



Second annual inspection of 'Adults at risk in immigration detention'

July 2020 – March 2021

David Neal

Independent Chief Inspector of
Borders and Immigration

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Foreword

The ‘Adults at risk in immigration detention’ policy is intended to help Home Office staff to identify and safeguard vulnerable individuals who have been detained under immigration powers. It relies on the effective sharing of information between Home Office units and with other parties, including medical professionals, and requires caseowners to balance evidence of vulnerability against immigration factors, and public protection risks in the case of Foreign National Offenders (FNOs), when determining whether an individual whom the Home Office is seeking to remove from the UK should be detained pending removal. This process has been made more complex by the COVID-19 pandemic, which severely reduced the likelihood of removal “in a reasonable timeframe”, or of finding suitable accommodation for those who should be released, and also required careful infection control within Immigration Removal Centres (IRCs), including identifying detainees at additional risk from COVID-19 for whom continued detention was not appropriate.

This inspection is a commission from the Home Secretary to report annually on “whether and how the Adults at risk policy is making a difference”.¹ This, the second inspection, found that while the policy does offer some degree of protection to people in detention who are identified as vulnerable, its effectiveness is negatively impacted by existing, and known, flaws within the policy and the way in which the policy is implemented by staff on the ground.

The Home Office took 39 weeks to publish and respond to ICIBI’s first annual inspection and had done little to implement its recommendations, the deadline set by my predecessor in order to create momentum behind the needed changes. This undermined Home Office efforts to manage vulnerable detainees effectively. The pandemic then effectively stalled further work: for example, work on greater parity of conditions for time-served FNOs in prisons and individuals detained in IRCs was temporarily postponed in April 2020, as a result of the Home Office response to the COVID-19 pandemic, and resumed in September 2020.

Most significantly, the much needed reform of the Adults at risk (AAR) policy itself was, by July 2020, moving at a glacial pace. By October 2020, the policy work had been formally paused in anticipation of broader changes to the immigration system expected as part of the government’s New Plan for Immigration. Recognised flaws in the AAR policy therefore remained unaddressed and likely to remain so for some time as proposed legislation has yet to begin navigating the Parliamentary process.

Staff were keen to tell inspectors that the Home Office has been on a significant journey regarding vulnerability. They were fluent in the language of vulnerability, and confident they knew the signs and hallmarks of human trafficking, gender or sexual based violence, or torture, and knew what steps to take to safeguard victims. All too often, their principal concern was the perceived abuse of the system, for example of Medico-Legal Reports, which coloured how staff at all levels thought about detainees and the safeguarding mechanisms which existed in the AAR policy. Inspectors found that despite these suspicions, the policy was broadly followed and appropriate actions were taken. While inspectors

¹ Home Secretary statement on immigration detention and Shaw report <https://www.gov.uk/government/speeches/home-secretary-statement-on-immigration-detention-and-shaw-report>

acknowledged that there was likely some abuse of the safeguards, the extent of the problem was difficult to establish.

In late May, and outside the scope of this inspection, I observed first-hand the approach taken by staff to a Case Progression Panel (CPP). I found that the Independent Panel Members envisaged by Stephen Shaw in his report 'Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons' (2018) are making a positive contribution to the process; indeed the Home Office has gone beyond Shaw's recommendation for this independent element to be available for six-plus month panels, applying it to CPPs for all lengths of detention. However, I also observed weak chairing, poor quality discussion, mediocre caseworking and an overall lack of rigour within the process.

The characteristics of those in detention during this inspection were markedly different from that of the first inspection: from late March 2020, there was a precipitous drop in the numbers of detainees and the detained estate has not returned to pre-pandemic population levels; Foreign National Offenders made up, and continue to comprise, the majority of those held with a significant increase in those detained in prisons under immigration powers.

During 2020, the pandemic meant that inspectors could not visit any places of detention.

However, in early 2021, inspectors were able to go to an IRC and to a prison to explore how the AAR policy was being used on the ground. The previous inspection, which had visited five IRCs and four prisons, had found that the policy had limited resonance on the operational frontline, and that greater emphasis was placed on internal IRC contractor and Prison Service processes. This second inspection found that this continued to be the case. Similarly, communication between caseowners and staff in IRCs and prisons remained fractured.

The Home Office considered that the first inspection had not fully appreciated the challenges surrounding the management of FNOs. My predecessor acknowledged that these cases present some of the most difficult decisions the Home Office has to make, and this remains true. However, the blinkered approach to cases which require nuance and the failure to effectively rise to the challenge of managing individuals who are both vulnerable and potentially dangerous had created conditions for very extended stays in detention. At the time of writing, the longest held detainee had been in a category B prison, under immigration powers for over three years, since February 2018.

The first annual inspection resulted in eight substantial recommendations, not all of which were accepted, and none were closed by the March 2020 deadline which was set to encourage momentum – indeed some had barely begun. This inspection has made 11 substantial recommendations, some of which are timebound. Responding to Home Office feedback I have made the recommendations narrower, more directed and hopefully more deliverable.

At the time of the last inspection, there appeared to be a genuine interest and commitment in making improvements to identifying and safeguarding vulnerable detainees; it was not always clear, especially with the competing pressures of the COVID-19 pandemic, that the same focus on improvement was consistently maintained across the period of this inspection. Internal records show that senior managers did wish to advance work in this area, and that members of staff at all levels sought to do so, but that these efforts were sometimes frustrated by internal and external challenges. I trust that my predecessor's experience of a 39 week delay to the publication of the first inspection report is not indicative of the value placed by the Home Office on safeguarding vulnerable people in detention and will not be repeated.

David Neal
Independent Chief Inspector of Borders and Immigration

1. Purpose and scope

- 1.1** An annual inspection of the ‘Adults at risk in immigration detention’ policy was commissioned by the Home Secretary in response to Recommendation 14 in Stephen Shaw’s report ‘Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons’, which was published on 24 July 2018.²
- 1.2** The first annual inspection was conducted between November 2018 and May 2019. It was submitted to the Home Office on 29 July 2019 and published on 29 April 2020.
- 1.3** This second inspection examined Home Office progress in implementing the recommendations from the first annual inspection of ‘Adults at risk in immigration detention’ and the effectiveness and efficiency of the safeguards in place for vulnerable detainees, including:
 - Detention Gatekeeper
 - Rule 35/Rule 21
 - Medico-Legal Reports
 - Case Progression Panels
- 1.4** The inspection looked, in particular, at the relationship between the Adults at risk (AAR) policy and caseworking practice, the consequences of the pause of much of the reform of the policy, and the impact of the COVID-19 pandemic on immigration detention. Unlike the first inspection, this inspection did not look at detainees’ journey through the detention system but rather focused on particular points in the journey; it therefore did not consider, in depth, initial encounters with Border Force, or the work of Immigration Enforcement teams in the community. This inspection focused primarily on Immigration Removal Centres and prisons, and did not consider Short-Term Holding Facilities.

² ‘Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons’, <https://www.gov.uk/government/speeches/home-secretary-statement-on-immigration-detention-and-shaw-report>

2. Methodology

2.1 Inspectors:

- analysed preliminary and formal evidence provided by the Home Office
- conducted surveys with Home Office teams including:
 - Detention Gatekeeper (DGK)
 - Criminal Casework (now Foreign National Offender Returns Command (FNORC))
 - National Returns Command (NRC)
 - Detention Engagement teams (DET)
 - Prison and Prosecution teams (POP)³
 - Case Progression Panel members (CPP)
- received 15 written submissions from stakeholders complemented by individual meetings, including two sessions with lived experience groups
- convened two Adults at risk forum meetings, plus one medical sub-forum meeting
- reviewed 122 Home Office files, stratified broadly on the representative Adults at risk numbers present in the detained estate at the snapshot dates
- observed 11 Case Progression Panels over a six-month period
- conducted interviews and focus groups with Home Office staff including from:
 - DGK
 - FNORC
 - NRC
 - Embedded Probation Service staff
 - DET
 - Detained Vulnerability Assurance and Advice Team (DVAAT)
 - Detention and Escorting Services (DES)
 - Rule 35 team
 - Returns Enforcement and Detention (RED) Policy
 - Senior leadership from FNORC and Detention, Progression and Returns Command (DPRC)

³ Renamed Immigration Prison Teams in March 2021.

- conducted interviews with IRC provider staff, IRC-based healthcare and Home Office staff, and detainees at Brook House and Yarl's Wood IRCs, and visited Colnbrook IRC
- visited and conducted interviews with Her Majesty's Prison and Probation Service (HMPPS) staff, prison healthcare staff, and time-served Foreign National Offenders (TSFNO) at HMP Pentonville
- sent a copy of the report to the Home Office on 26 May for factual accuracy checking. The Home Office responded on 14 June 2021

3. Summary of conclusions

- 3.1** The ICIBI's second annual inspection of 'Adults at risk in immigration detention' found that the Adults at risk (AAR) policy had become well established as the Home Office's framework for the identification and safeguarding of vulnerable people in detention. Interviews with staff revealed that the message about the importance of engaging with vulnerability was well embedded. Staff were familiar with the principles behind the policy and able to confidently articulate their roles and responsibilities within it. Members of staff spoke of "the journey the Home Office had been on" towards the creation of a culture that prioritises the safeguarding of the vulnerable, and many of those involved in administering the safeguards offered by the Adults at risk (AAR) policy exhibited real pride in their work.
- 3.2** The quality of the engagement with vulnerability by the teams working in the detention space was, however, inconsistent. Detention Gatekeeper staff highlighted to inspectors their confidence in identifying vulnerable individuals, challenging referring teams to provide further information, and rejecting a referral for detention. However, in the context of COVID-19, the majority of those referred were time-served Foreign National Offenders (TSFNOs) and could not be rejected by the Detention Gatekeeper; rather, the caseworker could be asked to submit a release referral to the Strategic Director and the individual would be detained while that process was completed.
- 3.3** More broadly, genuine concerns about vulnerability were in tension with a widely held view within the Home Office that the safeguarding mechanisms used to identify and protect vulnerable detainees were and are being abused. While staff insisted that they were scrupulous in applying the Adults at risk policy, many acknowledged that they viewed claims of vulnerability with suspicion. Officials pointed to a sharp rise in recent years in the number of Medico-Legal Reports (MLRs) and of modern slavery claims made through the National Referral Mechanism (NRM) as indications of abuse, and the Home Office was working to change the approach on the handling of MLRs and modern slavery claims to address this issue. The Home Office had sought to explore this abuse, but the Home Office and inspectors had different perceptions as to the volume and depth of the evidence presented. The impact of the measures employed by the Home Office to address this abuse, such as referrals to regulators, was not always clear to inspectors.
- 3.4** Progress towards the implementation of the accepted recommendations from the first inspection had been slow and limited. Work to improve conditions for immigration detainees held in prisons had not advanced beyond the scoping stage, and the introduction of a pilot to test an enhanced screening tool for vulnerability (the design of which had attracted criticism from stakeholders) had been suspended as a result of the COVID-19 pandemic. The biggest impediment to wider progress has been the pausing of the reform of the Detention Centre Rules (including Rule 35) and the Adults at risk policy itself. This pause was confirmed by officials in October 2020, in part in anticipation of wider ranging changes to the immigration

system expected through the New Plan for Immigration.⁴ The linkage between the AAR policy work and forthcoming legislation suggests that there will be a lengthy delay before any meaningful changes are made to the AAR policy and the Detention Centre Rules, meaning well-known flaws in the policy will continue to prove problematic for the Home Office, and vulnerable detainees.⁵ As currently considered, the focus of the proposed legislation appears to be on deterring abuse of the immigration system, with the identification and protection of vulnerable individuals potentially a secondary focus.

- 3.5** The second annual inspection of AAR took place in the context of the COVID-19 pandemic, which resulted in significant changes to the size and profile of the detained population and to the management of the detention estate, as well as inspectors' access to it. The number of individuals held in Immigration Removal Centres (IRCs) fell by 80% after the onset of the pandemic – from 1,438 on 17 February 2020 to 271 on 1 June 2020. Many individuals were released as a result of an internal review which assessed each detainee's potential vulnerabilities to COVID-19 and the barriers to their removal from the UK. At the same time, the number of people entering detention fell due to the suspension of most enforcement activity and the sharp decline in international travel. Though the detained population rose during the second half of 2020, it remained well below pre-pandemic levels, and well below the capacity of the detention estate, throughout the period of this inspection.
- 3.6** One result of these trends was that the composition of the detained population shifted, with time-served Foreign National Offenders (TSFNs) accounting for a sizeable majority – and at some points nearly the entirety – of those held in immigration detention since the onset of the pandemic. TSFNs were less likely to be released as a result of the COVID-19 detention reviews because of the public protection risks they were judged to pose. A shortage of suitable bail and asylum accommodation meant even those TSFNs whose release had been authorised in principle by the Home Office or by an immigration judge remained in detention for extended periods of time before appropriate housing could be secured. TSFNs starting a period of immigration detention in prison upon the completion of a custodial sentence also made up a significant proportion of those entering detention during the pandemic. Indeed, both the number and the proportion of immigration detainees being held in prisons, rather than IRCs, has increased significantly over the period of this inspection. As detainees in prisons are subject to a more restrictive regime and have less access to the safeguards of the AAR policy than those held within the immigration detention estate, this trend gives rise to concerns about the extent to which the Home Office is able to identify and address vulnerabilities in this growing population.
- 3.7** The Home Office response to the increasing numbers of asylum seekers arriving by small boats has also had a significant impact on the immigration detention system in 2020-21. Between August and December 2020, this cohort accounted for most of the rise in the size of the detained population, as new arrivals were held in short-term holding facilities for initial screening, and as some were subsequently re-detained for removal to European countries through which they had passed en route to the UK. Though small boat arrivals were generally detained only for brief periods initially, the pre-detention screening of these individuals for vulnerabilities was often rushed and incomplete. The use of a truncated asylum screening interview, without the knowledge of the Detention Gatekeeper, undermined the effectiveness

4 New Plan for Immigration policy statement, <https://www.gov.uk/government/consultations/new-plan-forimmigration/new-plan-for-immigration-policy-statement-accessible>

5 The pausing of work to update the Adults at risk policy and the Detention Centre Rules did not apply to work to bring potential victims of trafficking within the scope of the AAR policy and to develop minimum standards for MLRs. In its factual accuracy response of June 2021, the Home Office stated: "From 25 May 2021 the way detention decisions are made for potential and confirmed victims of modern slavery changed. We have also introduced a set of standards into the AAR policy which apply to external medical reports."

of this mechanism in assessing the suitability of an individual for detention. For those from this cohort who were re-detained for removal at Brooke House in their experiences of detention were marked by high levels of self-harm and significant pressure on IRC healthcare services, trying to respond to the resultant demand for Rule 35 reports.

- 3.8** Practical steps taken by the Home Office and those contracted to manage detention facilities to respond to the health risks posed by the COVID-19 pandemic generally functioned well. Moving to the single occupancy of cells in IRCs and the introduction of a reverse-cohorting system within the centres – maintaining separation between new arrivals and existing populations – helped to limit the potential spread of the virus within the detention estate. Although an outbreak at Brook House IRC in December 2020 led to its temporary closure, prevention measures were largely successful in keeping detainees and staff safe. COVID-19-related restrictions did have a negative impact, however, on the ability of detainees to access some services and amenities within the detention estate, including in-person legal visits and most in-person access to Detention Engagement team staff. However, custody staff welcomed the reduced numbers and the additional attention which could be paid to individual detainees.
- 3.9** The channels of communication between IRCs and the Home Office, identified as problematic in the first inspection, continued to be an issue, with the Part C process – used to alert the Home Office to a detainee’s vulnerability – failing to operate effectively. While mandated healthcare screening was taking place, the voluntary GP appointment offered within 24 hours of arrival (in accordance with Rule 34 of the Detention Centre Rules) had low levels of take-up. IRCs, particularly at Yarl’s Wood and Brook House from October 2020, identified an increasing number of age dispute cases, with concerns raised by Home Office and supplier staff, and by the Independent Monitoring Board, about the quality of initial screening at the Kent Intake Unit.
- 3.10** The Rule 35 process, deemed problematic by Stephen Shaw and the first AAR inspection, had shown limited signs of improvement. The ‘internally independent’ Rule 35 team had, by the time of this inspection, been in operation for 18 months, and there had been an increase in compliance with the two-day response time to Rule 35 reports, though questions arose as to the robustness of the data available to evidence this improvement. Both the GP reports, following an assessment of a detainee, and the Rule 35 team response were of varying quality. The numbers released following a Rule 35 report had increased from the previous inspection, from 24.5% to 36.5%, but, as with the previous inspection, Rule 35(3) reports, relating to claims of torture, accounted for the overwhelming majority of Rule 35 reports, leading to concerns about how those with health conditions or suicidal and self-harm tendencies were adequately protected.
- 3.11** MLRs were the primary focus of Home Office allegations that vulnerability safeguards were being abused, though the scale of the problem was hard to define, and mitigation measures were limited as a result. Efforts to develop a set of standards for MLRs were ongoing but subject to stakeholder criticism and concerns about the ability of MLRs to protect vulnerable detainees. While inspectors found that an MLR usually prompted a review of a detainee’s AAR level, as required by the policy, on occasion, and contrary to the requirements of the policy, caseworkers disregarded the conclusions reported in MLRs upon receipt of a second opinion requested from IRC healthcare staff.
- 3.12** Improvements to the processes and guidance for Case Progression Panels had raised the standard of this assurance mechanism, but there remained a lack of consistency in how these processes were undertaken. The quality of the discussion and the extent to which

vulnerability and alternatives to detention were considered for each case was variable. Independent Panel Members were a positive addition to the process, and the CPP Team staff who provided administrative support were professional and efficient. Panel members, however, were sometimes under-prepared or lacked up-to-date information on their particular area of expertise, such as the status of an appeal, which would better inform the discussion. Monitoring of the impact of CPPs was limited to the volume of the recommendations made and whether a caseworker recorded their response on the Home Office's caseworking database (CID) and in the Detention Case Progression Review (DCPR). There was no consideration of the quality of the action taken by the caseworker or follow-up in cases where CPP recommendations required action. Overall, cases were rarely 'panel-ready', meaning substantial time was spent by CPP members trying to establish the specifics of the case, particularly in relation to vulnerability and an individual's current Adults at risk level. Poor caseworking, and the lack of accountability for the effective execution of administrative tasks, continued to undermine CPPs and their value as an assurance mechanism.

- 3.13** While caseworkers, for whom the AAR policy played the biggest role, were cognizant of the duties upon them, they spoke of their suspicions as to the authenticity of claims of vulnerability. There was little evidence that caseworkers understood that vulnerability was dynamic and could fluctuate over a period of detention and therefore required monitoring. Detention was rarely reviewed when a vulnerability indicator was flagged, and all too often DCPRs contained basic errors, such as the wrong AAR level, negatively impacting how the Home Office made decisions about an individual. The COVID-19 Release Panels, undertaken in March and April 2020, and again in December 2020, were prompt but lacked attention to detail, and where release was recommended, the actual release of a detainee could take a significant period of time.
- 3.14** Time-served FNOs continued to exert pressure on the immigration detention system and the AAR policy. From a caseworking perspective, the effective and accurate assessment of the risk posed by a TSFNO was sometimes lacking and could have led to longer than necessary periods of detention. Information sharing between prisons and the Home Office was often piecemeal, with vulnerable detainees being managed in prisons rather than flagged to the Home Office for release. No Rule 21 reports, the closest analogue in prisons to a Rule 35 report, had been raised or recorded during the inspection, and the limits placed on the access of Prisons Operations and Prosecutions teams to immigration detainees in prisons as a result of COVID-19 restrictions inhibited their ability to provide effective liaison between Home Office caseworkers and TSFNOs. Staff perceived there to be a lack of transparency around the Strategic Director release referral process, and the criteria used for decision-making. A review of this process, carried out in response to a recommendation arising from the first AAR inspection, focused on timeliness of decisions rather than providing a more robust assessment of its effectiveness.
- 3.15** Finally, and as with the previous inspection, poor record-keeping undermined the quality of the data available to the Home Office to assess the extent to which it was identifying and safeguarding detainees. The problems with CID's functionality, and the hesitancy to expand the breadth of its data collection in the face of the rollout of Atlas has meant that the Home Office continues to fall short in this area and cannot rely on the data recorded on its systems. The introduction of Atlas will not by itself address the problems caused by poor data entry and record-keeping. Rather, a more holistic and strategic approach is required to improve caseworking more generally, with an efficient technical solution required to support this work.

4. Recommendations

The Home Office should:

- 4.1** 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,⁶ and Reporting and Offender Management.⁷
- 4.2** 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.
- 4.3** 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.
- 4.4** 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.
- 4.5** 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.

⁶ “An inspection of the Home Office’s approach to the identification and safeguarding of vulnerable adults February – May 2018”, 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

⁷ “An inspection of the Home Office’s Reporting and Offender Management processes, December 2016 – March 2017”, <https://www.gov.uk/government/publications/inspection-report-on-the-reporting-and-offender-management-system>

- 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.

4.6 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.

4.7 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.

4.8 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.

4.9 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 Multi-Agency Public Protection Arrangements (MAPPAs), 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.

4.10 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.

4.11 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;

- iii. 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;
- iv. Agree with the National Probation Service (NPS) a mechanism that ensures OASys reports for FNOs are automatically shared with the Home Office.

5. Background

- 5.1** ICIBI’s inspection of the ‘Adults at risk in immigration detention’ policy is an annual exercise that stems from the ‘Review of the welfare in detention of vulnerable persons’ carried out by the former Prisons Ombudsman Stephen Shaw CBE, and from his follow-up report published two years later. Shaw’s first review, commissioned by then Home Secretary Theresa May in February 2015 and published in January 2016, contained 64 recommendations and led to the implementation by the Home Office of the Adults at risk (AAR) policy in September 2016.⁸
- 5.2** In July 2018, in his follow-up review assessing the government’s progress in implementing recommendations from his first report, Shaw called the AAR policy a “work in progress”. He noted that while the policy had “engendered a genuine focus on vulnerability”, it was “not clear that AAR has yet made a significant difference in reducing” the number of vulnerable people in detention.⁹ It was in response to this report that then Home Secretary Sajid Javid 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”.¹⁰
- 5.3** The ICIBI carried out its first annual inspection between November 2018 and May 2019. The inspection examined 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 the opportunities and mechanisms for identifying and responding to vulnerability at each stage. The resulting report was sent to the Home Secretary on 29 July 2019 and published, after a significant delay of 39 weeks, on 29 April 2020.¹¹
- 5.4** The first inspection on ‘Adults at risk in immigration detention’ made eight recommendations.¹² Responding to the report, the Home Office accepted two recommendations and partially accepted five, while rejecting the recommendation relating to data collection on the grounds that the work called for would not be possible prior to the launch of the department’s new caseworking database (Atlas).¹³ The status of work to implement the recommendations from the first inspection is detailed in Chapter 6.

8 ‘Review into the welfare in detention of vulnerable persons: Terms of reference’, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/402206/welfare_in_detention_review_tors.pdf; ‘Review into the welfare in detention of vulnerable persons’, January 2016, <https://www.gov.uk/government/publications/review-into-the-welfare-in-detention-of-vulnerablepersons>; House of Commons, Home Affairs Committee, ‘Immigration detention: Fourteenth Report of Session 2017–19’, 12 March 2019, paragraph 106, <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/913/91302.htm>.

9 ‘Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons’, July 2018, p. xii, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728376/Shaw_report_2018_Final_web_accessible.pdf.

10 ‘Home Secretary statement on immigration detention and Shaw report’, 24 July 2018, <https://www.gov.uk/government/speeches/home-secretary-statement-on-immigration-detention-and-shawreport>.

11 ‘Annual inspection of ‘Adults at Risk in Immigration Detention’ (2018-19)’, p. 3, <https://www.gov.uk/government/publications/annual-inspection-of-adults-at-risk-in-immigration-detention2018-19>.

12 ‘Annual inspection of ‘Adults at Risk in Immigration Detention’ (2018–19)’, pp. 12-13, <https://www.gov.uk/government/publications/annual-inspection-of-adults-at-risk-in-immigration-detention2018-19>.

13 ‘The Home Office response to the Independent Chief Inspector of Borders and Immigration’s report: Annual inspection of Adults at Risk in Immigration Detention (November 2018 to May 2019)’, <https://www.gov.uk/government/publications/response-to-the-annual-inspection-of-adults-at-risk-inimmigration-detention>.

Legislation and policy: developments since the first inspection

- 5.5** The legislative and policy context within which the Home Office maintains a system of immigration detention is detailed in the report on the first annual inspection of ‘Adults at risk in immigration detention’. As of 1 May 2021, there had been no changes since the completion of that report in July 2019 to:
- The Home Office’s general guidance on detention (Chapter 55), the latest published version of which is dated 23 May 2019¹⁴
 - The Home Office’s staff guidance on ‘Adults at risk in immigration detention’, the latest iteration of which (version 5.0) is dated 6 March 2019¹⁵
 - The Detention Centre Rules 2001, the secondary legislation governing the operation of Immigration Removal Centres (IRCs), the most recent amendments to which (to insert a definition of ‘torture’) came into force on 2 July 2018¹⁶
 - The Short Term Holding Facility Rules 2018, governing the operation of places of detention where individuals may be held under immigration powers for up to seven days, which are unamended since coming into force on 2 July 2018¹⁷
- 5.6** The statutory ‘Guidance on adults at risk in immigration detention’ in force on 1 May 2021 remains unchanged since July 2018. However, a new draft version of this guidance – which is laid before Parliament in accordance with section 59 of the Immigration Act 2016 – would bring decisions on the detention of potential victims of trafficking who have received a positive reasonable grounds decision under the National Referral Mechanism (NRM) within the scope of the Adults at risk policy. This revised guidance was laid before Parliament on 22 February 2021 and will go into effect from 25 May 2021.¹⁸ The Home Office justified the proposed changes as necessary “to rectify an anomaly in the current policy” but acknowledged that “some individuals may, as a result of the changes, be more likely to be detained, or have their detention continued, than would currently be the case.”¹⁹ Stakeholders have raised their significant concerns with this change, particularly that this will reduce protection for trafficking victims.
- 5.7** Though the Home Office held a consultation on potential changes to the Detention Centre Rules between March and June 2019, ministers confirmed a decision to “pause” work on a new set of Immigration Removal Centre Rules, along with closely related work on revisions to the Adults at risk policy, in October 2020. The decision was taken in part to ensure that changes to these policies would be consistent with further reaching reforms to the immigration system expected to result from forthcoming legislation to implement the Government’s New Plan for Immigration, on which a consultation was announced on 24 March 2021. The background to, and impact of, the pause to this work is discussed further in Chapter 6.

14 ‘Detention and temporary release’, at <https://www.gov.uk/government/publications/offendermanagement>.

15 ‘Adults at risk in immigration detention’, version 5.0, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919791/adults-at-risk-policy-v5.0ext.pdf.

