the same legal safeguarding provisions as immigration detainees held in IRCs so that, on completion of their custodial sentence, they can be deported or have their immigration status resolved rather than entering immigration detention. This should include access in prison to the DDA scheme.”

**8.65** The Joint Committee on Human Rights drew similar conclusions in their 2019 report.

## The case owners

**8.66** Each person who is detained under immigration powers should have a Home Office case owner who is responsible for progressing their case towards return or release. Case owners are spread across different Home Office units (and directorates) according to the type of case. They are responsible for reviewing whether continued detention is justified, taking account of various factors, including removability and vulnerability.

**8.67** Case owners will not normally have direct contact with detainees and rely instead on others to identify that a person who is in detention is vulnerable and should be released.

## National Returns Command

**8.68** The National Returns Command (NRC) is responsible for both voluntary and enforced returns of non-FNOs with no lawful basis to remain in the UK. NRC is part of Immigration Enforcement. NRC Detained Casework Teams manage the enforced returns process from the point of detention until return or release.

**8.69** At the time of this inspection, NRC Detained Casework comprised five hubs: London (60 FTE posts as at 1 April 2019, not all of them filled), Croydon (32 FTE posts), Glasgow (34 FTE posts), Solihull (37 FTE posts) and Birmingham (26 FTE posts). There was also a central team that managed the Asylum, Migration and Integration Fund (AMIF) for detained cases.<sup>104</sup>

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<sup>103</sup> Adults at Risk: the ongoing struggle for vulnerable adults in detention ‘An evaluation of the ‘Adults at Risk’ policy in practice’. [http://hubble-live-assets.s3.amazonaws.com/biduk/redactor2\\_assets/files/667/Adults\\_at\\_risk\\_2018.pdf](http://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/667/Adults_at_risk_2018.pdf)

<sup>104</sup> According to GOV.UK: “AMIF is a European Union fund ... designed to help member states manage migration and implement, strengthen and develop a common EU approach to asylum and immigration.”

**8.70** NRC case owners told inspectors that they were allocated cases after the requests for admission to detention had been authorised by the Detention Gatekeeper (DGK). Case owners told inspectors that they could be allocated up to 25 cases but that it rarely got to that number. Upon allocation, the case owner determines whether the detainee has any identified vulnerabilities by reviewing the notes, on the Case Information Database (CID) made by the referring team and by the DGK.

## Detained Asylum Casework

- 8.71** Until the end of 2018, Detained Asylum Casework (DAC), part of UKVI, was responsible for progressing the cases of persons who had claimed asylum where there was a prospect of certifying the claim as unfounded and where the person was already detained pending removal (in which case a referral must be made to the DGK to consider their suitability for ongoing detention), or claims made while the person was detained following an enforcement visit. DAC also managed asylum claims from persons detained at a port of entry, those apprehended as a clandestine entrant, or who have presented themselves to the Asylum Intake Unit.<sup>105</sup>
- 8.72** By 14 February 2019, the Home Office intended moving responsibility for the initial asylum screening interview for those detained in an IRC to the embedded Detention Engagement Teams (DETs) at the Heathrow IRCs, mainly Harmondsworth, and Yarl's Wood. Responsibility for processing the claim and carrying out the substantive interview remains with DAC.
- 8.73** If it is decided to release a person who has claimed asylum, for example because a DAC case owner has concerns about the person following an asylum interview, the case is referred to the National Asylum Allocation Unit (NAAU), within UKVI, for non-detained casework teams to progress and to arrange support, if required.

## Criminal Casework

- 8.74** Criminal Casework (CC) is responsible for managing Foreign National Offenders (FNOs) towards removal, whether they are in the community or are detained. Criminal Casework (CC) has approximately 900 staff, most of whom work in Croydon, Liverpool or Leeds. Most case owners for detained FNOs are based in Croydon.
- 8.75** Once an FNO serving a custodial sentence has had their conditional release date<sup>106</sup> calculated by the prison service, CC's workflow team will establish if the individual meets the deportation criteria and if a Deportation Order should be served. Where an FNO is approaching their conditional release date, Criminal Casework will determine whether they should be released, pending removal, or detained under immigration powers.

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<sup>105</sup> The Home Office told inspectors that: "Almost all asylum seekers who have their claim processed in detention have made an asylum claim after being detained for removal."

<sup>106</sup> Those sentenced to a "determinate" or fixed term will be released automatically half-way through their sentence under the Criminal Justice and Immigration Act (CJIA) 2008. "Conditional release" means the sentence is still ongoing and the prisoner can be recalled to prison if licence conditions are broken or if he or she commits a further offence. The Home Office will normally be informed of the conditional release date within 10 days of sentencing.



# The detention review cycle

## The first three weeks

- 8.76** Chapter 55 of the Immigration Enforcement Instructions and Guidance explains that the continued detention of persons “detained solely under Immigration Act powers ... must as a minimum be reviewed at [specified] points”.
- 8.77** Reviews must give “robust and formally documented consideration” to “the removability of the detainee” and to “all other information relevant to the decision to detain.” Reviews should be conducted using the “Detention and Casework Progression Review (DCPR)” form. This form is completed by the case owner, in most cases an Executive Officer (EO) and signed off by a more senior “authorising officer”.

**Figure 17: “Specified” review points for immigration detainees and authorising level**

Period	Non-criminal casework/non-third country cases	Third country cases	Criminal casework cases
24 hours	Inspector <sup>107</sup> /SEO	CIO <sup>108</sup> /HEO	Not required <sup>109</sup>
7 days	CIO/HEO	CIO/HEO	Not required
14 days	Inspector/SEO	CIO/HEO	Not required
21 days	Not specified	CIO/HEO	Not required

- 8.78** Under “Case History”, the DCPR requires the reviewer to consider “Vulnerability issues, according to the Adults at Risk policy, including risk indicators and evidence level” listing “N/K”, “Level 1”, “Level 2”, “Level 3” in a way that implies that one of these should be selected.<sup>110</sup> During the course of this inspection, inspectors had sight of a large number of completed forms. In many instances, none of the Adults at Risk level options was selected, although there were notes in the free text box.
- 8.79** The DCPR also asks about “Known or claimed medical conditions (including mental health and/or self-harm issues and any reference to a Rule 35 report”. Rule 35 refers to the Detention Centre Rules 2001 “Special illnesses and conditions (including torture claims)”. This states that “The medical practitioner shall report to the manager [of the IRC] on the case of any detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention.” Rule 35 goes on to refer to detained persons the medical practitioner “suspects of having suicidal intentions” or “may have been a victim of torture” or appears to require “special arrangements” due to their “mental condition”.
- 8.80** The DCPR requires the reviewer to make a recommendation “i.e. whether to maintain detention or release, supported by reasons. Where the recommendation is to maintain detention, this should include the action(s) required to progress removal/deportation.” The checklist to be completed by the authorising officer includes “Adult at Risk” and asks for a decision “Having considered Home Office EIG [Enforcement Instructions and Guidance]”.

<sup>107</sup> Immigration Inspectors are Senior Executive Officers.

<sup>108</sup> A Chief Immigration Officer (CIO) is a Higher Executive Officer. Referrals from ICE teams to the DGK are normally approved by a CIO.

<sup>109</sup> Chapter 55 makes it clear that “There is no requirement for adult detention to be reviewed during the early stages in criminal casework cases” but sets out the authority levels for each monthly review up to the “24<sup>th</sup> monthly”, and “Post-24<sup>th</sup> monthly” where the cycle from month 13 starts again.

<sup>110</sup> The previous question, relating to Absconding, Harm and Re-offending has High, Medium and Low options and, from the reviews seen by inspectors, case owners seemed to understand that they were required to select one of these options.

## 24-hour review

- 8.81** The Detention Gatekeeper (DGK) carries out a review of each detention it has authorised after 24 hours. The DGK reviewer, who may or may not be the person who authorised the admission into detention, follows the DCPR. DGK managers told inspectors that the 24-hour review was an opportunity they had to pick up vulnerabilities. After the 24-hour review, responsibility passed from the DGK to the relevant caseworking unit to review and monitor continued detention.

## Case owner judgements

- 8.82** NRC casework managers told inspectors that when reviewing whether a person should continue to be detained, the weight given to the risks listed on the DCPR (Harm, Re-offending and Absconding), and to the consideration of vulnerability factors against immigration factors, was case-specific. In the absence of detailed guidance, case owners relied on their experience to make these judgements. NRC case owners told inspectors that they had not received any formal training on “the weighing process” or on conducting detention reviews, and that case owners had their “own style” when it came to minuting CID and recording actions.

## “More serious” and “less serious” offences

- 8.83** For Foreign National Offenders, CC case owners are instructed<sup>111</sup> when reviewing detention to weigh the risks of harm to the public and re-offending indicated by the individual’s criminality, and the risk of absconding, against a presumption in favour of immigration bail. They should distinguish between “more and less serious offences” and consider immigration bail as appropriate “only in exceptional cases because of the seriousness of violent, sexual, drug-related and similar offences”.
- 8.84** Criminal Casework (CC) managers told inspectors that there was no guidance relating types of offence to level of harm, but if a person had been sentenced to four years or more the likelihood was that they would be detained. Policy staff acknowledged the ambiguity of the language used to describe serious and less serious offences, explaining that detention guidance had previously contained a list of offences with an indication of which category they belonged to, but this had been removed, leaving the current “more general references” and creating “a gap which should be closed”. According to CC, the change had been made to enable decision making to be done on a case-by-case basis.
- 8.85** Adults at Risk training for caseworkers states: “In cases of FNOs, the public interest concerns will generally outweigh a risk of harm to the detainee”. Inspectors were told about the pressures on CC case owners when balancing public protection factors and vulnerabilities, and a recognition that case owners were “making difficult decisions”. The Home Office told inspectors: “There is a difficult balance to be struck between the presumption of not detaining and public protection considerations when we consider release, which is why decisions to release an FNO are taken at senior levels.”

## Risk of re-offending

**8.86** Meanwhile, file sampling by inspectors found that case owners were inconsistent in their interpretation of the risk of re-offending. Some applied it to the likelihood of the person committing a further criminal offence, while others applied it to the likelihood of them committing an immigration offence.

## Risk of harm (to others)

**8.87** Chapter 55 of 'Enforcement Instructions and Guidance' instructs case owners when carrying out a detention review to assess the risk of harm to the public based on an FNO's Offender Assessment and Sentence Management System (OASys)<sup>112</sup> or pre-sentence report,<sup>113</sup> or in their absence on any available information.<sup>114</sup> In the sample case files examined by inspectors, the case owner referred to an OASys or pre-sentence report in only 14% of FNO cases, raising questions about the reliability of the risk of harm assessments.

**8.88** CC managers told inspectors that in the absence of an OASys report the assessment tended to be based on "people's perspectives of offending" and, after reviewing the person's PNC (Police National Computer) results and criminal history, it would be "down to experience". However, a stakeholder raised concerns that detention review decisions were often based on an ill-informed understanding of offending.

## A "reasonable timeframe"

**8.89** Chapter 55 states that in CC cases "it will normally be appropriate to detain as long as there is still a realistic prospect of removal within a reasonable timescale", due to the "higher likelihood of risk of absconding and harm to the public on release". However, "reasonable" is not defined, including during training for caseworkers. Managers acknowledged that it was difficult to argue what was reasonable. There was "no rule of thumb guidance" and the meaning was "case specific and dependant [sic] on circumstances", with CC case owners likely to regard "a reasonable timeframe" as longer than their NRC counterparts.

**8.90** A policy manager emphasised that "a reasonable timeframe" was not fixed, as case owners were expected to reappraise the justification for detention as factors changed in a case, for example, if there were unexpected delays in obtaining an emergency travel document.

**8.91** CC senior management told inspectors that failed removals due to escorts double-booking was an issue, with 17 Early Removal Scheme (ERS) referrals having failed in one month for this reason.

**8.92** The examination of sample case files revealed a number of instances where the detention had not been reviewed following a failed removal even though the detainee was flagged as an Adult at Risk. In one case, the person was flagged as an Adult at Risk Level 2, however, the Home Office made a decision to detain them as removal directions were in place for 19 days' time. These removal directions failed due to an "escort admin failure" and were reset for 39 days later. Despite this, it was 11 days before the detention was reviewed. See Case Study 2.

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112 Designed by HM Prison Service (now HM Prison and Probation Service) *inter alia* to assess the likelihood that an offender will be reconvicted and assess the risk of harm (to self and others). According to Chapter 55 of 'Enforcement Instructions and Guidance', OASys reports are not produced where the sentence is less than 12 months.

113 Pre-sentence reports investigate whether there are extenuating circumstances, such as criminal history or mental disorder, which would mean that a person convicted of a crime should receive a shorter or longer sentence.

114 Such as a judge's sentencing remarks.

## Case Study 2: Adult at Risk Level 2: Detention maintained despite delays to planned removals

### The case

The person, who was not a Foreign National Offender, was detained on reporting at the end of July 2018. This was pre-planned. At the end of August, this person was flagged as an Adult at Risk Level 2 following a Rule 35(3) report and having reported feelings of isolation and the desire to self-harm because of their detention.

The person was due to be removed towards the end of September, but the removal failed due to an “escort failure”. In mid-October, a Case Progression Panel recommended that detention be maintained in light of imminent removal, which was set for one week later. However, this removal was also cancelled due to an escort failure.

When inspectors examined this case file, there was no evidence on file that a detention review had been done following the second failed removal.

The person was eventually removed towards the end of November 2018.

### Home Office comments:

“Case workers or case progression officers are expected to manage cases in detention in accordance with our published detention policies and Detention Service Orders. This includes conducting detention reviews at the statutory timeframes, responding to R35 notifications in 2 working days and responding to information provided from medical practitioners in IRCs. If any information received from any party including a medical practitioner is unclear it is expected that caseworkers or case progression officers will seek to clarify it, using Detention Engagement Team staff if appropriate.”

## Monthly reviews

- 8.93** The Detention Centre Rules 2001 (Rule 9.1) require that “Every detained person will be provided, by the Secretary of State, with written reasons for his detention at the time of his initial detention, and thereafter monthly.” Chapter 55 of the Enforcement Instructions and Guidance explains that “in this context monthly means every 28 days”.
- 8.94** Where the date specified for a review falls at a weekend or “bank holiday” Chapter 55 allows for the review to be completed early but warns that this will have an impact on subsequent reviews as the interval between monthly reviews “must not exceed 28 days”.
- 8.95** Chapter 55 makes it clear that reviews should be conducted using the DCPR form and that detainees should be informed of the outcome of monthly (and, from the context, any other) reviews using form IS151F. This form lists the “legislative basis and reason for detention”,<sup>115</sup> plus any barriers to removal, the progress made since the last review, and the “reasons and factors for maintaining detention” where:

115 From ‘Guidance – CCD detention reviews (adults) – v3.0, valid from 27 January 2014.’

“If possible every reason used must be supported by an appropriate factor. For example if you have said ‘There is reason to believe you would fail to comply with any conditions attached to the grant of temporary admission or release’, you must select the factors which cover the past behaviour or current position of the case.”

## Case Progression Panels

- 8.96** In his first report, Stephen Shaw was critical of the quality of detention reviews and their “cut and paste” nature. He recommended (Recommendations 60 and 61) that the Home Office should examine its processes, “looking at training requirements, arrangements for signing off cases at a senior level, and auditing arrangements” and that it should “consider if and what ways an independent element can be introduced into detention decision making”.
- 8.97** In response, as well as creating the Detention Gatekeeper (DGK), the Home Office introduced Case Progression Panels (CPPs).<sup>116</sup> According to the Immigration Minister, responding to a Parliamentary Question in October 2017, the CPPs were introduced “to provide an internally independent review of the suitability for continued detention and the progression of case actions”.<sup>117</sup>
- 8.98** A pilot was carried out in May and June 2016, involving seven CPP meetings, attended by representatives from units that either owned detained cases or were involved with effecting removal: Criminal Casework, National Returns Command, Detained Asylum Casework, Operational Support and Certification Unit (OSCU) and Complex Casework. The report of the pilot was presented to the Shaw Implementation Board in November 2016 and, in February 2017, CPPs became “business as usual”.
- 8.99** Inspectors were told that the aims of CPPs were:
- “• to increase the efficiency of case progression and reduce the number of long term detainees
  - to ensure a consistency of process and approach to reviewing detention and case progression
  - to drive case progression and casework diligence to effect departure from the UK whether by administrative removal or deportation, or release from detention if appropriate
  - to provide additional oversight and assurance for the identification and management of potentially vulnerable individuals.”
- 8.100** A case is first reviewed by a CPP when detention reaches the three-month point (84 days) and then at three-monthly intervals, although cases may be referred to a CPP by other units involved in the detention process,<sup>118</sup> at any time, if they believe a CPP review might be useful. Also, a CPP can recommend that a case is brought back to another CPP within a shorter timeframe if an action is planned, for example, obtaining an Emergency Travel Document, the outcome of which could affect whether continued detention is justified.

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116 Home Office response to Shaw Review (2016). [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/492227/gov\\_paper\\_2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/492227/gov_paper_2.pdf)

117 Written PQ – 107470 <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-10-12/107470/>

118 For example, the Detention Gatekeeper, Detention Operations, Detention Engagement Teams and the Adults at Risk Returns Assurance Team.

- 8.101** A CPP Team, comprising a Grade 7, an SEO and three EOs, is responsible for arranging the panels, and finding a chair and panel members. When the process first became “business as usual”, the Team was arranging four or five CPPs a week, with each scheduled to last for two and a half hours and to consider around 25 cases. The number of panels per week and cases per panel had reduced slightly by the time of this inspection.
- 8.102** The cases reviewed by a particular CPP are grouped according to length of detention: three months, six to nine months, twelve (or more) months. Three-month panels are chaired by an SEO, six- and nine-month panels are chaired by a Grade 7, and 12(+) months’ panels are chaired by Grade 7 or Grade 6. Panel chairs can come from any of the detained casework commands, Border Force, Operational Support & Certification Unit (OSCU), the DGK and Detained Casework Oversight and Improvement Team.
- 8.103** Panel members are selected from Criminal Casework, National Removals Command, Detained Asylum Casework and Third Country Unit, along with “experts” from Returns Logistics, Litigation Operations, Adults at Risk Assurance Team, Immigration Compliance and Enforcement and the Presenting Officers Unit. Grades EO to SEO can be panel members. Participation is voluntary. Some staff regard it as a development opportunity.
- 8.104** At the time of this inspection, all of the CPP meetings had been held in Croydon, although some members dialled in from elsewhere. However, efforts were being made to hold the panels in other locations in order to increase the pool of participants.
- 8.105** The CPP Team provides training, either face to face or via video conference. The training pack<sup>119</sup> covers the relevant policies that panels need to consider, including the Adults at Risk guidance, and a “non-exhaustive” checklist, which directs the panel to consider specific areas, such as the Rule 35 report.
- 8.106** The Team generates the list of cases for each CPP from CID. The Home Office told inspectors:
- “The Case Progression Panel (CPP) Team use CID when allocating individual cases to be reviewed by a CPP. A report from this database is produced which includes all of those individuals currently detained under immigration powers. Date parameters are then applied to the total nights in detention to capture all those individuals at a three-month interval of detention and then allocate to the appropriate CPP. Case allocation occurs every two weeks.”
- 8.107** The CPP Team told inspectors that they regularly reviewed the date parameters to ensure they were capturing those persons detained and scheduled to be presented to a CPP.
- 8.108** Two weeks prior to the CPP, the Team sends the chair and members a spreadsheet listing the cases: with “Person” details (CID reference, name, nationality, date entered detention, reason why the case is up for review); case owning team; Adults at Risk level; “Removal Directions” (Y/N and date); and “Criminality” (whether the person is subject to deportation, “Type of offence”, MAPPA category, “Length of sentence”).
- 8.109** The CPP Team told inspectors that there was no official minimum number of attendees though the aim was to have at least four panel members plus the Chair. Panel members can dial in to the meeting. The CPP Team commented that those dialling in were often forgotten by the Chair. There was no requirement for everyone to express a view on every case, but in selecting panel members the CPP Team sought out those who had previously been active participants.

