



Home Office

The Home Office response to the Independent Chief Inspector of Borders and Immigration's report:

**Second Annual Inspection of 'Adults at
Risk in immigration detention'**

(July 2020-March 2021)

The Home Office thanks the Independent Chief Inspector of Borders and Immigration (ICIBI) for his report.

The Home Office is grateful to the ICIBI for this second annual inspection, which follows an initial inspection report published in 2020. This represents continued progress from both of Stephen Shaw's reviews focused on the welfare of vulnerable persons in immigration detention. The Home Office appreciates the effort that the ICIBI and his team have devoted to this inspection. We have already begun to take forward work that stems from the recommendations made in this report.

The Department has accepted or partially accepted 9 of the ICIBI's 11 recommendations. 2 of the recommendations have not been accepted.

The Home Office response to the recommendations:

The Home Office should:

1. **Without further delays, implement the recommendations from previous reviews and reports about the 'Adults at Risk in immigration detention' policy (by Stephen Shaw, ICIBI and other statutory bodies), producing a revised timetable for this work and resourcing it so that it is completed during 2021-22, or if this is not possible, by a specified later date, and including in this process related recommendations from ICIBI reports concerning Non-detained Vulnerable Adults, and Reporting and Offender Management**

1.1 Partially accepted.

- 1.2 The Department will continue to implement those recommendations it accepted from previous reviews and reports, prioritising these accordingly. As referenced in this inspection report, the Detained Casework Board (DCB), the Immigration Detention Reform Board (IDRB) and the FNO Task Force are governance structures which regularly review progress on the implementation of recommendations and provide challenge where appropriate. This includes recommendations from Stephen Shaw's reports, alongside immigration detention reports from the Joint Committee on Human Rights, the Home Affairs Select Committee and the first ICIBI inspection into Adults at Risk. The Immigration Detention Reform and Improvement Board, bringing together the DCB and IDRB, was established in October 2021 to drive this work forward.
- 1.3 Much of our policy development work around Adults at Risk in Immigration detention was paused whilst the New Plan for Immigration was developed and following feedback from stakeholders. Following the changes made to the Adults at Risk policy this year, through a statutory instrument (which was subject to a Parliamentary debate) and with the Nationality and Borders Bill laid on Tuesday 6 July, we are now in the position to continue policy development. However, any changes will need to be compatible with any legislative changes made by Parliament and therefore will need to closely follow the passage of the Bill. As such, we will implement any further recommendations, where they remain relevant, over the next year.
- 1.4 We do not consider it appropriate to include vulnerability focused work which relates to those who are not within immigration detention in the sphere of this work, as it would potentially

dilute our focus on vulnerability in detention. It must however be noted that a considerable amount of work is being done across the borders and migration system to safeguard vulnerable people.

2. **In respect of the Adults at Risk policy overall and its implementation: ensure that the policy, plus any supporting guidance, instructions and performance measures clearly prioritise the safeguarding of vulnerable individuals over general concerns about abuse of the system.**

2.1 **Not accepted.**

- 2.2 The Home Office developed the Adults at Risk policy over the course of around 12 months before implementation in September 2016. The policy has already evolved, it was refined in 2018 and again in May 2021 to include changes regarding how detention decisions are made for victims of modern slavery. We believe the Adults at Risk in immigration detention policy appropriately balances the needs of those who may be potentially vulnerable in immigration detention with maintaining effective immigration control.

- 2.3 The Department acknowledges that with any policy, the application must be consistent. To this end we would signpost our 'detained caseworker training' that was developed following Stephen Shaw's second review and the concerns raised by the Home Affairs Select Committee in their report focusing on immigration detention. This three-module training package is provided to all involved in detained casework on an annual basis and ensures that there is a consistency of application of the Adults at Risk in immigration detention policy, whether it concerns initial detention, continuing detention or when release or return occurs.

- 2.4 Although we will continue to develop the Adults at Risk policy, we do not consider that we can accept this recommendation as we do not agree with the position that the policy does not already focus on, and prioritise, the identification and management of vulnerable or potentially vulnerable persons.