16 Detention Centre Rules 2001, at <https://www.legislation.gov.uk/uksi/2001/238/contents>; and Detention Centre (Amendment) Rules 2018, at <https://www.legislation.gov.uk/uksi/2018/411/contents/made>.

17 Short Term Holding Facility Rules 2018, at <https://www.legislation.gov.uk/uksi/2018/409/contents/made>.

18 ‘Draft revised guidance on adults at risk in immigration detention, February 2021’, <https://www.gov.uk/government/publications/draft-revised-guidance-on-adults-at-risk-in-immigrationdetention-february-2021>.

19 Secondary Legislation Scrutiny Committee, ‘Submission from Medical Justice and others on Immigration (Guidance on Detention of Vulnerable Persons) Regulations 2021 and Home Office response’, <https://committees.parliament.uk/publications/5085/documents/50376/default/>.

Immigration detention: trends

5.8 Responding in July 2019 to a report on immigration detention by Parliament’s Joint Committee on Human Rights, then Immigration Minister Caroline Nokes pointed to the fact that the size of the immigration detention estate was nearly 40% smaller in summer 2019 than it had been four years earlier and that 30% fewer people were detained at the end of 2018 than had been one year previously. She went on to state that, through reforms undertaken in response to the Shaw reviews, the government was committed to securing, over time, “a material reduction in the number of people detained and the length of time they spend in detention, coupled with improved welfare for detainees and a culture that maintains the highest standards of professionalism”.²⁰ In a written statement, the Minister for Immigration Compliance and the Courts for the current government, Chris Philp, reiterated this commitment in May 2020.²¹

The number of people detained: trends

5.9 The number of people held under immigration powers has indeed fallen from a peak reached in 2015, when there were 32,447 instances of individuals entering detention. In 2019, the last full calendar year before the immigration detention system was affected by the COVID-19 pandemic, the number of entries into immigration detention stood at 24,443, a level almost 25% lower than four years previously. Most of the pre-pandemic drop in the use of immigration detention had taken place by 2018, however, with the volume of entries into detention in 2019 only marginally lower than the year before. The number entering detention then fell sharply in 2020, reflecting the suspension of much enforcement activity and the significant barriers to international travel resulting from COVID-19.

Figure 1:

| Entries into immigration detention by year, 2015 to 2020 ²² | | |
|------------------------------------------------------------------------|---------------------------|-------------------------|
| | Number entering detention | Change on previous year |
| 2015 | 32,447 | +6.9% |
| 2016 | 28,903 | -10.9% |
| 2017 | 27,348 | -5.4% |
| 2018 | 24,773 | -9.4% |
| 2019 | 24,443 | -1.3% |
| 2020 | 14,773 | -39.6% |
| Change over period 2015-2019 (pre-COVID-19) | | -24.7% |
| Change over period 2015-2020 | | -54.5% |

20 ‘Joint Committee on Human Rights Immigration Detention Inquiry Report, February 2019, Home Office Response to Recommendations’, <https://www.parliament.uk/globalassets/documents/jointcommittees/human-rights/Immigration-detention-Government-response.pdf>.

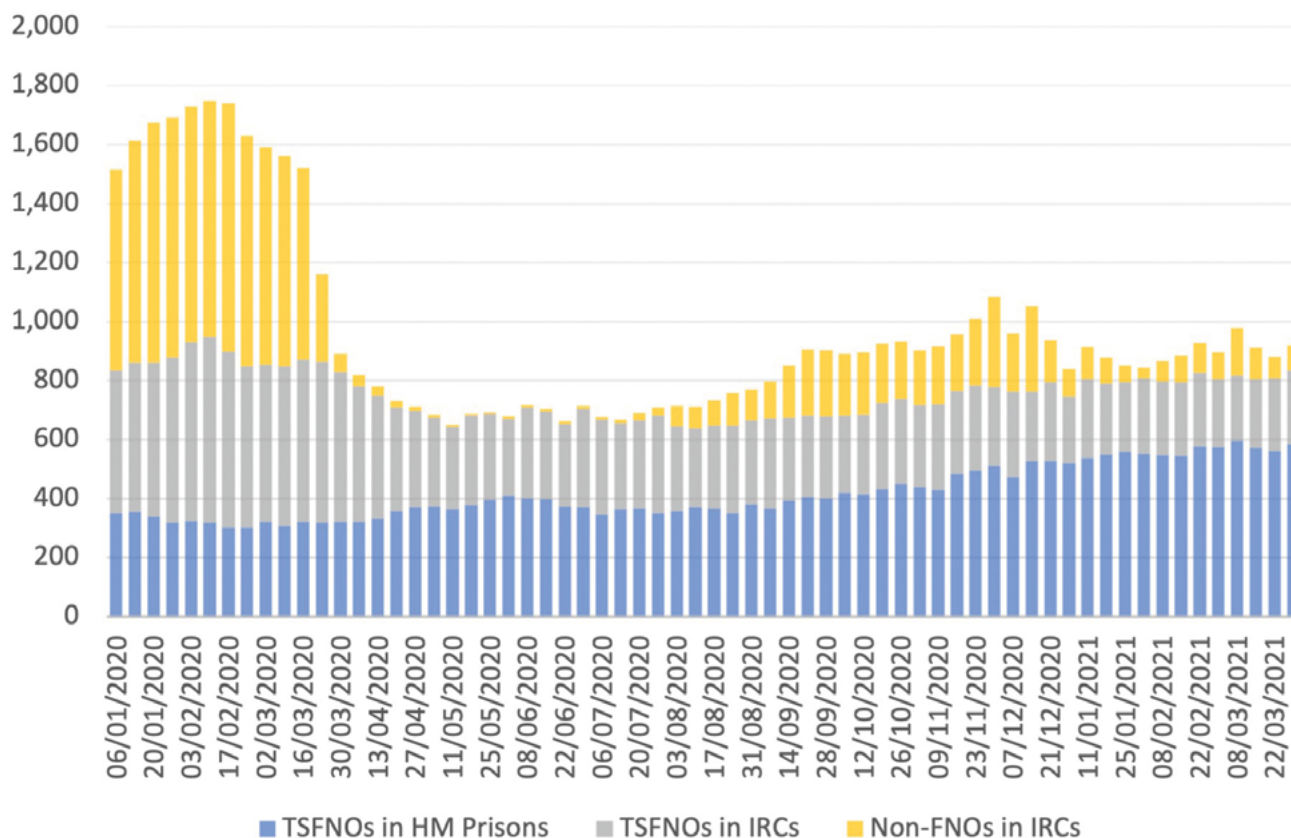
21 <https://questions-statements.parliament.uk/written-questions/detail/2020-05-04/43061>.

22 Figure 1 contains internal management information provided by the Home Office. It has not been quality assured to the level of published National Statistics so should be treated as provisional and therefore subject to change

5.10 The profile of those detained changed over the course of 2020, as the pandemic and a rise in the number of small-boat arrivals shaped Home Office operations. Over the period between April and December 2020, UK Visas and Immigration – the Home Office unit responsible for processing asylum claimants – made more than half (51.7%) of the detention referrals accepted by the DGK, reflecting both the scale of the operation around small-boat arrivals and the sharp drop, in the context of COVID-19, in referrals from Border Force and from Immigration Compliance and Enforcement Teams. The Foreign National Offender Returns Command (FNORC) accounted for another quarter of accepted referrals (25.3%) over those months, reflecting the fact that many of those entering immigration detention during the pandemic did so in prison, immediately after the completion of a custodial sentence. By contrast, UK Visas and Immigration (UKVI) and FNORC had accounted for only 12.7% and 13.7% of accepted referrals, respectively, over the ten months preceding the onset of the pandemic, from April 2019 to January 2020.

5.11 Since the onset of the pandemic, time-served Foreign National Offenders (TSFNOs) – non-British citizens who had completed a custodial sentence for a criminal offence – have accounted for the vast majority of those held in immigration detention at any given time. Though TSFNOs accounted for only just over half of the detained population (906 out of 1,730, or 52.5%, with 300 of those held under immigration powers in prisons) on 15 February 2020, they made up 99% of the reduced number of people in detention on 15 May 2020 (669 out of 676, with 372 of those held in prisons). The detention of many small-boat arrivals between August and December 2020 re-introduced a significant non-FNO element to the detained population, but as most of these individuals were held only for short periods, TSFNOs remained the largest group in detention. As of early 2021, TSFNOs continue to make up a substantial majority of immigration detainees (approximately 91% as of 29 March 2021).

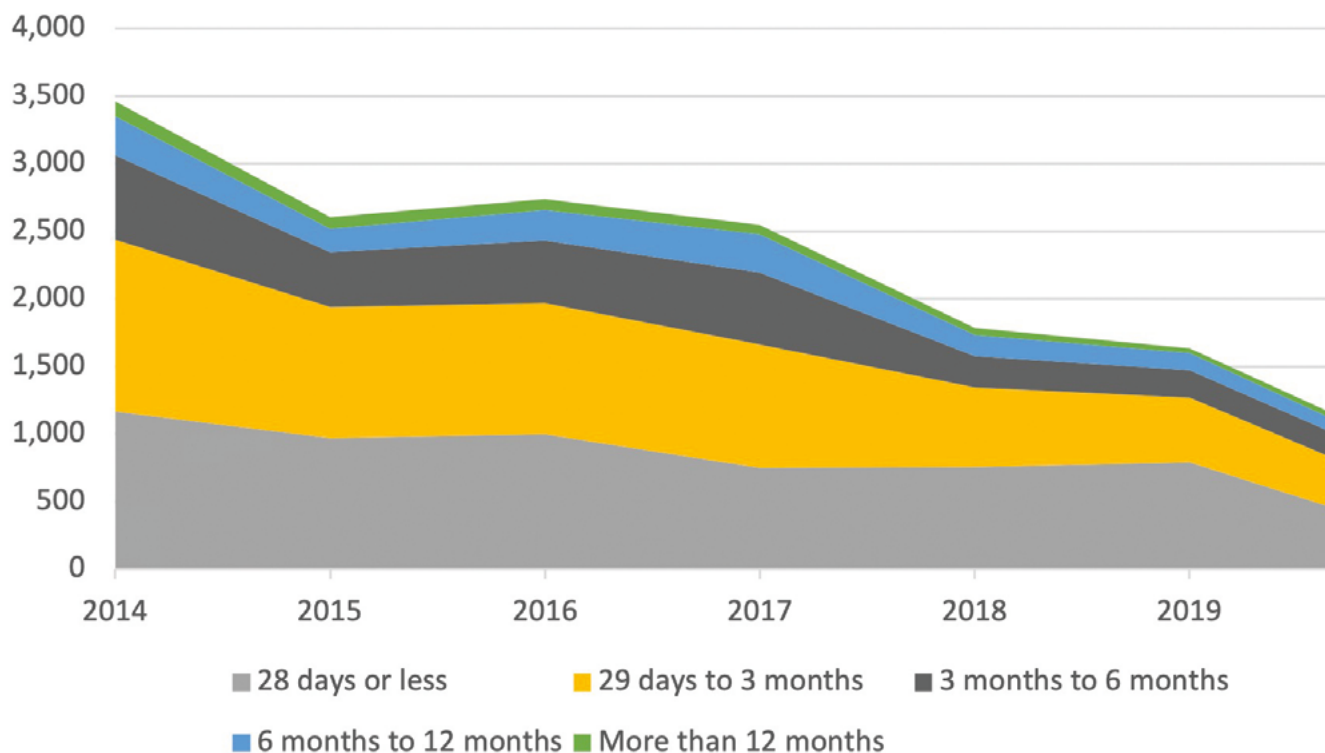
Figure 2: Size of the detained population, January 2020 to March 2021²³



5.12 The significant decrease in the use of immigration detention over the past six years can also be seen in snapshots of the size of the detained population over time. As of 31 December 2014, the number of immigration detainees (excluding time-served Foreign National Offenders being held in prisons, who were not included in the statistics at the time) stood at 3,462. By 31 December 2019, that figure was 52.7% lower, at 1,637 (this time including a cohort of 359 TSFNs being held in prisons). At the end of 2020, the number of immigration detainees stood at a historic low of 910, reflecting the drop in the use of detention during the COVID-19 pandemic. (See Figure 3.)

²³ Figure 2 contains internal management information provided by the Home Office. It has not been quality assured to the level of published National Statistics so should be treated as provisional and therefore subject to change.

Figure 3: Detained population at end of year, 2014 to 2020, showing length of detention



Length of time in detention: trends

5.13 The length of periods of detention has also, in general, been declining in recent years. In 2015, 34.8% of detentions ended – with an individual’s removal or release – within seven days, and 61.9% ended within 28 days. By 2019, those figures had increased to 39.2% and 73.6% respectively. In 2020, more than half of all periods of detention lasted seven days or less, largely reflecting the high numbers of small-boat arrivals who spent relatively short periods in detention while initial processing of their asylum claims took place.

Figure 4:

Length of detention, 2015 to 2020

| | 7 days or less | 28 days or less | Less than 3 months | Less than 6 months | Less than 12 months | Less than 18 months | More than 18 months |
|-------------|----------------|-----------------|--------------------|--------------------|---------------------|---------------------|---------------------|
| 2015 | 168 (34.8%) | 972 (61.9%) | 2,154 (88.1%) | 2,518 (96.4%) | 2,573 (99.1%) | 2,599 (99.7%) | 100 |
| 2016 | 199 (35.4%) | 996 (63.8%) | 2,170 (89.9%) | 2,660 (96.9%) | 2,716 (99.3%) | 2,730 (99.7%) | 82 |
| 2017 | 146 (33.0%) | 753 (63.4%) | 1,898 (87.6%) | 2,481 (95.9%) | 2,521 (99.2%) | 2,540 (99.7%) | 87 |
| 2018 | 159 (36.8%) | 754 (69.2%) | 1,471 (88.8%) | 1,730 (95.9%) | 1,771 (99.2%) | 1,782 (99.8%) | 60 |
| 2019 | 244 (39.2%) | 790 (73.6%) | 1,362 (93.5%) | 1,600 (97.9%) | 1,626 (99.5%) | 1,632 (99.9%) | 30 |
| 2020 | 109 (54.0%) | 290 (77.2%) | 692 (92.8%) | 867 (97.2%) | 889 (99.3%) | 904 (99.9%) | 17 |

- 5.14** Though instances of individuals being held for exceptionally long periods remain of concern, such cases became rarer over the decade prior to the COVID-19 pandemic. On 31 December 2010, the Home Office had held 519 people (20.6% of the detained population at the time) for more than six months, with 254 detained for more than a year and 65 (2.6% of the total) held for more than two years. The most extreme case was that of an individual who had been held for 1,885 days – more than five years. By the end of 2014, 397 people (11.5% of the total) had been held for more than six months, including 108 who had been held for more than a year and 18 (0.5%) who had been in detention for more than two. As of 31 December 2019, 167 individuals (10.2% of the total) had been in detention for more than six months, with 37 held for more than a year and five (0.3%) for longer than two years. The longest extant period of detention on that date was 1,002 days, or about two years and nine months.
- 5.15** Though, as noted above, most periods of detention in 2020 were brief, the year saw an increase in the number of individuals held for longer periods – with 43 people having been held for more than a year on 31 December 2020 (compared to 37 at the end of 2019), 21 held for more than 18 months (compared to 11 a year earlier), and six held for more than two years (up from five). Though COVID-19 had led to the release of many detainees judged to be vulnerable, or whose removal became impossible as a result of disruption to travel routes, these rises in the number of individuals held for exceptionally long periods reflect the increased difficulty during the pandemic of removing (or, in some cases, of sourcing bail accommodation for) a subset of detainees whose release would raise public protection concerns.

Figure 5 sets out the numbers of those detained for more than 12 months, together with their location and the AAR level 3 numbers within this 12+ month cohort.

Figure 5:

Length of detention and vulnerability, January 2020 to February 2021²⁴

| Snapshot date | Total detained population | IRC population | Length of detention: 12-18 months | Length of detention 18 -24 months | Length of detention 24+ months | Total AAR 3 for those held more than 12 months | Prison population | Length of detention: 12-18 months | Length of detention 18 -24 months | Length of detention 24+ months | Total AAR 3 for those held more than 12 months |
|-------------------------|---------------------------|----------------|-----------------------------------|-----------------------------------|--------------------------------|------------------------------------------------|-------------------|-----------------------------------|-----------------------------------|--------------------------------|------------------------------------------------|
| 1 January 2020 | 1,662 | 1,284 | 17 | 3 | 2 | 0 | 378 | 10 | 4 | 3 | 2 |
| 1 September 2020 | 898 | 472 | 11 | 25 | 0 | 1 | 426 | 26 | 26 | 5 | 1 |
| 1 February 2021 | 828 | 311 | 5 | 11 | 0 | 1 | 595 | 12 | 26 | 5 | 1 |

²⁴ Figure 5 contains internal management information provided by the Home Office. It has not been quality assured to the level of published National Statistics so should be treated as provisional and therefore subject to change

Detention outcomes: trends

5.16 Only a minority of those detained under immigration powers – for the purpose of effecting removal – are in fact removed at the end of their time in detention. The proportion of detentions ending in returns has been dropping in recent years, from 46.6% in 2017 to 26.3% in 2020. (See Figure 6.) The figure for 2020 is particularly low due to the impact of COVID-19, but even in the last full year prior to the pandemic, the percentage of those leaving detention who were removed stood at only 37%, while 61.5% were released on bail.

Figure 6:

Departures from detention, by outcome, 2017 to 2020

| Year | Returned | | Bailed ²⁵ | | Other ²⁶ | | Total |
|-------------|----------|-------|----------------------|-------|---------------------|------|--------|
| 2017 | 13,178 | 46.6% | 14,547 | 51.5% | 530 | 1.9% | 28,255 |
| 2018 | 11,152 | 43.7% | 13,953 | 54.7% | 394 | 1.5% | 25,499 |
| 2019 | 9,081 | 37.0% | 15,075 | 61.5% | 388 | 1.5% | 24,544 |
| 2020 | 4,048 | 26.3% | 11,149 | 72.1% | 252 | 1.6% | 15,499 |

The size and shape of the detention estate: trends and developments

5.17 To accommodate those being held under its detention powers, the Home Office maintains an immigration detention estate consisting of Short-Term Holding Facilities (STHFs), where individuals can be held for up to seven days, and Immigration Removal Centres (IRCs), where detainees can be held for longer periods. As of 1 May 2021, the Home Office maintained seven IRCs and two dedicated residential STHFs, with additional accommodation operating under the STHF Rules within Yarl’s Wood IRC, as shown in Figure 7. Though the immigration detention estate has been operating at a fraction of full occupancy levels since the outbreak of the COVID-19 pandemic, there has been no significant change to its size and capacity since the closure of the Immigration Removal Centre at Campsfield House in Oxfordshire in early 2019. In July 2020, it was announced that Morton Hall IRC in Lincolnshire, which is operated by HM Prisons and Probation Service (HMPPS) on behalf of the Home Office, would revert to HMPPS for use as a prison by July 2021. Though this will represent a loss of capacity, the Home Office confirmed in March 2021 that it had obtained the site of the former Hassockfield Secure Training Centre in County Durham, which it intended to open in autumn 2021 as an IRC to accommodate up to 80 women.²⁷ A ministerial statement indicates that the Home Office intends to maintain facilities for the detention of women at Colnbrook, Dungavel, and Yarl’s Wood, as well, in order “to provide flexibility in placement and shorter escorting journeys for those in detention”, but it is expected that Yarl’s Wood will transition from being a facility used primarily for the detention of women to one used primarily for the detention of men.²⁸

25 Includes immigration bail (release from detention, subject to conditions) granted by the Secretary of State (SoS bail) or by an immigration judge of the First-tier Tribunal (IJ bail).

26 Includes people who have returned to criminal detention, those released unconditionally, those granted leave to remain, and those sectioned under the Mental Health Act, as well as deaths and absconds.

27 <https://www.theyworkforyou.com/wrans/?id=2021-03-03.162658.h>.

28 Chris Philp parliamentary answer to Holly Lynch, 10 March 2021, <https://www.theyworkforyou.com/wrans/?id=2021-03-03.162658.h>. Another answer on 23 March 2021, refers to plans to maintain capacity for women at Yarl’s Wood, Colnbrook, and Dungavel, in addition to the new facility at Hassockfield, but reference is made to a “change to predominantly male accommodation at Yarl’s Wood IRC”, <https://www.theyworkforyou.com/wrans/?id=2021-0316.169892.h&s=speaker:25377#g169892.r0>

Figure 7:

Immigration Detention Estate, February 2021²⁹

| IRCs | Location | Operator | Category | Capacity (M/F) |
|---------------|------------------------------------------|-----------|-------------|----------------|
| Brook House | Gatwick Airport | Serco | Male | 448 |
| Colnbrook | Heathrow Airport | Mitie C&C | Male/Female | 312/18 |
| Dungavel | Scotland | GEO | Male/Female | 113/12 |
| Harmondsworth | Heathrow Airport | Mitie C&C | Male | 635 |
| Morton Hall | Lincolnshire | HMPPS | Male | 352 |
| Tinsley House | Gatwick Airport | Serco | Male | 162 |
| Yarl's Wood | Bedfordshire | Serco | Male/Female | 304/68 |
| STHFs | | | | |
| Manchester | Manchester Airport (freight terminal) | Mitie C&C | Male/Female | 32 (flexible) |
| Larne House | Northern Ireland | Mitie C&C | Male/Female | 19 (flexible) |
| Yarl's Wood | Bedfordshire | Serco | Male | 38 |
| Total | | | | 2,513 |

5.18 The ways in which facilities within the immigration detention estate have been used has been shifting since March 2020, as the Home Office has adapted to operational challenges arising from COVID-19, the arrival of rising numbers of asylum seekers by small boats, and the imminent closure of Morton Hall IRC. For example, in August 2020, after the detained population fell sharply following the outbreak of the pandemic, the small number of women being held at Yarl's Wood IRC was moved to Colnbrook. Yarl's Wood was then 'repurposed' as a Short-Term Holding Facility, operating under the STHF Rules, where UKVI's Midlands Intake Unit³⁰ processed small-boat arrivals transferred there from the south coast. The operation of Yarl's Wood as an IRC resumed in November, since which time it has accommodated both men and women. Tinsley House IRC at Gatwick Airport was initially closed, though it subsequently did receive some small-boat arrivals as a STHF and later was employed as bail accommodation for residents relocated from contingency asylum accommodation at Napier Barracks.

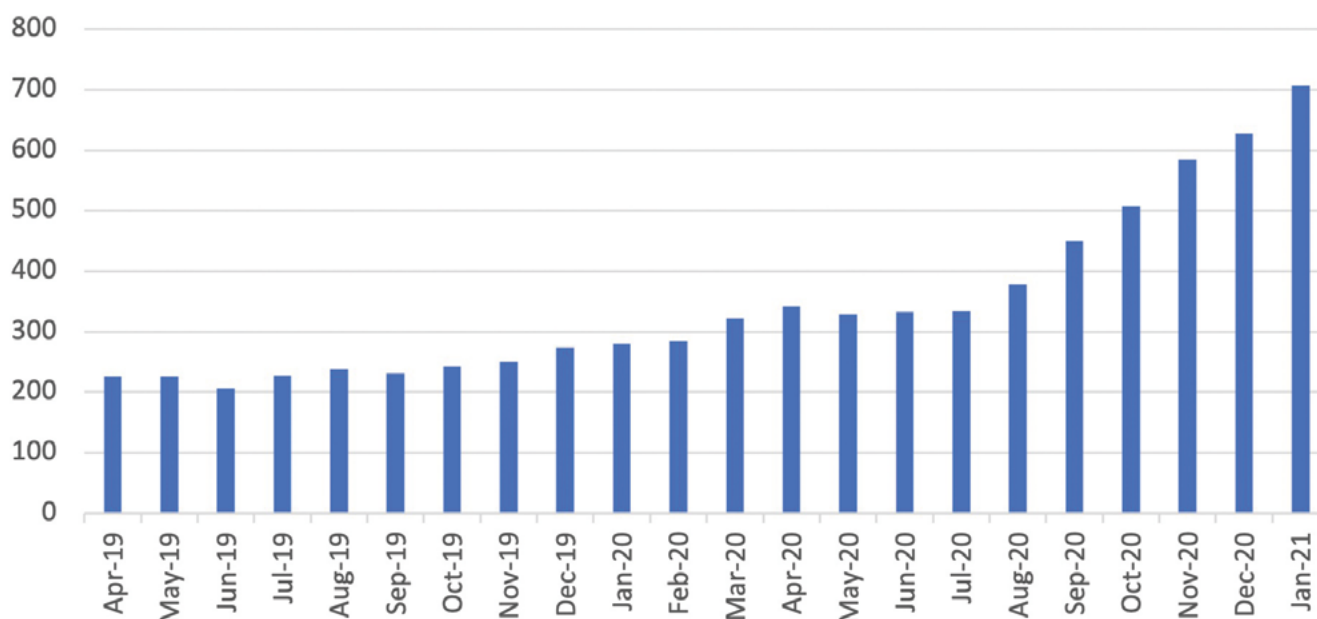
The use of prisons for immigration detention

5.19 The first Adults at risk inspection examined the management of TSFNOs and raised concerns about the limited ability of TSFNOs being held in prisons to access the safeguards offered by the AAR policy. As noted above, TSFNOs have made up a much higher proportion of the detained population since the onset of the COVID-19 pandemic in March 2020, with an increasing number of those detainees being held in prisons after the conclusion of their custodial sentences, rather than in IRCs. Figure 8 sets out the numbers detained in prisons between April 2019 and January 2021, broken down by month, and illustrates the rise in TSFNOs held in prisons over this period.

²⁹ Figure 7 contains internal management information provided by the Home Office. It has not been quality assured to the level of published National Statistics so should be treated as provisional and therefore subject to change.

³⁰ The Midlands Intake Unit registers asylum claims.

Figure 8: TSFNOs held in prisons, April 2019 to January 2021³¹



5.20 The detention of TSFNOs in prisons is enabled by a Service Level Agreement between the Home Office and HMPPs which designates 300 to 400 beds for Home Office use. The process, and criteria, for the transfer of a TSFNO between an HMP and an IRC is set out in Home Office guidance – Chapter 55, Detention Guidance – updated May 2019 – which states that prison beds will be used before any consideration is given to transferring TSFNOs into IRCs. This had not been reassessed in light of COVID-19. The Detainee Monitoring and Population Management Unit (DEPMU) makes an assessment of the suitability of a detention location on a case by case basis taking into account the nature of the offence, behaviour in prison, health considerations, and public protection considerations. In light of the significantly reduced numbers in IRCs in 2020, and the increasing numbers of TSFNOs held in prisons, inspectors requested the transfer criteria used by the Home Office during the pandemic to determine where immigration detention should take place. The Home Office said that “this process is currently being revised and is subject to a challenge through FOI and broader litigation. There is nothing we can provide at this time.”