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119 Last updated on 1 December 2018.

- 8.110** Panel members are expected to prepare by looking the case up on CID. Two of the CPP Team’s EOs attend each CPP, one to navigate CID (which is projected onto a screen) and the other to record the panel’s conclusions and recommendations and record them on CID. The Team told inspectors that they also spoke up when it seemed that the panel had missed the fact that the detainee was an Adult at Risk, or some other material point, or when the Chair appeared to have forgotten someone on the phone.
- 8.111** Different case owning teams had different ways in which they expect to be notified of CPP recommendations. Some have a central inbox, while others expect the case owner to be notified directly. CPP recommendations are not binding on the case owner, nor is the case owner required to provide the CPP Team with an update on actions taken. However, the case owner should place an acknowledgement and update on CID prior to completing the next DCPR, including the reasons for rejecting a recommendation where this is the case. The CPP checks CID after two weeks to see that the case owner has complied with these requirements.
- 8.112** Detainees are not notified that their case is being reviewed and no opportunity is given to a detainee, or their legal representative, to submit documents or any further information, nor are they provided with a read-out from the CPP. The Home Office told inspectors that detainees should be made aware of the process at the monthly detention reviews, but none of the detainees with whom inspectors spoke during the course of this inspection had heard of CPPs.

## Shaw’s follow-up report

- 8.113** In his second report, Stephen Shaw examined the reforms made to the detention review process, noting that he had attended five CPPs. He concluded that there was still more work to be done and made three recommendations relating specifically to CPPs:

“CPPs should have fewer cases per panel to consider. The Home Office should ensure that all required information, including information on vulnerability and AAR levels, is available and that all panel members are properly prepared on the cases before them.” (Recommendation 30)

“CPP chairs should be of sufficient competence for the role. Attendance from all relevant parts of the Home Office should be ensured.” (Recommendation 31)

“The Home Office should review the case for an independent element in CPPs, considering those detained for more than six months.” (Recommendation 32)<sup>120</sup>

- 8.114** In December 2018, inspectors were told that in order to improve competence and attendance:

“The number of cases has been reduced and vulnerability information is available at all Panels. All Panel members receive a case list 2 weeks and 2 days before each panel as business as usual. Guidance on Case Progression Panel is being updated and will be publicly available by April 2019”.

“New guidance will ensure that these messages are formalised” and the independent element continued to be the subject of work “to identify options for further increasing independence on the case progression panels”.<sup>121</sup>

<sup>120</sup> The importance of an “independent element” was echoed in the Joint Committee on Human Rights (JCHR) 2019 report, which found that detention reviews offered “insufficient independent scrutiny of decisions to detain and maintain detention” and little evidence that the CPP and DGK were making a difference to the quality of decision making. The 2019 Home Affairs Committee’s report also criticised the CPP process and argued for a judge to review detention after 72 hours.

<sup>121</sup> Update to the Home Secretary from the Shaw Implementation Board.

## ICIBI experience of CPPs

- 8.115** For this inspection, inspectors began observing CPPs in November 2018. They were shown a “crib sheet” given to panel members. This set out the timeframes for potential barriers to removal, such as how long it took to get emergency travel documents (ETDs), with the caveat “This is not an exhaustive list of barriers and data has been taken from internal management information, has not been independently audited and could be subject to change”.<sup>122</sup>
- 8.116** Panel members were also given a one-page guidance note on “what should and what should not be carried out during a Case Progression Panel”. The former included: a presumption in favour of immigration bail and, wherever possible, alternatives to detention; the need to consider Adults at Risk guidance and to ensure that the correct “flag” on CID Special Conditions was marked; checking that an auto-bail referral had been made in all eligible cases; and making “robust recommendations to progress the case towards return, or release if as a panel you believe that is appropriate.” The “Do nots” included: not assuming that continued detention is appropriate “just because removal directions are in place”, or because time has been invested in the case, and not just agreeing with the Chair or the consensus.
- 8.117** Between November 2018 and February 2019, inspectors observed six CPPs. On 19 February 2019, the Independent Chief Inspector (ICI) wrote to the Director General Immigration Enforcement, copying the Home Secretary and Immigration Minister, raising a number of concerns about how the CPPs were working. The letter is at Annex E. Briefly, the concerns centred on:
- Attendance – there was no sense of what constituted a quorum or what role those attending were fulfilling (‘independent’ member, expert, business area representative).
  - Preparation – chairs and panel members were underprepared, and a considerable amount of time was spent in silence reading CID screens to find a detail someone recalled having seen or to establish a particular fact.
  - Discussion – there was no structure to the case discussions, panel members made various points as they occurred to them, and there was no attempt to ensure that all views were sought.
  - Consideration of Adults at Risk felt very much like an afterthought and in some cases was not mentioned at all, despite appearing on the spreadsheet.
  - Decision – with Foreign National Offenders there appeared to be a presumption in favour of continued detention.
  - Caseworking – in the majority of cases, panel members were highly critical of the casework and previous actions or failures to act. The panels appeared to be identifying things that someone else should already have identified and dealt with.
- 8.118** The Director General Immigration Enforcement met the ICI before responding in writing – see Annex F. On 20 March 2019, the Chief Inspector attended a further CPP to see whether there had been any improvement but found that little had changed.
- 8.119** Many of the issues raised by the ICI had already been identified and were listed in the CPP Team’s Risk Register. Some reforms were being rolled out and new guidance was being developed. On 18 April 2019, the Home Office published revised guidance ‘Detention Case Progression Panels’ version 2.

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<sup>122</sup> Case Progression Panel “Crib Sheet”.



**8.120** The revised guidance contained amendments to the sections on Pre-Panel Preparation, Timing and Scheduling of Panels and Case Progression Panel Roles and Responsibilities. The impact of this new guidance could not be properly assessed within the timeframe of this inspection. However, the Chief Inspector attended two further CPPs on 24 April 2019. While one was an improvement on the previous CPPs, in that it was well chaired, inclusive and made a point of noting upfront where someone was an Adult at Risk, the case discussions still lacked structure. The other was, if anything, worse than the earlier CPPs: the chair and members were under-prepared, the former pre-empted discussion and did not make sure that everyone was heard, and the proceedings were rushed.

## File sampling

- 8.121** Inspectors examined 112 cases of persons held in detention under immigration powers on 30 September 2018. Of these, seven had not been considered by a CPP at the three-month point. In one case, the person had been detained at the end of April 2016, before CPPs were created. However, although CPPs became “business as usual” in February 2017, this detainee was not considered by a panel until the beginning of April 2017. In another, the person was detained in September 2017 having served a three-year prison sentence. However, he was not considered by a CPP until March 2018. No reason was given.
- 8.122** A third detainee had been in immigration detention in a Category A prison for over 200 days and had not been considered by a CPP. There were national security interests in this case and the Home Office explained “There are a very few cases [sic] that are restricted on Home Office systems given national security interests. These cases do not enter Case Progression Panels.” However, no alternative review mechanism was available for this kind of case.
- 8.123** The CPP Team was aware that a small number of detainees may not have been referred to a CPP at the three-month point, either because of an administrative error or because a CPP was cancelled and had to be re-arranged, which could take up to two weeks to organise; or the date fell during a holiday period when no CPPs were arranged (although inspectors were told that this may also mean that some cases would be brought forward to an earlier CPP).
- 8.124** Of the 112 cases examined, 73 were considered by a three-month CPP. In 14 (19%) of these 73 cases the CPP recommended release, while in 59 (81%) it recommended continued detention. Of the 14 recommendations for release, only six were accepted by the case owner. The other eight were rejected. By March 2019, three of the 14 recommended for release were still in detention.
- 8.125** Where a CPP recommends that a case is returned to a panel before the next three-month review, this is included in the CPP Team’s summary of the CPP’s consideration, which is recorded on CID. File sampling identified that this was not done consistently, and cases were not always returned to a panel in the recommended timeframe. The Home Office stated this was due to “administrative errors” or sometimes because of a change in the detainee’s circumstances.<sup>123</sup>
- 8.126** File sampling also showed that case owners often failed to acknowledge the CPP recommendation on CID or record their reasons for rejecting it. During interviews and focus groups with case owners and their managers, it emerged that different teams had different processes for acknowledging CPP recommendations.

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123 Home Office response to File Sampling Queries.

**8.127** A 12+ month CPP held on 27 November 2018 considered 15 cases. It recommended release in 12 cases. Of the 12, as at 3 April 2019:

- six had been released on Secretary of State bail between 29 November 2018 and 8 March 2019
- three had been released on Immigration bail in December 2018
- one had been removed on 20 February 2019
- two were still in detention as at 3 April 2019 (one of whom was Adults at Risk Level 2)

**8.128** When inspectors followed up on a CPP they had attended on 23 January, at which 13 detainees had been recommended for release they found that by 12 February 2019 only four had actually been released.

## Oversight and quality assurance of CPPs

**8.129** In his second report, Stephen Shaw recommended that:

“The Home Office should strengthen its data monitoring processes and quality assurance for the detention gatekeeper and case progression panels. In particular, it should ensure that the outcomes following case progression panels are tracked and reported.” (Recommendation 24)

**8.130** From 27 August 2018, the Home Office required that the ‘Calendar Events’ screen on CID should be used to record CPP recommendations “to allow the team to not only monitor what recommendations are being made, but also monitor detained caseworks teams’ compliance with the recommendations, allowing a more robust way of reporting statistics.”

**8.131** In December 2018, the Shaw Implementation Board noted:

“We have begun assuring and internally reporting on Case Progression Panels and for the Detention Gatekeeper we are exploring the possibility of putting interim solutions in place as the rollout of the new recording system (which will replace the Case Information database (CID)) is still awaited.”<sup>124</sup>

**8.132** However, in early 2019, inspectors found that no data was being collected in relation to various basic questions. For example, the CPP Team told inspectors that panels sometimes had to be cancelled at short notice because they could not find sufficient panel members or a Chair. The Team did not keep a record of cancellations. Meanwhile, some panels turn out not to be needed. The Home Office told inspectors:

“the CPP Team currently arrange around 4 panels per week, however this is carried out before the cases to be reviewed are allocated to individual panels. As a result, due to the occupation of the detention estate and those individual[s] within the detention estate that fall within the 3 monthly cycles of the CPP review, there is not always a requirement to run all those panels.”

**8.133** At the same time, inspectors found that data on recommendations by a CPP that a detainee’s Adults at Risk level should be changed was not being collected. Inspectors were told “we do not currently track this information in a way that is reportable” but that the CPP Team was:

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<sup>124</sup> Update from the Shaw Implementation Board to the Home Secretary.

“currently exploring improved options and technologies for data recording and we will consider how moving to the new Atlas information database may be able to assist in the future especially in being able to more accurately report on the individual case progression action recommendations, such as a review of an individual’s AAR level and compliance with these.”

- 8.134** In January 2019, inspectors were told that the Atlas programme was running behind schedule and unlikely to be rolled out for this part of Immigration Enforcement until mid-2019.
- 8.135** Senior managers responsible for policy and practice in relation to Adults at Risk guidance regarded CPPs as “an additional safeguard”, “a second line of assurance”, “a nudge”. They were keen to point out that CPPs were a “work in progress”. One commented: “I see the panels as a toddler. We are not going to get everything right first time. They are a continuous improvement tool.” Another stated: “It’s not the finished article. Recommendations are well thought out and sensible. Broadly they are doing what they are meant to do. We have to do more work on getting teams to follow the recommendation.”

## An independent element

- 8.136** In his second report, Stephen Shaw recommended that “The Home Office should review the case for an independent element in case progression panels considering those detained for more than six months.” (Recommendation 32)
- 8.137** The Home Office told inspectors it had been looking at how it might achieve this. The minutes of the November 2018 Shaw Implementation Board noted that: finding an organisation that was willing to act as an independent assessor for CPPs had proven difficult, and two NGOs with whom the Home Office already worked “were unwilling to participate in the panels themselves due to concerns about potential conflicts of interest.”<sup>125</sup>
- 8.138** Subsequently, the Home Office had invited the two NGOs to be regular observers at CPPs and to offer an opinion on how they were working with a focus on consistency. At the time of the inspection, both NGOs had taken up this invitation but had not yet reported their observations back to the Home Office.
- 8.139** The Removals Enforcement and Detention (RED) policy team was considering options for introducing an element of independence to the CPPs. The creation of a new body to provide independent oversight, broadly similar to that provided by the Independent Monitoring Board (IMB), was one option being considered, but the Home Office informed inspectors that having independent members on the CPP was a more likely outcome.

## Case owner perceptions of CPPs and responses to CPP recommendations

- 8.140** Inspectors spoke to case owning units about CPPs. In general, the more senior the staff member, the more positive their view. However, many case owners and their managers spoke disparagingly about CPPs. They were “a superficial look at CID”, were “never going to be a comprehensive thorough assessment” and were completed “so quickly that they miss things”. The managers said that “the one person missing from the panel is the case owner” and the case owners said they did not see CPPs as effective as they did not have access to the full information, for example, emails from case owners chasing HM Prisons and Probation Service about a suitable release address.

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125 Shaw Board minutes, 29 November 2018.

**8.141** The CPP Team told inspectors that CC case owners, in particular, often disregarded CPP recommendations and often failed to update CID. A stakeholder expressed concerns that “even where case progression panels are picking up errors in Home Office decisions, they may be overruled”. A Home Office Senior Civil Servant said that it was “frustrating” when case owners failed to act on a CPP’s recommendations as the CPPs were “robust” and although case owners were not required to implement a CPP’s recommendation they should be engaging with them and, at the very least, recording the reasons for their decision not to follow the CPP’s recommendations.

## Criminal Casework Internal Review Panels (CCIRP)

**8.142** Criminal Casework Internal Review Panels were introduced in July 2017 to meet the challenges posed by Foreign National Offenders (FNOs) and balance the associated risk factors. At the time of this inspection, they were held monthly:

“The CCIRP undertakes detailed discussions on identification of barriers to removal and efforts to unblock them. The panels draw on expert knowledge and add an additional layer of assurance in managing detention, vulnerability and risk of public harm, given the difficult balance in some cases, and this ensures increased consistency of decisions across Criminal Casework.”

**8.143** All detentions over 12 months are reviewed by the CCIRP, which carries out follow-up reviews every two months. The panel is chaired by the Director of Criminal Casework and attended by the Deputy Directors and Assistant Directors (or their representatives) from each Criminal Casework team, a representative from the Home Office Litigation Team and a member of Returns Logistics.

**8.144** Chapter 55 of ‘Enforcement Instructions and Guidance’ explains that CCIRPs “follow the principles of the central Case Progression Panels.” The Home Office cited the reduction of FNO cases detained for lengthy periods as evidence of the effectiveness of CCIRPs. See Figure 18. These are snapshots only, and internal management information (MI) indicated that, by 7 April 2019, the number of FNOs who had been in detention for more than two years had increased to three.

Figure 18: Periods of detention for FNOs since the introduction of Criminal Casework Internal Review Panels		
	First CCIRP (13 July 2017)	Latest figures (March 2019)
Over four years	5	0
Over two years	18	1
Between 18 months and two years	36	12

**8.145** Despite the length of time the CCIRP had operated, the frequency of its meetings and the significance of its reviews, none of the staff interviewed by inspectors made reference to it, raising questions about its visibility within Immigration Enforcement.

**8.146** In April 2019, inspectors were told that Criminal Casework was planning to hold CCIRP reviews of all cases detained beyond six months. It was also working closely with National Probation Service (NPS) to source appropriate addresses for release from immigration detention, and with Multi-Agency Public Protection Arrangements (MAPPA) agencies to ensure that high-harm and high-risk offenders are managed effectively in the community.

**8.147** Senior Civil Servant oversight did not always result in an earlier release. In one of the 112 cases examined by inspectors, a person who had been sentenced to seven years in prison for a violent offence was served with a Deportation Order. He was admitted to an IRC at the end of November 2016 and, in June 2017, he was designated Adults at Risk Level 2 due to threats of self-harm. Case Progression Panels in June 2017 and January 2018 recommended his release as removal was not considered to be within a reasonable timescale. Release referrals were made to the Grade 3 Strategic Director of Returns, but the latter considered that release was not appropriate when balanced against the public protection risks. However, the person was eventually released on Secretary of State bail in October 2018, at which point he had spent 676 days in immigration detention.

## Automatic immigration bail hearings

**8.148** In his first report, Stephen Shaw recommended that: “the Home Office gives further consideration to ways of strengthening the legal safeguards against excessive length of detention”. (Recommendation 62)

**8.149** Schedule 10 of the Immigration Act 2016 introduced a duty on the Secretary of State to “arrange a reference to the First-tier Tribunal for the Tribunal to decide whether to grant bail to a person if ... (b) the period of four months beginning with the relevant date has elapsed.” The relevant date is “(a) the date on which the person’s detention began” or the last date on which a “relevant event” (consideration of bail by a First-tier Tribunal or the withdrawal of an application for bail by the person) has occurred. However, those with a Deportation Order pending were excluded, in practice Foreign National Offenders, along with those with a removal pending on national security grounds.

**8.150** Automatic bail hearings came into force on 15 January 2018. According to Home Office data, 173 hearings were held between 15 January and 31 October 2018. Of the 173, 156 were refused and only 17 were granted. None of the 16 bail hearings between August and October 2018 was granted.

**8.151** On 24 July 2018, the Home Secretary made a statement to Parliament announcing plans to pilot an automatic bail referral after two months in detention. A six-month pilot started on 10 February 2019. A policy manager described that the notion of having judicial oversight at these points as “powerful”.

## Bail accommodation

**8.152** Inspectors were told that the release of a Foreign National Offender (FNO) held under immigration powers, particularly in cases where there was a public protection concern, was often delayed due to the difficulty of finding suitable accommodation.