3. **In respect of the Detained Casework Oversight and Improvement Team (DCOIT):**

- i. Review the structure and format of the Enhanced Screening Tool, taking full account of feedback from external stakeholders and the findings from the initial pilot.**

3.1 **Accepted**

- 3.2 The Enhanced Screening Tool (EST) is currently in first pilot phase. The Department sought stakeholder input before commencing the pilot and will do so again as the pilot continues, and as part of the evaluation. It is likely there will be further iterations of the EST pilot and we do not yet know whether this workstream will be implemented as business as usual and if it does what form it will take.
- 3.3 Any change to the Department's processes on handling migrants, must add value for the individual and for the public.

4. **In respect of the Detention Gatekeeper (DGK):**
- i. **Ahead of the 24-hour Detention and Case Progression Review (DCPR), introduce a requirement for the DGK to seek further information relevant to an individual's suitability for detention from their GP (or other medical professional with first-hand knowledge of the individual) and their legal representative;**
 - ii. **Mandate the DGK's participation in the 7-day DCPR;**
 - iii. **In the case of Foreign National Offenders, where the DGK has highlighted concerns, or advised that a release referral should be submitted, require FNORC caseowners to provide an update to the DGK on case progression actions (authorised by a manager), within 24 hours.**

4.1 Not accepted.

- 4.2 In the same manner as we engaged with this recommendation from the ICIBI's first inspection, the provision of real-time medical advice, in the way described, would require a fundamental change in approach by many stakeholders, including primary healthcare providers, and their respective systems, at significant cost. The Department is confident that the concerns raised can be proportionately addressed through work already underway to scope how we will enhance the screening of those encountered and subject to enforcement action, in part to better identify issues of vulnerability (as referenced in our response to recommendation 3).
- 4.3 In respect to seeking input from legal representatives on suitability for detention, we do not consider this feasible given that the majority of those encountered and deemed suitable for detention are clandestine entrants (encountered at all times throughout the day) who do not have a legal representative. It would require a fundamental change in approach by a number of stakeholders, including the Legal Aid Agency, at significant cost, to take this forward. It is also possible that if such a process was established, it could actually increase the number of those detained and increase the amount of time they are detained for – as meetings with legal representatives would be required before detention was authorised and potentially whilst an individual was at a Port, by the roadside or on a beach. We accept that the legal representatives would act in the best interests of their client and with a duty of candour, but we would doubt that any legal representatives would ever set out circumstances in which they would sanction or support the use of immigration detention.
- 4.4 Guidance on completing reviews of detention on the Detention and Case Progression Review form was updated and published in March 2021. The guidance makes clear that all factors around detention should be considered and balanced against the presumption of liberty.
- 4.5 The Department's published position on a review of detention is set out in the 'Detention General Instructions'. It makes clear, in addition to statutory set timeframes, that a review of detention should occur whenever there is a change of circumstances. This review occurs with all factors considered previously known to both the 'reviewer' and the 'authoriser'. Any party responsible for detention will be aware of the Detention Gatekeeper's consideration in authorising detention given the content of the 24-hour review of detention; and should engage with that in their reasoning for maintaining detention or taking forward release. Given our current operating model, it would take significant further resourcing and cost for there to be sufficient Detention Gatekeeper staff available to participate on 7-day Detention and Case Progression Review discussions. Given that the authorising officer's comments are visible to whomever subsequently reviews detention, it is not clear what value this could add if they were present.

4.6 Foreign National Offenders' Returns Command will already engage with issues set out and any concerns raised by the Detention Gatekeeper within any subsequent detention reviews.

5. Produce in respect of Detention and Escorting Services (DES), and in collaboration with NHS England and Scotland:

- i. Monitor and analyse the take-up of Rule 34 appointments at each IRC, to identify and address the reasons for missed appointments and using the lessons learned to inform and develop a Home Office owned IRC estate-wide approach to increasing attendance at Rule 34 appointments.
- ii. Using the principles of cooperative working and information sharing set out in the 'Partnership Agreement between Home Office Immigration Enforcement, NHS England and Public Health England (2018-21)', review the span and quality of data collected by the NHS about the design and delivery of healthcare services in IRCs, and recommend improvements where necessary;
- iii. Carry forward the commitment in the Partnership Agreement to "support a tripartite approach to developing a training programme for identification of trauma and torture and ensure that this programme is embedded across the detained estate and the providers of healthcare", expanding this approach to include gender and sexual-based violence.