Levels of vulnerability

- 5.21** The Adults at risk policy requires that once an individual has been identified as being at risk, “consideration should be given to the level of evidence available in support, and the weight that should be afforded to the evidence, in order to assess the likely risk of harm to the individual if detained for the period identified as necessary to effect their removal”:
- **Level 1** evidence is defined as “a self-declaration of being an adult at risk”, which the guidance states “should be afforded limited weight”
 - **Level 2** evidence is defined as “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”

³¹ Figure 8 contains internal management information provided by the Home Office. It has not been quality assured to the level of published National Statistics so should be treated as provisional and therefore subject to change. Provisional figures from a live database, not quality assured to the standard of official statistics and subject to change. Figures show detention instances where the latest centre was a HMP under Immigration powers only. Figures include any individual in detention at any point during the month.

- **Level 3** evidence is defined as “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”

5.22 An analysis of the levels of vulnerability at three snapshot dates in 2020 and 2021 shows that, for the IRC population, while the numbers held have decreased by 76% between 1 January 2020 and 1 February 2021, the proportion of detainees assessed as vulnerable increased by 8.2%. In contrast, there has been a 57% increase in the number of TSFNOs held in prisons, and AAR levels increasing by 6.5%. Overall, the proportion of vulnerable, AAR designated (levels 1-3), detainees held in IRCs and in prisons was increasing; by 1 February 2021, nearly 41% of those held in IRCs had been designated AAR, while for prisons, this was 23.9%. A scrutiny visit to Harmondsworth by Her Majesty’s Inspectorate of Prisons (HMIP) in March 2021 found this upward trajectory of vulnerability had continued with significant numbers of AAR levels 2 and 3 detained, at a far greater rate than prior to the pandemic, and for longer periods of time.³²

Figure 9:

Vulnerability levels in immigration detention: prisons and IRCs.³³

| Snapshot date | Total detained population | IRC | | | | | Prison | | | | |
|-------------------------|---------------------------|----------------|----------------------------|-----------|-----|----|-------------------|-------------------------------|-----------|----|----|
| | | IRC population | Total AAR population (IRC) | AAR level | | | Prison population | Total AAR population (prison) | AAR level | | |
| | | | | L1 | L2 | L3 | | | L1 | L2 | L3 |
| 1 January 2020 | 1,662 | 1,284 | 419 32.6% | 97 | 286 | 36 | 378 | 66 17.4% | 18 | 48 | 0 |
| 1 September 2020 | 898 | 472 | 142 30% | 28 | 95 | 19 | 426 | 91 21.3% | 30 | 55 | 6 |
| 1 February 2021 | 828 | 311 | 127 40.8% | 23 | 69 | 35 | 595 | 142 23.9% | 41 | 85 | 16 |

5.23 This data should be considered alongside inspectors’ findings on the identification and recording of vulnerability under the AAR policy for TSFNOs held in prisons. The categorisation of TSFNOs who qualified as adults at risk was not consistent across CID, and CID notes on those held in prisons were far sparser than the notes on detainees held in IRCs. Where relevant information was recorded, this was not always translated into the appropriate ‘Special Condition’ flag being raised. Between April 2019 and June 2020, five TSFNOs over the age of 70 started a period of detention under immigration powers at the conclusion of their custodial sentence but none were marked as being an adult at risk, despite the policy indicating that being over 70 automatically attracted a level 2 designation.

³² ‘Report on a scrutiny visit to Harmondsworth immigration removal centre by HM Chief Inspector of Prisons, 15–16 and 23–24 March 2021’ <https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2021/04/Harmondsworth-IRC-SV-web-2021.pdf>.

³³ Figure 9 contains internal management information provided by the Home Office. It has not been quality assured to the level of published National Statistics so should be treated as provisional and therefore subject to change.

6. Progress on previous recommendations

- 6.1 The first AAR inspection made eight recommendations, which were “not intended to replace or supersede” any of the other recommendations made by Stephen Shaw in his ‘Review of the welfare in detention of vulnerable persons’, and his follow-up report, as well as recommendations from Parliamentary Committee inquiries. The Chief Inspector set an implementation deadline of 31 March 2020.
- 6.2 The Home Office published the report, together with its response, on 29 April 2020. In its response, the Home Office indicated that it fully accepted two of the recommendations, partially accepted five, and did not accept one. (See Figure 10.) Though the Chief Inspector’s target date for the implementation of recommendations was not met, the Home Office response laid out how it intended to address the recommendations and indicated that “work is already underway to take [them] forward”.³⁴
- 6.3 Over the course of this inspection, the Home Office furnished inspectors with documentation on its work in response to recommendations from the first report. It also provided an update on progress towards the implementation of these recommendations in a letter to the Chief Inspector on 15 January 2021. Work on the recommendations had in general proceeded slowly and, as of January 2021, none had been formally closed. (See Figure 10.)

The policy ‘pause’

- 6.4 While the pace of work in some areas was affected by the challenge of COVID-19, the most significant single impediment to greater progress was the suspension of work on the revision of the Adults at risk (AAR) policy and reform of the Detention Centre Rules. These closely connected projects had been undertaken to address recommendations made by Stephen Shaw in his second review – for example, that individuals assessed at level 3 or over the age of 70 be detained only in “exceptional circumstances”, and that consideration be given to sub-dividing level 2, with a stronger presumption against detention for those assessed as being in the upper division of that level – and progress on multiple ICIBI recommendations hinged on their successful implementation.
- 6.5 Central to the Home Office’s approach to the development of these proposals was its aim to strike “the right balance between maintaining the integrity of the system and protecting it from abuse whilst ensuring protection for the vulnerable”. The revised policy would have realigned AAR levels to correspond to the level of risk of harm faced by an individual in detention, transferred responsibility for AAR assessments from caseowners to medical professionals, and made Rule 35 a mechanism for reporting all types of vulnerability. However, external stakeholders argued that by defining AAR levels in terms of professional assessments of the (low, medium, or high) likelihood of a person suffering harm in detention, the revised policy would raise a new evidentiary barrier to protection, leaving those who would previously have been classified as AAR level 1 on the basis of a self-declared condition outside the policy’s scope. And while in principle some stakeholders welcomed the expansion of the Rule 35 process to take account of all vulnerabilities, concerns were expressed about the adequacy of a procedure that required detainees (or their representatives) proactively to request an assessment.

34 Home Office, ‘The Home Office response to the Independent Chief Inspector of Borders and Immigration’s report: Annual inspection of Adults at risk in Immigration Detention (November 2018 to May 2019)’ (29 April 2020), <https://www.gov.uk/government/publications/response-to-the-annual-inspection-of-adults-at-risk-in-immigration-detention>, p. 2

- 6.6** The decision not to proceed with the draft reforms came after modelling and testing of the proposed new procedures suggested that they would not necessarily lead to the better identification and management of vulnerability and that they would be significantly more resource-intensive than current practice. Having concluded on the basis of this analysis that the proposed revisions were “neither feasible nor operationally possible to implement”, and in anticipation of wider-ranging reforms to the broader immigration system, the Immigration Detention Reform Board agreed in August 2020, and ministers confirmed in October 2020, that this policy work should be “paused”. The Director General for Immigration Enforcement has made clear to the Chief Inspector in correspondence that work that had been carried out on the AAR policy will now need to be fed “into the wider review of the immigration system that the Home Secretary has recently instructed the department to undertake”, adding that the Home Office will “need to ensure that any reforms to the Adults at risk policy are compatible with the future system, rather than the one that will soon be reformed”. Nonetheless, Home Office staff at all levels remain keen to emphasise, both in internal communications and in conversations with inspectors, that the suspension of work in this area is “a pause rather than a cancellation of our commitment to improve the AAR policy”.
- 6.7** A review of the status of work on individual recommendations from the first ICIBI report follows at Figure 10.

Figure 10:

Home Office response to recommendations from the first AAR inspection

| ICIBI recommendation | Home Office response | Progress as of early 2021 | ICIBI comment |
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| <p>1. Ensure that work to carry forward the implementation of recommendations from previous reviews is “properly prioritised, resourced and coordinated, with an overall Action Plan setting out actions, responsibilities, delivery dates, intended outcomes and review/evaluation mechanisms”.</p> | <p>Recommendation partially accepted</p> <ul style="list-style-type: none"> Existing internal governance structures to oversee work (recommendation for an overarching Action Plan not accepted). A cross-Borders, Immigration and Citizenship System (BICS) vulnerability and safeguarding strategy to be adopted (also part of response to Recommendation 3). | <ul style="list-style-type: none"> Progress on recommendations from external reviews monitored by the Home Office’s Immigration Detention Reform Board. Vulnerability strategy awaiting final approval (at last report, said to be expected by the end of March 2021). | <ul style="list-style-type: none"> Inspectors considered that the Immigration Detention Reform Board had good oversight of the recommendations. Development of the cross-BICS vulnerability and safeguarding strategy took considerably longer than anticipated. It was difficult for inspectors to judge how useful a tool the strategy will be for ensuring the consistent and appropriate handling of vulnerability issues by all relevant front-line staff, as the draft strategy appeared to be very high-level. |

| ICIBI recommendation | Home Office response | Progress as of early 2021 | ICIBI comment |
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| <p>2. Produce a cross-government strategy for reducing the size of the detained population, with a focus on vulnerable people and FNOs.</p> | <p>Recommendation partially accepted</p> <ul style="list-style-type: none"> In respect of FNOs, “a specific plan” to be developed “to pinpoint areas of concern and drive further progress”. Established cross-government approach to reforming detention. | <ul style="list-style-type: none"> An inter-departmental “FNO Taskforce” had identified “seven work strands, including enhancing the interface between HMPPS, the Home Office and key delivery partners so that all parts of the system work effectively together” to reduce the number of vulnerable FNOs in detention and the amount of time they spend in detention. Review and mapping of FNO management, including hand-offs between MoJ/HMPPS and the Home Office, was in progress; work was continuing as of January 2021. | <ul style="list-style-type: none"> Though the Home Office declined to produce the recommended strategy on immigration detention reform in general on the grounds efforts in this area were already “overseen through a dedicated cross-government senior oversight group”, monitoring and coordination of improvements is primarily through an internal body (the Home Office’s Immigration Detention Reform Board). The FNO Taskforce does represent an encouraging example of cross-government working, and initiatives such as the secondment of National Probation Service officers to serve as a liaison point within the Home Office’s FNO Returns Command have shown promise (further explored at Chapter 12). However, inspectors found that improvements remain to be made at the operational level in the flow of information and in the levels of effective coordination between the Home Office and HMPPS. |

| ICIBI recommendation | Home Office response | Progress as of early 2021 | ICIBI comment |
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| <p>3. “Review the various definitions and indicators of risk and vulnerability” in use across the Home Office, ensuring that they are “clear, consistent, and comprehensive” and that all staff “are fully trained to understand and comply with them”.</p> | <ul style="list-style-type: none"> • Recommendation partially accepted • Cross-BICS vulnerability and safeguarding strategy to be adopted (also part of response to Recommendation 1). • New cross-command training on detention to be delivered (also part of response to Recommendation 5). • Detention Centre Rules and AAR policy to be revised. | <ul style="list-style-type: none"> • Vulnerability strategy awaiting final approval and implementation (see discussion of Recommendation 1). • New training package rolled out from April 2020; delivery is ongoing. • Work on new IRC Rules and on revision of AAR policy paused, pending wider review of immigration system. | <ul style="list-style-type: none"> • The Home Office aimed to deliver its new cross-command training package covering the three stages of detention, designed in response to the second Shaw review’s Recommendation 26, by December 2020, a target that subsequently slipped to February 2021. Staff members interviewed by inspectors who had received the training stated it was useful, but an evaluation of the impact of the training had not yet been undertaken at the time of this inspection. • The pausing of work to revise the AAR policy and to introduce new IRC Rules, discussed above (in paragraphs 6.3-6.5), has slowed progress towards the closure of several recommendations. |

| ICIBI recommendation | Home Office response | Progress as of early 2021 | ICIBI comment |
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| <p>4. Review “where the authority not to detain/to release should sit” across the three key stages of detention.</p> | <p>Recommendation partially accepted</p> <ul style="list-style-type: none"> Review of authority levels for detention and release to feed into reform of the Home Office’s general policy guidance document on detention. Strategic Director release referral process for AAR level 3 FNOs to be reviewed. | <ul style="list-style-type: none"> Chapter 55 reform process not yet formally launched; minor amendments to guidance still pending. In a review that was limited in scope, the Strategic Director release referral process was found generally to deliver timely decisions; improvements to record keeping were agreed. | <ul style="list-style-type: none"> Modifications to the Home Office’s general guidance on detention – Chapter 55 of the Enforcement Instructions and Guidance – remained pending as of April 2021. As the current version of the general guidance on detention (which dates from May 2019) fails to make any reference to CPPs or to the DGK function, a comprehensive revision is increasingly urgent. The review of the Strategic Director release referral process was undermined by its focus primarily on the timeliness of decisions on release referrals, rather than on outcomes or on the robustness of the process. The review recommended that expected timescales for decisions be set out more clearly and that improvements be made to record keeping to allow for regular monitoring of the efficiency of the process. The Home Office’s Detention Casework Oversight Board agreed to these recommendations in October 2020, setting the expected timeframe for a decision on a release referral to the Strategic Director at one business day. The need remains for a fuller evaluation which would also seek to examine the consistency and transparency of the decisions resulting from the release referral process. |

| ICIBI recommendation | Home Office response | Progress as of early 2021 | ICIBI comment |
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| <p>5. Make specific changes to procedures that apply before detainees are admitted to an IRC, during the admission process, and after they been in detention for more than 24 hours.</p> | <p>Recommendation partially accepted</p> <ul style="list-style-type: none"> • Enhanced pre-detention screening for vulnerability to be explored. • Improvements to CPPs, including introduction of independent members, to be pursued. • New cross-command training on detention to be delivered (also part of response to Recommendation 3). • Recommendations on DGK access to medical advice, post-induction report to inform 24 hour review and caseowner engagement with IRC-based staff on information on vulnerability not accepted. | <ul style="list-style-type: none"> • Enhanced Screening Tool (EST) pilot launched in March 2020, but suspended for lack of cases/operational activity as a result of COVID-19. • Independent members to be included in all CPPs. • New training package rolled out from April 2020; delivery is ongoing (see discussion of Recommendation 3). | <ul style="list-style-type: none"> • Staff told inspectors that the pause of the Enhanced Screening Tool pilot had afforded an opportunity to consider feedback (including from stakeholders, who were highly critical of the EST’s design) and possible amendments to the tool, and that they intended “to relaunch the pilot once activity levels are such that meaningful data will be collected for the evaluation”. • Efforts to improve the functioning of Case Progression Panels had been wide ranging and promptly developed. Inspectors’ observations of CPPs indicate, however, that issues remain with the level of participants’ preparation for panels, and with the quality of the discussion of cases, which was highly variable. A fuller discussion of Case Progression Panels is found in Chapter 11. |

| ICIBI recommendation | Home Office response | Progress as of early 2021 | ICIBI comment |
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| <p>6. “(Without waiting for Atlas)” determine which data is essential to a thorough understanding and assurance of the effectiveness of the Adults at risk guidance ... 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.”</p> | <p>Recommendation not accepted</p> <ul style="list-style-type: none"> Expressed an intention “to fully commit to the substance of this recommendation” but “unable to do so prior to the implementation of Atlas” as the Home Office’s new database for casework. | <ul style="list-style-type: none"> Not applicable, as the recommendation was not accepted. | <ul style="list-style-type: none"> As of early 2021, Atlas had been partially rolled out, and case records were being “double-keyed” – entered in both the new system and CID – with the full implementation of Atlas and the decommissioning of the old system expected later in 2021. Some members of staff expressed concern that capabilities would be lost with Atlas. Others were cautiously optimistic about the new system. Inspectors found that the quality of the data relied upon to manage detention and to monitor vulnerability remains a concern, making this recommendation an important one to revisit now that Atlas is in use. |
| <p>7. Review the Policy Equality</p> <ul style="list-style-type: none"> Statement produced to accompany the AAR guidance, in order to “confirm that the statements and assessments in relation to unlawful discrimination remain valid in the light of experience”. | <p>Recommendation accepted</p> <ul style="list-style-type: none"> Review to take place in conjunction with revisions to Detention Centre Rules and AAR policy. | <ul style="list-style-type: none"> Review still pending, as work on Detention Centre Rules and AAR policy has been paused. | <ul style="list-style-type: none"> There was no suggestion in the original ICIBI recommendation that the review should be deferred until a new policy had been developed. |

| ICIBI recommendation | Home Office response | Progress as of early 2021 | ICIBI comment |
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| <p>8. Analyse conditions for TSFNOs held in prisons, relative to those for detainees held in IRCs, ensuring “that there is a clear and evidenced justification for any differences.”</p> | <p>Recommendation accepted</p> <ul style="list-style-type: none"> Comparative analysis to be undertaken as a “starting point” for work to bring about greater parity of conditions. | <ul style="list-style-type: none"> Phase 1 of prison parity project completed, with 12 potential workstreams identified. Joint working with HMPPS on Phase 2, to develop new policies and practices to bring about greater parity, currently in early stages. Related work on a separate status for TSFNOs in prisons (in response to the second Shaw review’s Recommendation 3) is linked to, and depends on progress of, broader AAR policy work, the wider prison parity project and policy work on access to legal advice.³⁵ | <ul style="list-style-type: none"> The Home Office launched the ‘parity project’ in November 2019 to carry out a comparative review of conditions for TSFNOs in prisons relative to those for immigration detainees in IRCs. The review was to feed into work to “address gaps identified in current policy and operational practices, or otherwise provide reasonable explanation where a difference is justified”. By April 2020, a first phase of this parity project had explored potential workstreams but was paused due to COVID-19 and staffing shortages. Although this work resumed in September 2020, achieving buy-in from the prison service in the midst of a public health crisis remained a challenge. |

³⁵ In its factual accuracy response, the Home Office stated that “the progression or pausing of the AAR policy has no significant bearing on the workstreams outlined within the prison parity project nor the separate status for TSFNOs in prisons.” However, while work is progressing on the basis that policy will “mirror the current Home Office approach to AAR and rule 35 and take account of future changes as and when appropriate”, internal discussions acknowledge that the AAR policy and Rule 35 are among policy areas with a bearing on the response to this recommendation that remain to be resolved.

| ICIBI recommendation | Home Office response | Progress as of early 2021 | ICIBI comment |
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| | | | <ul style="list-style-type: none"> The pause to work on the revision of the AAR policy has had a knock-on effect on the parity project, as well, as the final outcome of some workstreams will depend on developments in that area.³⁶ Moreover, one key area – the limited access of TSFNOs in prison to legal advice – falls outside the scope of the parity project. Though this subject has received attention from Home Office senior managers in the context of recent litigation, it should arguably be more of a focus in the broader work on parity of conditions. However, access to legal advice in prisons is being progressed separately via the MOJ Legal Aid policy team and will be referenced in the separate status for TSFNOs in prisons policy. |

³⁶ In its factual accuracy response, the Home Office stated that the “pause of work on the AAR policy has not prevented any of the workstreams within the parity project from being progressed or agreed” and that “any future amendments to the AAR policy will simply be mirrored within prisons, as appropriate.”

7. Detention Gatekeeper

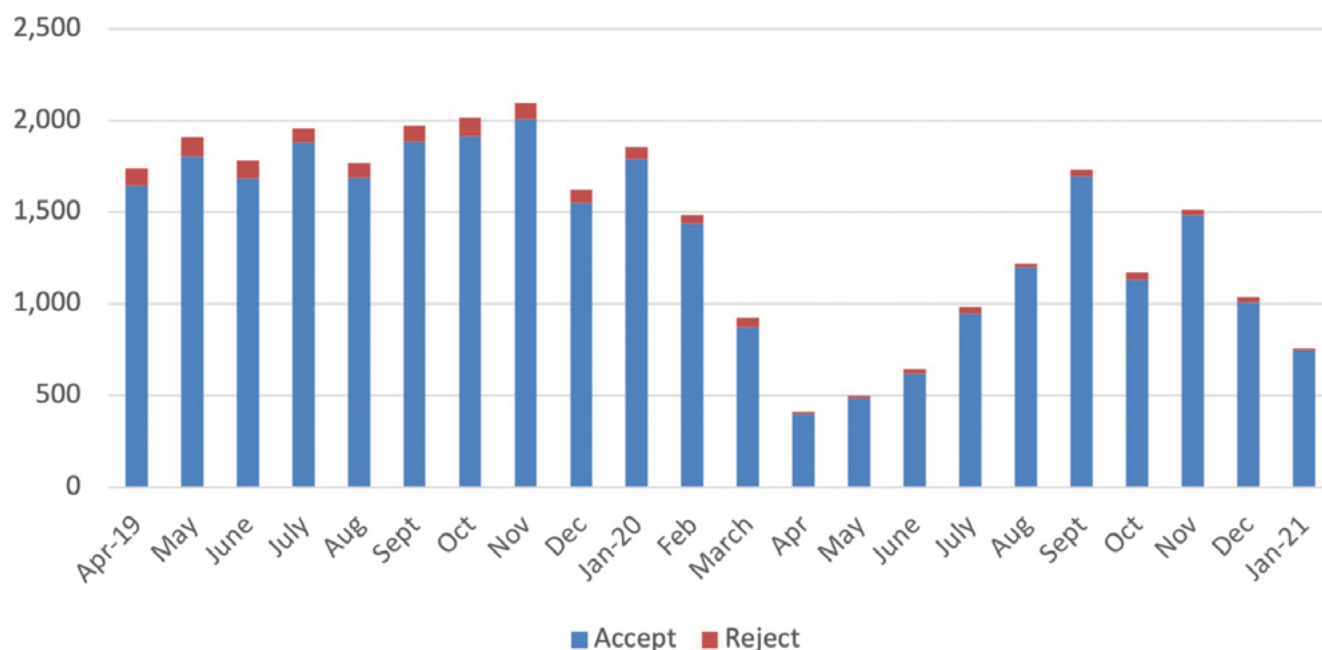
Background

- 7.1** The Detention Gatekeeper (DGK) holds responsibility for assessing and authorising referrals for entry into detention. It was introduced in June 2016, in response to recommendation 20 of Stephen Shaw’s ‘Review into the Welfare in Detention of Vulnerable Persons’ (January 2016). It is a unit within the Detention, Progression and Returns Command (DPRC) of the National Returns Command (NRC).
- 7.2** The team comprises two Grade 7s, one of whom also manages the Rule 35 team; 13 SEOs (including one vacancy as at July 2020), 13 HEOs and 32 EOs, an increase of ten staff in post since the time of the first annual inspection. Until March 2020, the team were located in Croydon; since late March 2020, the team have been working from home.
- 7.3** The DGK, as summarised on the internal Home Office website:
- “provides a centralised independent function to determine who it is appropriate to detain or not appropriate to detain
 - ensures a consistent application of relevant general detention policy
 - provides an additional layer of safeguarding for vulnerable individuals by consistent application of AAR policy
 - should help mitigate against unlawful detention claims by ensuring detention is agreed only where there is a realistic prospect of removal within a reasonable timescale and where it is the last resort where other avenues of return have failed
 - provides all the above 365 days a year including weekends and public holidays with an on-call SEO overnight facility and with a headcount of around 60 staff.”
- 7.4** The DGK makes decisions on two kinds of referrals: live and pre-verified. Live referrals are presented by officers from Immigration Compliance and Enforcement (ICE) teams and Reporting and Offender Management (ROM) among others.³⁷ Pre-verified cases are those where the detention is planned in advance either as removal directions have been set and the individual will be arrested in the community, or when an individual is coming to the end of a custodial sentence. These cases must be submitted to the DGK at least 72 hours before the planned detention.
- 7.5** A review of the data on referrals to the DGK since April 2019 shows that the number of cases considered by the team fluctuated within a relatively narrow range – between approximately 1,500 and 2,000 referrals per month – during the period preceding the onset of COVID-19. Referrals then dropped sharply from March 2020, to a low of 412 referrals in April 2020, as much immigration enforcement activity ceased. Overall, the volume of cases referred to, and

³⁷ Referrals can also be made by officers from Border Force; UKVI Intake Units such as the Kent Intake Unit; FNO Returns Command; and the Special Cases Unit (case-working and operational support unit that sits within the Office for Security and Counter Terrorism’s (OSCT) National Security Directorate).

accepted by, the DGK has remained below pre-pandemic levels. At certain points in autumn 2020, however, the volume of referrals to the DGK approached 2019 levels, as significant numbers of small boat arrivals and potential charter removal cases entered the system. (See Figure 11.)

Figure 11: Referrals to the Detention Gatekeeper, April 2019 to January 2021, broken down by outcome³⁸



- 7.6** The DGK is required to make a decision on whether an individual should be detained within one hour using the completed pro-forma submitted by the referring team. Areas for consideration by the DGK include reviewing legal barriers, Police National Computer (PNC) trace, Special Condition flags, medical conditions, removability, status of travel documents, and family ties. The DGK decision maker reviews the same information for both live and pre-verified cases.
- 7.7** While the decision should be made prior to detention, in a review of case files, inspectors found examples where the DGK consideration of the case was entered into CID after the individual entered immigration detention. The Home Office commented that for one case this was due to “issues around the primacy of HO systems [meaning] there was a delay in the acceptance and auditing of acceptance in this case” and for another, “There was a delay in case handling given primacy issues around HO information systems – use of CID and Atlas and who was using what system and when”. There was no indication that the DGK’s decision to detain in these cases had in fact been provided prior to the individual’s entry into detention.
- 7.8** For Foreign National Offender cases, managed by the FNO Returns Command, an additional consideration is applied to the decision-making: risk of harm. As the bulk of FNORC referrals are pre-verified cases, the DGK is provided with advance notice and an opportunity to request further information. However, DGK staff indicated that, despite this opportunity, FNORC caseowners did not always provide sufficient information to the DGK, and that accessing information from prison healthcare could be challenging. Where detention was not considered appropriate, the DGK decision maker requests the FNORC caseowner refer the decision not to

³⁸ Figure 11 contains internal management information provided by the Home Office. It has not been quality assured to the level of published National Statistics so should be treated as provisional and therefore subject to change.

detain or to bail a TSFNO to a Grade 7 or Assistant Director for agreement, and then further for authorisation by the Strategic Director. A period of short detention has to ensue while this referral is considered, though this is not always the case if the release referral is made in a timely fashion prior to the conclusion of a custodial sentence. Feedback was provided to the DGK on the outcome of the release referral.

- 7.9 DGK staff told inspectors that where they disagreed with the detention of a TSFNO, they would make a referral for the case to be considered at a Case Progression Panel, outside of the standard quarterly review cycle, as a method of safeguarding an individual. DGK staff indicated that they accepted the decision of the Strategic Director and “moved on”. However, inspectors considered that, as with the first inspection, the oversight of the DGK was effectively suspended for FNORC cases, as the final detention decision rested outside of the DGK, undermining the internal oversight provided by this mechanism.