**8.153** The local police and the National Probation Service will usually be required to approve an address before releasing an immigration detainee to it. In cases that involved domestic or gender-based violence, or offences against children, it is unlikely that a return to the family home would be approved. Meanwhile, where an FNO meets one of several exceptional circumstances, including destitution, vulnerability, and high risk of harm to the public or of re-offending, accommodation may be provided by the Home Office under Schedule 10 of the Immigration Act 2016.

### Case Study 3: Delayed release because suitable accommodation could not be found

#### The case

Mr Y, a prolific offender, was sentenced to 28 days imprisonment for a violent offence and in November 2017 was detained under immigration powers at an IRC.

In May 2018, a Case Progression Panel recommended his release as there was no timescale for obtaining an Emergency Travel Document. The release was authorised by the Strategic Director of Returns, but Mr Y remained in detention because no suitable bail accommodation was available.

CID notes refer to concerns about Mr Y's mental health, with multiple incidents of drug abuse, vomiting, refusing to attend healthcare, threats of violence against staff, and talking and laughing to himself. There was a note of a threat to self-harm and of an ACDT being opened in June 2018 and again in January 2019. However, Mr Y was not designated as an Adult at Risk at any point.

In January 2019, Mr Y was reported to have reacted very aggressively when "a member of staff" at the IRC told him that "detention can be indefinite in the UK."

Suitable accommodation was eventually found, and Mr Y was released in February 2019, eight months after his release had been authorised. He had been in immigration detention for 446 days.

Following his first night at the accommodation, Mr Y absconded, since when, at the time of this inspection, he had been arrested on two further occasions.

#### Home Office comments:

"Case owners should pro-actively seek the information required to progress cases and the best methods will depend on the individual case circumstances. Escalation remains case dependent but should occur on a regular basis. We are reliant on other providers such as HMPPS for approved premises and other secure accommodation and chase every 2 weeks. As part of a command restructure CC are considering enhanced oversight of each of the cases waiting approved premises. Although there is no specific timescale for unreasonableness, work continues with HMPPS and MAPPA to ensure the accommodation is available at the earliest opportunity. We are working on an SLA with the National Probation Service to agree a reasonable timeframe for NPS to approve premises."

- 8.154** The National Probation Service (NPS) manages a number of Approved Premises (AP). The latter are residential facilities for offenders, with overnight curfews and other conditions, and equipped with cameras and security measures. They are staffed and residents are monitored through daily contact. All residents must have an individual programme of "purposeful activity", aimed at reducing the risk of re-offending and reintegration into society.<sup>126</sup>
- 8.155** APs are "primarily a public protection measure for offenders released on licence". At the time of this inspection, there were around 2,300 AP beds (of which 117 were for women). The release of an FNO imprisoned for serious sex or violent offences may be dependent on them accessing one of these.<sup>127</sup>

<sup>126</sup> Taken from guidance produced in 2014 by the National Offender Management Service.

<sup>127</sup> National Probation Service: Approved Premises Placements for FNOs; February 2018.

- 8.156** APs are expensive, because of the staffing requirements and demand is high. They are not permanent accommodation and any application for an AP place must include a “move-on” plan to “accommodation in the community”, which might be difficult for an FNO awaiting deportation.
- 8.157** File sampling for this inspection, and observation by inspectors of CPPs, identified that difficulties with finding bail addresses and APs can seriously delay an FNO’s release from immigration detention. Inspectors found examples where recommendations from CPPs and the decisions from Immigration Judge bail hearings were not implemented, sometimes for many months, because suitable accommodation was not found.
- 8.158** NPS has a team embedded in the Home Office to help with FNO cases where there have been probation-related delays. The team identified three main problems:
- Firstly, NPS staff were reluctant to provide bail accommodation for FNOs as they were uncertain where the funds would come from to cover the accommodation costs. Guidance was clear, however, as the eligibility criteria (risk of re-offending, public protection concerns, vulnerability) did not distinguish between FNOs and other offenders<sup>128</sup>
  - Secondly, while around 40% of FNOs come from London and the South East, little of the available bail accommodation is there, meaning that most FNOs are dispersed to towns in the north of England. This creates delays. FNOs have to be persuaded to move, and the police and NPS take time to approve these addresses. Meanwhile, some local communities have campaigned against being “saturated” with bail accommodation
  - Thirdly, a national shortage of probation officers has led to backlogs of work, affecting all ex-offenders, including FNOs
- 8.159** From the case files examined by inspectors it appeared that the lack of clarity about whether it was the Home Office or the NPS who was responsible for arranging bail accommodation was contributing to the delays. CID notes often recorded that messages had been sent from case owners to the NPS regarding accommodation but had not received a reply. Where the case owner chased this up it was only after a long delay and often only after CPP prompting.
- 8.160** Home Office guidance ‘Immigration bail’, revised in April 2019,<sup>129</sup> notes that, under paragraph 9 of Schedule 10 of the Immigration Act 2016, “where a person is granted immigration bail subject to a residence condition requiring them to live at a specified address, and the person would not be able to support himself or herself at that address without the assistance of the Secretary of State” the latter “may provide, or arrange for the provision of, facilities for the person’s accommodation at that address to enable the bail condition to be met, but only in exceptional circumstances.” It lists the exceptional circumstances: “[Special Immigration Appeals Commission] SIAC cases, Harm cases and European Convention on Human Rights: Article 3 cases.”
- 8.161** The guidance refers to the requirement for CC case owners to prepare a release plan “for FNOs still serving prison sentences”, which includes consideration of whether these exceptional circumstances are met. From the sample of 112 cases examined by inspectors, observations at CPPs, and interviews and focus groups, there was no evidence that case owners were actively pursuing the provision of accommodation under the exceptional circumstances criteria, unless ordered to do so by an Immigration Judge.

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128 National Probation Service: Foreign National Offenders, Immigration Act 2016 Schedule 10 Bail Accommodation Criteria and Process; January 2018.

129 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/793103/immigration-bail-v4.0.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/793103/immigration-bail-v4.0.pdf)

## Case Study 4: Release dependent on finding suitable accommodation

### The case

Mr P was sentenced to 16 months imprisonment following a second conviction for wounding in 2016. He was made the subject of a Deportation Order and was detained in an IRC in April 2017.

- In June 2017, a “Special Conditions flag” was raised on CID indicating that he was an Adult at Risk Level 1, as he had previously had a stroke.
- In January 2018, a Rule 35 Report was completed stating that he had injuries consistent with torture, and that he had depression and nightmares that had become worse in detention. His Adult at Risk level was raised to Level 2.
- In October 2018, flags were raised due to threats of self-harm and refusal of food and fluids.
- In January 2019, a medico-legal report was received outlining depression, PTSD and psychosis.
- In February 2019, Mr P was granted bail by an Immigration Judge, dependent on the Home Office providing suitable accommodation.
- In March 2019, due to the seriousness of his mental ill-health, Mr P was released to a National Asylum Support Service (NASS) address (normally available only to persons who have claimed asylum).

He had spent 707 days in immigration detention.

Three days after his release Mr P was re-arrested by police for non-payment of fines. Some two weeks later, the Home Office was unable to confirm Mr P’s whereabouts but thought he was probably on police remand.

### Home Office comments:

“The detainee was able to access accommodation due to his exceptional mental health circumstances having been assessed by CCAT. Offenders are entitled to make an application for accommodation but there is no guarantee they will meet the relevant criteria. Police had arrested the above subject on suspicion of being wanted on warrant for non-payment of fines at [x] Court. CC understand the detainee remains on police remand in the interim. We do not know his current location. We were not notified ahead of the arrest and so do not consider this was a pre-planned police operation.”

## Reporting vulnerability

### Rule 35 reports

**8.162** Rule 35 of the Detention Centre Rules 2001 ‘Special illnesses and conditions (including torture claims)’ states that:

“(1) The medical practitioner shall report to the manager on the case of any detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention.



- (2) The medical practitioner shall report to the manager on the case of any detained person he suspects of having suicidal intentions, and the detained person shall be placed under special observation for so long as those suspicions remain, and a record of his treatment and condition shall be kept throughout that time in a manner to be determined by the Secretary of State.
- (3) The medical practitioner shall report to the manager on the case of any detained person who he is concerned may have been the victim of torture.
- (4) The manager shall send a copy of any report under paragraphs (1), (2) or (3) to the Secretary of State without delay.
- (5) The medical practitioner shall pay special attention to any detained person whose mental condition appears to require it, and make any special arrangements (including counselling arrangements) which appear necessary for his supervision or care.”

**8.163** The purpose of Rule 35 is set out in the Enforcement Instructions and Guidance Chapter 55 and in DSO 09/2016 ‘Detention Centre Rule 35 and Short-Term Holding Facility Rule 32’,<sup>130</sup> last revised on 5 March 2019. It is “to ensure that particularly vulnerable detainees are brought to the attention of those with direct responsibility for authorising, maintaining and reviewing detention”.

**8.164** In practice, Rule 35 has been exercised mostly in relation to Rule 35(3). In July 2018, the Detention Centre (Amendment) Rules 2018 came into force, introducing a new clause, Rule 35(6), which states:

- “(6) For the purposes of paragraph (3), “torture” means any act by which a perpetrator intentionally inflicts severe pain or suffering on a victim in a situation in which—
- (a) the perpetrator has control (whether mental or physical) over the victim, and
  - (b) as a result of that control, the victim is powerless to resist.”

**8.165** The amendment to the Rules followed a Judicial Review, sought by Medical Justice and others, challenging the previous definition of torture used by the Home Office in the Adults at Risk guidance, based on the UN Convention on Torture. The latter focused on the perpetrator, defining torture as “pain or suffering inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”. The Judge agreed with Medical Justice that this “would require medical practitioners to reach conclusions on political issues which they cannot rationally be asked to reach”. Adults at Risk guidance was amended to reflect the new definition of torture and mirrors the language of Rule 35(6).

**8.166** A medical practitioner is not required to make a report under Rule 35(3) “if they do not have concerns that a detainee may have been a victim of torture”, including where “the detainee’s experience of harm or mistreatment does not meet the definition of torture”, or “where there are no clinical concerns that the detainee may have been a victim of torture, or where there is no basis for concern other than an unsupported claim by the detainee to have been a victim of torture.”<sup>131</sup> Medical practitioners have the option of completing an Annex D: Rule 35(3)/Rule 32(3) letter, a template for which is included with DSO 09/2016, to explain this to detainees.

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<sup>130</sup> Rule 32 of the Short-term Holding Facility Rules 2018 (SI 409/2018) fulfil the same function as Rule 35 for individuals detained in residential short-term holding facilities. The latter are described as “relatively small detention facilities with sleeping accommodation in which detainees may, in law, be held for up to a maximum of seven days.”

<sup>131</sup> From DSO 09/2016 ‘Detention Centre rule 35 and Short-term Holding Facility rule 32’. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/783642/Detention\\_rule\\_35\\_process.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/783642/Detention_rule_35_process.pdf)

**8.167** In discussion with inspectors, Home Office senior managers expressed concerns about the potential for the Rule 35(3) process to be exploited. However, the Home Office was not informed when an Annex D letter was issued, for example, so had no data on this. A stakeholder told inspectors that data on Annex D letters could be useful in assessing the impact of the change in the definition of torture used by the Home Office.

## Home Office responses to Rule 35 reports

**8.168** Rule 35 reports are submitted to the Detention Engagement Team (DET) manager and copied to the IRC manager. A copy must be placed on the detainee’s medical record and the detainee must be provided with a copy. The DET sends the report to the case owner, who must record it on CID and review the justification for continued detention (as part of an interim detention review), taking into account the information in the Rule 35 report. Case owners are required to provide a response to the IRC within two working days of receipt, copying in the detainee’s legal representative, having decided whether continued detention is appropriate, or whether the person should be released.

**8.169** In his second report, Stephen Shaw highlighted concerns that Rule 35 reports “were routinely rejected for minor errors” and that detainee release rates following a Rule 35 report “had continued to decline”. Meanwhile, the 2019 Home Affairs Committee report, stated that the Rule 35 process had “... failed to prevent too many injustices” and was “not currently a fair or robust system”.

**8.170** The ‘call for evidence’ for this inspection produced similar concerns from stakeholders. One stated that the high number of reports that did not result in release illustrated “a deeply flawed approach to evidence by Home Office case owners” and a “speculative and dismissive approach to medical evidence”. The Independent Monitoring Board also raised concerns about case owners, who were not medically trained, overruling information from doctors about continued detention being detrimental to a detainee’s condition.

**8.171** The Home Office provided data for Rule 35 and Rule 32 reports received and outcomes for the two and a half years from April 2016 to September 2018 – see Figure 19.

**Figure 19: Rule 35 and Rule 32 reports raised between 1 April 2016 and 30 September 2018**

Rule 35/32 category	Reports raised	Detainee released	Detention maintained	No outcome <sup>132</sup>
R35/32(1) Health concerns	219	107	78	34
R35/32(2) Suicide risk	18	3	12	3
R35/32(3) Torture allegation	6,293	1,491	4,470	332
<b>Total</b>	<b>6,530</b>	<b>1,601</b>	<b>4,560</b>	<b>369</b>

**8.172** As Figure 19 shows, between 1 April 2016 and 30 September 2018, over 96% of Rule 35/32 reports were 35 (3)s. It also shows that detention was maintained in 36% of cases where a Rule 35/32 (1) report had been raised, in 67% of cases where a Rule 35/32 (2) report had been raised, and in 71% of cases where a Rule 35/32 (3) had been raised. Overall, fewer than a quarter (24.5%) of all Rule 35/32 reports received during the period resulted in release.

<sup>132</sup> No outcome by the date this data was provided.

- 8.173** In the sample of 112 cases examined by inspectors of persons held in detention under immigration powers on 30 September 2018, 31 had had a Rule 35 report raised. Of these, 27 had been flagged by the case owner as an Adult at Risk, but only two of the 27 had been released. In the other four cases there was no evidence that the case owner had taken any action in response to receiving the Rule 35 report.
- 8.174** Stakeholders questioned whether the quality of Rule 35 reports was one reason for the low release rates. One stakeholder told inspectors that often Rule 35(3) reports did not include information about the likely impact of continued detention, leading the case owner to argue that the medical practitioner “did not say that detention might be injurious”. Another said that despite there being a requirement for doctors to comment on the impact of detention this was “frequently absent or did not address the questions posed”. HM Inspector of Prisons (HMIP) told inspectors that it often found Rule 35 reports were “not of sufficient quality to help caseworkers make fully informed decisions about whether to release a detainee” and that “most reports lacked necessary detail”.
- 8.175** Home Office Compliance and Enforcement policy staff confirmed that there was an issue with the consistency and quality of Rule 35 reports, and case owners also told inspectors about inconsistencies. They were “not convinced that doctors had been trained properly” and described certain reports as “terrible”.
- 8.176** In April 2015, a UKVI audit<sup>133</sup> of Rule 35 processes had found reports with unsupported allegations of torture with little or no medical evidence offered, and “weak” explanations from case owners of decisions to release or to maintain detention. From the evidence produced for this inspection, it appeared that there had been little improvement since then.

## Feedback to healthcare staff

- 8.177** The Home Office appeared to be providing little feedback to medical practitioners about Rule 35 reports. The healthcare team at Brook House IRC told inspectors that they had sought feedback from the Home Office about Rule 35 reports but had not received any. At Yarl’s Wood, the healthcare team had requested assistance with their audits of Rule 35 reports but had not had a response from the Home Office. The Home Affairs Committee’s report raised concerns about the “lack of training and support for IRC GPs in completing Rule 35 reports”. In discussion with inspectors, Home Office case owners agreed.
- 8.178** Inspectors asked the Home Office how many Rule 35 reports had been returned to medical practitioners for revision, broken down by reason and by IRC. The Home Office replied that it was “not privy to this data” but that “Rule 32 and 35 reports are rarely returned to medical practitioners at the IRC or STHF”. A stakeholder contended that case owners were failing to revert to doctors, in instances where the Rule 35 report did not address the impact of detention on the person’s health, despite DSO 09/2016 specifically directing case owners to “telephone the Home Office DET immediately and ask them to obtain sufficient information [about a medical concern] from the IRC doctor” to enable “meaningful consideration of the report”.

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133 At the factual accuracy stage, the Home Office clarified that the UKVI audit was of UKVI responses and did not include those from IE.

## Case owners' interpretations of Rule 35 reports

- 8.179** Stakeholders argued that case owners failed to attach sufficient importance to explicit statements in Rule 35 reports about the deterioration in a detainee's condition. One referred to three cases where detention was considered to be detrimental yet the Home Office "disregarded the clinical findings to justify their decision to maintain detention". Another expressed concern that there were "inadequate and ill-considered responses to reports".
- 8.180** HMIP informed inspectors that "the Home Office often maintain detention even when they accept the Rule 35 report as evidence of torture, citing immigration history as countervailing factors against release". A group of organisations working with victims of trafficking raised concerns about the Home Office allowing vulnerability factors to be outweighed too easily by immigration factors.
- 8.181** This chimed with what Criminal Casework case owners told inspectors. They said that "98% [of those with a Rule 35 report] would remain in detention". When deciding whether to maintain detention, their main concern was with "the final bit" of the Rule 35 report, where the doctor noted their concerns about the likely impact of continued detention. Case owners told inspectors their responses often stated that, although the person met the definition of torture, "the doctor has said that it won't have an impact [on detention]".
- 8.182** One stakeholder raised concerns about the Home Office treating Rule 35(3) reports as Level 2 evidence for the purposes of an Adults at Risk assessment rather than Level 3 evidence. In the sample of 112 cases examined, inspectors identified one such case amongst the 31 cases with a Rule 35 report. See Case Study 5.

## Case Study 5: Dismissal of a Rule 35 report despite explicit reference to the impact of continued detention on the detainee's mental and physical health

### The case

The detainee was an overstayer. He was arrested by Immigration Enforcement and detained at an IRC at the end of May 2018. He did not have a criminal history but had failed to comply with the conditions of his release on reporting on two previous occasions. His risk of absconding was therefore assessed as "High".

While in detention he made an asylum claim and in mid-June 2018 his case was passed to Detained Asylum Casework. His asylum claim was refused the following month.

In mid-August 2018, a medical practitioner completed a Rule 35(3) report, stating:

"In my opinion, the symptoms he is describing can be consistent with the clinical findings [of torture] and ongoing detention can have adverse effects on his mental and physical wellbeing. I am raising my concerns that he may be [a] victim of torture in his country and his case needs to be further investigated".

The Rule 35(3) report reached the Home Office at the end of September 2018. At the beginning of October 2018, the detainee was flagged as an Adult at Risk Level 2 (he had previously been flagged as Level 1), and the Home Office noted on a Detention and Case Progression Review (DCPR) form:

"Rule 35 considered and it was accepted that the applicant was a victim of torture, however due to the negative indicators in his immigrations history. Detention is being maintained and the applicant has been as Level 2 Adult at Risk."