5.1 Partially accepted.

5.2 Healthcare in all immigration detention facilities in England is commissioned by NHS England. At Dungavel House IRC in Scotland and Larne House Short-Term Holding Facility in Northern Ireland healthcare is commissioned by the service providers. To consider the changes as recommended would require a fundamental change in approach by a number of stakeholders and their respective systems, at significant cost.

5.3 However, the Department will utilise the existing healthcare governance framework and Partnership Agreement to support NHS England in making improvements to the data collection process for R34 appointments and reviewing the current training programme for identification of trauma and torture. The design and delivery of healthcare services in England is a matter for NHS England.

6. In respect of DES, and in collaboration with NHS England and Scotland, and service providers:

- i. Review the purpose and use of the Part C process, including clarifying and confirming the roles and responsibilities of Home Office staff and suppliers and the value of enabling Part Cs to be attached to electronic healthcare records;
- ii. Review the processes in place relating to the arrival, screening and induction into an IRC/Short-Term Holding facility of migrants who have arrived in the UK by small boat, paying particular attention to age assessments.

6.1 Accepted.

6.2 The Home Office accepts that the current IS91 Risk Assessment Part C process can be improved. We will undertake a policy and operational internal review of the process and the findings will inform the revision of the published Detention Services Order 01/2019 'detainee escort records'. It is envisaged the review and subsequent DSO changes will be made by the end of the 2021 financial year.

6.3 The Home Office is continually reviewing and improving the end-to-end process for those who arrive by small boat.

6.4 While age assessment does not form part of this specific review, the Home Office makes every effort to ensure that age is assessed correctly, in the interests of safeguarding and to avoid abuse of the system. The Department will only treat an age disputed claimant as an adult upon their initial encounter if their physical appearance and demeanour very strongly suggests that they are 25 years of age or older. This threshold is set deliberately high in recognition of the difficulty in assessing an individual's age in this manner. If doubt remains about whether the claimant is an adult or a child, they will be referred to a local authority for an age assessment and treated as a child until further assessment of their age has been completed. While there is no single assessment technique, or combination of techniques, currently available which determine age with precision, we are committed to seeking improvements to current processes - this includes introducing a number of measures within the Nationality and Borders Bill.

7. In respect of Detainee Monitoring and Population Management Unit (DEPMU):

- i. **Review the criteria used to determine where an individual is detained, to ensure the use of prisons occurs in exceptional circumstances only, and for the shortest time possible.**
- ii. **Publish the criteria used to determine whether an FNO can be transferred to an IRC at the end of their custodial sentence.**

7.1 Partially accepted.

7.2 The Home Office and HM Prisons and Probation Service will review the criteria used to determine the placement of detained individuals to provide more transparency to this process. The review will inform the development of a new Detention Services Order (DSO) on Foreign National Offender (FNO) risk assessment, which will subsume the current DSO 03/2016 on 'detainee placement'. Although this will provide some transparency, the Department cannot agree to an 'exceptional circumstances' test at this time, given that there are complex circumstances that must be considered, when the appropriate detention location of an FNO is decided. It is intended that this review and subsequent DSO will be published by the end of the 2021 financial year.

8. In respect of Medico-Legal Reports (MLRs):

- i. **Carry out a thorough, robust investigation into suspicions that MLRs are being systematically abused and share findings with staff and external stakeholders;**
- ii. **In consultation with key stakeholders, agree any changes in the MLR process that are supported by the evidence from the investigation of possible abuse, with the aim of ensuring that MLRs are regarded by all parties as a robust and effective means of raising concerns about vulnerable individuals;**
- iii. **In future, where a case of fraud is suspected, take urgent action to bring this to the attention of the regulatory bodies responsible for investigating professional misconduct and malpractice.**

8.1 Partially accepted.

8.2 The Department accepts oversight and assurance of our handling around Medico Legal Reports can be improved. A significant amount of work and evidence has already been collated and, where appropriate, steps have been taken to refer and report individuals and

Solicitors to regulatory bodies. Legal requirements mean it is not always possible to provide specific details.

8.3 The Department will create a new team to establish processes and procedures to enable greater oversight and assurance around Medico Legal Reports. Once established we will be able to gather information around individual cases and trends, enabling us to work with both stakeholders and regulatory bodies to ensure safeguarding occurs and if there is abuse, it is challenged. This work should be complete by Summer 2022.