Case study 1 – oversight of time-served FNOs

Mr H (a Foreign National Offender) was sentenced to five months imprisonment in December 2019. A note on CID indicates that on 10 October 2019, when he arrived in prison custody, the “Subject claimed to have mental health issues when booked into custody but would not give any further details and did not say he was taking any medication.” On the 24 January 2020, the DGK authorised retrospective immigration detention due to a miscalculation of time already spent on remand.

The caseowner noted in the referral to the DGK “On 21 January 2020 a report was received from a consultant forensic psychiatrist stating that Mr H was showing clinical features of a severe and chronic mental illness, probably schizophrenia F20 and that he had concerns about his mental state should he stay in prison as his treatment needs are not being met there.” A Special Condition flag was raised on CID indicating that he engaged Adults at risk policy at level 2.

On the same day the DGK EO wrote “In considering Mr H requires an ETD for which there are no established timescale coupled with a medical practitioner expressing concerns regards the mental state of Mr H should he remain in a custodial/detention environment, continued detention from a DGK perspective is not appropriate.” The duty SEO commented that “Mr H would engage the AAR policy at L3 with no prospect of an imminent removal... In light of the information available, detention agreed pending a release referral by CC to the Strategic Director” and also raised another Special Condition flag but as an AAR level 2. As a result, every subsequent review maintained the level 2 status until it was amended in December 2020, following a Rule 35 report. In February 2020, the caseowner began drafting a release referral. This was sent to his line manager in April 2020. There are no records of the release referral being submitted to the Strategic Director.

A case progression panel recommended releasing Mr H in May 2020, July 2020, October 2020 and January 2021. On the 7 April 2021, Mr H was granted bail by an immigration judge and was released from detention on 8 April 2021, having spent 441 days in immigration detention.

Home Office comments

“The case owner had been attending weekly meetings with [the] IRC who confirmed he was fit for detention. A healthcare enquiry was sent on 17/02/20 and chased on 05/05/20, 05/08/20 and 26/10/20. Detention should however have been reviewed on the basis of the evidence that was already available, i.e. the clinical opinion in the MLR.

It is acknowledged that HO systems do not provide an audit trail, however internal team inboxes confirm that action was occurring. A release referral (RR) was drafted on 18/02/20 and awaited information from probation [Probation Service]. The RR was sent to the SEO inbox for clearance on 21/04/20. The case manager reviewed the RR, however due to COVID-19 it was extremely difficult to get a response from Healthcare. On 05/05/20 a further chaser email was sent to healthcare. We acknowledge that the RR should have been submitted to the Strategic Director earlier.

At the point of detention on 24/01/20 he was initially assessed L2 by the DGK. However, following a review of his medical condition, the duty SEO changed AAR to L3 on the same date. This however was not reflected in the DCPR [Detention Case Progression Review] of the same date. As a result, every subsequent review maintained the level 2 status until it was amended in December 2020, following a Rule 35 report. All case owners have received a reminder on the recording of appropriate levels.”

ICIBI comments

This case demonstrates the structural flaws in the relationship between the DGK and FNORC where, despite the DGK highlighting serious concerns about the suitability of continued detention, these concerns can be ignored by the caseowner, with limited continued oversight from the DGK. However, the case also illustrates the consequences of poor record-keeping, by both the DGK and other Home Office teams, and the impact this can have on the consideration of an individual’s ongoing detention.

- 7.10** Inspectors reviewed the DGK’s acceptance and rejection rate since April 2019 and found: the DGK accepted 95.2% of the cases referred to it between April and December 2019, a rate that rose to 96.3% for January-July 2020 and to 97.6% for July-December 2020, before reaching 98.8% in January 2021. Inspectors considered that the significant rise in acceptance, nearing 100%, was indicative of the shift in the composition of the population referred for detention, with a higher proportion of potential detainees now comprising TSFNOs or ‘small boat’ arrivals, and a lower proportion of those encountered through enforcement activity in the community. As the former group includes individuals who are already incarcerated and who may be judged to pose a risk to the public (in the case of TSFNOs) or who lack the prior UK immigration history out of which barriers to removal can emerge (in the case of small boat arrivals), it is perhaps not surprising that acceptance rates have risen. The consistently very high acceptance rate does, in any event, raise the question of whether the DGK is functioning as effectively as intended as a screening mechanism for detention referrals. Even if the proportion of cases rejected is very low, however, the existence of the DGK function requires referring teams to consider and articulate the justification for detention, a process that may lead to cases not being referred where detention is not appropriate. As the activity of enforcement and other

referring teams was outside the scope of this inspection, inspectors were not able to explore the extent to which the existence of the DGK was fundamentally altering the behaviour, and referrals, of referring teams, in more detail.

- 7.11** The data shows that the primary ground for rejecting a referral was consistently legal barriers, information that a referring officer may not be able to easily access in the field as they cannot access CID, representing 55% (2019), 67% (Jan-July 2020), 78% (July-Dec 2020), 66% (January 2021) of rejections respectively. Adults at risk ranked as the second grounds for rejection, though this had declined since 2019 when it comprised 16% of rejections, to 11% by early 2021.
- 7.12** The raw data provided by the Home Office showed that, between July 2020 and early February 2021, a total of 8,421 referrals were made to the DGK. Of these, 1,183 were designated as adults at risk, including 115 individuals who were assessed at level 3, of whom 103 (98%) were accepted into detention. Most of these cases were ‘owned’ by Border Force indicating that they were encountered at the border, and their removal was likely considered by the Home Office to be imminent. However, the data provided did not give an indication of how long an individual subsequently spent in detention so inspectors could not confirm the timeframe of the removal of these cases. Finally, among those accepted for detention between April 2019 and July 2020 were 27 individuals whose nationality was defined as stateless and 16 individuals who were designated “nationality undefined”; some of these individuals were detained for initial examination (rather than removal). A small number of those who were detained for removal purposes were not imminently removable (although by far the majority were) but the period required to facilitate their removal was nevertheless deemed reasonable.³⁹
- 7.13** DGK EOs are also responsible for undertaking the Detention and Case Progression Review (DCPR) held 24 hours after detention. Staff acknowledged that additional information may become available which changed the decision to detain such as an appeal or results from medical screening by IRC healthcare. However, there were no formal consistent feedback mechanisms available for staff to share the learning from a 24-hour review. Similarly, past the 24-hour point, and where an individual was subsequently found to be unsuitable for detention, this information was not consistently shared or feedback given to the DGK decision maker. There was informal engagement with the DEPMU, where cases approved by the DGK may then be refused, but this did not happen regularly.

DGK operations

- 7.14** The work of the DGK is guided by general detention policy, the Adults at risk policy, and Standard Operating Procedures. ICIBI inspectors circulated a survey to DGK staff in October 2020; of the 60 members of staff within the Detention Gatekeeper team, 19 completed the survey. 86% of those surveyed agreed that the Home Office “provides them with adequate guidance to enable me to perform my role effectively”.
- 7.15** At the time of the last inspection, the DGK Operating Manual was in draft form. Inspectors were told by the Home Office it was due to be published in December 2020, however, by February 2021, this document still had not been published. The manual provided a helpful overview of the process, and a step-by-step guide to the administrative actions required. However, it contained limited information on the kinds of vulnerabilities which could arise in a referral, and be considered by a DGK decision maker.

³⁹ Stateless – as defined in 1954 convention (3) – 6; stateless refugee – as defined in 1951 convention (3) – 17; stateless refugee – other – 4; nationality unknown – officially designated as such (2) – 6; nationality unknown – other (all systems except si) 5; nationality unknown – other (suspect index) – 5.

- 7.16** The work of the DGK, as with other detention decision-making teams in the Home Office, was informed during the pandemic by ‘Operational Instruction: COVID-19 – Detention Considerations’ which required decision makers to consider Public Health England’s guidance with respect to people who are at increased risk of severe illness from Coronavirus. The review of case files undertaken by inspectors showed that the DGK had looked at potential comorbidities for COVID-19, where these were known, in their consideration of the suitability for detention. However, without access to medical advice, they were not able to establish the extent of the comorbidity, for example, the severity of an individual’s asthma.
- 7.17** DGK staff are required to undertake all of Immigration Enforcement’s compulsory training including a course on Modern Slavery; and a range of DGK/National Returns Command specific training including courses on ‘Vulnerability’ and ‘Safeguarding Adults and Children’. At the time of the inspection, some members of the DGK had received the cross-command training on detention; consisting of three modules: Start Detention, Manage Detention, and Release and Return. This training was being gradually rolled out for anyone involved in detention decisions from April 2020. 79% of DGK staff who responded to the survey at least agreed that their training had equipped them with the practical and technical skills required to effectively review the suitability of an individual for detention. However, of those surveyed, only one person stated they had received all three modules of the cross-command training.
- 7.18** DGK staff, at interview and through the survey, indicated they considered they had a good understanding of the AAR policy and its use, and were confident in the identification and management of vulnerable individuals. 79% of surveyed staff regularly referred to, and used, the Adults at risk policy as part of their role.
- 7.19** DGK staff had a clear sense of purpose, and understood how their role fitted within the broader detention landscape, viewing themselves as an ‘internal regulator’. They made regular use of the Safety Valve Mechanism, a virtual community of experts who can provide advice to staff “in cases where they feel that something simply isn’t right with the action that the relevant policy and guidance is pointing them towards”, having made 52 of 403 referrals between inception in December 2018 and end of September 2020, (though no analysis of these referrals had been conducted nor was it clear what follow-up action had been taken).
- 7.20** At interview, DGK managers indicated they had a strong understanding of vulnerability and were engaged with improving DGK performance. DGK decision makers expressed confidence in the escalation process of raising concerns with managers and utilising the Safety Valve Mechanism and felt empowered to request additional information that might be necessary from referring teams. Cross-team communication, through weekly meetings was also considered effective, though the use of vulnerability champions had waned with the impact of COVID-19. Overall, staff stated that they were cognisant of the impact of COVID-19 on the reasonable timeframe for removal but noted the impact the pandemic had had particularly on assessing the vulnerability of those detained in prisons.
- 7.21** Inspectors reviewed 122 case records. The majority were randomly selected from those in detention at two snapshot dates, 1 January 2020 and 1 September 2020. Inspectors also reviewed the case files of all those in detention for more than one year who were AAR level 3 at the snapshot dates. When considering DGK performance, inspectors found that, broadly, DGK entries in the case files were clearly annotated, consistent in approach, and contained sufficient depth of information considered in the decision-making process. However, as explored further in Chapter 12, it was clear that the handoff process in terms of the identification and management of an individual’s vulnerability from the DGK to the caseowner

was disconnected and flawed. Inspectors found several cases where the DGK had designated an individual an AAR level (usually level 3), but this level was either ignored by caseowners or the subsequent Detention and Case Progression Review (DCPR) and CID notes recorded the individual at a lower level, meaning the management of, and decision-making about, the detainee was based on a lower level of vulnerability.

Identifying vulnerabilities

- 7.22** The Adults at risk policy requires referring teams to highlight details of any vulnerability on the Detention Gatekeeper referral form to “ensure that detention is only authorised on the basis of full awareness of the case”. Those making referrals were however reliant on the individual in question making the relevant disclosures, and being provided a suitable environment in which to do so. This approach was based on the assumption that staff have been sufficiently trained to identify a condition or grounds that would mean the individual being referred should be considered an adult at risk. For some groups, such as victims of gender and sexual-based violence, who may lack obvious physical scarring and have significant barriers to disclosure, their identification through this mechanism is difficult. The form itself asks broad questions about medical conditions and nothing about trafficking. One stakeholder considered, based on their knowledge of the DGK, “the DGK ‘safeguarding’ mechanism is only limited to an extremely inadequate ‘tick box’ exercise where insufficient evidence is provided to the DGK authorising detention. The information on these forms is often out of date or incomplete, with critical information omitted.”
- 7.23** Stakeholders raised concerns that, even when it is clear that the situation in which a person has been encountered may be pertinent to the assessment of an individual as vulnerable, this is not always acknowledged, shared and subsequently considered as part of the decision-making. Stakeholders provided a range of case studies where, despite an individual being encountered in a likely site of exploitation they were not identified as a trafficking victim until after they had been placed in detention. One case study provided by an NGO noted there were multiple failings including a lack of inquiries made as to the possibility of trafficking, sexual violence or exploitation and mental health despite being encountered in a brothel; the DGK pro-forma was not completed in its entirety and despite the inadequate information presented in the form, no efforts were made by the DGK to send this back to the referring officer for further information to be obtained – the individual has since been recognised conclusively as a victim of trafficking, been granted asylum in the UK and a civil claim with regards to the detention launched. While inspectors are not able to verify the particulars of this case, the experiences outlined echo findings highlighted in several other stakeholder submissions and that of a recently published report ‘Survivors behind bars, The detention of modern slavery survivors under Immigration Powers (2019-2020)’.⁴⁰
- 7.24** Several stakeholders raised concerns about the limited range of information used to assess the suitability of detention, with one noting that “letters from NGOs, GPs and previous Rule 35 reports may provide vital information about an individual’s vulnerabilities so must be considered before decision to detain is made. The individual in question and their lawyer, if they have one, should be able to make direct representations prior to any considerations made by the Detention Gatekeeper Team.” Currently the DGK is required to review CID, but, for example, a letter from an NGO or an external healthcare provider cannot be uploaded onto the system and while this information may be summarised in a CID ‘note’, the notes function is not

40 The Detention of modern slavery survivors under Immigration Powers (2019-2020) 4 February 2021, <https://www.refugeewomen.co.uk/wp-content/uploads/2021/02/Survivors-Behind-Bars-1.pdf>

searchable. There is no current requirement for the DGK to actively seek this information, nor much scope to do so within the one-hour decision timeframe.

7.25 The first annual inspection recommended that “Prior to admission...(i) provide the Detention Gatekeeper (DGK) with real-time access to professional medical advice”. The Home Office rejected this recommendation on the basis of cost. Inspectors asked current DGK staff about their levels of confidence in identifying medical conditions and were told that staff used Google, their own background knowledge and experience developed through their time in the role, to inform decisions. While one member of DGK staff thought it would be beneficial to have “a small medical contact a bit like the children’s champions”, more broadly, staff stated there were medical professionals at ports and in police stations where an immigration encounter might take place, and considered that access to additional medical advice would not be a useful addition to their decision-making.

Referring teams

7.26 Relationships with referring teams were constructive. DGK staff told inspectors that they were comfortable requesting more information and gave an example of an ICE team contacting an individual’s GP to ascertain the nature of a medical condition; and in rejecting a referral. Staff commented that the quality of the referrals had been steadily improving, though there was no measure for this and they told inspectors there was plenty of challenge on both sides, with opportunities for feedback and escalation to more senior grades if required.

7.27 Inspectors identified examples of good practice by DGK staff, particularly their confidence in contesting referrals, as the case study set out below shows.

Case study 2 – approach of the Detention Gatekeeper

Mr M was due to be removed on 27 April 2019. The ICE Team made a pre-verified referral to the DGK, seeking to detain Mr M from his home address as his detention was considered necessary to affect removal. He had previously been the subject of failed removal directions and had spent time in an IRC. He had complex health needs.

The duty DGK officer requested further information as documented on CID: “Whilst Mr M clearly engages the AAR policy as a level 2, there is a real possibility that whilst in detention this may escalate to level 3. He has a very worrying detention history and was previously released from detention due to his health at the time. He also has some very concerning self-harm incidents in detention including arson and making cuts to himself. Before I make a decision with regards the appropriateness and suitability of detention, please can further information be sought as below:

I note from CID he had previously stated he wished to return home, does this remain the case?

Has the option of him attending the Embassy voluntarily been explored?

RL [Returns Logistics] country returns guide states an ETD [Emergency Travel Document] can be revalidated within ten working days does a face-to-face interview need to take place to revalidate the ETD?

If the options above are not viable, can an ETD interview be scheduled prior to detention, therefore informing the DGK of the proposed length of detention?

Given healthcare's concerns in an IRC whilst previously detained, I recommend that should detention be agreed (depending on the responses to the above), a comprehensive healthcare referral must be completed prior to detention. The attached will need to be completed and returned to the DGK who, should detention be agreed, will share with DEPMU in order to commence a healthcare referral with an appropriate IRC."

Detention was authorised for three days prior to detention, with the DGK HEO noting that "Should the RDs [removal directions] fail, I would expect a release referral to [be] made as a matter of urgency, please. This subject is NOT suitable for long-term detention."

Mr M was detained on the 24 April 2019. His subsequent planned removal failed, and further removal directions were set but failed due to Mr M's disruptive behaviour in June and July 2019. In August 2019, removal directions were deferred after Mr M lodged a Judicial Review. Case Progression Panels from July 2019 until October 2019 recommended that detention should be maintained and in November 2019 the panel recommended that Mr M should be released.

In September 2019, Mr M was granted bail in principle on the basis that accommodation could be sought within seven days. In March 2020, appropriate accommodation was found and a release referral was accepted by the strategic director. Mr M was released from detention on 6 March 2020. Mr M spent 317 days in immigration detention.

ICIBI comments:

While this case indicates the oversight value provided by the DGK in challenging proposed detention and providing a 'bigger picture' of the consequences of this detention, this is undermined by the limited extent to which the DGK can provide effective assurance of an FNORC referral and the lack of embedded equivalent oversight within the FNORC caseworking structure, which could have avoided prolonged detention.

Operation Sillath and small-boat arrivals

- 7.28** Most referrals to the DGK are completed on an individual basis. However, in response to the volumes of referrals arising from those arriving in the UK via small boats, DGK staff told inspectors that they had developed what they considered to be a more efficient system to capture key information about those proposed for detention. The Consolidated Bulk Referral spreadsheet was completed by the referring team for the DGK instead of the pro forma and contained an individual's name, nationality and date of birth; and then y/n for medical conditions and safeguarding concerns, as well as details of PNC and security checks. An example of this sheet, from January 2021, was provided to inspectors. A functional, if sparse document, while it considered an individual's basic details though there was no column for gender, or guidance for what constituted a 'safeguarding concern'. If a safeguarding concern was marked 'y', the author was instructed to provide details though no free text box was provided. A spot check by inspectors of four of these cases showed the DGK decision was

correct in that no issues were raised after detention which might impact their suitability for detention.

- 7.29** Staff were broadly content that those referred for detention via this method were primarily “healthy” single males who were going to be detained for a short period, as women and children would have been triaged out at Tug Haven, a welfare unit and location where individuals can be held for short periods for identity checks at Dover, commenting “Even if you made a disastrous decision, the person would only be held for 48-72 hours”. Though one staff member remained cautious, “You hope they have had all the proper checks, medical assessments and so forth, but I don’t know if some slip through the net.”
- 7.30** The extent to which the DGK should be content with the initial screening undertaken by Border Force should be viewed in conjunction with the findings from Her Majesty’s Inspectorate of Prisons (HMIP) ‘Inspection of UK Border Force short-term holding facilities 2-13 March 2020’ (published June 2020) that Border Force staff were unaware of the basic features of the Adults at risk policy⁴¹, but had a general understanding of trafficking indicators, and of the National Referral Mechanism (NRM). HMIP inspectors considered record keeping poor and there was no process for staff to open and therefore monitor care plans for vulnerable persons. In August 2020, some work had begun on implementing HMIP’s recommendations such as enhancing the detention induction process to “provide a comprehensive and detailed assessment and identification of risk, vulnerability or needs, such as pregnancy...”. However, interviews with staff in January 2021 highlighted that progress on this work was slow.
- 7.31** On 30 March 2020, UKVI made a decision to truncate the asylum screening interview to “reduce contact in the asylum intake process” for those arriving in the UK, primarily via small boats. This decision was not shared with Immigration Enforcement and the DGK was unaware that these questions were not being asked at the point of referral. Stakeholders, including HMIP subsequently raised concerns that the truncated interview reduced the ability of the Home Office to identify trafficking indicators, as questions about somebody’s journey to the UK and reasons for coming to the UK were omitted from the interview. Senior Managers in Immigration Enforcement (IE) voiced concerns that they had not been told of the decision by UKVI to truncate the interview, and no consideration had been given to the knock-on effect on the DGK. Staff were confident that it was a “one off” situation, and that suitable mitigation had been put in place: “As soon as we became aware we made sure the DET were deployed to ask those questions of everybody in detention who had gone through that screening process, to ask those questions and check up on those trafficking indicators.”
- 7.32** A legal challenge was brought against the Home Office and on 13 November 2020, an interim court judgment required that:

“...Asylum Screening Interviews in all cases must involve asking Question 3.1 (“why have you come to the UK?”) and Question 3.3 (“please outline your journey to the UK”) set out at pages 66-67 of the Asylum Screening and Routing Guidance (version 5, 2 April 2020).”

New guidance on ‘Asylum screening and routing’ was issued on 31 December 2020 and now includes the questions, ‘Why have you come to the UK?’ and ‘Please outline your journey to the UK’ have to be asked as part of the interview.

41 HMIP’s inspection of UK Border Force short-term holding facilities 2-13 March 202 (published June 2020), pg 13, <https://www.justiceinspectores.gov.uk/hmiprisons/inspections/uk-border-force-short-term-holding-facilities/>

Quality assurance and feedback

- 7.33** DGK decision-making is subject to an escalating assurance process. In response to the emergence of the Windrush scandal, in May 2018 the Home Office launched Operation Tarlo which required a Senior Civil Servant (SCS) to authorise each initial detention decision. A subsequent internal review (May 2019) of Operation Tarlo found that “during the latter part of the operation DGK staff have aligned their decisions to meet the expectations of SCS”, thus rendering the SCS escalation process redundant. The review concluded that Operation Tarlo should be replaced by a new assurance process which required specific levels of approval for different categories of cases. Operation Tarlo officially ceased on 11 November 2019. Grade 7 sign-off was thus now required for groups including those over the age of 59, or where there had been prior media interest; Grade 6 sign-off for those who had been in the UK for more than 20 years; and Senior Civil Servant sign-off where an individual has previously been in the UK Armed Forces or where an individual is being detained from a port or from the Asylum Intake Unit for their asylum claim to be considered in detention. At interview, DGK staff said they were comfortable with this approach, and evidence in the case files reviewed showed this escalation approval process was used and documented.
- 7.34** An evaluation in March 2020 of the replacement assurance process was broadly positive, noting that DGK staff considered it effective and was not adding pressure to the team. However, this conclusion was drawn despite “4% of detention referrals do not appear to be recorded at all, and between 13% and 31% of escalations do not appear to have been noted” and
- “... between 3.4% and 9.5% of people accepted for detention and within scope of the measures do not appear to have had their referral escalated in line with the guidance. Those with interest from an MP were most likely to have been missed (25%), followed by those where a family separation had been authorised (between 3% and 20%)...”
- 7.35** The Home Office indicated that a formal DGK quality assurance framework was under development (to include an IT solution and links to the IE Risk and Assurance Framework Working Group) though no timelines were provided as to its expected completion and rollout.

Continuous improvement

- 7.36** During the inspection, inspectors highlighted concerns with the current approach taken to the recording and detention oversight of those transferred from immigration detention to detention under Mental Health Act powers (Section 48 cases). As constituted, if an individual re-entered detention from Mental Health Act accommodation, this would be via DEPMU, as this was considered to be a continuation of detention and so their suitability for detention would not be assessed by the DGK. However, on CID, their return would be recorded as if it was a new entry into detention, so it would not be clear that the individual had in fact been detained continuously, though under different powers, for a longer time period and they would not be considered under the relevant CPP cycle – in other words, they would be considered at a 3 month panel, rather than, perhaps a 12+ panel at which note of the length of the detention would play a key part in the panel’s consideration. The new process, introduced in December 2020, sought to ensure decision-making was fully cognizant of the exact circumstances of that individual and required: a separate referral is made to the DGK prior to a re-entry into immigration detention, with the case referred to a CPP within seven days (if detention were authorised) and DCPRs have to be authorised by a Grade 7.

Enhanced Screening Tool

- 7.37** In response to Recommendation 8 of the Home Affairs Select Committee’s (HASC) March 2019 inquiry into immigration detention, and the first AAR inspection recommendation 5.a.ii, the Home Office developed the Enhanced Screening Tool (EST), a form to be completed by staff which collates details about an individual prior to referral to the DGK. The questions cover: medical history; travel history including questions on exploitation; immigration history; preferences for voluntary departure; personal circumstances (ties to the UK); details of departure; compliance factors (work/study). The ten-page document doesn’t include any instructions to staff on how to identify a vulnerable individual, or best practice for encouraging disclosure. The basis for the questions about voluntary departure are not clearly explained to the recipient and appear rather oddly ahead of ties to the UK. The form also includes a case consideration section which sets out questions to reflect upon, such as “What alternatives to detention have been considered?”
- 7.38** The Home Office noted that it had received feedback from a number of NGOs and these comments would be considered as part of the EST’s evaluation, though this evaluation had been paused. NGO feedback considered: the purpose of the tool (and the need for this to be made clear to the individual), the language used, the potential for effective disclosure by individuals, recommendation of the use of UNHCR’s vulnerability screening tool, concerns about access to legal advice, and the relationship between the form and the submission of protection claims.
- 7.39** The pilot of the Enhanced Screening Tool began on 2 March 2020 just a couple of weeks before the COVID-19 pandemic impacted operations. Originally planned to last eight weeks, it was to be trialled across teams in West Midlands ICE, Border Force at Manchester, Birmingham and Heathrow Terminal 5 airports, Kent Intake Unit and Eaton House Reporting Centre. There were also plans for a formal evaluation by the Home Office Analysis and Insight team. Unfortunately, insufficient data was collected within the operational timeframe for this evaluation to take place. As at October 2020, the Home Office indicated their intention to “re-launch the pilot once activity levels are such that meaningful data will be collected for the evaluation.” None of the files reviewed by inspectors contained an example of the tool being used. DGK staff interviewed by inspectors were aware the pilot had started but had little experience of its use which indicates the pilot has some way to go before it has collected enough meaningful data.
- 7.40** The EST serves the needs of an immigration official trying to establish a broad range of information to inform an immigration decision. It doesn’t fulfil the recommendation of either the ICI or the HAC – it is not a vulnerability focused tool. The inclusion of elements more relevant to the immigration process, such as voluntary departure, devalue it from this perspective and will likely inhibit the response provided by those questioned.

8. Immigration Removal Centres

Background

8.1 Immigration Removal Centres are run under commercial contracts agreed between the Home Office and a number of contractors, mostly large supply and services companies. On 21 July 2020, the ICIBI wrote to the Home Office requesting “Details of commercial partners (including healthcare providers) operating at each IRC/STHF since 1 April 2019, including a description of the contracted services, Key Performance Indicators, performance monitoring and reporting, assurance and oversight”. The Home Office’s response was to provide redacted summaries of the contracts, which excluded any details of costs, staffing numbers and performance measures. When challenged, the Home Office stated:

“Shona [Second Permanent Secretary] undertook in October 2019 to write to you in the event of further instances where the Department is unable to disclose information on the basis the content is deemed commercially sensitive and where the Department is contractually obliged to not disclose it to a third party. This notification is being provided at this stage”.