In mid-November 2018, a Case Progression Panel (CPP) made no reference to the Rule 35(3) report and recommended continued detention. However, on the same day, the case owner recommended release on the basis of an ongoing appeal that would not be concluded within a reasonable timescale. The person was therefore released.

### Home Office comments:

ICIBI asked why the Rule 35 report had taken six weeks to reach the case owner. The Home Office responded:

"This was a healthcare administrative error but the HO [Home Office] should have been more pro-active in chasing the response. The HO, through DES continually monitor Healthcare to HO correspondence."

In respect of its decision to maintain detention, it commented:

"Having reviewed the Rule 35 notification the GP did not say 'is' or 'was likely' to have an injurious effect, rather they said, 'ongoing detention can have adverse effects on his mental and physical wellbeing'. It is also clear that the AAR level was escalated to Level 2 from 1 October 2018."

**ICIBI comments:**

The six-week delay before the Rule 35(3) report found its way to the case owner is particularly concerning. It was unclear to inspectors whether this was investigated thoroughly.

The evidence in this case appears to meet the test for Adults at Risk Level 3: “professional evidence stating that the individual is at risk”. Adults at Risk guidance states that Level 3 evidence “should be afforded significant weight”. However, it seemed the use of “can” created sufficient doubt about whether “a period of detention would be likely to cause harm” for the case owner to flag the detainee as Level 2 rather than Level 3, making it easier to argue to maintain detention because of immigration factors. Given the seriousness of this decision, it would have been reasonable to expect the case owner to check their interpretation of “can” with the medical practitioner, however, no attempt was made to seek clarification from the latter.

The CPP should have referred to the Rule 35(3) report if only to confirm its acceptance of the case owner’s interpretation of the level of risk.

The system for identifying and responding to an Adult at Risk in detention appears to have failed this detainee at each stage.

- 8.183** The healthcare team at Yarl’s Wood told inspectors they felt that case owners ignored GP advice. Their counterparts at Brook House felt that case owners did not understand Rule 35 reports, had “no medical knowledge” and they sometimes “wondered how they made their decision”.
- 8.184** CC managers said they were concerned that case owners were expected to make judgements on the severity of medical conditions, stating that this was “complex stuff” and they were “not doctors” so “can’t guess”. Often, they had to “google” medication. Inspectors observed CC case owners using Google and case owners said they were “googling every single medicine”. CC senior management told inspectors “our staff don’t have the knowledge” and they “look on Google to try and see what a medical condition could be”. National Removals Command (NRC) case owners did the same but felt they lacked the knowledge to understand the information they found. They also said that the training they had received on Rule 35 reports had been inadequate.

## **Under-usage of Rule 35 categories (1) and (2)**

- 8.185** Stakeholders told inspectors they believed that Rule 35(1) and (2) were underused. HMIP commented that “very few Rule 35 reports are submitted when a detainee suffers from suicidal ideation, even when the centre puts them on constant watch to prevent suicide”. This was relevant because the Adults at Risk indicators do not include suicide and self-harm.
- 8.186** Figure 19 showed that, between 1 April 2016 and 30 September 2018, over 96% of Rule 35 and Rule 32 reports were 35/32(3)s. Home Office data<sup>134</sup> for October to December 2018 showed this trend continuing – see Figure 20.

134 Transparency Data <https://www.gov.uk/government/publications/immigration-enforcement-data-february-2019>

Rule 35 category	Number of reports
Rule 35(1) – Health concerns	18
Rule 35(2) – Suicide risk	0
Rule 35(3) – Torture allegation	496
<b>Total</b>	<b>514</b>

**8.187** Home Office Compliance and Enforcement policy acknowledged that the department should “do more to simplify the landscape” which was currently “confused” as Rule 35(1) and (2) information could potentially be reported by those working with detainees through other means, such as the Assessment Care in Detention and Teamwork (ACDT)<sup>135</sup> system and the IS91RA Part C process.

## Rule 35 report pilot

**8.188** In his second report, Stephen Shaw recommended: “new arrangements for the consideration of Rule 35 reports. This should include referrals to a new body – which could be within the Home Office but separate from the caseworker responsible for detention decisions.” (Recommendation 15)

**8.189** The Home Office responded to this recommendation by developing a pilot scheme where a team comprising two officers from the National Returns Command, two from Criminal Casework and one from Detained Asylum Casework<sup>136</sup> would have responsibility for all Rule 35 responses. If the team assesses that the person should be released the case owner is advised before the team sends its response. In CC cases, the case owner will draft a release referral for the Strategic Director of Returns to decide whether or not to release (following the same procedure as cases where the Detention Gatekeeper (DGK) and CC disagree about an FNO’s detention).

**8.190** The pilot began on 4 March 2019 and was due to run for six weeks. Its purpose was to “evaluate whether an independent team can respond to Rule 35 responses to a higher quality than current casework teams whilst meeting the required timescales”.

**8.191** The pilot was reviewed after three weeks. The review found that the team was under-resourced to meet the demand and timescales for Rule 35 responses. According to DSO 06/2016: “Responsible officers have two working days after accepting receipt to provide a response to the rule 35 report”. This was not met in 25% of non-CC cases and 60% of CC cases.

**8.192** The evaluation report produced at the end of the pilot found that timeliness did not improve, as the team continued to be under-resourced, but decision quality did improve. The team considered that it had had a positive impact overall and recommended that the team be established permanently and linked to the DGK.

<sup>135</sup> ACDT is the system used for monitoring detainees considered to be at risk of self-harm or suicide and is operated in all Immigration Removal Centres (IRCs) and Short-Term Holding Facilities (STHFs).

<sup>136</sup> The resources to create the team were taken from the teams that receive Rule 35 reports.

## Medico-legal reports

- 8.193** A medico-legal report may be commissioned by a person’s legal representative. The report is written by an appropriately qualified clinical expert acting in the role of a medical expert witness in a legal case. While they may refer to any medical condition and the likely harmful effect of continued detention, medico-legal reports are often used to document the psychological and/or physical results of the torture a person has suffered.<sup>137</sup> In such cases, the Adults at Risk guidance states that medico-legal reports “will be regarded as meeting the Level 3 evidence under the policy, providing the report meets the required standards.”
- 8.194** The Home Office told inspectors that there was the potential for the medico-legal reports system to be exploited, noting the sharp increase in the number of Albanians released from detention since 2018 on the basis of a medico-legal report. According to Home Office data, there were five such releases in July 2018, while in March 2019 there were 117.
- 8.195** The Home Office had sought to understand the reasons for this increase and had identified a trend since May 2018 affecting several nationalities “with over 1,500 MLR [Medico Legal Report] reports received” and resulting in a significant number of releases from detention. The data showed an increase in releases recorded under “Adults at Risk – Other”, which had accounted for 10% of all releases in July 2018 and had risen steadily to 45% in March 2019. Inspectors were told that these reports were also being used to support asylum claims and to challenge reporting restrictions imposed as a condition of Secretary of State bail.
- 8.196** Home Office senior management was concerned that the “stark increase and the high likelihood of release from detention following receipt of MLR” may “provide an incentive for reports to be commissioned” and for some reports to be produced “solely for the purpose of release rather than for highlighting vulnerability”, while operational managers in the National Returns Command (NRC) also expressed concerns about potential abuse of the system and told inspectors that some reports submitted by solicitors were “doubtful”.

## The ‘Part C’ process

- 8.197** The IS91RA Part C forms (‘Part Cs’) are the primary mechanism for IRC supplier and healthcare staff to communicate with the Home Office about a detainee who is at risk. DSO 08/2016 ‘Management of Adults at Risk in Immigration Detention’ states:

“where a vulnerability has been identified, the supplier or on-site healthcare team must complete an IS91RA Part C form, including the reference ‘adult at risk’ on the first line of the form”.

- 8.198** From interviews and focus groups, it appeared that supplier and healthcare staff had a good understanding of the Part C process and used it regularly. However, prison staff dealing with Foreign National Offenders held under immigration powers made use of their own reporting processes rather than Part Cs.
- 8.199** From the cases examined for this inspection, it was evident that Part Cs were used to report a wide range of issues and risks, from a change of bedroom location, to a transfer to a Care and Separation Unit, to an assault by one detainee on another. From these cases, there was no apparent consistency about raising a Part C if a person was the subject of Assessment Care in Detention and Teamwork (ACDT) or was recorded as refusing food and fluids. Stakeholders

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137 <http://www.helenbamber.org/our-services/legal/medico-legal-reports/>



suggested that this was because the Part C was seen primarily as the means of alerting the IRC supplier to an issue, and in the case of an ACDT or food and fluid refusal the supplier would already have been involved.

- 8.200** The challenge for staff who submitted a Part C was finding out what action had been taken. Inspectors were told that no feedback was provided by the Home Office to the person who had submitted the Part C, nor did DSO 08/2016 require the Home Office to alert a detainee’s legal representative or the detainee themselves that a Part C had been raised.
- 8.201** A stakeholder expressed concern that, unlike the Rule 35 process where it was mandatory for case owners to set out their response and their reasoning for maintaining detention, the Part C process did not require this, which made it difficult for anyone to challenge decisions. CC managers told inspectors that an interim detention review was “sometimes” done in response to a Part C. In the 112 examined cases there was one where a detainee was not flagged as “at risk”, despite a Part C referring to increased risk factors having been raised since the last detention review.
- 8.202** At Yarl’s Wood, the supplier told inspectors that Part Cs elicited “very little” response from the Home Office, and detainees remained in detention. See Case Study 6.

### Case Study 6: Delayed review and continued detention despite vulnerabilities raised in a Part C

#### The case

The individual (a Foreign National Offender) was detained at an IRC in mid-March 2018, having served a six-month prison sentence.

At the beginning of October 2018, the detainee was flagged as an Adult at Risk Level 2 following receipt of a Rule 35(3) report. Two days later the Home Office made the decision to maintain detention because removal directions were set for three weeks’ time (the end of October).

In mid-October, the IRC raised a ‘Part C’ form, which stated that the person was suffering from “severe anxiety and depression in the context of being in detention”.

The planned removal at the end of October 2018 failed due to “escort admin failure” and new removal directions were set for the beginning of December. Following the failed removal, it took 11 days for the Home Office to complete a detention review. This authorised continued detention.

The detainee was removed from the UK at the beginning of December 2018.

**Home Office comments:**

“The [December] removal date was set for over a month later due to the availability of escorts which were required in this case.

The Adults at Risk policy allows for a case-by-case evidence-based assessment of the appropriateness of the detention of an individual considered to be at particular risk of harm in immigration detention. This will not mean that someone at risk will never be detained. However, it will mean that detention will become appropriate only at the point at which immigration control considerations and/or public protection concerns outweigh the evidence of vulnerability in the particular case. Within this context it will remain appropriate to detain and maintain detention of individuals at risk if it is necessary in order to remove them.

In this particular case, the individual was considered to pose a high risk of harm, due to his offending history and the nature of his offences. He was also considered to pose a high risk of re-offending and of absconding. The individual’s continued violent and non-compliant behaviour in the IRCs, as noted on CID, strengthens these conclusions. When the public protection concerns in this case were balanced against the known vulnerabilities (satisfying Level 2 of the Adults at Risk policy), detention was appropriately balanced and justified to enforce removal, the timescale for which was considered reasonable given the facts of the case.

CC accept that a detention review should have occurred earlier; however, a CID note on 29/10/18 shows a ‘review of detention’ (but not a formal detention review on the proscribed<sup>138</sup> form) occurring and this is not acceptable.”

**ICIBI comments:**

The time taken to complete a detention review following the failed removal at the end of October indicates that little significance was attached to the Part C referring to mental health issues linked directly to the person’s continued detention.

**8.203** In their evidence, one stakeholder commented:

“The Part C risk assessment is not designed with the AAR framework in mind; in particular, the differing evidence levels. Further, the Part C risk assessment can lead to a fragmentation of important data, so that although key indicators are being identified in different documents, data is not being considered cumulatively to ensure that detainees are properly assessed under the AAR policy.”

**8.204** Another stakeholder referred to the fact that the Part C form was unstructured and contained “an open invitation to record anything” and communicated risk and issues that did not relate to vulnerability. The Part C process was considered a poor alternative to Rule 35 specifically, and to information sharing more generally.

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138 sic.

## Eliminating unlawful discrimination

- 8.205** The Policy Equality Statement (PES) that accompanied the original version of the Adults at Risk guidance<sup>139</sup> in 2016 identified a number of factors that the Home Office had considered in order to “eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act”. These were covered under the headings: ‘Age’, ‘Disability’, ‘Gender reassignment’, ‘Pregnancy/Maternity’, ‘Race’, ‘Religion/Belief’, ‘Gender’ and ‘Sexual Orientation’.
- 8.206** This inspection focused on whether the Home Office’s data collection and analysis in relation to the detained population was sufficient to enable it to evidence that, since it had been introduced the Adults at Risk guidance had not discriminated unlawfully against certain groups – (see paragraph 6.58 to 6.67 regarding ‘Race’).

## Transgender and intersex detainees

- 8.207** The Adults at Risk guidance lists ‘transgender’ and ‘intersex’ as indicators of risk in detention. The PES acknowledged that in his first report Stephen Shaw had “suggested” that transsexual individuals suffer a disproportionate risk of bullying and intimidation in detention. It stated that:

“The Home Office accepts that transsexual people are more likely to be victims of bullying. They may therefore be adversely affected by being detained in close proximity to other individuals, some of whom may hold trans-phobic views. Individuals may also require specific medical interventions (in particular provision of hormone treatment) and access to appropriate clothing/make-up allowing them to “pass” in their acquired gender.<sup>140</sup>”

- 8.208** The PES noted that the Home Office did not “collate data on the number of people entering detention broken down by gender reassignment” but “anecdotally the number of transgender is known always to have been very small.”
- 8.209** For this inspection, inspectors asked about the recording of transsexual or intersex persons. They were told that there were no specific data fields on CID but the information may be recorded as free text. The Home Office stated:

“it is acknowledged that the recording of indicators of risk is likely to add value to our understanding of vulnerability in the detention estate and we therefore are considering how the recording of this information may best be incorporated in the development of a new case information database (ATLAS).”

- 8.210** The Home Office repeated that: “It is rare for the detention of a trans or intersex to occur.” It provided inspectors with 10 examples of such cases from 2016–17 and 2017–18. However, given the lack of systematic recording, it was not possible to say whether these were representative of the experiences of detained transgender and intersex persons.

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139 The Policy Equality Statement notes that it “will be reviewed by April 2019. This date is held to be appropriate to account for the required statutory changes to the definition of torture and other envisaged changes to the detention centre rules in 2018.” However, the Detention Centre Rules 2001 were not revised in 2018, except for an amendment to Rule 35 concerning the definition of torture. The Home Office circulated a draft ‘Removal Centre Rules 2019’ for selective consultation in March 2019. The consultation closed in June 2019.

140 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/695212/AaR\\_PES\\_final\\_SCS\\_cleared.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/695212/AaR_PES_final_SCS_cleared.pdf)

- 8.211** Inspectors found a lack of common understanding about how to apply the Adults at Risk guidance in these cases. Immigration Compliance Enforcement (ICE) team members felt the Detention Gatekeeper (DGK) was inconsistent in its decisions about detaining transgender persons. DGK staff said they would authorise the detention of transgender and intersex persons but would first seek further information about their physical ('pre-op/post-op') status.
- 8.212** According to stakeholders, this approach ignores the complexity and subsequent vulnerability of trans individuals, and operative status is not a reliable indicator of whether a person should be placed in a male or female IRC. The healthcare team at Yarl's Wood told inspectors about receiving transgender detainees whom they assessed as completely unsuitable for immigration detention. Following submission of a 'Part C', these detainees had been released.

## LGBTQI+

- 8.213** The Home Office was unable to tell inspectors how many LGBTQI+ persons had been held in immigration detention in 2016–17, 2017–18 and 2018–19, as this information was not centrally recorded on Home Office systems. The Home Office explained that:

"The disclosure and therefore identification of an LGB individual detained under immigration powers, about their sexuality, is entirely at the discretion of the individual. Whilst the DSO 02/2016 ['Lesbian, gay and bisexual detainees'] requires Home Office Immigration Enforcement staff to record this disclosure on the Casework Information Database (CID) as appropriate, when they are told, there is not expectation that this information will be disclosed in every case. Consequently, even a manual trawl of cases of individuals detained within the requested timeframe, will not necessarily be representative of the true number of LGB individuals detained during this period."

- 8.214** In relation to Adults at Risk guidance, the Home Office stated that:

"sexuality of an individual (for those falling within L-G-B-Q), is not considered a category of risk in which an individual is particularly vulnerable to harm within the context of immigration detention under the adults at risk policy."

- 8.215** However, the Policy Equality Statement (PES) acknowledged that:

"The Home Office recognises that, where an LGB detainee's sexuality is openly expressed, they may be more likely to be victims of bullying and therefore may be adversely affected by their experience of detention."<sup>141</sup>

- 8.216** The PES cited Stephen Shaw, who had recommended that "The Home Office should consider the need for a separate DSO on LGBTI detainees. Anti-bullying policies should include explicit reference to LGBTI detainees." (Recommendation 19), noting that he had not found "that LGB individuals needed particular protection in the immigration detention context and he did not recommend that there should be a presumption against the detention of such individuals."

- 8.217** Under "Mitigation", the PES referred to existing DSOs on managing bullying (DSO 12/2012 'Room Sharing Risk Assessment') and on LGB detainees (DSO/02/2016), which provides for "consistent standards of treatment across the detention estate for detainees belonging to these groups to safeguard their welfare whilst in detention." The PES continued:

141 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/695212/AaR\\_PES\\_final\\_SCS\\_cleared.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/695212/AaR_PES_final_SCS_cleared.pdf)

“There is no apparent reason to consider that the adults at risk policy will impact negatively on individuals on the basis of their sexual orientation ... It has also widened, with the inclusion of groups such as Post Traumatic Stress Disorder sufferers and victims of sexual or gender-based violence, the scope of those considered to be ‘at risk’. In effect, this means that LGBT individuals who are found to be vulnerable if detained by virtue of some experience of harm relating to their sexual orientation will be likely to be picked up by relevant indicators of risk in the policy.”

**8.218** For this inspection, the Home Office repeated that “any specific needs of an LGB individual should be considered as part of standard risk assessments, for example, the ‘Room Sharing Risk Assessment’ (DSO 12/2012 refers), in order to manage and lower any risk of vulnerability.” However, as it did not collect any data in relation to LGBTQI+ detainees it was unable to evidence that this approach to risk assessment was effective in identifying and dealing with any specific needs.

**8.219** Meanwhile, in their submission to this inspection, one stakeholder challenged the Home Office position and advocated that:

“The Home Office should follow developments in international law and recognise that detention of LGBTQI+ people places them in a situation of vulnerability; ... [and] should recognise lesbian, gay and bisexual people as vulnerable in immigration detention, alongside existing recognition of the vulnerability of trans and intersex people in detention.”