8.4 We will continue to work with stakeholders, but it is not always possible or appropriate to consult on all policy or procedural changes.

9. In respect of Case Progression Panels (CPPs):

- i. Identify best practice from other panels responsible for assessing and balancing risks to the public with the rights, interests and needs of individuals, such as MAPPA, and consider how this could improve the structure and practice of CPPs;
- ii. Revise and publish clear guidance on CPP roles and responsibilities, including what constitutes a quorum, the CPP's powers to mandate specific actions by the caseowner and others prior to the next CPP review;
- iii. Require the caseowner to attend any CPP at which their cases are being considered;
- iv. (Re-)Define the skills, qualities and knowledge (experience) required to act as CPP Chair and Panel Member and:
 - a. As a priority, provide training and guidance to CPP Chairs both in how to chair meetings and in the specifics of CPPs to ensure consistency of approach, meeting management, and decision-making; and,
 - b. Require that training for all CPP panel members is provided face-to-face with regular opportunities for refresher training, and that all panel members are cognizant of the role of the Chair;
 - c. To ensure that CPP Chairs and Panel members perform to a consistent standard, develop a quality assurance regime for CPPs, to include monitoring the use of the 'Case Progression Panel Chair Minimum Review Checklist';
- v. At least five working days before a CPP, ensure that the case files/records for all cases listed for review are up-to-date and include all of the information on vulnerability and case progression (e.g. any barriers to removal) that the CPP will need to make a decision, where necessary escalating the case to a senior manager in the caseworking unit to ensure that outstanding actions are completed and the case file/record updated before the CPP convenes.

9.1 Partially accepted.

9.2 The Department broadly accepts this recommendation.

9.3 We will revisit other types of safeguarding panels to draw best practice into our operations (i), improve assurance process (iv c) and ensure cases are ready to be reviewed before a CPP convenes (v). The Department will also, once independent panel member appointments have been confirmed, refine the published CPP guidance, ensuring that what constitutes a quorum is known (ii).

9.4 The Department does not see value in mandating a case owner or case progression officer attending a CPP (iii). Not only would this be challenging to arrange, but the consideration of a case owner should be clear from within the review of detention on the Detention and Case Progression Review. We have already taken steps to improve compliance around required CPP actions and we consider that this awareness, with updated guidance around Detention

and Case Progression Reviews will ensure cases are up-to-date and ready to be discussed at a CPP. However, accepting the concerns raised within this inspection, the Department will pilot having case owners or case progression officers present at a CPP when discussion occurs around an individual defined as an Adult at Risk Level 3.

- 9.5 In relation to CPP training (iv), a comprehensive training package is available to panel members and Chairs; and this can be provided as a 'self-learn package' or can be delivered by the head of the CPP Team. Training for both panel members and chairs includes a recommendation to observe CPP; and for Chairs they attend engagement sessions with existing Chairs and the detained leads working group. Chairs are also expected to observe at least two CPPs a year. We have also instigated from April 2021 a post CPP feedback process where every chair receives positive or developmental feedback from the CPP Team.

10. In respect of Rule 35:

- i. **As a priority, roll-out planned training to GPs regarding Rule 35;**
- ii. **Evaluate compliance with the two-day Home Office response time for Rule 35 reports;**
- iii. **Review the effectiveness of Rule 35(1) and (2) as safeguarding mechanisms, with the aim of ensuring their scope and use are fully understood by anyone called upon to write or assess a Rule 35 report;**
- iv. **Expand the list of the medical professionals who can complete a Rule 35 assessment to include qualified psychiatrists.**

10.1 Partially accepted.

- 10.2 The Home Office is currently developing a GP awareness package around the Rule 35 process, with the intention of ensuring the notification allows the Adults at Risk in Detention (AAR) policy to be used in a more specific manner to assess whether ongoing detention is appropriate. Improving the quality of Rule 35 notifications, should also lead to an improvement in the timeliness of the Department's response, and we have ensured the new Atlas immigration database allows for bespoke reporting around Rule 35. Awareness sessions are expected to begin by the end of 2021.

- 10.3 The Home Office recently introduced the Nationality and Borders Bill to Parliament, which will deliver the most comprehensive reform in decades to fix the broken asylum system. Consequently, we have paused work to reform the AAR policy and Detention Centre Rules 2001 (which include the Rule 35 process). We need to ensure that any further reforms to AAR are compatible with the future system, rather than the one that will soon be reformed. We expect this work to resume in 2022.