The Home Office did however share with inspectors the Key Performance Indicators (KPIs) for healthcare services in IRCs provided by NHS England.

- 8.2** On 21 May 2020, Serco undertook the management of Brook House and Tinsley House IRCs underpinned by a new contract which, the Home Office told inspectors, included additional protections for vulnerable detainees, those at risk of suicide and self-harm, and increased numbers of welfare staff to ensure individuals receive the appropriate level of care. However, despite requests for sight of this new contract, the Home Office declined to provide it and as such inspectors are unable to assess these assertions.
- 8.3** There are two embedded Home Office teams operating in each IRC: Detention Engagement teams (DET) and Detention and Escorting Services (DES). The role of the DET officer is to work with detainees to overcome barriers to removal, liaising closely with caseowners and IRC staff, healthcare staff and welfare staff to resolve issues. DETs at each IRC generally consist of an SEO Area Manager; a HEO Operations Manager; between four and 16 EO Engagement Officers; and between five and 12 AO Engagement Support Officers, depending on the size and needs of the IRC. The DES team liaise with the contractor at each IRC on the day-to-day management of the contract. These teams work alongside contractor staff comprising a Centre Manager, a Safeguarding Lead, Detainee Custody Officers (DCOs) and Managers, as well as auxiliary staff.
- 8.4** Since 2013, NHS England has been responsible for commissioning healthcare in IRCs in England. Inspectors reviewed the ‘Partnership Agreement between: Home Office Immigration Enforcement, NHS England and Public Health England 2018-21’ which sets out arrangements for governance and accountability of healthcare in IRCs and informs the commissioning and delivery of healthcare services in IRCs, STHF and pre-departure accommodation. The priorities for 2018-21 include: managing the mental health of people in detention and strengthening

multi-agency approaches to managing adult detainees at risk. Healthcare provision is delivered by a separate contractor in each IRC.

- 8.5** Though IRCs were operating significantly below capacity during the COVID-19 pandemic, contractor staff told inspectors that the staffing level requirements stipulated in their contracts with the Home Office continued to apply. DES staff had reportedly shown a willingness to authorise reductions to staffing levels, if elevated rates of sickness and self-isolation requirements precluded attendance by a large number of staff members.
- 8.6** ‘Detention Services Order 03/2016: Consideration of Detainee Placement in the Detention Estate’ provides instructions for Home Office staff on the process for completing a risk assessment before a person is placed in immigration detention.⁴² It aims to ensure that staff are clear on their responsibilities in the identification of an individual’s risk factors and the role of the Detainee Escorting and Population Management Unit (DEPMU), which assesses where an individual is located within the IRC estate. IRC staff told inspectors that the quality of the information provided about detainees prior to their arrival at an IRC was variable.

Opportunities to identify vulnerability Induction

- 8.7** Guidance for IRC staff on the process for admitting, inducting, and discharging a detainee from an IRC is set out in ‘Detention Services Order 06/2013: Reception, Induction and Discharge Checklist and Supplementary Guidance’.⁴³ As well as highlighting an individual’s heightened vulnerability on their first night in detention, it set out the steps to take to provide support such as an individual induction plan specific to the detainee’s welfare needs.⁴⁴ Staff are instructed to make an initial assessment of the arriving detainee.⁴⁵ The DSO provides a non-exhaustive list of possible vulnerabilities, including: “susceptibility to bullying, mental health issues, noticeable medical conditions ... evidence of self harm ... or potential victims of trafficking or slavery.”⁴⁶
- 8.8** On 4 March 2020, ICIBI inspectors visited Colnbrook IRC and observed the arrival of TSFNOs from a prison. Inspectors spoke to the IRC staff, undertaking the induction, who indicated they had a good understanding of vulnerability and how a vulnerability should be managed in that context. Inspectors also reviewed the ‘Heathrow IRC Reception to Induction worksheet’ used by IRC staff which covered a basic list of potential vulnerabilities such as self-harm. However, issues such as trafficking and “requests for legal assistance” were found at the end of the form, in a much smaller font. Further, inspectors reviewed the induction materials provided to detainees at each IRC; all differed in terms of content and format, indicating that there was no uniform approach to induction materials, with the leaflets distributed at Dungavel and Morton Hall IRCs notably more informative and comprehensive than those provided at other centres.
- 8.9** Inspectors were also made aware of the particular challenges posed by those arriving via small boats, who, despite the aspirations of staff to carry out inductions on a “one to one” basis, tended to be inducted in groups, undermining opportunities for detainees to make disclosures about their mental health or experiences, and impeding staff’s ability to probe assertions made more fully.

⁴² [Detention Services Order 03/2016: Consideration of Detainee Placement in the Detention Estate](#), April 2016, review date April 2018.

⁴³ [Detention Services Order 06/2016 Reception, Induction and Discharge Checklist and Supplementary Guidance](#), Published in November 2013, revised in July 2016 and Reviewed in July 2018.

⁴⁴ [Detention Services Order 06/2016 Reception, Induction and Discharge Checklist and Supplementary Guidance](#) pg. 4, para 10.

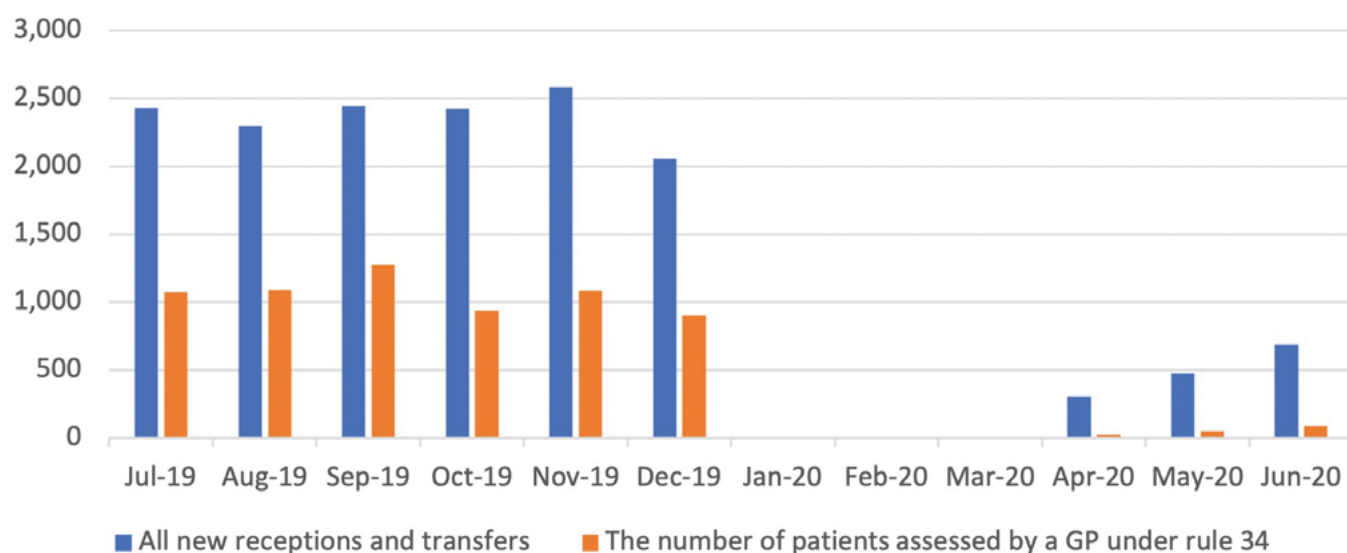
⁴⁵ [Detention Services Order 06/2016 Reception, Induction and Discharge Checklist and Supplementary Guidance](#) pg. 4, para 12.

⁴⁶ [Detention Services Order 06/2016 Reception, Induction and Discharge Checklist and Supplementary Guidance](#) pg. 4, para 13.

Healthcare

- 8.10** ‘Detention Services Order 08/2016: Management of Adults at risk in Immigration Detention’ requires all detainees to have a medical screening within two hours of their arrival at an IRC.⁴⁷ Subsequently, under Rule 34 of the Detention Centre Rules, every arriving detainee must be examined by a GP within 24 hours of admission to an IRC. Rule 34 also stipulates, however, that no such examination shall take place without an individual’s consent, meaning that, in effect, whether or not to accept the offer of a Rule 34 appointment is up to a detainee. The first AAR inspection found that the proportion of those given a GP appointment at Colnbrook and Harmondsworth IRCs (“the Heathrow Estate”) and actually seen within 24 hours in any month ranged from 52% to 64% of arrivals.
- 8.11** Inspectors requested information about the number of detainees seen outside any Service Level Agreements (SLAs) for medical screening and GP appointments and were told, “No patients have been seen outside of the health specifications against which services are commissioned. There are no SLA’s (sic).” In contrast, NHS England provided inspectors with a national report showing healthcare contractor performance against KPIs for 2018-19; 2019-20; 2020-Sept 2020, for each of IRCs and STHFs. Though analysis is complicated by gaps and inconsistencies in the data, the reasonably complete data that is available for 2019-20 Q1-3 (April-December 2019) suggests that the proportion of new arrivals at IRCs in England receiving a Rule 34 medical examination was less than half (around 45%) for that period. The proportion was lower at the Heathrow IRCs (around 30%), higher at Yarl’s Wood (around 85%), and closer to the mean at the Gatwick IRCs and Morton Hall.⁴⁸ Figure 12 shows the numbers of arriving detainees eligible for a Rule 34 appointments and the number of appointments taken up, between July 2019 and June 2020. Incomplete data was received from the Home Office for January to March 2020 and therefore has been excluded from consideration.

Figure 12: Rule 34 eligibility and take-up, July 2019 to June 2020⁴⁹



- 8.12** The Home Office was only able to supply IRC-specific data for one IRC, Colnbrook, set out in Figure 13 which found that average Rule 34 take-up from April 2019 to end of February 2021 was 27%.

⁴⁷ [Detention Services Order 08/2016, Management of Adults at risk in Immigration Detention](#) – published in July 2018 and updated in July 2019.

⁴⁸ Data provided by NHS England.

⁴⁹ Figure 12 contains internal management information provided by the Home Office. It has not been quality assured to the level of published National Statistics so should be treated as provisional and therefore subject to change.

Figure 13: Colnbrook IRC, Uptake (%) of Rule 34 appointments, April 2019 to February 2021⁵⁰



- 8.13** The view of healthcare professionals as to the low uptake of Rule 34 appointments and the subsequent impact this had on identifying vulnerable detainees was mixed. Healthcare staff indicated that detainees often had a greater interest in accessing legal advice, and they were confident that if a detainee “feel[s] like they are an AAR, they will be screened and then the GP will see them.”
- 8.14** In terms of ongoing access to healthcare, staff said that although COVID-19 had changed ways of working, often with the introduction of a more formal triaging system, for example, detainees had not been disadvantaged. In one IRC, this triaging system required detainees to write down their healthcare requests, potentially excluding those who were illiterate or had poor English language skills. However, in another IRC, custody staff stated they were happy to pass the information between detainees and healthcare, though this relied on a detainee being comfortable in disclosing personal health matters to a member of the custodial team. At Colnbrook, inspectors saw an example of a pictogram, available in a range of languages, which showed the healthcare services available and could inform such a conversation.
- 8.15** To aid in the assessment of detainees’ access to healthcare services outside the detention estate when required, inspectors requested information on the number of instances in which a hospital visit was cancelled or delayed due to the non-availability of escorting services since April 2019. The evidence provided showed that no such visits had been cancelled or delayed for detainees at Morton Hall or Yarl’s Wood, and that there had been only four cases of restricted or delayed access over that period at the Gatwick IRCs. By contrast, at the Heathrow IRCs, 57 out of 1,023 routine and emergency hospital visits had been delayed or cancelled.

⁵⁰ Figure 13 contains internal management information provided by the Home Office. It has not been quality assured to the level of published National Statistics so should be treated as provisional and therefore subject to change.

IRC staff

- 8.16** ‘Detention Services Order 08/2016: Management of Adults at risk in Immigration Detention’ outlines the process for staff to follow if they observe changes to the physical or mental health of a detainee, or a change in the severity of an identified vulnerability.⁵¹ Where a change has occurred, staff must notify the Home Office caseowner as a matter of urgency (and within 24 hours) by completing an IS91RA Part C form (known as a Part C), so that the caseowner can “undertake a review of the appropriateness of the individual’s continued detention at the earliest opportunity”.^{52, 53}
- 8.17** Interviews with healthcare and provider staff indicated they were familiar with the Part C process, though they suggested that they were more likely to use internal processes and support mechanisms, such as daily briefings and multi-disciplinary team meetings which focused attention on the management of the vulnerability of the individual rather than the decision as to the suitability of detention. For healthcare staff, the fact that a Part C cannot be attached to a detainee’s electronic medical record meant this information was lost if an individual moved around the IRC/prison estate. Senior IRC staff viewed the Part C process as a method of alerting the Home Office to new information rather than an active safeguarding mechanism. One DET officer similarly stated that Part C functioned as “an escalation process”.
- 8.18** A focus group with DCOs from one IRC revealed none of them were familiar with the Part C process while another focus group at a different IRC indicated that Part Cs could only be completed by managers. Interviews across both IRCs with junior contractor staff revealed siloed working, with limited opportunities to share information with the Home Office. One DCO indicated that there was a case log for day-to-day interactions with detainees, but that DETs didn’t have access to it. Another indicated that the lack of access that custodial staff had to Home Office information meant they would not necessarily be aware if a detainee was an adult at risk or had self-harmed at another IRC or prison.
- 8.19** While Home Office managers were confident that the submission of Part Cs are an effective mechanism for those working in IRCs to communicate concerns about vulnerability to caseowners, inspectors found, when reviewing case files, and through attendance at CPPs, the response of the caseowner to a Part C was inconsistent, and at times it was hard to establish what action, if any, had been taken after the receipt of a Part C.

Managing vulnerability within IRCs

- 8.20** Where IRC staff identified an individual as vulnerable, they are required, with support from healthcare staff, to complete an initial assessment to ascertain whether a plan for the monitoring and safeguarding of the detainee is required. In such cases, staff members open a Vulnerable Persons Care Plan (VACP) for the detainee, and must make the Home Office caseowner aware they have taken this step by completing a Part C.
- 8.21** Inspectors reviewed 19 anonymised VACP files from five different IRCs and found that there were significant inconsistencies in the format of the VACP and the processes followed. References to the nature of the vulnerability in the VACP lacked detail, suggesting that the form sometimes serves, at best, as a flag for IRC staff to be aware that there are concerns around particular detainees. Where regular observations took place and were recorded on the form,

⁵¹ [Detention Services Order 08/2016, Management of Adults at risk in Immigration Detention.](#)

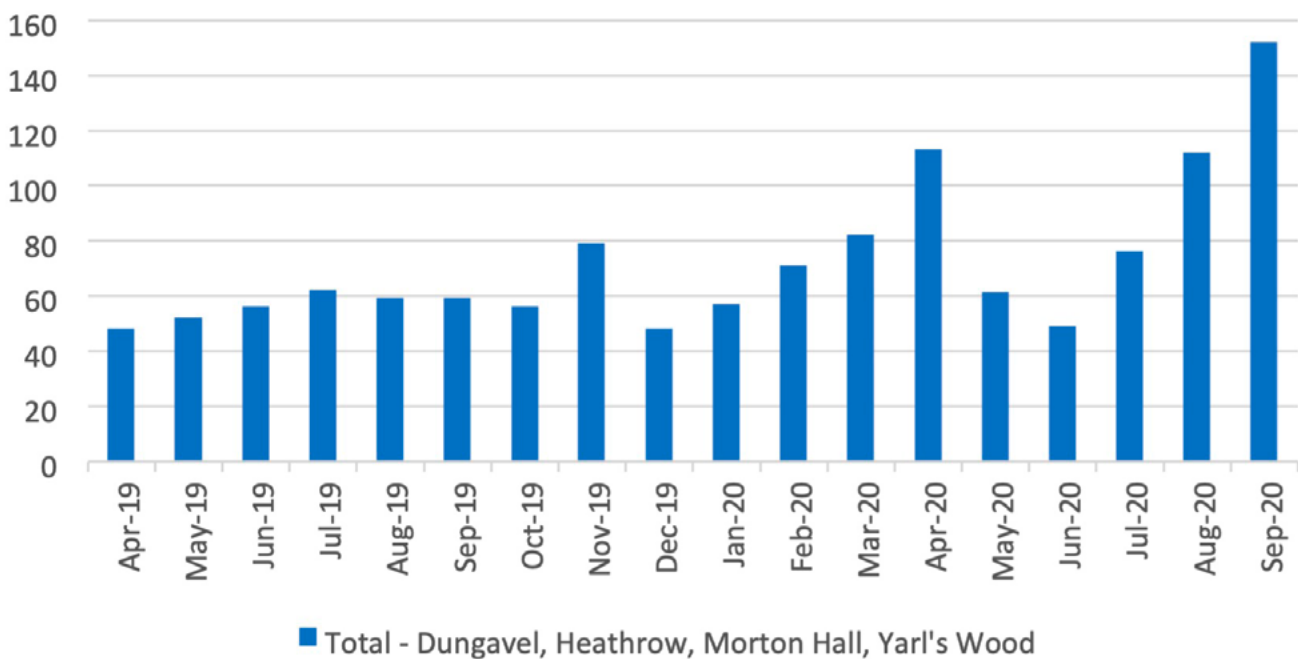
⁵² [Detention Services Order 08/2016, Management of Adults at risk in Immigration Detention.](#) pg. 9, paragraph 21.

⁵³ In its factual accuracy response of June 2021, the Home Office stated “To supplement the Part C process during the COVID-19 pandemic, in March 2020, a weekly report was initiated by healthcare and Home Office staff, to identify those at heightened risk of COVID-19 in line with Public Health England Guidance. The weekly report is shared with relevant caseworking managers for action in line with a published interim policy.”

VACP procedures functioned as a form of assurance that there is monitoring of an individual's well-being.

8.22 Inspectors requested data on the number of detainees subject to a VACP since 1 April 2019. This is set out at Figure 14 and shows a notable increase in numbers on a VACP over the course of the inspection, despite declining numbers in detention overall. While some of this increase, for example in April 2020, can be explained by a focus by IRC staff on identifying those at risk of COVID-19, the sharp rise in August and September 2020 were, according to staff, the result of increased incidents of self-harm, particularly among those asylum seekers being detained in advance of removal to third countries through which they had passed en route to the UK.

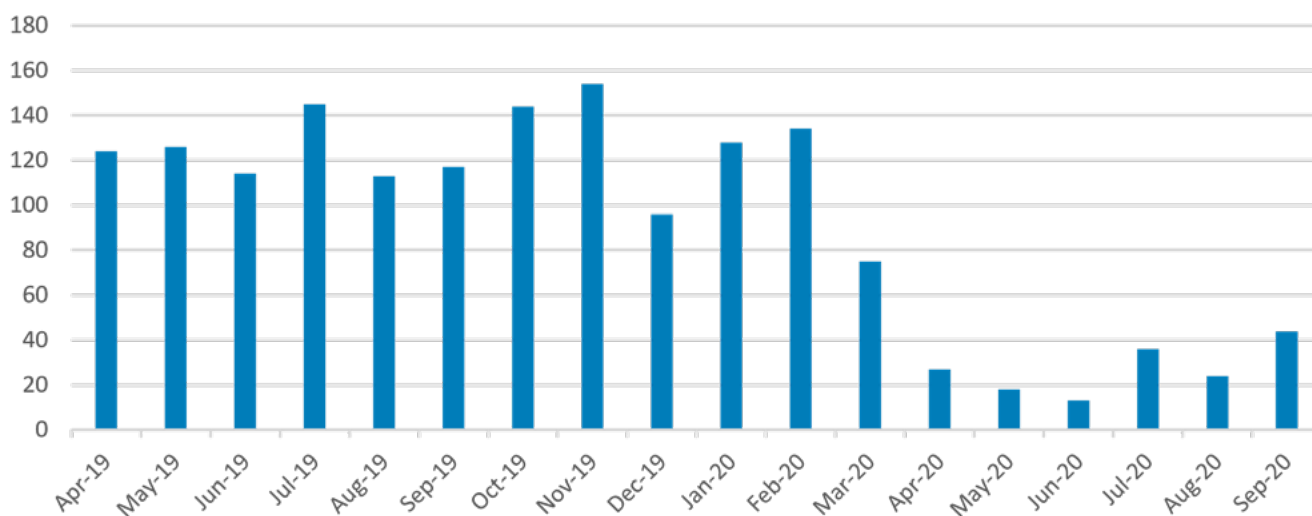
Figure 14: Number of Vulnerable Persons Care Plans (VACP), April 2019 to September 2020 at Dungavel, Morton Hall, Yarl's Wood, Colnbrook and Harmondsworth IRCs⁵⁴



8.23 Staff should, in cases of concerns about suicide and self-harm, utilise the Assessment Care in Detention Teamwork (ACDT) process, which provides a support package to monitor individuals according to their assessed risk of self-harm and suicide in detention. The process enables scheduled and ad hoc contact and interventions with the detainee, enabling welfare, mood, and behaviour to be reviewed and support offered. The number of ACDTs opened between April 2019 and September 2020 is set out at Figure 15. It is striking, however, that there are significant inconsistencies in the use of VACPs and ACDTs across the detention estate. At the Heathrow IRCs, for example, there were nearly six times as many ACDTs (950) as VACPs (164) while at Morton Hall, VACPs were more common than ACDTs (610 compared to 400). The limited data provided for the Gatwick estate, which only covers May to October 2020, shows the increasing numbers on a ACDT over the time period, from ten in June to 46 in September, falling slightly, in October, to 37. Similarly, there were 23 VACP opened during this period, with 14 of them concentrated in September and October, at the height of the Dublin Regulation returns.

⁵⁴ Figure 14 contains internal management information provided by the Home Office. It has not been quality assured to the level of published National Statistics so should be treated as provisional and therefore subject to change.

Figure 15: ACDTs opened between April 2019 and September 2020⁵⁵



8.24 The poor quality of the data provided by IRCs makes full analysis and comparison between IRCs difficult. This is similarly reflected by the Home Office’s own poor data collection – while well over 1,000 VACPs were opened over the period (even with an incomplete return from the Gatwick IRCs), only 549 VACP Special Condition flags were raised on the Home Office’s caseworking database (CID).

Detention Engagement Teams

8.25 A DET officer’s main responsibilities involve regularly engaging in face-to-face contact with detainees from induction through to leaving the IRC, and acting as the intermediary between detainees and caseowners. One engagement officer described the role as being the “middle person in detention”. DET officers carried out inductions of new detainees within 48 hours of their arrival at an IRC, with prioritisation given to anyone identified from CID as an adult at risk. Inspectors reviewed the DET induction list of 30 questions which covered a range of issues including voluntary return and whether an individual had been a victim of torture. While the form includes prompts for DET actions, there is no advice to the engagement officer on how to ask the questions, for example, providing a safe environment for disclosures of potentially traumatic events. The accompanying Standard Operating Procedure noted that the induction interview “should attempt to build a rapport with the person, to promote voluntary departure and to answer any questions regarding their immigration case”. A record of the induction is placed on CID. However, inspectors found little to no reference in the DCPRs to the issues raised in induction, unless a specific additional action had been required, such as a referral to the NRM.

8.26 In light of the impact of COVID-19, from March 2020, the majority of these inductions were conducted over the telephone. This practice gave rise to significant challenges; DET officers reported problems being able to speak to detainees in the first place, difficulties accessing interpreting services, as well as the loss of an ability to pick up further information from body language observations. One IRC-based stakeholder informed inspectors that there were problems with the reliance on telephones, due to the volumes of detainees, the demand for certain languages which had seen long waits for interpreting services, poor telephone connections, and Wi-Fi issues. Interviews with staff at Yarl’s Wood and HMP Pentonville

⁵⁵ Figure 15 contains internal management information provided by the Home Office. It has not been quality assured to the level of published National Statistics so should be treated as provisional and therefore subject to change.

revealed that sourcing Albanian interpreters via telephone had been a particular challenge over this period. Many of these issues have been similarly highlighted in the ICIBI's report: [An inspection of the Home Office's use of language services in the asylum process May – November 2019](#). Referring to the use of interpreters in asylum screening interviews in immigration detention, the report commented,

“Staff on the Detention Engagement Teams (DETs) said that, despite instructing the big word interpreters to ask the questions as worded, questions were “quite often mistranslated”. Inspectors were also told that there were “numerous times” when the information provided in the substantive interview and what was recorded in the screening interview did not match. After their screening interview, applicants sometimes raised their dissatisfaction with the interpreter through their legal representative.”

- 8.27** The Home Office provided inspectors with details of the Minimal Viable Product (MVP) for DET operations used from April 2020. From 28 May 2020, “In exceptional circumstances, for instance where vulnerability concerns have been flagged, consideration will be given to induction and/or a follow up engagement to take place in closed visits or visits hall”. It wasn't until 14 December 2020 that face-to-face inductions recommenced for all detainees. DET officers acknowledged that reduced face-to-face contact with detainees had impacted the effectiveness of their role but some raised concerns that the change in engagement methods had not been effectively communicated to detainees, via posters or at IRC inductions.
- 8.28** The perception of the purpose and activities of the DETs varied. Stakeholders raised concerns about the limited level of communication between detainees and Home Office staff, and the impact this had on a detainee's welfare; irregular contact between caseowners and DET officers meant the latter often stated “they are waiting for a response or are unable to get hold of their case owner (sic)”. Inspectors spoke to detainees at both Brook House and Yarl's Wood, who raised their frustrations at the lack of information about their case but were unaware of or unfamiliar with the role of the DET team. Caseowners considered DET teams a valuable resource for accessing or obtaining information about a detainee in an IRC, particularly when compared to obtaining information from a prison. Some DET staff felt that detainees would benefit from direct contact from their caseowner, with one suggesting that caseowners should be based in IRCs.

Age disputes

- 8.29** ‘Detention Services Order 02/2019, Care and management of post detention age claims’, published in August 2019 and updated in October 2020, provides instructions and guidance for Home Office and contractor staff operating in the immigration detention estate on the process for dealing with individuals claiming to be under 18.⁵⁶ The guidance states, “An individual must be treated as an adult only if their physical appearance and demeanour very strongly suggests that they are 25 years of age or over.” If an individual makes a claim to be a child whilst in detention, a defined set of actions must be followed; the contractor must notify the DET, who must note the incident on CID and inform the caseowner. The caseowner then must make a referral to the local authority for an age assessment to be undertaken.
- 8.30** Inspectors were told by IRC contractor and Home Office staff that there had been an increase in the number of age dispute cases raised in IRCs, particularly in the context of the detention of asylum seekers arriving in the UK by small boat. Staff indicated that, in their view, there were several points at which effective assessments of the age of those encountered were not

⁵⁶ [Detention Services Order 02/2019, Care and management of Post Detention Age claims](#)

being properly carried out: on arrival in the UK, on arrival at Yarl's Wood (when it had been re-purposed as a Short-Term Holding Facility for small-boats arrivals), and on arrival at Brook House ahead of removal to a third country. In some cases, individuals were only identified as minors on arrival at Brook House, usually by IRC reception staff, and cases escalated to the contractor's embedded social workers. Home Office staff commented,

"... people weren't following due process and procedures.... At KIU [Kent Intake Unit], because they are so overrun, I don't think they [small-boats arrivals] were being seen on an individual basis, and if they didn't have ID to show they were underage they were considered an adult and given a date of birth by staff."