## Pregnancy

**8.220** Under the Adults at Risk guidance, pregnancy is regarded as Level 3 evidence. The Policy Equality Statement refers to the evidence provided by the Royal College of Midwives suggesting that “pregnant women are uniquely vulnerable because of their healthcare needs”, which led Stephen Shaw to recommend “that the Home Office amend its guidance so that the presumptive exclusion from detention for pregnant women is replaced with an absolute exclusion.” (Recommendation 10)

**8.221** However, “The Government did not agree to an absolute exclusion because there remains a need to detain some pregnant women in order to be able to effect their removal.” Instead, it used the Immigration Act 2016, which came into force on 12 July 2016, to impose statutory limits on the detention of pregnant women.

**8.222** As Chapter 55 of the Enforcement Instructions and Guidance explains:

“Under [section 60 of the Immigration Act 2016](#), a woman who is to be detained pending removal or deportation and who the Secretary of State is satisfied is pregnant may be detained only if the removal or deportation will take place shortly or there are exceptional circumstances to justify detention. In either case, the detention of such a pregnant woman may be for no more than 72 hours although this may be extended up to a total of 7 days if authorised by a minister. In addition, there is a duty to have regard to the welfare of the pregnant woman.”

- 8.223** The PES contained some data in relation to the detention of pregnant women under immigration powers, which the Home Office stated it had begun collating only since July 2016. This showed that, from 12 July to 31 January 2017, 34 pregnant women were detained, only one of whom required Ministerial authorisation to detain beyond 72 hours. Up to 30 November 2017, the total increased to 75.
- 8.224** For this inspection, inspectors asked the Home Office for the number of pregnant women detained in an IRC, or in a prison under immigration powers, in each month since 2016, along with the duration of each period of detention and the detainee’s age and nationality. The Home Office said it was unable to provide the data in the requested format and detail and directed inspectors to the transparency data – see Figure 21. It was unclear whether these figures included women held in prison under immigration powers.

Figure 21: Transparency data PWD 01 February 2019 Number of pregnant women detained in the immigration detention estate	
Quarter	Number detained
2016 Q3	12
2016 Q4	15
2017 Q1	12
2017 Q2	8
2017 Q3	20
2017 Q4	13
2018 Q1	12
2018 Q2	11
2018 Q3	8
2018 Q4	14

- 8.225** DSO 05/2016 ‘Care and Management of Pregnant Women in Detention’ is clear that:

“If a woman informs centre staff that she is pregnant or suspects that she is pregnant, the member of staff should notify healthcare staff, the onsite [Home Office Immigration Enforcement] HOIE team, and the Head of Detention Operations as soon as possible. On notification healthcare staff should offer the detainee a pregnancy test to confirm the pregnancy.”

- 8.226** Subject to obtaining the woman’s consent, the “onsite healthcare team must raise an IS91RA Part C”. The process appeared to work. Healthcare staff in Yarl’s Wood informed inspectors that once they identified that a detainee was pregnant the process of informing the Home Office and the woman’s release were swift: “ladies are gone the next day”.

## Age 70 and over

- 8.227** The Adults at Risk Policy Equality Statement considered age, both in terms of those under 18 and those aged 70 or over. The latter is specified as an indicator of risk in detention within the policy: “Accordingly, people falling into this group will be detained only when immigration control considerations in their case outweigh their inherent vulnerability.”

**8.228** The PES noted that the data on adults entering detention was not subdivided by age groups, except over and under 18, and therefore it could not say how many individuals aged 70 and over had historically been detained. However, the Home Office accepted “that elderly people may be adversely affected by detention, given that infirmity increases with age. Older people are also more likely to suffer from physical disabilities or have particular medical needs.” And, for the purposes of the Adults at Risk guidance, it regarded 70 as “elderly” and automatically Level 2.

**8.229** Inspectors asked the Home Office for the number of people who had been detained who were aged 70 or over since the Adults at Risk guidance was introduced. The Detention Gatekeeper provided local management information covering the period September 2016 to October 2018, which showed the number detained “from the community”<sup>142</sup> and the referring unit – see Figure 22.

Figure 22: Number of persons aged 70 or over detained from the community between September 2016 and October 2018	
Referring Unit	Number
Border Force	22
Criminal Casework	4
Detention Gatekeeper	1
National Returns Command	21
Special Operations	1
<b>Total</b>	<b>49</b>

## File sampling analysis

### Length of detention and vulnerability in the detained estate

**8.230** Inspectors examined a sample of 112 cases of persons who were in immigration detention on 30 September 2018. The records were selected at random from three lists:

- detainees identified as Adults at Risk (50 cases)
- detainees not identified as “at risk” (50 cases)
- detainees who had been in detention for more than 12 months (12 cases)<sup>143</sup>

**8.231** In this sample, detainees recorded as Adults at Risk remained in immigration detention for longer on average than those not identified as “at risk”, while detainees (FNOs) whose cases were owned by Criminal Casework spent on average longer in detention than detainees whose cases were owned by other units. “At risk” FNOs spent the longest time on average in detention – see Figures 23 to 25.

<sup>142</sup> The assumption is that this excludes any FNOs who may have been detained under immigration powers on completion of their custodial sentence.

<sup>143</sup> Home Office data showed that 2,049 persons were in immigration detention (either in an IRC or in prison) on 30 September 2018. The sample of 112 therefore represents 5.4% of the total.

Figure 23: Average length of detention by type		
Type	Number of cases	Number of days
Adult at Risk	50	185
Not "at risk"	50	125
12 months +	12	619

Figure 24: Average length of detention by case owner <sup>144</sup>		
Case owner	Number of cases	Number of days
Criminal Casework	44	253
National Returns Command (NRC), Detained Asylum Casework (DAC), Third Country Unit (TCU), Border Force (BF)	56	86

Figure 25: Average length of detention by type and case owner <sup>145</sup>			
Case owner	Type	Number of cases	Number of days
Criminal Casework	Adult at Risk	21	291
	Not "at risk"	23	219
NRC, DAC, TCU, BF	Adult at Risk	29	109
	Not "at risk"	27	55

**8.232** Of the 112 detainees in the sample, 31 (28%) had been removed from the UK by the time inspectors examined the case files in March 2019. (In 2018, 44% of all persons detained were removed.) From the sample, cases managed by Criminal Casework, that is Foreign National Offenders, spent significantly longer in detention before removal than cases managed by other units.

Figure 26: Average length of detention for removed cases by type		
Type	Number removed	Number of days
Adult at Risk	14	180
Not "at risk"	12	99
12 months +	5	670

Figure 27: Average length of detention for removed cases by case owner <sup>146</sup>		
Case owner	Number of cases	Number of days
Criminal Casework	20	321
NRC, DAC, TCU, BF	11	57

144 Excludes 12 month+ cases.

145 Excludes 12 month+ cases.

146 Includes 12 months+ cases.



Figure 28: Average length of detention by criminal offence and vulnerability <sup>147</sup>			
Criminal offence	Type	Number of cases	Number of days
Sexual offence	Adult at Risk	4	543
	Not "at risk"	7	213
Violent offence	Adult at Risk	1	164
	Not "at risk"	6	177
Other	Adult at Risk	19	213
	Not "at risk"	13	225

**8.233** All of the 12 month+ detainees in the sample were CC cases. There are a number of reasons why FNO cases may be delayed. Firstly, a Deportation Order must be served on the FNO, and this attracts a right of appeal. Secondly, many FNOs have been in the UK for a long time and have family ties here, and many have immigration status in the UK which may need to be revoked, which again attracts a right of appeal. Thirdly, the removal or deportation of people who were born in the UK or who arrived as children and invariably results in legal challenges.

Case Study 7: Extended immigration detention of an FNO who could not be removed
<p><b>The case</b></p> <p>Mr O, a foreign national, is a prolific and violent criminal who was sentenced to 5 years in prison and made subject to a Deportation Order (DO). In prison he was diagnosed with paranoid schizophrenia and exhibited a range of troubling behaviours. Upon completion of his custodial sentence he remained in prison, detained under immigration powers, and was designated as an Adult at Risk Level 2 due to his poor mental ill-health.</p> <p>In late July 2018, CID recorded that Home Office Returns Logistics could give no timescale for obtaining an Emergency Travel Document (ETD) for Mr O's country of origin, suggesting that removal was unlikely to be imminent. Nonetheless, Mr O remained in prison.</p> <p>He was eventually released on Secretary of State bail after 450 days in detention.</p> <p>The Home Office told inspectors that the case "could have been progressed more expeditiously".</p>
<p><b>Home Office comments:</b></p> <p>"CC acknowledge that this case could have been handled and progressed more expeditiously. We note that this was an FNO who had 41 convictions including 3 serious assaults and this case shows the difficult balance between the presumption of not detaining and public protection considerations when we consider release. Special conditions flag has been misinterpreted and the special condition is actually identifying that they are unsuitable for an IRC given behaviours, not that they are unsuitable to be held in prison under immigration powers."</p>

**8.234** From the 112 cases examined, those designated Adult at Risk Level 3 were released from detention relatively quickly. There were ten such cases. None was an FNO. They had spent an average of 95 days in detention. The average time between them being designated Level 3 and their release was three and a half days (the range was between eight days and the same day).

<sup>147</sup> Includes 12 months+ cases.

Seven of the 10 were designated Level 3 following receipt of a Medico-Legal Report (MLR), two following completion of a Rule 35 report, and one following the completion of a Part C report. Four had been on an ACDT. In one of the two Rule 35 cases, the person was not flagged as Level 3 until two months after the Rule 35 report was submitted but released two days after being flagged as Level 3.

- 8.235** However, of the 100 detainees who had been in detention for less than 12 months, those with a declared medical condition spent longer in detention on average than those without one.

**Figure 29: Average length of detention for those with a declared medical condition<sup>148</sup>**

Declared condition	Number of cases	Number of days
Yes	40	172
No	60	151

- 8.236** Of the 40 cases with a declared condition, 21 were FNOs, which might go some way towards explaining the average number of days spent in detention; 37 were identified as an Adult at Risk, three of whom were Level 3; in 28 of the 40 cases the condition was self-declared; 16 had a Rule 35 report; six were recommended for release, which was accepted by the case owner in three cases.
- 8.237** Case owners told inspectors that getting access to medical records was challenging. The detainee had to give their consent. Detention Services Order 01/2016 ‘Protection, Use and Sharing of Medical Information Relating to People Detained Under Immigration Powers’ sets out the process for obtaining medical consent. It states that “it is essential that the purpose of the information sharing is made explicit and the person understands what will happen to their information”. Inspectors were told that some detainees refused consent as they were concerned that the information would be used against them. This had a knock-on effect where release relied on collaboration with other agencies, such as the NHS.
- 8.238** However, based on the case sample, observation of the CPPs, and discussions with case owners, the most common reason case owners and CPPs decided against releasing FNOs was concern for public protection, especially where an FNO had served a criminal sentence of four or more years.
- 8.239** Inspectors found that FNOs who had been convicted of sex offences were likely to spend a substantial period in immigration detention in prison as their offence acted as a barrier to a transfer to an IRC. The same was true, but to a lesser extent, of those convicted of violent offences.
- 8.240** In one case, the FNO had arrived in the UK as a small child. In 2017, now a young adult, he was convicted of sexual assault, exposure and perverting the course of justice and was sentenced to eight months in prison. When deportation action began, doubts emerged surrounding the detainee’s identity and the ease of re-documentation. In August 2018, a CPP recommended release as there was little prospect of imminent removal. He was eventually released to live at a relative’s house in January 2019, tagged and subject to a curfew. He had spent 481 days in prison, detained under immigration powers.

148 Excludes 12 months+ cases.

**8.241** Commenting on the caution shown by CC case owners, a senior policy manager told inspectors “many case owners will have experienced the FNO crisis under Charles Clarke, and that makes them risk averse when it comes to authorising release”. Based on case sampling, CPPs and interviews, this extended to FNOs with identified vulnerabilities.

## Impact of long and open-ended detention on vulnerability

**8.242** It was a commonly-held view amongst contributors to this inspection, and more widely, that a prolonged period of detention, particularly where there is uncertainty how long it will last, can have a profound effect on a detainee’s mental health. For example, the GP at one prison commented that “this uncertainty adds to anxiety and often manifests itself through self-harm episodes. [We] often see self-harm as a way for detainees to take back control of their destiny, something they don’t have if they are detained for a long time.”

**8.243** The decline in mental health was also noted by a member of Home Office staff at an IRC who told inspectors:

“It’s an issue. I’ve seen it with one of my detainees. It’s quite sad really. You see them going down and down. You can let the caseworker know. Normally at that stage they’ll be seeing healthcare but not much gets done. When you give that information, they still keep them here ... It doesn’t really change their decision to keep them in detention.”

**8.244** Given that this was something that Stephen Shaw considered at length in his second report, this first annual review of the working of the Adults at Risk process did not seek to examine this issue, other than to note that the Adults at Risk guidance refers to not detaining a person “if the evidence suggests that the length of detention is likely to have a harmful effect” but sets this against a public interest test, where “the public interest in the deportation of foreign national offenders (FNOs) will generally outweigh a risk of harm to the detainee.”

**8.245** It would be reasonable to expect, therefore, that non-FNOs and detainees with an identified medical condition or designated an Adult at Risk would spend less time in detention. Adults at Risk Level 3 cases aside, Figures 23-29 show that this was not true of Adults at Risk detainees at risk or those with an identified medical condition. Nor, despite the clear evidence from the 112 sample cases examined that FNOs were spending far longer in detention, did this appear to be true based on the data the Home Office provided in relation to detainees who were successfully removed – see Figure 30.

<b>Date range</b>	<b>Command</b>	<b>Total removed</b>	<b>Days detained</b>
4 weeks to 1 March 2018	Criminal Casework	345	29
	National Returns Command	348	43
4 weeks to 1 Sept 2018	Criminal Casework	240	29
	National Returns Command	257	38
4 weeks to 1 March 2019	Criminal Casework	187	31
	National Returns Command	357	35

**8.246** The data at Figure 30 excludes those released from detention and those still in detention. Occupancy statistics taken from Home Office Management Information (MI) therefore provide a fuller picture of the length of time detainees were spending in detention.

**Figure 31: Occupancy statistics for the detained estate by length of detention for those detained as at week ending 26 November 2018**

Time detained	Week to 26 Nov 2018		4-week average to 26 Nov 2018	
	Count	Percentage	Count	Percentage
0 to 1 week	314	16%	301	16%
1 week to 1 month	642	33%	586	30%
1 to 4 months	634	33%	668	35%
4 to 6 months	119	6%	133	7%
6 to 12 months	170	9%	186	10%
12 to 18 months	41	2%	37	2%
18 to 24 months	6	<1%	8	<1%
24 months +	9	<1%	8	<1%
<b>Average days detained</b>	72.6		75.4	

**8.247** The same Management Information showed the length of time spent in detention for each person who was removed or released in the same periods.

**Figure 32: Occupancy statistics for the detained estate by length of detention for those removed in the four weeks to week ending 26 November 2018**

Time detained	Week to 26 Nov 2018		4-week average to 26 Nov 2018	
	Count	Percentage	Count	Percentage
0 to 1 week	80	47%	97	43%
1 week to 1 month	65	38%	84	37%
1 to 4 months	21	12%	36	16%
4 to 6 months	2	>1%	3	>1%
6 to 12 months	1	<1%	4	>1%
12 to 18 months	0	0%	1	<1%
18 to 24 months	0	0%	1	<1%
24 months +	0	0%	0	0%
<b>Average days detained</b>	16.0		24.5	

**Figure 33: Occupancy statistics for the detained estate by length of detention for those released in the four weeks to week ending 26 November 2018**

Time detained	Week to 26 Nov 2018		4-week average to 26 Nov 2018	
	Count	Percentage	Count	Percentage
0 to 1 week	38	14%	36	14%
1 week to 1 month	126	47%	119	46%
1 to 4 months	83	31%	82	32%
4 to 6 months	6	2%	12	5%
6 to 12 months	11	4%	9	3%
12 to 18 months	3	1%	1	<1%
18 to 24 months	0	0%	1	<1%
24 months +	0	0%	0	0%
<b>Average days detained</b>	46.6		42.3	

# 9. Inspection findings: Foreign National Offenders

## Foreign National Offenders and other detainees

- 9.1** Foreign National Offenders (FNOs) present the Home Office with particular challenges when it comes to detention and removal.

### The detained population

- 9.2** As at 30 September 2018, Home Office records indicated that 921 FNOs were held in detention under immigration powers. At that time, the total number of detained adults was 2,049. FNOs therefore represented 45% of all detainees. Roughly two-thirds of the FNOs were detained in an Immigration Removal Centre (IRC) or Short-Term Holding Facility (STHF). The remainder were detained in a prison.
- 9.3** None of the 1,128 non-FNOs had been in detention continuously for over a year as at 30 September 2018, whereas 54 FNOs had been, and two FNOs had been in detention for over two years.
- 9.4** Of the 921 FNO detainees, 377 (41%) had been flagged as an Adult at Risk. This compared with 403 (36%) of the 1,128 non-FNOs.

### Foreign National Offenders

- 9.5** Criminal Casework (CC) is notified by Her Majesty's Prison and Probation Service (HMPPS) within 10 days of the sentencing of any foreign national who has received a custodial sentence. The information passed to CC will include the FNO's conditional release date, enabling CC to plan when to serve relevant paperwork, for example a Deportation Order, and to begin to progress the case towards removal.
- 9.6** Where an FNO is within 30 days of their conditional release date and cannot be removed immediately, CC will consider whether to recommend their release into the community, in which case they will normally be required to report regularly to a Reporting and Offender Management Centre, or to request that they are transferred to an IRC, which is subject to Detainee Monitoring and Population Management Unit (DEPMU) determining that they are suitable to be detained in an IRC, or to look to have them detained in prison under immigration powers.
- 9.7** Chapter 55 of the 'Enforcement Instructions and Guidance' sets out the factors to be considered when deciding whether to detain an FNO under immigration powers on completion of their custodial sentence:

"Where a foreign national offender meets the criteria for consideration of deportation, the presumption in favour of granting immigration bail may well be outweighed by the risk to the public of harm from re-offending or the risk of absconding, evidenced by a past history

of lack of respect for the law. However, detention will not be lawful where it would exceed the period reasonably necessary for the purpose of removal or where the interference with family life could be shown to be disproportionate.

## Data for releases and transfers to an IRC

- 9.8 Transparency data for the second half of 2018 shows the numbers of FNOs released and transferred to an IRC – see Figure 34. Inspectors were told that none of those released from prison was released without having been considered for deportation.

Figure 34: Foreign National Offender releases and transfers to immigration detention		
Quarter	Released	Transferred
2018 Q3	1,728	1,285
2018 Q4	1,711	1,246

- 9.9 Home Office Management Information (MI) showed that the 47 FNOs released from detention by Criminal Casework (CC) in the week ending 25 November 2018 had been in detention for an average of 121 days. The 101 persons released by NRC in the same week had been in detention for an average of 29 days.