11. In respect of caseworking:

- i. **By the end of September 2021, complete a data cleansing exercise for all records with an Adults at Risk marker (all levels) and corresponding 'Special Condition' flags;**
- ii. **By the end of September 2021, review all elements of the Strategic Director release referral process to clarify the criteria used to make a decision and design and implement a means of capturing and reporting the outcomes of release referrals to provide greater transparency as well as feedback to caseowners and the DGK;**
- iii. **By the end of October 2021, evaluate the impact of the new DCPR form on case progression and the identification and safeguarding vulnerable detainees;**

- iv. By the end of October 2021, carry out a training needs analysis (TNA) covering all caseworking units involved with detained cases, to identify training and knowledge gaps and deliver targeted core and refresher training to all caseowners who need it by the end of 2021-22;
- v. With HMPPS:
 - a. Review and revise as necessary, the Immigration Enforcement – HMPPS Service Level Agreement, ensuring that responsibilities and timelines for advising FNOs about immigration detention decisions and outcomes are clear and understood;
 - b. Review and agree the respective roles of FNORC and HMPPS in assessing the level of risk posed to the public by a TSFNO;
- vi. Identify and take the necessary steps to ensure that vulnerable TSFNOs detained in prisons are identified and safeguarded, including ensuring prison staff are aware of the Part C process and the AaR policy;
- vii. Agree with the National Probation Service (NPS) a mechanism that ensures OASys reports for FNOs are automatically shared with the Home Office.

11.1 Partially accepted.

- 11.2 We will by the end of 2021, evaluate the impact of the new Detention and Case Progression Review form (iii) on identifying potential vulnerabilities.
- 11.3 In relation to FNOs, the Home Office will continue working with HMPPS to review and revise applicable Service Level Agreements to ensure the appropriate management of FNO vulnerability and expectations occurs and vitally, that we have appropriate measures in place to assess the levels of risk posed to the public in the event of release (v). We will also continue work to ensure appropriate safeguarding measures are in place for FNOs that remain in a prison, working to upskill Prison Officers and Key workers in their knowledge of the Adults at Risk in detention policy. We are also developing a prison process similar to the IS 91 Risk Assessment Part C process and are already working to implement an equivalent of the Rule 35 process under Prison Rule 21(vi).
- 11.4 The Strategic Director Release Referral process is kept under regular review, in particular the information provided by relevant teams in terms of progress of the case, any barriers, public protection risks, individual vulnerabilities and the risk of absconding or non-compliance. Reforms to Case Progression Panels and the Adults at Risk policy continue to evolve and inform this process. A review around this process will be undertaken to ensure vulnerability and public protection factors are comprehensively and consistently recorded; and the Oasys report is routinely included (ii).
- 11.5 The Home Office is focused on ensuring Adults at Risk level records are accurately recorded on Atlas. It would not be in the public interest to commission a resource intensive data cleansing exercise for the Case Information Database (CID) - a system that will soon be decommissioned (i).
- 11.6 In relation to training, we have already developed and delivered 'detained caseworker training' to all involved in detained casework. We acknowledge that with any policy, it is the application of it that must be consistent, and our three-module (start detention, manage detention & return and release) package based on the application of the Adults at Risk in detention policy, ensures all case owners are equipped to balance vulnerability and immigration compliance when making initial and ongoing decisions around detention. Any further training that is identified as required for individual staff, for teams or commands, would be developed and delivered by local Learning and Skills teams and would not be for all staff (iv).

11.7 OASys reports are produced by HMPPS and provided to the Home Office. For FNOs sentenced to 12 months or more there is a requirement to have an OASys assessment undertaken at the start of the custodial sentence and for this to be reviewed whenever there is a significant change that may impact upon their risk management or sentence plan. Our Service Level Agreement with HMPPS in relation to the management and removal of FNOs was agreed in January 2020 and requires provision of information around risk on our request. Where no OASys report is available case owners might make an informed judgement by considering the pre-convictions or any assessments/reports from probation based on pre or post sentence work (short of OASys). We have strong working relationships with HMPPS, and established governance structures exist where any concerns around the SLA can be escalated if they cannot be resolved by the offender manager and case owner (vii).