Further concerns were raised about the quality of the assessment undertaken at KIU, with a member of staff noting:

"One detainee said on the paperwork that he had an age assessment. He'd only arrived four days ago. Age assessments can take months; KIU were doing their own assessments. It clearly stated that it was a Merton-compliant age assessment, [but] when I looked at the line of questioning was clear it wasn't."

Another concluded that perhaps only initial rather than full age assessments were being carried out by Kent social workers, which meant that further age dispute claims were being raised when individuals re-entered the detention system ahead of removal.

8.31 At Brook House, contractor staff were confident that where an age dispute case was identified, swift action would be taken:

"We raised it with the Home Office on every occasion, and our social services team that deals with age disputes has been very responsive – it's very rare that they [minors/age dispute cases] have been here overnight; they have left the centre."

The value of the on-site social worker, introduced when Serco took over the management of the Gatwick estate, was clear; the social worker was able to efficiently identify age dispute cases on arrival and had the necessary connections within West Sussex Social Services to ensure due safeguarding was undertaken.

8.32 Home Office staff highlighted their concerns about the quality of the data, and the consistency of its collection, on age disputes and the corresponding quality of the records on CID. At interview, senior managers did not appear to be fully appraised of the increased numbers of age disputes, though they acknowledged that the small-boats cohort was one of the most challenging, particularly due to volumes of simultaneous arrivals.

8.33 Inspectors requested age dispute data broken down by IRC location and including metadata on the date when the dispute was raised, the team who raised the case, the team who carried out the age assessment, and the outcome. This metadata could not be provided. Instead the Home Office shared quarterly returns produced by Detention and Escorting Services (DES), though the Home Office caveated the evidence by noting it had not been assured to the standard of published data. The data provided only recorded asylum cases, and while the information was broken down by location, useful details about the identification and referral process for each case were buried in the notes. This information was collated by the DES team at Gatwick. It was unclear to inspectors how it is used by the Home Office. Figure 16 draws from this data and gives an impression of the numbers of age disputes recorded over 2020.

Figure 16:

Number of age dispute (asylum only) each quarter by IRC; outcome (rolling)⁵⁷

| Date (2020) | Total cases new in each quarter | New age dispute case in quarter, broken down by IRC | Outcome: Claimed to be a child once detained. Local Authority assessment outcome – ADULT | Outcome: Assessed by LA and released as a CHILD/ released pending assessment | Claimed to be a child pre-detention. Detained as an adult on basis of previous assessment – new evidence introduced element of doubt making continued detention inappropriate |
|--------------------|---------------------------------|----------------------------------------------------------------------------|------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| January – March | 6 | Tinsley House (3) Brook House (1) Yarl's Wood (1) Morton Hall (1) | 2 | 4 | 0 |
| April – June | 0 | N/A | 2 | 1 | 0 |
| July – September | 7 | Brook House (6) Tinsley House (1) | 2 | 0 | 0 |
| October – December | 16 | Brook House (16) | 2 | 13 | 1 |
| TOTAL | 29 | | 8 | 18 | 1 |

8.34 The Independent Monitoring Board based at Brook House also drew attention, in their Annual Report 2020-21, to concerns at “apparent failures in identifying risk and vulnerabilities at different stages in the overall Home Office detention system” and noted that many of those brought to Brook House for removal under the Dublin Convention had failed to have their age disputes, NRM or Rule 35 claims identified or assessed before their arrival, despite engagement with the Home office on arrival in Kent, Yarl's Wood STHF and reception at Brook House. More positively, the Board observed “the beneficial impact of additional support provided by a Serco social worker based at Brook House this year, particularly in addressing concerns relating to age disputes, but also for supporting other vulnerable detainees.”

⁵⁷ Figure 16 contains internal management information provided by the Home Office. It has not been quality assured to the level of published National Statistics so should be treated as provisional and therefore subject to change.

9. Rule 35

9.1 Rule 35 of the Detention Centre Rules 2001 is intended “to ensure that particularly vulnerable detainees are brought to the attention of those with direct responsibility for authorising, maintaining and reviewing detention”. It states:

“Special illnesses and conditions (including torture claims)
35.—

(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.

(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.”⁵⁸

Whilst all healthcare staff are able to assist in the assessment of a detainee, only doctors are qualified to produce the Rule 35 report. The Rule 35 report is passed to the Detention Engagement Team, who log it and then forward it to the Rule 35 team for consideration. In Short-Term Holding Facilities (STHF), Rule 32 applies and follows the same principle as Rule 35 apart from the assessment of a detainee can be undertaken by a healthcare professional, defined in the Rules as a registered medical practitioner (a doctor) or a registered nurse, and the report is shared with the caseowner via DEPMU, as there are no DETs in STHFs.

58 [Detention Services Order 08/2016, Management of Adults at risk in Immigration Detention](#)

Rule 35 team

9.2 At the time of the first ICIBI AAR inspection, an independent Rule 35 team was being piloted as part of the response to Stephen Shaw's Recommendation 15, which called for:

“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 caseowner responsible for detention decisions.”

By the time of this second inspection, the Rule 35 team had become ‘business as usual’ (from September 2019), and was considered by the Home Office to be an internally independent team. This team also assesses Rule 32 reports received from STHFs. Under the auspices of a Grade 7 Assistant Director, who is also the joint head of the Detention Gatekeeper, the team comprises three SEO operational managers overseeing eight EO decision makers. The Rule 35 team was recruited from detained casework commands with the expectation that all staff therefore “have a grounding and background in general detention and Adults at risk Policies and an existing understanding of the practices and procedures governing their prior casework areas”. Usually based in Croydon, the team has been working at home since March 2020.

9.3 At interview, members of the team told inspectors they were clear on their roles and had received sufficient training. This training included modules on the Rule 35 process, Criminal Casework, Adults at risk in Detention, and vulnerability, in addition to ‘on the job’ coaching and mentoring.

9.4 The Rule 35 team described a cohesive unit, where escalation processes were clear and managers were aware of the impact on their staff of reading sometimes graphic material. Rule 35 team staff considered they were sufficiently resourced, though they noted the pressures on response times resulting from an influx of Rule 35 reports on individuals who had arrived by small boat and were facing returns to third countries in mid-to-late 2020.

9.5 Inspectors reviewed the materials used to guide the work of the Rule 35 team, including ‘Detention Services Order 09/2016: Detention Centre Rule 35 and Short-Term Holding Facility Rule 32’ (DSO 09/2016), the Adults at risk policy, Chapter 55 Detention guidance, a checklist for caseowners, and details of templates used for responses, as well as relevant quality assurance forms.

9.6 The role of the Rule 35 team is to review the doctor's report to ensure that it meets the required standards. Where these standards are not met, the team returns the report to the medical practitioner for further information. Where the standards are met and the report contains sufficient information to allow for full evaluation, Rule 35 team staff review the detainee's detention in light of the report, and in line with the general Chapter 55 guidance on detention, with reference to DSO 09/2016 and the Adults at risk policy. The decision on whether the individual should continue to be detained or released must be made, and a written response provided, within two working days of receipt of the doctor's report.

9.7 There are three categories of Rule 35 and Rule 32 reports. Rule 35/32(1) reports are concerned with establishing if a detainee's health is likely to be injuriously affected by continued detention or any conditions of detention; Rule 35/32(2) reports focus on detainees with suicidal intentions; while Rule 35/32(3) reports are concerned with detainees who may have been a victim of torture. The first AAR inspection found that between 1 April 2016 and 30 September 2018, over 96% of Rule 35/32 reports were 35/32(3)s; a trend which continued to December 2018. The Home Office provided data to this inspection for all Rule 35/32 reports received

between January 2019 and October 2020, broken down by report type, shown at Figure 17, and indicates this upward trajectory noted from 2016 has continued with 98% of reports received being Rule 35/32 reports. However, the data, provided by the Performance Reporting and Analysis Unit (PRAU) and drawn from CID, is caveated; Home Office systems could not provide data on the volume of individuals released from detention due to a R35 report being raised, but only report on the number of R35 applications raised with a 'released' outcome, because otherwise data may be distorted by the inclusion of individuals for whom a R35 report has been raised but who have actually been released for a separate reason.

Figure 17:
Number of Rule 35/32 reports received, January 2019 to October 2020⁵⁹

| Rule 35 report type | Number submitted | Per centage of total reports received |
|-------------------------|------------------|---------------------------------------|
| Rule 35/32(1) (health) | 49 | 1.5% |
| Rule 35/32(2) (suicide) | 15 | 0.5% |
| Rule 35/32(3) (torture) | 3,026 | 98% |
| TOTAL | 3,090 | 100% |

59 This table contains internal management information provided by the Home Office. It has not been quality assured to the level of published National Statistics so should be treated as provisional and therefore subject to change.

Figure 18:

Category of Rule 35 report broken down by IRC with outcomes, January 2019 to October 2020⁶⁰

| | IRC name | | | | | | | | | |
|----------------------------|-------------|------------|------------|---------------|--------------------|-------------------|-------------|---------------|-------------|--------------|
| | Brook House | Colnbrook | Dungavel | Harmondsworth | Larne House (STHF) | Manchester (STHF) | Morton Hall | Tinsley House | Yarl's Wood | TOTAL |
| Category of Rule 35 report | | | | | | | | | | |
| Rule 35(1) | 5 | 9 | 11 | 16 | 1 | 1 | 4 | 0 | 2 | 49 |
| Rule 35(2) | 0 | 0 | 0 | 4 | 1 | 9 | 1 | 0 | 0 | 15 |
| Rule 35(3) | 410 | 543 | 121 | 977 | 20 | 10 | 368 | 171 | 406 | 3,026 |
| Total: Rule 35 reports | 415 | 552 | 132 | 997 | 22 | 20 | 373 | 171 | 408 | 3,090 |
| | Outcome | | | | | | | | | |
| Released | 87 | 158 | 42 | 614 | 7 | 6 | 67 | 39 | 108 | 1,128 |
| % | 21% | 28.6% | 31.8% | 61.6% | 31.8% | 30% | 18% | 22.8% | 26.5% | 36.5% |
| Detention maintained | 328 | 393 | 90 | 380 | 15 | 14 | 300 | 132 | 300 | 1,952 |
| % | 79% | 71.2% | 68.2% | 38.1% | 68.2% | 70% | 80.4% | 77.2% | 73.5% | 63.2% |
| Not recorded | 0 | 1 | 0 | 3 | 0 | 0 | 6 | 0 | 0 | 10 |
| % | | 0.2% | | 0.3% | | | 1.6% | | | 0.02% |

⁶⁰ This table contains internal management information provided by the Home Office. It has not been quality assured to the level of published National Statistics so should be treated as provisional and therefore subject to change.

Process – the view from IRC

- 9.8** Due to the relatively small numbers of Rule 32 reports received, inspectors focused primarily on the execution of the Rule 35 process in IRCs. The first opportunity to identify detainees who may require a Rule 35 assessment takes place at the medical screening of detainees on entry to an IRC, which requires the health professional to ask the detainee whether they have been tortured. For those who respond ‘yes’, an appointment with an IRC doctor must be made. As noted in Chapter 8 on IRCs, attendance at the first health screening, within two hours of arrival, is mandatory and therefore enables this information to be captured if detainees feel able to disclose at this point.
- 9.9** The sharp fall in the number of detainees held in IRCs after the onset of the COVID-19 pandemic in spring 2020 meant that, for a time, Rule 35 appointments were more readily available, though there were a small number of cases in which detainees faced lengthy delays. However, an increase in detainees from August 2020, for removals under Dublin Regulations, placed significant pressure on healthcare for Rule 35 appointments, in particular at Brook House. One member of healthcare commented: “We didn’t have enough staff to meet the increased numbers. We had to spend an extra day doing this – we came in and did them ... [It was] definitely challenging but we did get through it.” Stakeholders raised concerns that there was a particular risk for the small-boats cohort, who made up the majority of those in Brook House during this period, in terms of identifying vulnerabilities. This cohort had been subject to a truncated screening interview on arrival in the UK meaning that the Rule 35 process had added significance and may have been the first opportunity available to detainees to highlight their vulnerabilities.
- 9.10** HMIP’s report ‘Detainees under escort: Inspection of escort and removals to Sweden and Romania’ (October 2020) found examples of detainees waiting 13 days for an appointment for a Rule 35 assessment, and a failure by healthcare to prioritise those with removal directions, including three detainees with appointments booked for after they were scheduled to be removed from the UK.⁶¹ In mitigation, but only on one occasion, the Home Office deployed DET staff to speak to detainees who had not had their Rule 35 assessment and would not receive one prior to removal, and recorded their findings on I120 forms which were then shared with DEPMU. These forms are usually used after an individual is served with a notice of liability for removal. The process requires the individual to raise with the Home Office as soon as reasonably practicable any grounds not previously raised as to why they should be allowed to remain in or not be removed from the UK. The I120 forms were treated the DETs in this scenario “...as a further submission – this was done with policy and HOLA (Home Office Legal Advisers) sign off”. Staff were clear on their perception of the robustness of the process: “we absolutely captured details of issues and made sure they were seen by the casework team and reviewed before RDs [removal directions].” No assessment was made of the I120 forms by IRC healthcare and the outcomes resulting from the information gathered were unclear. HMIP, in their observation of the process, did not consider this to be a sufficient safeguard.
- 9.11** One challenge in the Rule 35 process is the restriction as to who can undertake the Rule 35 assessment; currently this can only be a GP. A stakeholder shared the case of a psychiatrist at one IRC, who was prevented from submitting Rule 35 reports due to this requirement. This led to concerns that this restriction was depriving some of the most vulnerable detainees of an important safeguard. Other stakeholders emphasised the importance of ensuring the assessor was of the same sex as the person being examined as a method of building trust and aiding

⁶¹ ‘Detainees under escort: Inspection of escort and removals to Sweden and Romania’ (October 2020), <https://www.justiceinspectors.gov.uk/hmprisons/wp-content/uploads/sites/4/2020/11/Sweden-andRomania-escort-web-2020.pdf>

disclosure, particularly for female victims of sexual violence and trafficking. This is not a current requirement in the Rule 35 process.

- 9.12** The Home Office last provided Rule 35 training to IRC medical staff in 2016.⁶² At interview, IRC GPs said they were clear on the Rule 35 process and understood the requirements of the Rule 35 report. Inspectors were told the Rule 35 team are designing, and hoping to deliver by 1 April 2021, training for IRC medical practitioners on the Rule 35 process. In the absence of this training package, some training was provided by existing GPs to new GPs within IRCs, though there was no formal mechanism in place to review this training.
- 9.13** Detention Services Order (DSO) 09/2016 instructs medical practitioners on the preparation of a Rule 35 report: “All reports must be legible and use clear and easily understood language so that Home Office responsible officers can understand the significance of any evidence provided and are able to make an informed decision when reviewing detention.”⁶³ The guidance also sets out the templates to be used by GPs and noted, “It is for the doctor to decide if they have concerns in a professional capacity that a detainee may have been the victim of torture. The doctor must always state clearly the reasons why they have concerns arising from the medical examination – specifically the medical evidence which causes these concerns, including all physical and mental health indicators.”⁶⁴
- 9.14** The DSO states:

“Healthcare professionals are not required to make a report under rule 35(3) if they do not have concerns that the detainee may have been a victim of torture.... As an optional aid when seeking to explain this position to a detainee, healthcare professionals might find it helpful to use the Annex D: Rule 35(3)/Rule 32(3) letter template, if they wish.”

At the time of the last inspection, the Home Office was not informed when an Annex D letter was issued, so had no data on the number of occasions a Rule 35 report had been requested but refused, and therefore a less rounded understanding of how the Rule 35 process functioned. This remains the case and no data was held because: “The production of an Annex D notice is optional and they are not routinely produced; and if one was produced it would not be centrally reported or recorded (by the R35 Team or others).”

Rule 35 report quality

- 9.15** Detention Service Order (DSO) 09/2016 is clear on the parameters of Rule 35(3) reports, namely that it is “a mechanism for a doctor in an IRC to refer on concerns, rather than an expert medico-legal report” and states that, when preparing a report, doctors therefore need not “apply the terms or methodology set out in the Istanbul Protocol”, which provides formal guidelines for the assessment of persons who allege torture and ill treatment, for investigating cases of alleged torture, and for reporting such findings to the judiciary and any other investigative body.⁶⁵ A number of stakeholder submissions highlighted that a consequence of this approach was that reports often offered limited detail and omitted comment on whether ongoing detention would be harmful to an individual.

62 At the factual accuracy stage the Home Office stated that “combined Adults at risk and Rule 35 training was provided to healthcare staff at Heathrow and Gatwick IRCs and Larne House STHF in 2018”.

63 Detention Services Order 09/2016: Detention Centre Rule 35 and Short-term Holding Facility rule 32, Version

7.0, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/783642/Detention_rule_35_process.pdf.

64 Detention services order 09/2016 Detention centre rule 35 and Short-term Holding Facility rule 32 Version 7.0.

65 Detention services order 09/2016 Detention Centre Rule 35 and Short-term Holding Facility Rule 32, Version 7.0.

- 9.16** The first AAR inspection considered the quality of Home Office responses to Rule 35 reports and referenced an April 2015 UKVI audit of Rule 35 processes which 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.” The first AAR inspection concluded that, “From the evidence produced for this inspection, it appeared that there had been little improvement since then.”
- 9.17** Inspectors requested examples of five “good” and five “bad” Rule 35 reports (as judged by the Home Office), together with the Rule 35 team responses and quality assurance documents, received between 1 January 2020 and 1 January 2021, from across the IRC estate. All of the reports provided were Rule 35(3) (torture) reports. The Home Office subsequently provided inspectors with comments on the quality of these medical reports, indicating that seven of the ten reports could have been improved. Inspectors assessed these reports and the Home Office responses to them against the guidance provided in DSO 09/2016 and the AAR policy. These findings are set out below. (See Figure 19.)

Figure 19:

Summary review of Rule 35 GP reports and Home Office responses from 1 January 2020 to 1 January 2021

| Report no. | HO comment on medical report | Did the GP include a conclusion on whether the detainee may have been a victim of torture? What was this conclusion? | Could the Rule 35 team review the appropriateness of the individual's continued detention in light of the information in the report? | Was the Home Office response provided within two days? | Detention decision | What was the rationale for the detention decision as set out in the Home Office response? |
|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | <p>“Could be better</p> <p>Although being managed via a Mental Health referral, they could have been clearer as to impact of detention on the mental health concerns.”</p> | Yes | No – report indicates he is under the care of the mental health team but nothing about his stability in detention (or equivalent) | Yes | Maintain | <ul style="list-style-type: none"> • Illegal entry to the UK • Previous removal from the UK • FNORC with 6 month sentence (drugs): low risk of harm; medium risk of offending; high risk of absconding • No UK ties • Outstanding appeal and removal can occur within 2-3 months • Meets the definition of torture and it is accepted that the evidence provided meets level 2 of AAR policy. • Mental health can be supported in detention |

| Report no. | HO comment on medical report | Did the GP include a conclusion on whether the detainee may have been a victim of torture? What was this conclusion? | Could the Rule 35 team review the appropriateness of the individual's continued detention in light of the information in the report? | Was the Home Office response provided within two days? | Detention decision | What was the rationale for the detention decision as set out in the Home Office response? |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------|--------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2 | <p>“Could have been better</p> <p>Could have expanded on potential outcome from ongoing medication and management within the centre, with more detail of the impacts and timescales.”</p> | No – no reference to torture (only “abuse”) | No – report makes no comment on his current condition in detention | No | Maintain | <ul style="list-style-type: none"> • FNO (serious sexual offences): MAPPA cat 1 level 2, significant risk of harm and absconding • Appeal due to conclude in 3-4 weeks; if refused, removal can be affected in 3-4 weeks • Meets the definition of torture and it is accepted that the evidence provided meets level 3 of AAR policy |

| Report no. | HO comment on medical report | Did the GP include a conclusion on whether the detainee may have been a victim of torture? What was this conclusion? | Could the Rule 35 team review the appropriateness of the individual's continued detention in light of the information in the report? | Was the Home Office response provided within two days? | Detention decision | What was the rationale for the detention decision as set out in the Home Office response? |
|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3 | <p>“Could be better Covered all required elements for assessment (clear account/ findings from examination linked to assessment), could have been clearer on reasons for impacts other than to just say due to the nature of being detained with an unknown status.”</p> | Yes – refers to “likely torture” | Yes | No | Maintain | <ul style="list-style-type: none"> • European Economic Area (EEA) national but no evidence of exercising treaty rights • No ties in UK • Previous serious offending history in Romania (including sexual offences against a child) and thus assessed by the Home Office as high risk of harm; high risk of reoffending • Not been tested on reporting conditions previously • No fixed residence • If deportation decision is certified, removal can occur within 2-4 weeks • Meets the definition of torture and it is accepted that the evidence provided meets level 3 of AAR policy |

| Report no. | HO comment on medical report | Did the GP include a conclusion on whether the detainee may have been a victim of torture? What was this conclusion? | Could the Rule 35 team review the appropriateness of the individual's continued detention in light of the information in the report? | Was the Home Office response provided within two days? | Detention decision | What was the rationale for the detention decision as set out in the Home Office response? |
|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4 | <p>“Could be better</p> <p>Could have expanded on potential outcome from ongoing medication and management within the centre with more detail of the impacts and timescales.”</p> | <p>Yes – concludes “this may be torture”</p> | <p>Yes – notes he is stable</p> | <p>No</p> | <p>Release</p> | <ul style="list-style-type: none"> • Clandestine entry • Appeal Rights Exhausted • Previous held Indefinite Leave to Remain: indicates compliance with reporting restrictions • High risk of absconding; low risk of harm; low risk of reoffending • Meets the definition of torture and it is accepted that the evidence provided meets level 3 of AAR policy • Mental health is likely to decline in detention |

| Report no. | HO comment on medical report | Did the GP include a conclusion on whether the detainee may have been a victim of torture? What was this conclusion? | Could the Rule 35 team review the appropriateness of the individual's continued detention in light of the information in the report? | Was the Home Office response provided within two days? | Detention decision | What was the rationale for the detention decision as set out in the Home Office response? |
|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------|---------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5 | <p>"Could be better</p> <p>The report was vague/contradictory in terms of findings from examination and could of had more detail of the impacts and timescales."</p> | Yes – concludes the detainee "may be a victim of torture" | Yes – notes he is stable | No | Release | <ul style="list-style-type: none"> • Subject of signed Deportation Order based on UK criminal conviction • Limited evidence to indicate risk of absconding • Not considered a high risk of harm • Outstanding Judicial Review (likely concluded in 3-6 months) • Meets the definition of torture and it is accepted that the evidence provided meets level 3 of AAR policy |
| 6 | <p>"Good</p> <p>Covered all required elements for assessment (very clear account /findings from examination linked to assessment that noted the impacts of detention)"</p> | No – no reference to torture, concludes "On examination, he has scars which may be due to the history given" | Yes – notes an expected deterioration | Yes | Release decision made prior to the response | No consideration provided as the release decision had already been made |

| Report no. | HO comment on medical report | Did the GP include a conclusion on whether the detainee may have been a victim of torture? What was this conclusion? | Could the Rule 35 team review the appropriateness of the individual's continued detention in light of the information in the report? | Was the Home Office response provided within two days? | Detention decision | What was the rationale for the detention decision as set out in the Home Office response? |
|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7 | <p>“Good</p> <p>Covered all required elements for assessment (very clear account/ findings from examination linked to assessment that noted the impacts of detention).”</p> | <p>No – no reference to torture, concludes “He has scars on his body which may be due to the history given”</p> | <p>Yes – notes an expected deterioration</p> | <p>No</p> | <p>Maintain</p> | <ul style="list-style-type: none"> • Clandestine entry into UK • No convictions: low risk of harm/low risk of absconding • Previous period of reporting compliance • Refused asylum claim (third country case) • Refused human rights claim • Disruptive behaviour in detention • Can be removed within 5-10 days • Meets the definition of torture and is accepted that the evidence provided meets level 2 of AAR policy |

| Report no. | HO comment on medical report | Did the GP include a conclusion on whether the detainee may have been a victim of torture? What was this conclusion? | Could the Rule 35 team review the appropriateness of the individual's continued detention in light of the information in the report? | Was the Home Office response provided within two days? | Detention decision | What was the rationale for the detention decision as set out in the Home Office response? |
|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 8 | <p>“Could be better</p> <p>Impacts of detention were omitted (sic), this is a requirement and resulted in us [Home Office] having to stop the clock. We [Home Office] sought further clarity in this case in order to fully assess.”</p> | <p>No – no reference to torture, concludes “He has scars on his body which may be due to the history given”</p> | <p>Yes – notes an expected deterioration</p> | <p>No</p> | <p>Maintain</p> | <ul style="list-style-type: none"> • Unlawful entry into UK • No ties in the UK • Failed previous compliance with reporting restrictions: high risk of absconding • FNO (driving offences): low risk of harm/low risk of reconviction • Barriers to removal: human rights claim; outstanding NRM referral; confirmation from court that the community payback can be suspended • Once barrier free, removal can be executed in 14 days • Meets the definition of torture and is accepted that the evidence provided meets level 2 of AAR policy |

| Report no. | HO comment on medical report | Did the GP include a conclusion on whether the detainee may have been a victim of torture? What was this conclusion? | Could the Rule 35 team review the appropriateness of the individual's continued detention in light of the information in the report? | Was the Home Office response provided within two days? | Detention decision | What was the rationale for the detention decision as set out in the Home Office response? |
|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 9 | <p>“Good</p> <p>Covered all required elements for assessment (clear account/ findings from examination linked to assessment that noted the impacts of detention)”</p> | <p>No – contains no reference to torture, concludes “He has scars on his body which may be due to the history given”</p> | <p>Yes – notes the expected deterioration</p> | <p>No</p> | <p>Maintain</p> | <ul style="list-style-type: none"> • Clandestine entry • Third Country case – asylum claim refused • No convictions: low risk of harm • Low risk of absconding • Barrier to removal: NRM referral • Once barrier free, removal can be facilitated within 2-3 weeks • Meets the definition of torture and is accepted that the evidence provided meets level 2 of AAR policy |

| Report no. | HO comment on medical report | Did the GP include a conclusion on whether the detainee may have been a victim of torture? What was this conclusion? | Could the Rule 35 team review the appropriateness of the individual's continued detention in light of the information in the report? | Was the Home Office response provided within two days? | Detention decision | What was the rationale for the detention decision as set out in the Home Office response? |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10 | <p>“Could be better Could have expanded on potential outcome from ongoing medication and management within the centre, with more detail of the impacts and timescales.”</p> | <p>No – contains no reference to torture, concludes “On examination he has scars which may be due to the history given”</p> | <p>Yes – notes the expected deterioration</p> | <p>Yes</p> | <p>Maintain</p> | <ul style="list-style-type: none"> • Clandestine entrant on three occasions – previously deported and returned in breach FNO (drugs): High risk of harm; high risk of re-offending; high risk of absconding • Asylum claim • No previous attempts to regularise stay in UK • Barrier to removal: second asylum claim • Once barrier free, can be removed within 4 weeks |

Assurance and oversight

- 9.18** The Quality Assurance Framework (QAF) provides a ‘Rule 35 response guide’ for staff. Its purpose is to:

“embody a transparent, consistent and robust quality assurance system that sets out the quality expectations in relation to key work streams within the detention and removal process, ... highlight patterns or trends of inappropriate decision-making, ... highlight areas where support is required for decision-making teams, ... [and] infuse best practice and innovation into our approach to quality”.