## Facilitated Returns and Early Removals

- 9.10 The Facilitated Return Scheme (FRS) has been running since 2006. It is open to all non-EEA nationals who have been convicted of a crime and have served a custodial sentence of up to four years. FRS is not itself a removal mechanism but simply offers financial support to encourage compliance with the removal process so that FNOs leave the UK at the earliest possible opportunity.<sup>149</sup> The scheme can be accessed once all appeal rights have been exhausted.
- 9.11 Meanwhile, there are three removal mechanisms that are used to remove FNOs before the end of their custodial sentences: the Early Removal Scheme (ERS), Prisoner Transfer Agreements (PTA), and the Tariff Expired Removal Scheme (TERS). These mechanisms do not apply to FNOs who have completed the custodial part of their sentence, whether detained in a prison under immigration powers or in an IRC or non-detained and in the community.
- 9.12 The Home Office told inspectors that the Early Removal Scheme (ERS) “enables FNOs serving a determinate prison sentence to be removed up to nine months (270 days) before the end of the custodial element of the sentence (subject to a minimum of a quarter of their sentence having been served). Once removed from the UK they are not subject to further imprisonment in their own country and cannot legally return to the UK while the Deportation Order remains in force.” Inspectors were also told: “This accounted for 46.8% of FNO removals in the Home Office’s latest quarterly transparency release. Those who wish to return home voluntarily are now progressed quickly through the system.”

## Detention in prison under immigration powers

- 9.13 Inspectors were provided with a redacted copy of a Service Level Agreement (SLA) between the Home Office and the National Offender Management Service (NOMS),<sup>150</sup> under which the latter committed to providing 400 prison spaces for use by the Home Office for immigration

149 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/558202/Facilitated-returns-scheme-v8\\_0.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/558202/Facilitated-returns-scheme-v8_0.pdf)

150 In April 2017, NOMS was replaced by Her Majesty’s Prisons and Probation Service (HMPPS).

detainees. Under the SLA, it is a matter for the Home Office which FNOs will be detained in prison rather than in an IRC. Inspectors were told that a new SLA was in draft. This was “owned” by Home Office/HMPPS Bi-lateral Steering Group.

- 9.14** Inspectors were also provided with an undated slide, setting out the Terms of Reference for a “Foreign Nationals Reference Group”, the purpose of which was “To develop operational policies and processes for the progressive management, successful transfer and effective preparation for release of Foreign National Offenders (FNOs)”. This HMPPS-led Group,<sup>151</sup> which was scheduled to meet every two months, included “Home Office Immigration Enforcement Criminal Casework” and “FNO Policy”. However, the true extent of Home Office engagement was unclear.<sup>152</sup>
- 9.15** Inspectors asked the Home Office, for numbers of FNOs (FNOs) detained in prisons under immigration powers, broken down by category of prison (location), amount of time held under immigration powers, and original sentence length. According to evidence provided by the Home Office, as at 30 January 2019 there were 116 FNOs detained in prisons in England and Wales under immigration powers, plus two in Scottish prisons and one in prison in Northern Ireland. Of these, only one was recorded as having been detained for between 7-12 months. However, the January 2019 data did not include those detained in prison for more than 12 months. This data did not align with other data also provided by the Home Office – see below.

## Adults at Risk in prison

- 9.16** Home Office data for the end of October, November and December 2018 showed the number of persons flagged as Adults at Risk who were detained in prisons under immigration powers – see Figure 35.

Figure 35: Numbers of persons flagged as Adults at Risk detained in prisons under immigration powers at end October, November and December 2018					
	Total FNOs	Number of prisons	AAR Level 1	AAR Level 2	AAR Level 3
October	310	68	47	77	0
November	315	62	38	76	2
December	369	64	45	77	2

## Induction by the Prison Operations and Prosecutions team

- 9.17** All foreign nationals held in prison, including those on remand, are inducted by members of the Home Office’s Criminal Casework Prison Operations and Prosecutions (POP) team. The main purpose of this induction is to establish the person’s immigration status as early as possible and to advise on possible outcomes in the event of sentencing, provide details of removal schemes, and contact details for Home Office staff.
- 9.18** At the time of the inspection, POP comprised an Assistant Director (Acting Grade 7), four SEOs and 13 HEOs running 13 teams (with over 100 staff, mostly EOs). Most of the teams were responsible for a number of HM prisons within a particular region. There was also Removals Desk and a liaison team (an HEO and an AO), based in HMPPS headquarters.

151 The Public Sector Prisons lead for FNOs was Chair of the Group.

152 At the factual accuracy stage, the Home Office commented: “The Home Office do not recognise the term or group ‘Foreign National Offenders Group’. It would be useful to understand where this came from or who referred to it, it appears to be an MoJ or HMPPS function.”

- 9.19** POP management described it as acting as “the lynchpin between the case worker and the prison”, making sure the FNO and the case owner had the information they needed, similar to the Detention Engagement Team function. Part of POP’s role was to monitor and ensure that immigration cases were being processed in line with the end of an FNO’s custodial sentence. Management saw it as in POP’s interest to prompt case owners: “I don’t want my staff being put at risk if someone in Croydon is being inefficient”. Although POP staff had received personal safety training, in some prisons they were not issued with radios (as there were not enough to go around). POP also commissioned and were present for the taking of fingerprints for travel documents by Prison Officers, by force if necessary.
- 9.20** But, POP staff told inspectors, even if they get all of the necessary information to the case owner they are still at the mercy of the latter’s timelines and decision making. This was a particular issue for prisoners who had elected to leave the UK but where the case owner was slow to process the paperwork. Inspectors found that, despite POP’s primary function as a conduit for information, the mechanisms for raising issues and concerns appeared fragmented, ad-hoc, and reliant on personal relationships.
- 9.21** The POP function did not explicitly include screening for indicators of trafficking. Nor did it include monitoring FNOs for signs of vulnerability and the impact on FNOs of continued detention. POP staff told inspectors that this was the responsibility of healthcare. However, if POP staff saw an individual deteriorating, they were clear about the process they should follow:
- Observation book entry.
  - Talk to them if possible.
  - IR mercury report<sup>153</sup> to go to security department.
  - Senior officer or custodial manager will intervene. Depends on the situation.
  - Observation book entries to alert everyone.
  - Flag to caseworker and chase.
  - Decision on case or ticket or whatever the barrier is.
  - Make manager aware and caseworker.
  - Notes on CID and email to caseworker.
- 9.22** Focus groups with POP staff based in an FNO-only prison<sup>154</sup> highlighted examples where staff had concerns about FNOs and had taken safeguarding actions, for example, making sure they were aware of mental health support in the prison. However, other POP staff who worked across a number of prisons highlighted the challenge of building relationships with TSFNOs (Time Served Foreign National Offenders) due to the size of their case load and the intervals between visits to each prison.
- 9.23** Inspectors were told that the Home Office and HMPPS had decided to action part of a draft SLA which meant that paperwork (an IS91) authorising the detention under immigration powers of an FNO would be served 30 days ahead of the latter’s conditional release date. In March 2019, prison staff told inspectors that they had noticed an improvement in the timescales for the Home Office to produce an IS91, however, this was not consistent. Meanwhile, the IS91 was served by prison staff rather than Home Office staff, meaning that the Home Office was not in a position to see how the FNO reacted to the IS91, or to respond.

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153 Prisons’ intelligence reporting and management system.

154 At the time of the inspection, HMPPS operated two FNO-only prisons in England. In its Annual Report, HMPPS indicated that it planned to open a third in 2019. FNOs represent approximately 11% of the overall prison population.



## Vulnerability

- 9.24** Inspectors spoke to FNOs at HMP Brixton and at HMP Maidstone (an FNO-only prison). The issues they raised echoed those raised by detainees in IRCs, for example: not receiving updates about their Home Office case, including about any barriers; a feeling of being coerced into signing documents, despite the Home Office knowing that they had a legal representative; concern that the Home Office may take advantage of those with poor English; and, the challenge of providing a suitable release address. In HMP Brixton, where there was no embedded POP team, FNOs were unclear how to contact the Home Office to try to progress their cases.
- 9.25** For FNOs who had completed the custodial part of their sentence in a Category ‘C’ prison, such as HMP Maidstone, but whom the Home Office considered unsuitable for transfer to an IRC, there was an additional issue. Having served their custodial sentence they were entitled to be held under unconvicted/remand conditions, however, this would mean being transferred by HMPPS to a Category ‘B’ remand prison where the regime and the environment was generally harsher. FNOs described this to inspectors as a “false choice”.
- 9.26** Several of the FNOs complained to inspectors about Home Office delays. One commented: “it’s now over four months past release. Immigration didn’t ask me anything. No-one came to me. ... But I spent five years in prison and they never came to me to ask, now I’m two months over they are coming to me. ... I am angry and hurt.”

## Deaths in custody

- 9.27** The Prisons and Probation Ombudsman (PPO) investigates the death in custody of anyone held in immigration detention.<sup>155</sup> The PPO’s reports include recommendations and require responses from the relevant parties, including an action plan.
- 9.28** Since the end of 2018, the Home Office has published data for deaths in IRCs as part of its transparency data. Deaths in prisons, including of FNOs, are recorded and published by the Ministry of Justice (MoJ). MoJ data does not differentiate those detained under immigration powers, but in January 2019 MoJ reported that of all “self-inflicted deaths” in prison 9% were foreign nationals.”<sup>156</sup>
- 9.29** In February 2019, the PPO told inspectors that, since April 2016, six FNOs had died in IRCs and three in prison. Of the former, two were self-inflicted deaths, one was a homicide, one was drugs related, and two died from natural causes. All three deaths in prison were self-inflicted.
- 9.30** One of the three self-inflicted prison deaths was that of Mr Michal Netyks, who took his own life at HMP Altcourse after being served with a Deportation Order on the day he was due to be released from prison. The death was investigated by the PPO<sup>157</sup> and the Coroner for Liverpool. The latter issued a Regulation 28 (Prevention of Future Death) report in December 2018,<sup>158</sup> with recommendations for both the Director (Governor) of the prison and for the Home Office:

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<sup>155</sup> <https://www.ppo.gov.uk/>

<sup>156</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/774880/safety-in-custody-bulletin-2018-Q3.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/774880/safety-in-custody-bulletin-2018-Q3.pdf)

<sup>157</sup> <https://s3-eu-west-2.amazonaws.com/ppo-prod-storage-1g9rkjhjkgw/uploads/2018/12/N219-17-Death-of-Mr-Michael-Netyks-Altcourse-07-12-2017-SI-31-40-35.pdf>

<sup>158</sup> <https://www.independent.co.uk/news/uk/home-news/home-office-immigration-detention-denial-deleting-records-death-michal-netyks-poland-a8693121.html>

“The Director [of the prison] should ensure that: the prison has arrangements in place to inform prisoners of continuing detention under immigration powers in a way that minimises the prisoner’s distress; and when staff serve immigration decisions relating to a prisoner’s detention or removal from the UK, they: communicate effectively with the prisoner so that the prisoner understands the implications of the decision; and assess whether the prisoner is at risk of suicide and self-harm as a result.”

“The Home Office should ensure that, wherever practicable, prisons are notified of decisions to detain prisoners under immigration powers at least 48 hours prior to the prisoner’s release date.”<sup>159</sup>

**9.31** The Coroner also highlighted the lack of access to legal advice available to FNOs:

“Foreign National Prisoners liable for deportation who are not in an Immigration Detention Centre currently have no access to a duty lawyer scheme. It is important that such subjects are not treated less favourably than those in an Immigration detention centre. This could be addressed by providing free legal advice on immigration matters from duty lawyers at a minimum via the prison estate pin phone system.”

**9.32** The PPO’s recommendations, which the Home Office accepted and which the Criminal Casework Business Improvement Team was managing, focused on:

- the very late service of immigration paperwork including, in some cases, the day of the prisoner’s scheduled release from prison custody
- a lack of a proper process for serving immigration detention paperwork meaning prisoners were served paperwork with no explanation, or with no assessment of the impact the paperwork might have on an individual’s risk of suicide and self-harm
- a lack of updates from Home Office staff on a prisoner’s immigration case

**9.33** In the case of deaths and incidents of serious self-harm in IRCs, the Home Office told inspectors it was engaging with the Independent Advisory Panel on Deaths in Custody (IAP).<sup>160</sup> At the time of the inspection, there had been one meeting and the shape of any future work was not yet clear.

**9.34** Home Office POP teams and prison staff told inspectors they were aware that learning about a change to their immigration status could affect a person’s vulnerability, and they tried to take steps to mitigate the impact. POP staff told inspectors that they would inform the wing officer if a negative decision had been served on an FNO so that they could be monitored.

**9.35** POP staff said they preferred to use a telephone interpreter service when serving immigration paperwork. But, in some prisons this was not possible because there was nowhere where this could be done. POP management’s view was that it was better to serve the paperwork rather than wait for an interpreter. Inspectors witnessed paperwork being served using a fellow prisoner as an interpreter, and FNOs told inspectors this was a regular occurrence.

**9.36** According to prison staff, Home Office attendance at ACCT reviews (suicide and self-harm procedures) was infrequent, even though immigration matters were often at the forefront of the prisoner’s concerns. The Home Office position was that POP staff should attend ACCT reviews, but it was acknowledged that this was hard to achieve when the POP team was not

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<sup>159</sup> <https://s3-eu-west-2.amazonaws.com/ppo-prod-storage-1g9rkjhkimgw/uploads/2018/12/N219-17-Death-of-Mr-Michael-Netyks-Altcourse-07-12-2017-SI-31-40-35.pdf>

<sup>160</sup> <http://iapdeathsincustody.independent.gov.uk/>

embedded in a prison, and POP teams relied on their relationship with Safer Custody Managers for notification of meetings rather than on a formal process. One of the latter believed there was also some cynicism that FNOs would use an ACCT review to put pressure on the Home Office to be released.

- 9.37** All of the FNOs who spoke to inspectors expressed frustration at Home Office delays and the negative impact on their mental health and wellbeing of being detained beyond the end of their sentences. After one focus group, inspectors raised safeguarding concerns about two of the FNOs present with the Home Office as they had made threats about self-harming.

## Information sharing between the Home Office and HMPPS

- 9.38** The importance of efficient and effective information sharing between the Home Office and HMPPS is self-evident. However, the recorded deaths and incidents of serious self-harm highlight various problems with this. For example, on 1 December 2016, Tarek Chowdhury was murdered in Colnbrook IRC by another detainee, Zana Yusif. In May 2017, Mr Yusif pleaded guilty to manslaughter on grounds of diminished responsibility due to mental health problems. The West London Coroner and the PPO found that information sharing between the prison service and the Home Office about the suitability of detaining Mr Yusif, an FNO, in an IRC had been poor.<sup>161</sup>

- 9.39** The PPO made a number of recommendations. These included:

“The Home Office and HMPPS should agree a consistent approach to the sharing of Mercury intelligence reports between prisons and all immigration removal centres, including those that are not run by HMPPS, in order to provide staff in removal centres with the information they need to help them assess the risk that detainees pose to themselves and others.”

“The Home Office should ensure that healthcare providers and staff in the immigration detention estate share information about risks relating to detainees’ mental health when they move between immigration removal centres.”

- 9.40** Other identified information sharing issues included: poor risk assessment procedures at reception, where risk factors for suicide and self-harm were missed; poor management of ACDT procedures; no communication with healthcare; failure to obtain details of self-harm history from the IRC and prison; failure to refer individuals for a mental health assessment when the medical record showed one was required; a lack of communication between healthcare and centre staff when a detainee was found under the influence of psychoactive substances.
- 9.41** As a result of deaths in custody, and in response to Stephen Shaw’s recommendations, there had been some initiatives to improve information sharing between prisons, IRCs and the Home Office. For example, at the time of the inspection a pilot was running (due to end in June 2019) at eight prisons and at Morton Hall IRC (where the supplier is HMPPS) trialling a new ACCT system incorporating a digital ACDT/ACCT form with the aim of improving information sharing about self-harm and suicide process.

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<sup>161</sup> <https://www.theguardian.com/uk-news/2019/mar/25/catalogue-of-failings-led-to-death-of-gentle-man-at-detention-centre>

- 9.42** Up to the end of 2018–19, HMPPS was not providing the Home Office with intelligence reports on FNOs. However, inspectors were told that in mid-April 2019 there was a plan to roll out the sharing of Mercury reports and this would:
- “provide a mechanism for the consistent exchange of intelligence information on individuals who move between the prison and detention estate and, in the first instance, for FNOs as they move around the detention estate.”
- 9.43** For information sharing about the vulnerabilities of FNOs to be genuinely efficient and effective, the custodial and healthcare staff working in prisons needed to understand the Home Office’s information requirements. The Home Office provided evidence about the training received by Home Office staff working in prisons but was unable to provide any details of the training received by HMPPS staff including on the Adults at Risk guidance. Inspectors found that, in reality, prison staff relied on their own internal processes to flag concerns about an individual’s vulnerability. Inspectors were told by a prison Governor that:
- “Prison officers follow their own processes ... they note concerns, they would expect the Home Office to already be aware of these concerns. The onus is therefore on the Home Office to be aware already. The Governor has a good relationship with Home Office senior management, but this is more on a strategic level (individual cases would never be discussed).”
- 9.44** It appeared that the Home Office was aware of this issue. One manager told inspectors:
- “if a detainee went up to a prison officer and claimed a vulnerability, that wouldn’t necessarily get back to the HO via that route – it would depend on the prison and whether the officer realises he/she should report this to the HO.”
- 9.45** How prison staff regard vulnerability and the thresholds they apply will inevitably be conditioned by their own experiences. The overall levels of suicide and self-harm within prisons are therefore relevant, not least as prison staff told inspectors that they did not treat FNOs any differently from other prisoners.
- 9.46** A 2017 National Audit Office report, ‘Mental Health in Prisons’, found:
- “Rates of self-inflicted deaths and self-harm in prison have risen significantly in the last five years, suggesting that mental health and well-being in prison has declined. Self-harm rose by 73% between 2012 and 2016. In 2016 there were 40,161 incidents of self-harm in prisons, the equivalent of one incident for every two prisoners. While in 2016 there were 120 self-inflicted deaths in prison, almost twice the number in 2012, and the highest year on record.”
- 9.47** The most recent ‘Safety in Custody Statistics, England and Wales: Deaths in Prison Custody to March 2019 Assaults and Self-harm to December 2018’ indicated that the situation had since worsened: “Self-harm incidents reached a record high of 55,598 incidents in 2018, a 25% increase from 2017” and “Annual assault incidents reached a record high of 34,223 incidents in 2018, a 16% increase from 2017” of which 30% were directed at prison officers.<sup>162</sup>
- 9.48** At the time of this inspection, HMPPS was in the process of rolling out a system of ‘key workers’, whereby a prison officer was allocated five or six prisoners with whom they were tasked to build supportive relationships through regular one-to-one meetings. Key worker

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162 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/797074/safety-custody-bulletin-q4-2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/797074/safety-custody-bulletin-q4-2018.pdf)

meetings were an opportunity for FNOs to raise immigration concerns, but prison staff said that these would likely be passed to the Offender Manager Unit<sup>163</sup> to engage the Home Office for a response. However, key workers were not briefed to probe FNOs about possible vulnerabilities that might require them to be flagged as an Adult at Risk.