The QAF provides preferred wording and the recommended layout for a response with reference to “standard paragraphs” for each Rule 35 response. Assurers are required to assess Rule 35 responses against the checklist in order to conclude whether requirements met (pass) or did not meet (fail) the expected standard, culminating in a compliance rating out of 100%. The checklist includes some mandatory questions which must always be “met” in order to progress to a pass outcome. Inspectors used the checklist of 39 questions to examine the ten sample responses provided by the Home Office.

- 9.19** Inspectors noted the consistent use of the “standard paragraphs” as required but found that eight out of ten of the reports assessed (as set out at Figure 19) were not measured against the checklist accurately. Notably, in eight of the QAFs, “NA” (used where a response is not necessary) had been checked incorrectly at least once. Inspectors found the most common error made by assurers related to the timeliness of responses. Where responses were late, the QAFs were scored incorrectly, with either a false “met” or an “NA”. Seventy per cent of the sample responses were late, though only two acknowledged this in the response, and only one provided an explanation. The QAF marked these late reports inaccurately as “pass” or “NA”. In the single case where the response clearly explains reasons for the delay, the assurer scored this as NA when the score should be “pass”. Inspectors found the inaccuracies of the completion of the QAF ensured that the overall score was also incorrect.

Categories of Rule 35/32 reports

- 9.20** There is significant disparity in the numbers of Rule 35/32 reports submitted in each category, leaving stakeholders to conclude that the “lack of Rule 35(1) and Rule 35(2) reports highlights issues around the effective identification of people with these vulnerabilities”. The number of Rule 35/32(1) reports, on individuals whose health was deteriorating as a result of detention, was low, totalling just 49 between April 2019 and October 2020. Healthcare staff told inspectors that the low numbers of Rule 35/32(1) reports was due to the presence of in-house IRC healthcare enabling medical conditions to be managed within the IRC or STHF. Further, staff pointed to the role of the Detention Gatekeeper in screening out those with medical conditions which may be impacted by detention, reducing the numbers potentially eligible for a Rule 35(1) assessment. However, while the screening function carried out by the DGK is important, this view reflects a failure to appreciate the dynamic nature of vulnerability and the fact that the condition of a previously healthy individual may start to deteriorate after a period in detention.
- 9.21** The relatively low number of Rule 35/32(2) reports on individuals with suicidal ideation appears inconsistent with the much higher documented level of self-harm in detention, as reflected, for example, by the significantly larger number of Assessment Care in Detention and Teamwork (ACDT) plans that are opened for people in detention. While DSO 09/2016 specifies that “being subject to ACDT does not equate automatically to a need to raise a rule 35(2) report” – because “an individual may be subject to ACDT for a number of reasons” as the process identifies those

at risk of self-harm and or suicide – the vastness of the disparity between the number of Rule 35(2) reports (of which there were only 15 between January 2019 and October 2020) and the number of ACDTs opened (of which there were 1,644 between April 2019 and September 2020) gives rise to a concern that Rule 35(2) is failing to identify detainees at risk of suicide. Inspectors reviewed 122 detained cases and observed that a Rule 35(2) was not completed in any of them, including the 24 cases where an ACDT had been opened and at least one in which a suicide attempt was recorded.

9.22 Healthcare and contractor staff in IRCs interviewed by inspectors indicated they were suspicious about the motivation behind the self-harm and suicide attempts and this may be one reason behind the low levels of Rule 35(2) reports. One healthcare professional commented, “GPs should make the final decision and look at why they are self-harming: is it mental health or that they are at risk of deportation? The majority of our cases are the latter; it is rarely due to mental health”. Some IRC staff suggested that the lack of Rule 35(2) reports reflected the effectiveness of the ACDT process. However, the DSO provides no guidance on the threshold which should be reached in terms of triggering a Rule 35(2) report where a detainee is also being managed on an ACDT. Similarly, IRC staff told inspectors that while they recognised the requirement to open an ACDT, they were less familiar with the AAR policy and the Rule 35 process. Notably, the ability of individuals to refer themselves for a Rule 35(2) assessment is substantially reduced as those vulnerable to suicide and self-harm are the least likely to seek assistance. Therefore, proper identification by staff is imperative to capture this group under the Rule 35(2) process. Healthcare staff indicated that, in their view, there were more effective methods at hand, namely the Part C process, to secure a prompt release.

Work of the Rule 35 team

9.23 Central to the decision-making of the Rule 35 team was the GP’s report drafted after their assessment of the detainee. Rule 35 team staff, echoing the views of stakeholders, described varying standards: “Some are very detailed, some are very thin and sparse.” Overall, though, staff (but not stakeholders) were broadly satisfied with the quality of the reports provided to them. Stakeholders expressed their concern at the lack of clinical oversight of the Rule 35 team, questioning the team’s capacity to understand or interpret medical reports. This was not a view shared by staff who said, “If the information isn’t strong enough, we go back and say it’s not sufficient, through DET”, though noting it was the role of the DET to triage and assess the report in the first instance. It was not clear the extent which DET officers regularly assessed these reports. Rule 35 team staff were also content to contact healthcare directly and seek clarification particularly where there may be an absence of information about how detention will affect mental and physical health.

9.24 The Rule 35 team also considered, as part of their assessment, the potential timeline for the removal of the detainee, which was particularly significant in cases where the GP had stated that the individual might deteriorate over a “longer” period of time in detention. Rule 35 staff described seeking additional information from caseowners, which at times led to delays in a decision, but which the Home Office considered to be sometimes essential. The DSO also enables the responsible officer to effectively pause the process “if the report states that it raises a medical concern but contains insufficient content to understand the medical concern, meaningful consideration of the report will not be possible (such a view must not be reached lightly)” and therefore the responsible officer is required to “telephone the Home Office DET immediately and ask them to obtain sufficient information from the IRC doctor for meaningful consideration, and to repeat the issuing process”. The DSO notes the “response timescales will resume once a report with meaningful content has been received.” Though staff indicated that

the provision of information was usually reasonably prompt, there were more pronounced delays with FNORC cases due to, according to caseowners, the public harm considerations, the availability of accommodation and the need for a release referral to be made to the Strategic Director.

- 9.25** Stakeholders considered that the Home Office’s responses to Rule 35 reports were of poor quality, describing them as “inadequate and ill-considered” which failed to assess risk and vulnerability when there was evidence of mental health deterioration. One stakeholder advocated greater consistency in the interpretation of Rule 35 reports, with an emphasis on responding to reports in the most protective manner possible. Reflecting on the wording chosen by GPs in reports, this stakeholder noted:

“It is difficult for doctors to assess future risk of harm; the level of protection a vulnerable person receives should not be determined by the doctor’s choice of auxiliary verb (‘could’, ‘may’, ‘will’ deteriorate). Rather, the simple fact that a doctor has indicated a specific risk of harm should be taken as a significant indication of risk of harm.”

Timeliness

- 9.26** Inspectors requested updated information on Rule 35/32 reports. Due to pressures on PRAU, the Home Office provided a collated version of the weekly Rule 35/32 report produced by the Detained Vulnerability Assurance and Advice Team (DVAAT), internal management information, and caveated as a local return which had not been assured to the standard of published data. This data set only included details of the timelines of the Home Office response and the outcome; this was not broken down by the type of Rule 35/32 report, location or AAR level. The data provided should be further caveated; there was no reference in the data to cases where the “clock has been stopped” to allow for additional information to be requested from the medical practitioner who prepared the report, which means timelines could be further elongated. The absence of this information was a concern in case it indicated that Home Office managers were not able to assess the relationship between the timeliness of responses and vulnerability nor identify reports from IRC doctors which require further follow-up, however it is acknowledged that the Rule 35 team maintain their own data and management controls separately to DVAAT and DET staff on-site also monitor the handling of reports. This management information data set shows a significant difference in the number of reports received by the Home Office: 1,249 reports from 1 April 2019 to 1 February 2021 in contrast to the PRAU data which showed 3,090 reports received between 1 January 2019 and October 2020.
- 9.27** The internal data shows that between 1 April 2019 and 31 March 2020, only 64% of cases received a response from the Rule 35 team within the mandated two days, as shown in Figure 20. While most of the Home Office responses were provided within ten days, 16% of delayed responses (representing 5.7% of all responses) took longer, including one which took 48 days. For 1 April 2020 to 1 February 2021, response time compliance was improving, with 81.2% of responses issued within the two-day timeframe, and only five responses (less than 1% of the total) taking longer than ten days. The longest delay had also decreased to 30 days. In contrast, the data provided by PRAU, and covering January 2019 to October 2020, showed a far poorer record of Home Office response times with only 1,915 (62%) meeting the two-day response time requirement.⁶⁶ While 886 (75%) of the late Home Office responses were provided within

⁶⁶ At the factual accuracy stage, the Home Office indicated that the data provided PRAU did not differentiate between working days and weekend/public holidays; the policy requires that “These actions must be carried out as soon as possible but no later than the end of the second working day after the day of receipt”.

ten days, 184 (15.6%) took longer than ten days including two responses which took 240 and 248 days respectively to complete. For the 184 responses which took longer than ten days, 102 were for individuals designated AAR level 3.

Figure 20:

Rule 35/32 response times, broken down by year and outcome⁶⁷

| Date | No of reports received | Number of responses issued within 2 days | Number of responses issued between 2 and 10 days | Number of responses issued over 10 days |
|--------------------------------|------------------------|------------------------------------------|--------------------------------------------------|-----------------------------------------|
| 1 April 2019 – 31 March 2020 | 489 | 314 | 147 | 28 |
| Outcome: detention maintained | 271 | 169 | 98 | 4 |
| Outcome: released | 218 | 145 | 49 | 24 |
| 1 April 2020 – 1 February 2021 | 760 | 617 | 122 | 5 |
| Outcome: detention maintained | 447 | 374 | 68 | 5 |
| Outcome: released | 1 | 1 | 54 | 0 |

9.28 Of the case files reviewed by inspectors, 40 had a Rule 35 report on their record. For three of these cases, insufficient records on CID meant it was unclear whether the required timelines had been met. Of the remaining 37 cases, in only five cases was the timeline met. Seven cases had required further inquiries to be made of the caseowner. More broadly, though, 85% of those cases reviewed with a Rule 35 report had their Adult at risk level changed, though only one detainee had been released as a result of a Rule 35 report.

Outcomes

9.29 Inspectors found release rates had increased since the first AAR inspection which identified that, between 1 April 2016 and 30 September 2018, of the 6,530 Rule 35/32 reports raised, only 1,601 (24.5%) were released, with varying rates across the Rule 35/32 categories: 107 (48%) of those with a Rule 35/32 (1) (health concerns) were released while only 3 (16%) with a Rule 35/32 (2) (suicide) and 1,491 (23%) of those with a Rule 35/32 (3) (torture) were released. Home Office PRAU data shows that out of the 3,090 reports recorded between January 2019 and October 2020, only 36.5% of those led to a release, as set out at Figure 21. Where a Rule 35/32(3) report was raised, the detainee was released in 36% of cases, an increase from the 23.7% release rate identified in the previous inspection.

⁶⁷ Figure 20 contains internal management information provided by the Home Office. It has not been quality assured to the level of published National Statistics so should be treated as provisional and therefore subject to change.

Figure 21:

Rule 35/32 reports raised between January 2019 and October 2020 with outcomes.⁶⁸

| Rule 35/32 category | Reports raised | Detainee released | Detention maintained | No outcome |
|----------------------------------|----------------|------------------------------|------------------------------|--------------------------|
| Rule 35/32(1) Health concerns | 49 | 30 | 17 | 2 |
| Rule 35/32(2) Suicide risk | 15 | 5 | 10 | 0 |
| Rule 35/32(3) Torture allegation | 3,026 | 1,093 | 1,925 | 8 |
| Total | 3,090 | 1,128 36.5% | 1,952 63.2% | 10 0.3% |

Rule 35 as part of the AAR policy – stakeholder views**9.30** Stakeholders' concerns about the efficacy of the Rule 35 process included:

- its failure to provide for the concept of vulnerability as dynamic and susceptible to change over time, in light of the lack of a mechanism to facilitate regular reviews of those who might have been judged at the time of a Rule 35 report not to be deteriorating in detention, but whose condition nonetheless required further monitoring
- failure by the Home Office to engage with the challenge presented by the premise that those who are most vulnerable are also the least likely to utilise the mechanisms available
- the potentially negative impact of increasing the role of medical professionals in detention decisions, which ran the risk of “compromis[ing] their clinical relationship with patients as well as their ethical duties under the profession” and of leading to a situation in which torture and trafficking survivors “may be reluctant to engage with people they see as working for those who made the decision to detain them.”

More broadly, and overwhelmingly, stakeholders considered that the Rule 35 process was, as currently constituted, not fit for purpose. The expectation from stakeholders was that this would likely be addressed through the planned reform of the Adults at risk policy. However, the Home Office had decided to “pause” this work. Stakeholders further expressed concerns about the Home Office’s approach to consultation on this issue citing “a lack of genuine interest in constructive dialogue”, and pointing to what they saw as the Home Office’s general reluctance to consult and its unwillingness to share its evidence base.

⁶⁸ This table contains internal management information provided by the Home Office. It has not been quality assured to the level of published National Statistics so should be treated as provisional and therefore subject to change.

10. Medico-Legal Reports

- 10.1** Medico-Legal Reports (MLRs) are documents prepared by a qualified clinical expert to provide evidence of the physical and/or psychological impact of torture or other traumatic experiences on an individual.⁶⁹ These reports are relied upon as evidence in support of asylum claims, but in recent years they have also been presented for consideration under the Adults at risk (AAR) policy as professional evidence of the vulnerability of a person in detention. The growing use of MLRs for this purpose, and a sharp rise in the number of reports received, have contributed to concern amongst Home Office staff that this mechanism is being abused to secure the release of detainees who may not be vulnerable. External stakeholders counter this view, arguing that MLRs operate as a vital safeguard for individuals who might not otherwise be able to obtain the kind of professional evidence required to engage the AAR policy. Inspectors agree that the increased volume of MLRs gives rise to a legitimate concern that this safeguarding mechanism is not operating efficiently or effectively, meaning that opportunities for exploitation of the process exist, as well as the potential for the mechanism to inadequately identify vulnerability and enable appropriate action to be taken. The over-use of this mechanism cannot be viewed without considering the relationship with other safeguarding mechanisms, such as Rule 35, and the established problems which exist within these processes.
- 10.2** To evaluate the interaction between Medico-Legal Reports and the AAR policy, and to assess the Home Office’s concerns about potential abuse of this mechanism, inspectors examined the guidance for caseowners on the handling of MLRs; reviewed submissions from stakeholders on the importance of the reports as a safeguard for the vulnerable; analysed the available data on the volume of, and outcomes from, MLRs; and reviewed evidence provided by the Home Office in support of its view that many of the reports it receives are not reliable. Inspectors also reviewed work by the Home Office to develop a set of standards against which MLRs could be assessed.

Guidance

- 10.3** As the AAR policy recognises that “having been a victim of torture” may mean that an individual is “particularly vulnerable to harm in detention”, Home Office guidance acknowledges that MLRs may be relevant not just to asylum decision-making but also to assessments of the appropriateness of detention.⁷⁰ The guidance for staff states that “evidence that an individual is a victim of torture may emerge” either from a Rule 35 report or from “a medico-legal report supplied by Freedom from Torture, the Helen Bamber Foundation, or another reputable medico-legal report provider”. This guidance lays out that where there is

69 See <https://helenbamber.org/medico-legal-reports> and <https://www.freedomfromtorture.org/help-for-survivors/medico-legal-reports>. Both organisations are recognised by the Home Office as reputable providers of MLRs.

70 ‘Immigration Act 2016: Guidance on adults at risk in immigration detention’, July 2018, paragraph 11; the same text appears as paragraph 11, ‘Immigration Act 2016: Draft Revised Guidance on adults at risk in immigration detention’, February 2021, due to come into force on 25 May 2021. For the purposes of the AAR policy, the meaning of ‘torture’ is as defined in Rule 35(6) of the Detention Centre Rules 2001 (as amended from 2018):

“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.”

“professional evidence of torture”, such as an MLR “that meets the required standards”, “the individual should be regarded as being at level 2 in the terms of this [AAR] policy”, and that only “where the professional evidence indicates that a period of detention would be likely to cause harm they should be regarded as being at level 3”.⁷¹ However, it is unclear from the guidance what “required standards” apply to MLRs, nor is it clear which providers of reports, other than Freedom from Torture and the Helen Bamber Foundation – two specialist charities “accepted by the Home Office as having recognised expertise in the assessment of the physical, psychological, psychiatric and social effects of torture” – are to be regarded as “reputable”.⁷²

- 10.4** An internal document entitled, ‘Medico-Legal Reports (MLR) – Guidance and Frequently Asked Questions’, provides additional advice to staff on reviewing detention in light of an MLR. Produced by the Adults at Risk Returns Assurance Team (ARRAT, the forerunner of the current DVAAT) in June 2018, this document states that, where it can be established that a professional assessment has not taken place as claimed in an MLR, or where a report contains many errors (for example, references to an incorrect name or nationality, or to attributes that do not correspond to the subject of the report), the Home Office may, after seeking the legal representative’s response to the concerns raised, take a decision to place no weight on the report. At the same time, the document makes clear that, when specific concerns about the reliability of a report do not arise, an MLR must be accepted as “the most recent professional evidence”, even when it contains an opinion that conflicts with information received from the healthcare staff at an Immigration Removal Centre (IRC). Moreover, caseowners are reminded that they “should not specifically challenge the doctors’ clinical opinion” and that “all MLRs should be considered on individual merit”, even if there are concerns about other reports from a particular doctor. [emphasis in original]

Potential abuse of the MLR process

- 10.5** At the time of the first ICIBI inspection (November 2018 – May 2019), Home Office staff highlighted their concern about potential abuse of the MLR process, noting that from May 2018 there had been a sharp increase in the number of reports submitted and in the proportion of subsequent releases from detention. The fact that more than 1,500 MLRs had been received within the space of a few months, and that a disproportionate number of them had related to detainees of a particular nationality, led officials to conclude that some reports were being produced “solely for the purpose of release rather than for highlighting vulnerability”.⁷³ A Home Office manager subsequently explained that it was in response to this “recent influx of medico-legal reports (MLR) being submitted for detained cases” that the June 2018 ARRAT guidance was produced, with concerns about potential abuse heightened by the receipt “in quick succession” of MLRs “from the same representatives and the same authors”, with “remarkable similarities” between the details and diagnoses contained within the reports.
- 10.6** During the course of this inspection, staff told inspectors that they remained concerned about potentially abusive uses of MLRs. This concern stemmed in part from the continued growth in the volume of reports received through 2019 and early 2020 – “the evidence [for abuse] is the spike in numbers” – and from the use of MLRs by detainees of particular nationalities, and from patterns observed in some reports. A Home Office dip-sampling exercise focusing on

71 ‘Adults at risk in immigration detention’, v5.0, 06 March 2019, p. 10, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919791/adults-at-risk-policy-v5.0ext.pdf.

72 For the Home Office’s acceptance of the expertise of the charities, see ‘Asylum Policy Instruction: MedicoLegal Reports from the Helen Bamber Foundation and the Medical Foundation Medico-Legal Report Service’, v4.0, July 2015; at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/444410/MLR_Foundation_Cases_External_v4_0.pdf.

73 ‘Annual inspection of ‘Adults at risk in Immigration Detention’ (2018–19)’ 8.193–8.196, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881648/Annual_inspection_of_Adults_at_Risk_in_Immigration_Detention_2018-29_.pdf.

132 MLRs submitted between mid-2018 and the end of 2019 found that 93% of the reports selected related to nationals of just four countries – with Albanians alone accounting for 63% of the total, and Indian nationals accounting for a further 18% – even though those groups made up only 30% of the number of people in detention over the relevant period. The Home Office also pointed to the fact that reports by some authors were characterised by “common and repeated use of whole sections of text” and/or “very generic and similar outcomes”. They provided details of reports they regarded as suspicious and unreliable, including an MLR in which two different individuals were referred to in the same document and another in which incorrect gender pronouns were used to refer to a detainee. This exercise also revealed a disconnect between those undertaking MLRs and IRC healthcare, noting that the healthcare professionals were not reporting cases of obvious concern to IRC healthcare and

“no attempt is made [by the health professional] to obtain the existing healthcare file from the IRC, despite the existence of a clear process to do this. In 35 randomly selected cases, none listed the current healthcare record as being before the author for their consideration”

- 10.7** External stakeholders rejected the suggestion that these observations amount to significant evidence that MLRs are being abused, and argued that the increase in the number of reports was a reflection of “the failures of the Home Office’s internal mechanisms for identifying vulnerabilities”, which leave detainees in the position of “having to rely more often on the evidence of external independent doctors”. Stakeholders indicated that instances of “editorial poor practice” in some reports “do not in themselves speak to the reliability of the clinical assessment within the report”, and note that, as the use of stock phrases is common “in many reports by highly reputable providers”, the appearance of repeated text “should not be of concern” if “there is sufficient individualising detail in the rest of the report”.
- 10.8** Inspectors found that the data available on the number of, and outcomes from, MLRs was poor. “AAR – MLR” has only been recorded in CID as a distinct reason for release from detention since December 2019, and as the receipt of a report is recorded only in the ‘notes’ field, figures on the overall volume of reports are not centrally logged and could not be produced when requested by inspectors in October 2020 and February 2021.
- 10.9** Home Office internal analysis, which looked at eight legal avenues through which a person can seek to remain in the UK, or challenge the decision to remove or detain them⁷⁴ subsequently published in March 2021 found that the number of detentions in which an MLR was raised increased from just 51 in 2017 to 1,174 in 2018 and 2,315 in 2019. According to these calculations, the proportion of detentions in which an MLR featured (excluding cases of detention on arrival in the UK) thus rose from 0.2% in 2017 to 14% in 2019. The Home Office analysis was caveated:

“The data show the prevalence with which each issue was raised in detention. However, trends in prevalence should be interpreted with caution. An increase could be caused by many factors, including: (i) an increase in detentions of people with a genuine basis for raising that issue, (ii) increased awareness of that issue among people in detention and their

⁷⁴ These avenues are: applying for asylum; applying for leave to remain on human rights or other rights-based grounds; a fresh application for leave to remain on protection or human rights grounds following an earlier refused asylum or human rights claim (known as ‘further submissions’); appealing against an immigration decision, such as a refusal for further leave to remain, an asylum decision, or a decision to deport; lodging a judicial review; being referred as a potential victim of modern slavery through the National Referral Mechanism (NRM); being the subject of a medical report under Rule 35 of the Detention Centre Rules 2001, which can then lead to the consideration of ‘further submissions’; being the subject of a medico-legal report (MLR) from a medical practitioner independent from the Home Office.

representatives, or (iii) a change in the perceived likelihood of achieving one's aims through one means rather than another.

Reasons for release can be complicated, and may involve multiple factors. As a result, we cannot say that someone raised an issue and was released as a consequence, only that they raised the issue and were subsequently released. ... Outcomes of the issues raised are included where possible. However, a negative outcome does not necessarily mean that the issue was raised spuriously. The individual may have genuinely believed that their application was well-founded, but the relevant decision-making body disagreed with their claim. It is impossible to understand the person's motivations purely from the statistics. Similarly, the fact that an issue was raised by an individual does not necessarily mean that the claim was well-founded."

- 10.10** Home Office internal analysis subsequently published in March 2021 found that the number of detentions in which an MLR was raised increased from just 51 in 2017 to 1,174 in 2018 and 2,315 in 2019. According to these calculations, the proportion of detentions in which an MLR featured (excluding cases of detention on arrival in the UK) thus rose from 0.2% in 2017 to 14% in 2019. The Home Office analysis noted, however, that "trends in prevalence [of issues raised in detention, such as claims of torture raised in an MLR] should be treated with caution", acknowledging that "many factors may cause an increase," including "an increase in detentions of people with a genuine basis for raising that issue" and "increased awareness of that issue among people in detention and their representatives".⁷⁵
- 10.11** Senior Home Office managers acknowledge that the scale of any abuse that might be taking place is hard to gauge, and that building an evidence base to substantiate suspicions of abuse has been challenging. Inspectors asked whether referrals had been made to relevant regulatory bodies on potential misconduct by legal representatives and clinical professionals. The Home Office response stated "where the required evidential thresholds have been met, referrals [to the regulators] have been completed", though no defined outcomes were provided and the response was caveated by the acknowledgment that not all such referrals will have been directly in connection with suspect MLRs.
- 10.12** The Home Office had launched a pilot where independent clinicians provided a second opinion on the diagnoses furnished in MLRs. Launched shortly before the outbreak of the COVID-19 pandemic and then suspended, the initial phase of the pilot resumed in December 2020 and involved a review of a small number of cases that had already received caseowner consideration. Initial findings of "poor standards and inconsistencies with diagnoses" were expected to "feed into work with policy", and it was anticipated that a further stage of the pilot would involve a review of live cases by the independent clinicians under an interim policy. No evaluation or assessment of outcomes from the second opinion pilot had been undertaken by February 2021.
- 10.13** In the absence of comprehensive and reliable data to support suspicions of fraud, it is impossible to reach a conclusion on what the scale of the problem of abusive MLRs might be. Certainly, where abuse can be substantiated, the Home Office should act decisively to bring professional misconduct and malpractice to the attention of the relevant regulators, not least in order to protect vulnerable individuals in detention who might otherwise be exploited by unscrupulous representatives. Evidence provided by the Home Office stated that:

⁷⁵ 'Issues raised by people facing return in Immigration Detention: Research Report' (Draft), dated December 2020; report published on 16 March 2021 at <https://www.gov.uk/government/publications/issues-raised-by-people-facing-return-in-immigration-detention/issues-raised-by-people-facing-return-in-immigrationdetention>. Figures combine those given for people detained within the UK for immigration offences and FNOs in immigration detention.