**9.49** Prison staff and FNOs told inspectors that when the latter used the “application” process, through which prisoners were able to put written requests to the prison authorities to ask to speak to someone from the Home Office, the response was slow and the request was often ignored. This was more problematic where the POP team was not embedded in that prison and the request had to wait until the next POP visit. Prison staff said they would be keen for Home Office staff to be more visible on the wings and to spend more time with detainees answering questions.

## Different Rules for Immigration Removal Centres and for Prisons

**9.50** As might be expected, the Rules that apply in IRCs (the Detention Centre Rules 2001) and those that apply in prisons (the Prison Rules 1999) cover several of the same areas but are also materially different in places, not least in their recognition of the purposes of ‘detention centres’ and of prisons.

**9.51** The Detention Centre Rules 2001 (Rule 3) explain that:

“(1) The purpose of detention centres shall be to provide for the secure but humane accommodation of detained persons in a relaxed regime with as much freedom of movement and association as possible, consistent with maintaining a safe and secure environment, and to encourage and assist detained persons to make the most productive use of their time, whilst respecting in particular their dignity and the right to individual expression.

(2) Due recognition will be given at detention centres to the need for awareness of the particular anxieties to which detained persons may be subject and the sensitivity that this will require, especially when handling issues of cultural diversity.”

**9.52** The Prison Rules 1999 do not refer to the purpose of prison. However, speaking on the subject of prison reform on 6 March 2018, and making the argument for “safer, more secure, more decent” prisons, the Justice Secretary said:

“I believe its purpose is threefold:

- First, protection of the public – prison protects the public from the most dangerous and violent individuals.
- Second, punishment – prison deprives offenders of their liberty and certain freedoms enjoyed by the rest of society and acts as a deterrent. It is not the only sanction available, but it is an important one.
- And third, rehabilitation – prison provides offenders with the opportunity to reflect on, and take responsibility for, their crimes and prepare them for a law-abiding life when they are released.”

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<sup>163</sup> A team based in a prison who monitor the progress of prisoners and provide a link with an offender manager in the community (Probation Officer) at the time of release.

**9.53** The Prison Rules 1999 refer to the “Classification of prisoners” (Rule 12) by “age, temperament and record” and differentiate between “unconvicted” and “convicted” prisoners, stating that the former:

“2(a) shall be kept out of contact with convicted prisoners as far as the governor considers it can reasonably be done, unless and to the extent that they have consented to share residential accommodation or participate in any activity with convicted prisoners; and

(b) shall under no circumstances be required to share a cell with a convicted prisoner.”

**9.54** Where FNOs are detained under immigration powers in prison they are entitled to be treated as unconvicted/remand prisoners, however, the prison in which they are held may not be equipped to provide such conditions, in which case they may apply to be transferred to one that does. The Detention Centre Rules 2001 do not refer to FNOs, but Detention Services Order 12/2012 ‘Room Sharing Risk Assessment’ lists the information supplier staff should consider when assessing the risk of detainees sharing a room, which include “Previous convictions”, “Cell sharing risk assessment (if transferred from a prison)”, “Prison file including list of any adjudications” as well as “Known vulnerabilities for an individual identified as an ‘adult at risk’”.

**9.55** Inspectors were told that, in practice, the information that was shared with an IRC about an FNO was often incomplete, regarding the nature of their offences and any issues relating to their time in prison. Where the IRC was made aware of particular factors, for example about an FNOs involvement in organised crime or gangs, this would be taken into account and mitigations would be put in place.

## Rule 21 and Rule 35

**9.56** In his reports, Stephen Shaw drew particular attention to the lack of equivalence between Rule 35 of the Detention Centre Rules 2001 and Rule 21 of the Prison Rules 1999, ‘Special illnesses and conditions’. In his first report, while he identified deficiencies in the Rule 35 process and recommended that the Home Office “immediately consider an alternative to the current rule 35 mechanism” (Recommendation 21), he also recommended that “rule 35 (or its replacement) should apply to those detainees held in prisons as well as those in IRCs.” (Recommendation 22)

**9.57** The Home Office rejected Recommendation 22, arguing that:

“A broadly equivalent provision (Rule 21) exists in the Prison Rules. Rule 21 provides that medical officers must report to the governor on the case of any prisoner whose health is likely to be injuriously affected by continued imprisonment or any conditions of imprisonment. Prisons have their own well-established healthcare provision and the mechanism for reporting any concerns. The adults at risk policy applies to individuals held in prisons under immigration powers as well to those held in the immigration estate.”<sup>164</sup>

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<sup>164</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/728376/Shaw\\_report\\_2018\\_Final\\_web\\_accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728376/Shaw_report_2018_Final_web_accessible.pdf) Annex 5.

**9.58** Rule 21 states:

“(1) The medical officer or a medical practitioner such as is mentioned in rule 20(3)<sup>165</sup> shall report to the governor on the case of any prisoner whose health is likely to be injuriously affected by continued imprisonment or any conditions of imprisonment. The governor shall send the report to the Secretary of State without delay, together with his own recommendations.

(2) The medical officer or a medical practitioner such as is mentioned in rule 20(3) shall pay special attention to any prisoner whose mental condition appears to require it, and make any special arrangements which appear necessary for his supervision or care.”<sup>166</sup>

- 9.59** While for those serving a criminal sentence ‘the Secretary of State’ would be the Justice Secretary, for those detained under immigration powers it would presumably be the Home Secretary, although this is not stated. The point is, however moot, in practice, Rule 21 is seldom, if ever, used. One Prison Governor told inspectors that in their experience it had “never been invoked. The only way a Rule 21 would be initiated is if a healthcare provider raised it and this never happens.” A medical practitioner in a London prison told inspectors they had never heard of Rule 21. The Independent Monitoring Board (IMB) Chair in the same prison had also never heard of Rule 21.
- 9.60** Inspectors requested data from the Home Office for the number of times Rule 21 had been used in relation to an FNO detained under immigration powers. The Home Office responded: “We have approached the Ministry of Justice and HM Prison and Probation Service: both do not hold any information in the scope of your request.”
- 9.61** Amongst the 112 cases examined by inspectors, was one of an FNO detained in a prison under immigration powers who had tried to hang himself. Inspectors asked the Home Office whether a Rule 21 report should have been raised in this case. The Home Office responded that this was a decision for prison healthcare staff.
- 9.62** In his second report, Stephen Shaw<sup>167</sup> noted that he was “much less confident that Rule 21 is an adequate substitute” for Rule 35 of the Detention Centre Rules when it came to identifying vulnerabilities amongst FNOs held under immigration power and described this as “a worrying gap” that “needs to be remedied”. He recommended that “a policy [“about the position of detainees held in the prison estate”] be developed to equate to Detention Centre Rule 35.” (Recommendation 4) He further recommended that: “The Home Office should establish a joint policy with HMPPS on provision for those held in prison under immigration powers”. (Recommendation 3)
- 9.63** In response to the first Recommendation 4, at the end of 2018 the Shaw Implementation Board noted that “Options are being developed with HMPPS colleagues” to address this issue. The Board minutes recorded that there were a number of outstanding Judicial Reviews challenging the absence of Rule 35 arrangements for immigration detainees in prisons. As that time, no written policy had been developed, however, dedicated part-time HMPPS staff had been engaged to progress this work. According to the minutes, “HMPPS colleagues are leading work to develop a policy (by April next year) for those held in prison under immigration powers.”

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<sup>165</sup> Rule 20(3) defines a medical practitioner as “a fully registered person within the meaning of the Medical Act 1983(1)”.

<sup>166</sup> <http://www.legislation.gov.uk/ukxi/1999/728/article/21/made>

<sup>167</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/728376/Shaw\\_report\\_2018\\_Final\\_web\\_accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728376/Shaw_report_2018_Final_web_accessible.pdf)

- 9.64** Inspectors were told that the Adults at Risk guidance was applied to all detainees, including those in prisons. However, there was no mention of monitoring measures and the Home Office acknowledged it had little oversight of the operation of the Adults at Risk guidance in prisons, citing a combination of reasons; including the fact that it was not in control, but also that FNOs were not generally thought of as vulnerable, and finally that it had not had the resources to look at this. On the last point, in March 2019, the Home Office had employed a policy officer who would focus on this area of work.
- 9.65** HMPPS was represented on the Shaw Implementation Board and inspectors saw evidence that HMPPS was due to hold internal workshops early March 2019 to discuss the possibility of introducing discharge interviews/medical examinations for all FNOs at the point they become immigration detainees, with a view to identifying any vulnerabilities. The plan was then to hold further workshops with external stakeholders.
- 9.66** In their responses to the ‘call for evidence’ for this inspection, stakeholders indicated that they shared Shaw’s lack of confidence in Rule 21 and the application of the Adults at Risk guidance in prisons, highlighting their concerns about the welfare of FNOs. One stated that there was an absence of structured process for identifying immigration detainees who are ‘at risk’ in prison due to the lack of Rule 21 reports. Another argued that public protection concerns had “replaced the requirement to undertake a careful, individualised risk-based analysis” on potentially vulnerable FNOs. There were also concerns about the lack of equivalence with Rule 35 as Rule 21 did not apply to those with suicidal ideation or to victims of torture.



# Annex A: Role and remit of the Independent 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 his 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
- whether 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 him 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 he 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.

# Annex B: Expectations of the Independent Chief Inspector



## ICIBI's 'expectations' of asylum, immigration, nationality and customs functions

**Background and explanatory documents are easy to understand and use** (e.g. statements of intent (both ministerial and managerial), impact assessments, legislation, policies, guidance, instructions, strategies, business plans, intranet and GOV.UK pages, posters, leaflets, etc.)

- They are written in plain, unambiguous English (with foreign language versions available, where appropriate)
- They are kept up to date
- They are readily accessible to anyone who needs to rely on them (with online signposting and links, wherever possible)

### **Processes are simple to follow and transparent**

- They are IT-enabled and include input formatting to prevent users from making data entry errors
- Mandatory requirements, including the nature and extent of evidence required to support applications and claims, are clearly defined
- The potential for blockages and delays is designed out, wherever possible
- They are resourced to meet time and quality standards (including legal requirements, Service Level Agreements, published targets)

### **Anyone exercising an immigration, asylum, nationality or customs function on behalf of the Home Secretary is fully competent**

- Individuals understand their role, responsibilities, accountabilities and powers
- Everyone receives the training they need for their current role and for their professional development, plus regular feedback on their performance
- Individuals and teams have the tools, support and leadership they need to perform efficiently, effectively and lawfully
- Everyone is making full use of their powers and capabilities, including to prevent, detect, investigate and, where appropriate, prosecute offences
- The workplace culture ensures that individuals feel able to raise concerns and issues without fear of the consequences

## **Decisions and actions are ‘right first time’**

- They are demonstrably evidence-based or, where appropriate, intelligence-led
- They are made in accordance with relevant legislation and guidance
- They are reasonable (in light of the available evidence) and consistent
- They are recorded and communicated accurately, in the required format and detail, and can be readily retrieved (with due regard to data protection requirements)

## **Errors are identified, acknowledged and promptly ‘put right’**

- Safeguards, management oversight, and quality assurance measures are in place, are tested and are seen to be effective
- Complaints are handled efficiently, effectively and consistently
- Lessons are learned and shared, including from administrative reviews and litigation
- There is a commitment to continuous improvement, including by the prompt implementation of recommendations from reviews, inspections and audits

## **Each immigration, asylum, nationality or customs function has a Home Office (Borders, Immigration and Citizenship System) ‘owner’**

- The BICS ‘owner’ is accountable for:
  - implementation of relevant policies and processes
  - performance (informed by routine collection and analysis of Management Information (MI) and data, and monitoring of agreed targets/deliverables/budgets)
  - resourcing (including workforce planning and capability development, including knowledge and information management) managing risks (including maintaining a Risk Register)
  - communications, collaborations and deconfliction within the Home Office, with other government departments and agencies, and other affected bodies
  - effective monitoring and management of relevant contracted out services
  - stakeholder engagement (including customers, applicants, claimants and their representatives)

# Annex C: ‘Review into the Welfare in Detention of Vulnerable Persons’ – List of Recommendations

**Recommendation 1:** I recommend that the Home Office prepare and publish a strategic plan for immigration detention.

**Recommendation 2:** The Home Office should consider how far it can encourage a more cohesive system through more joint training and planning, shared communications, and a recognition scheme.

**Recommendation 3:** Where weaknesses in particular policies have been identified in Mr Cheeseman’s audit, I recommend these be remedied at their next iteration.

**Recommendation 4:** I recommend that work to amend the Detention Centre Rules commence following the Home Office’s consideration of this review.

**Recommendation 5:** I recommend that the Home Office draw up plans either to close Cedars or to change its use as a matter of urgency.

**Recommendation 6:** Given my observations at each of the Heathrow terminals and at Cayley House, Tascor should arrange for refresher training for its staff on their duty of care, and the need for proper and meaningful engagement with detainees.

**Recommendation 7:** I recommend that a discussion draft of the short term holding centre rules be published as a matter of urgency.

**Recommendation 8:** The Home Office should review the adequacy of the numbers of immigration staff embedded in all prisons.

**Recommendation 9:** I recommend that there should be a presumption against detention for victims of rape and other sexual or gender-based violence. (For the avoidance of doubt, I include victims of FGM as coming within this definition.)

**Recommendation 10:** I recommend that the Home Office amend its guidance so that the presumptive exclusion from detention for pregnant women is replaced with an absolute exclusion.

**Recommendation 11:** I recommend that the words ‘which cannot be satisfactorily managed in detention’ are removed from the section of the EIG that covers those suffering from serious mental illness.

**Recommendation 12:** I recommend that those with a diagnosis of Post-Traumatic Stress Disorder should be presumed unsuitable for detention.

**Recommendation 13:** I recommend that people with Learning Difficulties should be presumed unsuitable for detention.

**Recommendation 14:** I recommend that transsexual people should be presumed unsuitable for detention.

**Recommendation 15:** I recommend that the wording in paragraph 55.10 of the EIG in respect of elderly people be tightened to include a specific upper age limit.

**Recommendation 16:** I recommend that a further clause should be added to the list in paragraph 55.10 of the EIG to reflect the dynamic nature of vulnerability and thus encompass ‘persons otherwise identified as being sufficiently vulnerable that their continued detention would be injurious to their welfare’.

**Recommendation 17:** I recommend that the Home Office consider establishing a joint policy with NOMS on provision for those held in prison under immigration powers.

**Recommendation 18:** I recommend that the Home Office consider what learning there is for IRCs from the Prison Service’s experience of operating ‘first night centres’ for those initially received into custody.

**Recommendation 19:** The Home Office should consider the need for a separate DSO on LGBTI detainees. Anti-bullying policies should include explicit reference to LGBTI detainees.

**Recommendation 20:** The Home Office should consider introducing a single gatekeeper for detention.

**Recommendation 21:** I recommend that the Home Office immediately consider an alternative to the current rule 35 mechanism. This should include whether doctors independent of the IRC system (for example, Forensic Medical Examiners) would be more appropriate to conduct the assessments as well as the training implications.

**Recommendation 22:** I further recommend that rule 35 (or its replacement) should apply to those detainees held in prisons as well as those in IRCs.

**Recommendation 23:** Once the NOMS review of ACCT is complete, there should be an urgent review of ACDT and DSO 06/2008, informed by the NOMS review and by the findings of this report.

**Recommendation 24:** I note that DSO 03/2013 on food and fluid refusal is currently the subject of internal review within the Home Office. I recommend that the review consider alternatives to treatment within a prison or IRC in light of my discussion of this issue.

**Recommendation 25:** I recommend that the Home Office commission a formal review of the quality of PERs and that any deficiencies are addressed. In the meantime, all staff should be reminded of the importance of completing PERs fully.

**Recommendation 26:** I recommend that the Home Office consider how rapidly it can move towards a system of electronic record keeping for the PER119 and IS91RA.

**Recommendation 27:** I recommend that the Home Office conduct an annual audit (or ask for an independent audit) of the RSRA process so that it remains an effective means of ensuring detainee safety.

**Recommendation 28:** The Home Office should consider if the allocation criteria and processes to which DEPMU operates could be strengthened.

**Recommendation 29:** I recommend that the Home Office and the Department of Health work together to consider whether current arrangements for safeguarding are adequate.

**Recommendation 30:** The internet access policy should be reviewed with a view to increasing access to sites that enable detainees to pursue and support their immigration claim, to prepare for their return home, and which enable them to maximise contact with their families. This should include access to Skype and to social media sites like Facebook.

**Recommendation 31:** I recommend that the Home Office reconsider its approach to pay rates for detainees in light of my comments on the benefits of allowing contractors greater flexibility.

**Recommendation 32:** I recommend that all IRCs should review the range of activities offered to detainees; in particular, those that could provide skills to detainees that would be useful on their return to their home country.

**Recommendation 33:** I recommend that the Home Office review detainees' access to natural light and to the open air, and invite contractors to bring forward proposals to increase the time that detainees can spend outside.

**Recommendation 34:** The Home Office should no longer require contractors to operate an Incentives and Earned Privileges Scheme.

**Recommendation 35:** I recommend that the service provider at Yarl's Wood should only conduct searches of women and of women's rooms in the presence of men in the most extreme and pressing circumstances, and that there should be monitoring and reporting of these cases.

**Recommendation 36:** I recommend that Home Office Detention Operations carry out an audit of reception and holding environments to ensure that the policy on searching out of sight of other people is properly followed.

**Recommendation 37:** I recommend that the Home Office consider amalgamating and modernising rules 40 and 42.

**Recommendation 38:** The Home Office should review all the rule 40 and rule 42 accommodation to ensure that it is fit for purpose. All contractors should be asked for improvement plans to ensure that the name Care and Separation Unit is something more than a euphemism.

**Recommendation 39:** I recommend that the Home Office should routinely publish statistics on the number of transfers of detainees between IRCs and STHFs.

**Recommendation 40:** The Home Office should review the use made of regional airports for removals.

**Recommendation 41:** I recommend that the Home Office negotiate night-time closures at each IRC, the times of which should reflect local circumstances.

**Recommendation 42:** I recommend that the practice of overbooking charter flights should cease.

**Recommendation 43:** I recommend that the Home Office consider if the inspection arrangements for IRCs can ensure the involvement of the ICI.

**Recommendation 44:** I recommend that the Home Office liaise with the Ministry of Justice to ensure that all IMBs in IRCs have sufficient membership at all times.

**Recommendation 45:** I recommend that the Home Office seek the views of the Ministry of Justice and the Department of Health on extending section 75 of the Sexual Offences Act 2003 to IRCs, prisons and mental hospitals.

**Recommendation 46:** I recommend that the Home Office review the use of fellow detainees as interpreters for induction interviews.

**Recommendation 47:** I recommend that the Home Office remind service providers of the need to use professional interpreting facilities whenever language barriers are identified on reception.

**Recommendation 48:** Home Office staff should be reminded that, to ensure continuity of care, detainees should not be transferred when there is clinical advice to the contrary.

**Recommendation 49:** The Home Office and NHS England should promote the self-administration of drugs where risk assessments support that approach.

**Recommendation 50:** I recommend that the Home Office, in consultation with NHS England, draw up explicit guidelines as to:

- What informed consent looks like
- What information can be shared between all parties in the event that informed consent to the release of clinical information is granted by the detainee.

**Recommendation 51:** I further recommend that an alternative to SystmOne be pursued for those detention facilities not in England.

**Recommendation 52:** As part of its response to future growth in the demand for healthcare, NHS England needs to ensure the filling of permanent healthcare vacancies in IRCs as a priority.

**Recommendation 53:** I recommend that the Home Office, in association with service providers, consider what can be done to reduce the use of new psychoactive substances and to advise detainees on the effects of their misuse.

**Recommendation 54:** The Home Office should draw up a research strategy for immigration detention. In particular, it should consider commissioning clinical studies on the impact of detention upon women, and research aimed at improving models of care.

**Recommendation 55:** The Home Office and NHS England should conduct a clinical assessment of the level and nature of mental health concerns in the immigration detention estate.

**Recommendation 56:** I recommend that the creation of care suites across the IRC estate should be taken forward as a priority.

**Recommendation 57:** I recommend that talking therapies become an intrinsic part of healthcare provision in immigration detention.

**Recommendation 58:** I recommend that the Home Office, NHS England, and the Department for Health develop a joint action plan to improve the provision of mental health services for those in immigration detention.

**Recommendation 59:** I recommend that all caseworkers should meet detainees on whom they are taking decisions or writing monthly detention reviews at least once. The meeting should be face-to-face, or by video link, or by telephone.

**Recommendation 60:** The Home Office should examine its processes for carrying out detention reviews, including looking at training requirements, arrangements for signing off cases at a senior level, and auditing arrangements.

**Recommendation 61:** As part of the examination of its own processes that I have proposed, I recommend that the Home Office consider if and what ways an independent element can be introduced into detention decision making.

**Recommendation 62:** I recommend that the Home Office give further consideration to ways of strengthening the legal safeguards against excessive length of detention.

**Recommendation 63:** I recommend that the Home Office investigate the development of alternatives to detention.

**Recommendation 64:** I recommend that the Home Office consider how far electronic monitoring can contribute to the goal of fair and efficient border control.



# Annex D: ‘Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons’ – List of Recommendations

**Recommendation 1:** The Home Office should strengthen its promotion of voluntary returns.

**Recommendation 2:** The Home Office should develop a strategic plan for the type and scale of immigration estate it thinks necessary, bearing in mind the priority now attached to voluntary returns, so that the number and location of beds is proportionate to carrying out its wider aims.

**Recommendation 3:** The Home Office should establish a joint policy with HMPPS on provision for those held in prison under immigration powers.

**Recommendation 4:** I remain concerned about the position of detainees held in the prison estate and recommend that a policy be developed to equate to Detention Centre Rule 35.

**Recommendation 5:** I repeat my recommendation that the internet access policy should be reviewed with a view to increasing access to sites that enable detainees to pursue and support their immigration claim, to prepare for their return home, and to maximise contact with their families.

**Recommendation 6:** Weekly multi-disciplinary review meetings should be held at all IRCs to review and progress cases and ensure appropriate care for the most vulnerable individuals in each centre. These meetings should include a range of managers and staff, and crucially should involve the dialling in of the relevant caseworker for each detainee discussed.

**Recommendation 7:** No immigration detention facility should be built in future with a barely screened toilet inside a shared room, and this set-up should be upgraded in all existing facilities.

**Recommendation 8:** In future, capacity in the immigration estate should not be increased by adding extra beds to rooms designed for fewer occupants. Where this has already occurred (e.g. Campsfield House, Brook House), these extra beds should be removed, and capacity reduced or extra space created.

**Recommendation 9:** Detainees should have improved access to facilities on their units at night, and night-time lock-in periods should begin as late as possible.

**Recommendation 10:** While the recent decrease in the overall number of women in detention is welcome, the Home Office should at the earliest opportunity take further steps to identify women who claim asylum in detention and whose case would be better processed in the community.

**Recommendation 11:** The current Adults at Risk policy should be amended. Detention of anyone at AAR Level 3 should be subject to showing ‘exceptional circumstances’.

**Recommendation 12:** Consideration should be given to AAR Level 2 being sub-divided and, if adopted, the presumption against detention for those in the upper division should be strengthened. The Home Office should consider the merits of the UNHCR Vulnerability Screening Tool.

**Recommendation 13:** The Home Office should no longer detain any adults over the age of 70 except in ‘exceptional circumstances’.

**Recommendation 14:** The Independent Chief Inspector of Borders and Immigration should be invited to report annually to the Home Secretary on the working of the Adults at Risk process.

**Recommendation 15:** I recommend new arrangements for the consideration of Rule 35 reports. This should include referrals to a new body – which could be within the Home Office but separate from the caseworker responsible for detention decisions.

**Recommendation 16:** A best practice forum should be established across IRC healthcare providers.

**Recommendation 17:** SystemOne templates should be urgently amended so that detainee healthcare records no longer identify detainees as prisoners.

**Recommendation 18:** NHS England should continue to roll out staff training on SystemOne/HJIS and should make sure that patient consent is consistently recorded by conducting a national case file audit and ensuring that this is a mandatory field in HJIS.

**Recommendation 19:** The Home Office and Ministry of Justice should conduct a review of the quality of interpreter services in IRCs.

**Recommendation 20:** An action plan should be drawn up to address the shortcomings I found in healthcare facilities within the immigration estate to ensure a clinically safe, compliant and appropriate environment for the delivery of care to detainees.

**Recommendation 21:** Waiting environments for medication distribution should be reviewed to ensure privacy and dignity, and support personal safety.

**Recommendation 22:** As set out in the NHSE, Home Office and PH(E) National Partnership Agreement, all centres should become smoke-free as soon as possible, subject to proper planning and support for detainees and staff.

**Recommendation 23:** The Home Office and Department of Health and Social Care should prepare a joint communication to IRC healthcare teams clearly laying out health-based entitlements for former detainees released into the community.

**Recommendation 24:** The Home Office should strengthen its data monitoring processes and quality assurance for the detention gatekeeper and case progression panels. In particular, it should ensure that the outcomes following case progression panels are tracked and reported.

**Recommendation 25:** The Home Office should ensure casework management processes allow for the detention gatekeeper to make decisions on all FNO cases entering immigration detention, including those transferring directly from prison at completion of a custodial sentence.

**Recommendation 26:** All relevant Home Office staff should be trained in making assessments of vulnerability within the parameters of the Adults at Risk policy.

**Recommendation 27:** I recommend that a copy of this report be shared with HM Chief Inspector of Probation for her consideration.

**Recommendation 28:** The Home Office, working with the National Probation Service and Community Rehabilitation Companies, should consider how far vulnerable detainees released from detention can be offered appropriate support and supervision.

**Recommendation 29:** I recommend that all caseworkers involved in detention decisions should visit an IRC either on secondment or as part of their mandatory training.

**Recommendation 30:** Case progression panels should have fewer cases per panel to consider. The Home Office should ensure that all required information, including information on vulnerability and AAR levels, is available and that all panel members are properly prepared on the cases before them.

**Recommendation 31:** Case progression panel chairs should be of sufficient competence for the role. Attendance from all relevant parts of the Home Office should be ensured.

**Recommendation 32:** The Home Office should review the case for an independent element in case progression panels considering those detained for more than six months.

**Recommendation 33:** The Home Office should no longer routinely seek to remove those who were born in the UK or have been brought up here from an early age.

**Recommendation 34:** The Home Office should review whether figures relating to deaths in and after detention should be issued on a regular basis.

**Recommendation 35:** The Home Office should encourage moves to develop a digital version of the ACDT document.

**Recommendation 36:** I recommend that IRC staff who have regular contact with detainees should receive mandatory safer detention training on an annual basis.

**Recommendation 37:** I recommend that the Home Office commission research into deaths in immigration detention, 'near misses' and incidents of serious self-harm.

**Recommendation 38:** The Home Office should devise and publish a strategy for reducing the number of deaths from natural causes and those that are self-inflicted in, and shortly after, immigration detention.

**Recommendation 39:** The Home Office should review with the Ministry of Justice the resource allocated to each IMB in the immigration detention estate.

**Recommendation 40:** The Home Office should roll out the use of body worn cameras to all IRCs and robustly monitor their use.

**Recommendation 41:** The Home Office should increase the number of its staff who have direct operational experience in closed institutions.

**Recommendation 42:** The Home Office should strengthen its own assurance processes to examine adherence to professional standards and staff culture in IRCs on a regular basis.

**Recommendation 43:** I recommend that the Detention Action project for ex-offenders in the community be expanded.

**Recommendation 44:** I recommend the Home Office establish an Alternative to Detention project for vulnerable persons who would otherwise be at risk of being detained.

# Annex E: Letter from ICIBI to Director General Immigration Enforcement regarding Case Progression Panels

Tyson Hepple CB  
Director General  
Immigration Enforcement  
2 Marsham Street  
London  
SW1P 4DF



Date: 19 February 2019

Dear Tyson,

## Annual review of the adults at risk process – Case Progression Panels

Thank you for finding time today to discuss my concerns about the Detention Case Progression Panels (CPPs). This letter summarises those concerns.

As I explained, to date I have observed three CPPs and my inspection team has observed six. I appreciate that the Home Office regards the Adults at Risk (AaR) policy as a 'work in progress' and that this extends to the CPPs. However, the CPPs have been in operation since February 2017, and I think it is reasonable to expect higher standards than I witnessed.

I also accept that the department is making genuine efforts to find suitable external bodies to provide an independent member for each panel, and I have seen the draft guidance about the purpose and processes of CPPs. These moves should help, but there are some fairly fundamental issues that I believe need more urgent attention:

- Attendance – there was no sense of what constituted a quorum at any of the CPPs or what role those attending were fulfilling ('independent' member, expert, business area representative). At one, the chair acknowledged that the person expected from of a particular unit had yet to arrive but said that they could start anyway as that unit's input was not required for the first couple of cases, only to decide as these were being discussed that perhaps their input would have been useful after all. Nonetheless, the panel proceeded to recommend continued detention in both cases. Other panel members came after the meeting had started and left before it ended.
- Preparation – chairs and panel members were under-prepared, and a considerable amount of time was spent in silence reading CID screens to find a detail someone recalled having seen or to establish a particular fact.
- Discussion – there was no structure to the case discussions, panel members made various points as they occurred to them, and there was no attempt to ensure that all views were sought, so some attendees said nothing, while those dialling in were forgotten and talked over. Much of the discussion comprised assumptions or speculation, regarding what might be

possible in terms of future actions (obtaining travel documents, removal, tagging etc.), and about the 'facts' of the case (the nature of the detainee's offending, its relative seriousness and the likelihood of re-offending, for example, and the validity of "last minute" asylum claims), and some of the language used was best described as "loose". For most cases the discussion was short, one lasted less than a minute, and the panel took just over an hour to review all 22. Another panel took a little longer, but only because of the silences as members read what was displayed on the screen.

- Consideration of AaR – this felt very much like an afterthought and in some cases was not mentioned at all, despite appearing on the spreadsheet of cases for discussion.
- Decision - accepting that the cases I observed were FNOs, and that around half were recommended for release, there appeared to be a presumption in favour of continued detention, with phrases like "we should err on the side of caution" used to justify release, and a 'let's wait and see what happens next' approach, with the proposal that cases were brought back to a CPP in a couple of weeks. The driver appeared to be the department's exposure to legal challenge and damages rather than detainee welfare.

One further point stood out for me. In the majority of cases, panel members were highly critical of the casework and previous actions or failures to act. The panels appeared to be identifying things that someone else should already have identified and dealt with. While the CPPs can provide a backstop to failures elsewhere in the system this should not be their focus.

What I have seen so far may be atypical, which I hope is the case, so I plan to observe more CPPs before I produce my annual review in April/May. In the meantime, while it is possible to make improvements to most of the above through better training, guidance and quality assurance, my sense is that there is something essentially wrong with the composition of the CPPs. I believe the Home Office and detainees would be better served by a clearer separation of roles. A better model might be to have a more senior panel of, say, three people, without operational responsibilities for enforcement, who take 'evidence' and receive advice from caseworkers and other relevant units as appropriate. This might also be more acceptable to external bodies invited to provide an independent panel member.

Yours sincerely,



David Bolt  
Independent Chief Inspector of Borders and Immigration

cc. Home Secretary, Immigration Minister, Second PUS, Pre-inspection Team

# Annex F: Response from Director General Immigration Enforcement



Immigration  
Enforcement

Tyson Hepple CB  
Director General  
Immigration Enforcement  
14<sup>th</sup> Floor Lunar House  
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14<sup>th</sup> March 2019

David Bolt  
Independent Chief Inspector of Borders and Immigration  
5<sup>th</sup> Floor  
Globe House  
89 Eccleston Square  
London SW1V 1PN

*Dear David*

## **Annual review of the adults at risk process - Case Progression Panels**

Thank you for your letter of 19 February. I am grateful to you and your colleagues for your work on the inspection into the operation of the Adults at Risk policy and appreciate you setting out your concerns around Case Progression Panels in advance of your final inspection report and following our recent discussion.

I was pleased to read your acknowledgement that our new guidance will improve the operation of Case Progression Panels and that we have made genuine efforts to find suitable external bodies to provide an independent member for each panel. Although we had some improvement plans in the pipeline, I can assure you that I take the issues you have raised very seriously. Following our discussion, I immediately tasked my team to look at the issues and develop a plan to address them, as I am particularly concerned about the lack of clarity of roles and general lack of consistency which we discussed.

member, enabling a detained discussion of the most complex and long-term cases. As you suggested, we will look at how other panels, such as the Parole Board, operate when designing this. This would then be underpinned by a second tier, the current, albeit strengthened, CPP arrangement.

I have annexed our plan, which covers eight areas, to this letter. This is a combination of operational improvements, new operational initiatives and the continuation of work to create a new independent body as part of the first-tier panels (I have described above).

I have summarised below how these eight areas will address your concerns:

- **Attendance** – The revision of our operational guidance to better define the structure of each panel, alongside the inclusion of a mandatory performance goal, will help provide greater accountability and more of a formal framework for those participating in panels.
- **Preparation** – A detention review will be mandated prior to any panel ensuring that the most relevant and up to date information is available and easily accessible to panel members.
- **Discussion** – Will be assisted by the mandated detention review and supplemented by the improved guidance and more regular observations by SCS.
- **The consideration of Adults at Risk** – Operational training will be updated to include a mandatory section on AaR and we will look to use a smaller pool of chairs to provide more consistency.
- **Decision** – A combination of updated guidance, mandated detention reviews prior to panels and updated training should provide a more rounded evidence base on which to make recommendations and reduce the need to bring cases back to panels within short timeframes.

I hope that these changes will start to address your concerns around clarity of roles, consistency and the quality of discussion within Case Progression Panels and improve the overall quality of decision making and oversight. It is my expectation that some of these changes will be evident to you from any CPP you observe from as early as the end of March, but some of this work will of course take more time.

I am also very clear that all caseworkers must fully engage with any recommendations from panels, even if they choose to reject a recommendation because circumstances may have changed since the panel met. That is why we have already begun to provide weekly performance reports to casework managers about engagement with panel recommendations and why there will be a performance goal for caseworkers in the coming reporting year, with attendant performance measures or management action if necessary. I am encouraged that the National Returns Command and Criminal Casework Directorate, who, for understandable

reasons oversee some of those who have spent longest in detention, have already put in place some further assurance measures to ensure that panel recommendations are engaged with.

I am conscious that, as you move on to the inspection itself, we have provided you and your team with a wealth of evidence in relation to the operation of the Adults at Risk policy. This includes detail of our operations to safeguard those identified as vulnerable. As this is the first of an annual inspection, we have worked hard to ensure that you have an appropriate baseline of all evidence for further inspections.

If there is anything else that the team or I can help you with, please let me or Alison Samedi, as the SCS sponsor for this inspection, know.

*Yours sincerely*

*TH*

Tyson Hepple  
Director General, Immigration Enforcement



## Action plan for the improvement of Case Progression Panels.

Action	Owner	Description	Delivery Date
1. Weekly performance reporting	IE CPPT	Provide weekly CPP performance reporting to all detained casework managers, embedding a culture that signposts that challenge and CPP recommendations are welcomed and must be engaged with.	Commenced week beginning 11 March 2019
2. Mandate a detention review before each panel	IE CPPT & RED policy	Mandating the completion of a detention review in advance of each CPP to ensure the most up to date information is known and a review by the case owner has occurred. This will demonstrate ownership and stimulate richer discussion within the panel.	1 <sup>st</sup> June 2019
3. Operational guidance update	IE CPPT	Revising the structure of CPPs to set out what is an appropriate quorum, with defined representatives from designated areas and a step-by-step approach to CPPs to ensure consistency.	1 <sup>st</sup> April 2019
4. Operational training update	IE CPPT	Revise and redefine training, reducing the pool of chairs who must agree to chair at least 2 CPPs a month and increasing what is expected from members in terms of their active participation in each panel. This will include consideration of Adults at Risk issues.	1 <sup>st</sup> April 2019
5. Panel compliance performance goal.	IE CPPT	The creation of a mandatory performance goal in relation to CPP engagement and compliance for all detained caseworkers or case progression officers. This will allow management action to be taken if engagement with recommendations does not occur.	1 <sup>st</sup> April 2019
6. Weekly SCS CPP observations	IE CPPT	Arrange CPP observations from HO SCS to increase oversight and assurance with monthly reporting through the CPP Team to the Director of Returns.	1 <sup>st</sup> April 2019
7. MoU with trusted NGOs	IE CPPT	Complete work with UNHCR and BRC to create a quarterly observation programme with regular reporting of CPP quality to the Director of Returns.	1 <sup>st</sup> June 2019
8. Independent panel members	RED policy	Create a body of panel members to be part of CPPs from six months thereafter.	Tbc

# Acknowledgements

The inspection team is grateful to the Home Office for their cooperation and assistance during the course of this inspection and appreciates the contributions from staff who participated. We are also grateful to the stakeholders who participated.

## **Inspection team**

Lead Inspector	Caroline Parkes
Project Manager	Akua Brew-Abekah
Inspectors	Monika Kukar
	David Rhys-Jones