“Joint agency working has taken place with the Ministry of Justice alongside regulators of immigration representatives and legal advisors, to understand both specific and wider themes of potential abuse to the immigration system. Discussion to gain a common understanding of requirements has taken place on the evidential requirements for onward referral to the regulators and closer working with the regulators has been implemented by setting up dedicated points of contact.”

The Home Office indicated that,

“where the required evidential thresholds have been met, referrals have been completed, although we cannot share individual details during a live investigation.”

The dates these referrals were made, and the volume and outcomes of these referrals were not provided to inspectors.

10.14 Inspectors were told, by stakeholders, that at a meeting with the Home Office, the latter highlighted the possibility that individuals released as a result of an MLR submission might find themselves subjected to debt bondage in order to pay the costs involved in securing the report. However, the Home Office subsequently told inspectors they were not aware of “any evidence to establish [an] explicit link between MLRs and either debt bondage [or] trafficking” and that therefore “no investigation of this type has been undertaken and there has been no engagement with industry regulators around this.” No evidence was provided to inspectors by either the Home Office or stakeholders which supported a debt bondage scenario. However, there may be merit in the Home Office exploring the financial component of the MLR process as a method of developing further the evidence of abuse of the process.

MLR volumes as an operational challenge

10.15 Home Office senior managers noted the significant operational challenge posed by increased MLRs and the impact on caseworking resources. To the extent that failures to give due consideration to MLRs have been exacerbated by the strain that the large number of reports has placed on caseworking units, the creation of a dedicated team to assess evidence on vulnerability may be helpful. Indeed, the response of NRC London when “MLRs were literally piling up” and “case owners were overburdened” was to create a six-member Vulnerability Assessment Team (VAT) within the unit to evaluate the reports. Staff there told inspectors that the establishment of the VAT in March 2019 had relieved caseowners of an unmanageable burden and allowed MLRs to be evaluated more quickly, with the time from the submission of a report to the release of a detainee (where that was the decision reached) said to have been reduced from 9 days to 1-1.5 days.

Proposed standards for MLRs

10.16 Over the period of this inspection, policy work on MLRs has been focused on the development of a set of minimum standards for such reports as a tool to guide consideration of MLRs by caseowners and to deter abuse and which “aims to regulate the quality and rigour of external medical evidence and provide a decision-making framework for case owners”. Though progress on this project has been slow, the higher priority that has been placed on it is highlighted by the fact that the work to develop MLR standards was one of the only strands of policy development to continue after ministers confirmed the decision to “pause” a wider revision of the AAR policy in October 2020.

- 10.17** The proposed standards had not been finalised at the time of this inspection, and inspectors were therefore not able to review them, but in a pre-meeting paper produced for discussion with external stakeholders in August 2020, the Home Office laid out that its aims in producing the standards were “to address the business impact resulting from the unprecedented increase in reports” and to provide staff with “additional guidance on how to consider and balance this evidence in line with the AAR policy”. It was envisaged at that time that new guidance would “include a detailed framework, against which external medical reports commissioned by legal representatives for their clients in detention will be considered”. Though the document did not provide full details of the standards, it suggested that the new guidance would differentiate between reports commissioned while an individual was in detention and other forms of evidence that shed light on conditions identified previously, while a person was in the community. It also indicated that the onsite healthcare teams at IRCs could have greater involvement in the process, with the introduction of a requirement that MLR providers request a detainee’s healthcare file, and with the IRC healthcare staff potentially playing “an enhanced role in the consideration of external reports”.
- 10.18** The Home Office held discussions with a limited number of stakeholders, including specialist organisations on the work to develop a set of MLR standards in January, June, August, and December 2020. The organisations involved raised significant objections to the proposed standards, questioning the robustness of the evidence base to support the need for a policy change and expressing concern that the imposition of standards would lead to legitimate reports being set aside in genuine cases of vulnerability. Stakeholders found the proposition that IRC healthcare records and/or staff should play a greater role in the process problematic, leading to concerns that this involvement would create the perception that IRC healthcare staff have the power to maintain detention, thus undermining the trust between patient and doctor. They said they were also concerned by suggestions that caseowners would be able to disregard repeated text, as stock phrases are routinely used to describe symptoms. Moreover, one organisation argued that, even if it were accepted that abuse of the MLR process was a significant problem, the proposed response was unlikely to be an effective remedy. “It is difficult to see how tick-box standards would address” such a challenge, it wrote, as “the fraudulent persons would soon learn how to ensure that the reports they prepare appear to fulfil the new tick-box standards”, while some genuine reports would be disregarded under the new policy. As one medical expert with extensive experience in this field told inspectors, “The danger is that what they are doing isn’t going to have an effect on the bogus claims, but will impact on real claims.”
- 10.19** Home Office staff stressed to inspectors that the purpose of the proposed standards was not “to try and dismiss reports”. Officials stated that under the policy being developed, the intention would be to “go back to the author and to point out what is needed”, opening up a dialogue between the Home Office and the clinical professional to ensure that legitimate medical evidence is given appropriate weight.

Handling of MLRs: the impact of a culture of scepticism

- 10.20** Despite widespread suspicion of MLRs at all levels of the Home Office, both senior management and the front-line staff responsible for considering the reports insisted that they are assessed on their own merits and in line with the AAR policy. One manager acknowledged that “we have to be independently assessing each [report],” adding that “we have to follow the policy, even if we feel there might be an abuse of the system”. A senior official expressed confidence that caseworking teams were following the policy but recognised that the perception that there was widespread abuse created “a real risk that people get hardened

to that and think every single MLR is abusive”, which in turn could undermine “their whole attitude to vulnerability and how they treat people”.

- 10.21** This scepticism was exhibited in caseowner free text responses to the ICIBI survey question: “Some stakeholders have told ICIBI that, in assessing claims of vulnerability, Home Office staff demonstrate a “culture of disbelief” (whereby the default Home Office position is that people are not telling the truth).” One National Returns Command caseowner wrote that “it is very difficult to not become jaded and cynical when you have to deal with so many near identical MLRs”, while a caseowner from the Foreign National Offender Returns Command (FNORC) expressed the view that “some of the detainees’ representatives abuse this policy to secure their release from detention”. Another FNORC caseowner voiced doubt that a one-hour telephone conversation with a detainee could be sufficient to allow a doctor to say that an individual had mental health problems and was unfit for detention. In contrast, and reflecting what inspectors were told in focus groups with a range of caseworking teams, one caseowner stated “ultimately it is a medical document prepared by a professional, so whatever misgivings we may have, we will accept it as medical evidence and raise to level 3”.
- 10.22** In detained cases from January and September 2020 analysed for this inspection, inspectors found that the submission of an MLR generally did lead to a reassessment of an individual’s AAR level, though inspectors identified three cases in which external reports were effectively disregarded, or were inappropriately set aside in favour of assessments from IRC healthcare. Medical professionals working at IRCs confirmed that the Home Office did ask for comment on MLRs. Although the AAR policy does not allow an opinion from IRC healthcare to displace an assessment in an unchallenged MLR, one IRC doctor had a different understanding of the weight attached to the opinions that were sought from him and his IRC healthcare colleagues: “Our combined clinical experience of that patient overrides that of the MLR report,” he said, adding that “MLRs are scary when you read them, but as a clinician, you will just think, ‘there is nothing really here.’” Legal representatives have also reported that the experience of their clients suggests that it is “almost routine” for caseowners to ask IRC healthcare for a view on the assessment in an MLR and to disregard the MLR if they do not, despite the inconsistency of this approach with established policy. In a judicial review, ‘AK v Secretary of the State for the Home Department’ [2020], the Home Office accepted that by substituting the assessment of IRC healthcare for that contained in an MLR, AK was unlawfully detained for nearly five months.

Case study 3 – independent medical assessment set aside in favour of an opinion for IRC healthcare

Mr M entered detention in August 2019. Though the notes on his case in CID indicate that he exhibited “bizarre” behaviour and refused food and fluid within his first few weeks at the IRC, it was not until January 2020 that a DCPR placed him at level 1 of the AAR policy due to his food and fluid refusal.

An attempt to remove Mr M in June 2020 failed as he was found to be medically unfit to fly. A Part C from IRC healthcare reported that he was “very unwell with depression and psychotic symptoms” and that his “current presentation suggests that he lacks mental capacity in immigration related decision-making”. In a telephone call 12 days later, a psychiatrist in IRC healthcare stated that Mr M was “exhibiting psychotic behaviour” and that “he poses risks to his own health and own

safety and others". This information did not immediately lead to any reassessment of his status under the AAR policy.

Mr M's legal representative arranged an independent medical assessment that was carried out by video link on 2 July 2020. The Home Office caseowner responsible for reviewing Mr M's detention recorded that this report assessed him "as having 'psychosis/paranoid schizophrenia/bipolar affective disorder and some features suggestive of Post-Traumatic Stress Disorder'", and that it suggested that he "would be a Level 3 Adult At Risk for displaying certain symptoms". However, in response to a query from the Home Office, the psychiatrist at IRC healthcare reported on 30 July that, in his opinion, Mr M "does not suffer from any mental health disorder within the meaning of the Mental Health Act 1983" and that he was no longer taking medication or receiving mental health treatment. Despite the fact that Home Office policy does not provide for an assessment in an MLR to be set aside in favour of the opinion of IRC healthcare, the caseowner assessed Mr M at level 2 of the AAR policy, rather than level 3.

After a second independent medical report was received on 10 September, indicating that Mr M was "still suffering from symptoms relating to psychotic illness and that any prolonged periods in detention would only be detrimental to his wellbeing", the caseowner did raise him to AAR level 3, while also making an "urgent request" to IRC healthcare "for an updated medical report". After reassessing his AAR level, the Home Office tried to remove Mr M on a charter flight on 5 October, but released him on immigration bail on 13 October 2020, after a legal barrier arose to prevent his removal.

Home Office comments

The Home Office were asked why the first independent medical report, which raised serious concerns about the mental health of the detainee, was disregarded. The Home Office responded: "A clinical view was sought from the healthcare staff who would have had far more interactions with the individual compared to the external clinician who authored the MLR. However, detention should have been reviewed on the basis of the evidence that was already available, including the clinical opinion in the MLR. The individual had been previously assessed as an AAR L2 however this was adjusted to AAR level 3 given all the evidence, which included the updated independent medical assessment received on 9/9/20."

ICIBI comments

This case is indicative of the risk which arises when MLRs are not handled properly and when IRC healthcare opinion is sought and given primacy where this opinion undermines the finding made in the MLR; the caseowner did not make additional inquiries nor effectively review detention in light of all the available evidence. Though coordination with medical staff to ensure appropriate treatment of a detainee is sensible, allowing the opinions of those staff members to override judgements offered in an MLR is out of line with existing policies, and deferring action on reports until responses are received from the IRC or prison can and does lead to long delays in the release of vulnerable individuals.

11. Case Progression Panels

Background

- 11.1** In response to Stephen Shaw’s recommendations 60 and 61 from his 2016 report⁷⁶, the Home Office introduced Case Progression Panels (CPP) “to provide an internally independent review of the suitability for continued detention and the progression of case actions”.⁷⁷ Following a pilot in November 2016, CPPs became ‘business as usual’ in February 2017. Evaluating this mechanism as part of his 2018 follow-up report, Shaw cited Case Progression Panels as an improved safeguarding measure⁷⁸ and further recommended reducing the numbers of cases considered at each panel, improving the availability of relevant information for panel members to enable proper preparation, improving CPP chair competence, and reviewing the case for an independent element in CPPs.
- 11.2** The first AAR inspection considered the purpose and operation of Case Progression Panels and identified several areas of concern, including poor preparation by panel members, the unstructured nature of discussions, limited consideration of the AAR policy, an apparent presumption of detention for FNOs, poor caseworking prior to a panel, a failure by caseowners to acknowledge recommendations, and poor data collection. The introduction of an independent element to the Panels was still being considered at the time of the first inspection. The first annual inspection report recommended that the Home Office: “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”.⁷⁹ The Home Office accepted this recommendation and outlined plans for improvements to guidance, process and feedback loops; the addition of quarterly assurance from the UNHCR and the Red Cross; and the development of a pilot for independent panel members.⁸⁰ The operation of Case Progression Panels is governed by an internal guidance document on ‘Detention Case Progression Panels’, the current version of which was published in January 2021.⁸¹

Purpose and function

- 11.3** The purpose of Case Progression Panels is to review continued detention and to evaluate case progression. The functions of the CPP are to ensure a consistency of process and approach

76 Shaw 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”.

77 Home Office response to Shaw Review (2016), <https://questions-statements.parliament.uk/writtenstatements/detail/2016-01-14/HCWS470>

78 “Improved safeguards have been introduced, including the Detention Gatekeeper, Case Progression Panels, the development of an Adults at Risk Assurance Team.”

79 Annual inspection of ‘Adults at risk in Immigration Detention’ (2018-2019),

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881648/Annual_inspection_of_Adults_at_Risk_in_Immigration_Detention_2018-29_.pdf

80 ‘Response to the annual inspection of adults at risk in immigration detention’,

<https://www.gov.uk/government/publications/response-to-the-annual-inspection-of-adults-at-risk-inimmigration-detention>

81 ‘Detention case progression panels: Guidance on the purpose, processes and functions for the case progression panels’, <https://www.gov.uk/government/publications/detention-case-progression-panels>

to reviewing detention and case progression across the immigration system; to drive case progression and casework diligence to effect departure from the UK, whether by administrative removal or deportation; and to provide additional oversight for the identification and management of potentially vulnerable people in detention.

- 11.4** Inspectors circulated a survey to the 177 CPP members. Thirty-five eligible participants completed the survey, eight of whom had attended more than ten panels within the past year and 14 of whom had chaired a CPP. Ninety-two per cent of respondents agreed that CPPs provide additional oversight for the identification and management of the detention of potentially vulnerable people; the remaining 8% neither agreed nor disagreed. Seventy-five per cent of respondents agreed that CPPs ensured a consistency of process and approach to reviewing detention and case progression across the detained immigration estate.

Structure

- 11.5** Cases must be reviewed by a CPP after the first three months in detention, and then every three months subsequently. A CPP can consider a case on an ad hoc basis outside of the three-monthly schedule, if it has been identified – by the DGK or DVAAT, for example, or by a previous CPP – as requiring more frequent review. Panels meet as three-month panels, six-to-nine-month panels, or 12-plus months panels, focusing on a set of cases in which detainees have generally been held for the same lengths of time. Panels include members of the CPP Team; a panel Chair; panel members drawn from relevant areas including caseworking units, Returns Logistics, and Litigation Operations; and an Independent Panel Member. Panels are scheduled to last for 2.5 hours. While the number of cases considered in a CPP meeting varies, the average number of cases in panels observed by inspectors was 13.

Case Progression Panel Team

- 11.6** The CPP process is supported by an administrative team comprised of an SEO and four EOs. The work of the team is guided by a 'Standard Operating Procedure' (version 1.1, published June 2020). This team is responsible for identifying the relevant cases to be discussed based on length of detention, convening the panel, and circulating a list of the cases selected to panel members at least one week in advance of the meeting. This report includes case information (including ownership), removal directions date, AAR information, criminal casework specific information (e.g. MAPPA, sentence length). Panel members are also provided with supporting documents including a 'Case Progression Panel Crib Sheet', detention guidance, and 'Operational Instructions: COVID-19 – Detention Considerations', as well as a copy of the AAR policy. Panel members are expected to undertake their own research on Home Office caseworking systems (CID and Atlas). The remit of the CPP Team does not extend to ensuring the cases considered are 'panel ready' or that all relevant actions have been completed ahead of a panel.
- 11.7** Two members of the CPP Team attend a CPP. In addition to providing guidance and assistance to the Chair, the Lead Officer introduces the case; provides a case summary; and records the key points of the CPP discussion and the recommendation(s) made in each case, including the reasoning given by the Chair. The Information Manager navigates CID, sharing information with the panel. At the end of the meeting, and within 48 hours, the team is responsible for recording the decisions, sharing recommendations with relevant teams, and updating CID/Atlas. When inspectors reviewed case files, they found that entries from the CPP Team following a panel were concise, logical, and accurate.

- 11.8** The CPP Chair has overall responsibility for the management and oversight of the panel as set out in guidance. The grade of the Chair will vary depending on the length of detention. An SEO chairs three-month panels; a Grade 7 chairs six-to-nine-month panels; and 12-plus month panels must be chaired by a Grade 7 or Grade 6. Chairs complete the same training as panel members; no additional training is provided on how to chair a meeting.
- 11.9** Inspectors were provided with the ‘Case Progression Panel Chair Minimum Review Checklist’ used by Chairs, which aims to ensure a consistent running of a CPP and a consistent review of individual cases. The checklist sets what should be included in the case review including the AAR level and other vulnerability factors; removal timescales, which includes directions, documentation, outstanding casework representations, legal barriers, and whether the panel agrees that the timeframe until anticipated removal is reasonable; whether there has been any recent case progression; and balancing factors, including public protection concerns, MAPPA levels, and risk of re-offending.

Panel members and panel experts

- 11.10** Panel members consist of Home Office staff with a mix of grades from EO and above. To become a panel member, staff must submit an expression of interest to the Detained Casework Oversight and Improvement Team (DCOIT) and CPP Team. This is a voluntary role, in addition to an individual’s regular duties, and is often considered a useful development opportunity. For relevant staff, participation in CPPs is included as an additional goal in their performance record, with the requirement that the individual attend at least one CPP per month.
- 11.11** Guidance states that the minimum requirement for the operation of the CPP is representation from the Foreign National Offender Returns Command, the National Returns Command, Returns Logistics, and Litigation Operations. Attendance from the DGK is “required if resource allows”. In the absence of one or more of these required attendees, guidance states that a “CPP is unlikely to proceed”, but discretion is left to the CPP Chair. The guidance does not indicate whether attendees are representing their respective teams (and therefore interlinked with their performance goals, approaches, and methods of working) or providing internally independent review. The Standard Operating Procedure sets out that, when resources allow, these attendees will be supplemented with ‘CPP experts’ whose role is to provide “detailed, expert advice on the status of individual cases and a broader awareness of removability and case progression” and can be drawn from a range of related teams, such as DVAAT, Removals Enforcement and Detention Policy and the Presenting Officers Unit.⁸² Inspectors, observing CPPs, found that the panel members’ range of knowledge and level of preparation were of an inconsistent quality, with some panel members drafted in to attend at the last minute.
- 11.12** Inspectors were provided with a PowerPoint document entitled, ‘Considering Detention and Case Progression: A guide for Panel Chairs and Members, Detention Case Progression Panels’ (July 2020). It aims to “provide training for Panel Members and Chairs” through individual, independent learning rather than a formal training process, though the pack indicates face-to-face training can be provided if required. The presentation is thorough, and it logically outlines the basic principles for the use of detention, the purpose and process of a CPP, and the principles and operation of the AAR policy. The document also provides guidance on how to balance immigration factors against vulnerability, and it includes a range of useful checklists for use during a CPP.

⁸² The Case Progression Panel guidance states that “The core CPP members will be supplemented by CPP experts”; for the DGK this attendance is dependent on the availability of resources, and for policy staff, the guidance states they “may be in attendance”.

- 11.13** Inspectors held focus groups and interviews with six CPP members, all of whom at the time of interview had been attending CPPs for more than 12 months. They told inspectors they had not received formal training but rather had shadowed colleagues, observed meetings, and regularly referred to the guidance to assist them in the execution of their role. A Home Office survey with panel members, carried out in September 2020, received 64 completed responses and found that “some considered CPP training should be face-to-face (not a self-training pack) and additional training provided such as shadowing to increase knowledge in other areas of the business”.
- 11.14** Panel members’ preparation for a CPP required a review of CID, including DCPRs and other documents available on DocGen (part of CID) as well as CID notes. The average preparation time was considered, in the training pack, to be about two hours, though the number of cases under consideration could fluctuate. The Home Office’s internal survey found only 37% of respondents felt fully prepared for a panel, with 51% stating they felt somewhat prepared and 11% not sufficiently prepared. As reasons for a lack of preparation, 37% cited insufficient operational time, while 60% gave other reasons including incomplete CID notes, last-minute changes to the case list, and a lack of training. The survey further found that preparation time varied between 30 minutes and four hours, depending on the number and complexity of cases and work commitments. In ICIBI’s survey of CPP members, 63% of respondents spent less than two hours preparing for a CPP, with 29% spending one hour or less preparing for a CPP; there was no correlation between those who spent more time preparing and the respondent’s grade. Most staff (74%) agreed that they were given enough time to prepare for a CPP by their line manager.

Independent Panel Members

- 11.15** On 27 November 2019, the Home Office launched a pilot to introduce Independent Panel Members (IPM) to CPPs. This pilot included two IPMs and concluded on 19 March 2020. A second phase began on 5 May 2020 with the addition of three further IPMs. In September 2020, the Home Office received ministerial agreement to make IPMs ‘business as usual’. The draft Terms of Reference for the pilot defined the role of IPMs as that of “a critical friend to the Home Office” who would “support development of Case Progression Panels (CPP)”.
- 11.16** The advertisement for IPM positions did not require a background in detention, but sought those with “experience of working in a multi-disciplinary environment – particularly protection ... [with] an ability to analyse complex information to identify key issues and make effective recommendations”. Initially drawn from the Family Returns Panel⁸³, IPMs have all previously been involved in multi-disciplinary safeguarding roles, with four members having a law enforcement background. Post-recruitment training includes a visit to an IRC, a training session with a Home Office Business Embedded Trainer, two CPP observations, and shadowing/ speaking to a member of the DGK team. IPMs have access to relevant Home Office IT systems. At the time of the inspection, IPMs were unable to visit an IRC due to COVID-19 restrictions but had completed all other required training. As of May 2021, there were five IPMs on the rota.
- 11.17** The majority of ICIBI survey participants felt that the IPMs added value to the quality of the discussion at a CPP. Chairs and more senior grades viewed the IPM as an “independent voice”. In contrast, one EO told inspectors they felt that IPMs did not add value to the discussion: “it’s important to hear what others outside the business think, but they don’t always understand

83 The IFRP provides independent advice to the Home Office on how best to safeguard children’s welfare during a family’s enforced return, <https://www.gov.uk/government/organisations/independent-familyreturns-panel>

the process or procedures, and if we're having to explain procedures to the panel, then we're moving away from things".

Panels during COVID-19

11.18 Prior to COVID-19, CPPs were held in Croydon, with some panel members dialling in to the meeting. Occasionally meetings were also held in Liverpool. From March 2020, Case Progression Panels moved online, where they have remained throughout the pandemic. Reflecting the impact of COVID-19 on individuals with specific health conditions, and on returns to particular countries, all those attending panels are required to review 'Operational Instructions: COVID-19 – Detention considerations' as part of their panel preparation. Case Progression Panels were temporarily suspended for six weeks from mid-March 2020 to allow the Home Office to focus its resources on reviewing all detained cases in light of the impact of the pandemic.

Process

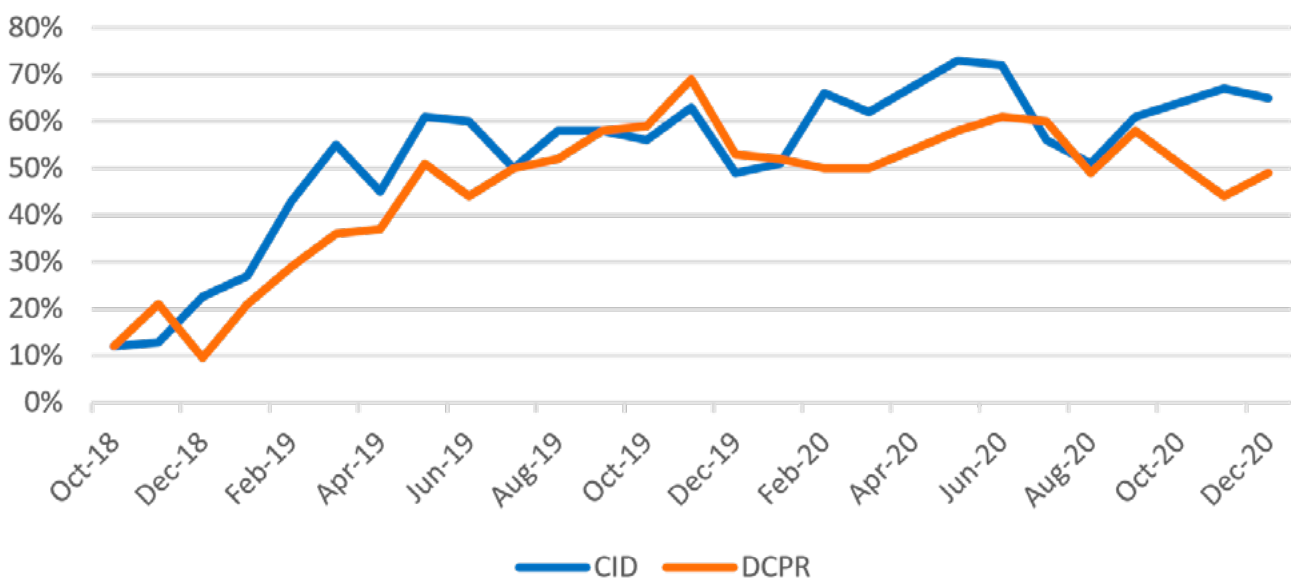
11.19 Home Office guidance states: "In order for the Case Progression Panel (CPP) to make an informed, justified, proportionate and lawful recommendation, they will require accurate up to date information." Panel members are instructed to refer to the monthly Detention and Case Progression Review document and the Home Office caseworking system (CID). The panel is also instructed to check previous CPP recommendations and actions. There is nothing in the guidance which covers what should be discussed in relation to each case. However, the Chair's checklist requires a consideration of the AAR policy, barriers to removal, case progression actions, and balancing factors (including public protection concerns). There is no information in the guidance or training on how the panel and Chair should reach a decision, only that the Chair is charged with "making a final decision on the recommendation being made by the CPP if CPP members are split and a majority decision cannot be reached". After discussion of each case, the panel may make one of three recommendations: 'Recommend Release', 'Maintain Detention but with Case Progression Actions', or 'Maintain Detention'.

Caseowner engagement and compliance

- 11.20** CPP conclusions and any recommendations made are provided to the caseowner, who is required to give "significant consideration" to the recommendations (though the shape or requirements of the consideration are undefined) and to provide detailed notes on CID on actions taken in response to the recommendation, with any rejection of a CPP recommendation accompanied by clear reasoning.
- 11.21** The first AAR inspection found that caseowners often failed to acknowledge the CPP recommendation on CID or record their reasons for rejecting it. For this inspection, the review of case files undertaken by inspectors and observations of CPPs indicated that there has been limited progress in how caseowners responded to CPPs. While 48 of the files reviewed had been considered by a CPP, in only 24 of these cases had the caseowner acknowledged the recommendation and, of these, only 13 undertook the mandated actions.
- 11.22** The Home Office monitors the impact of CPP recommendations in several ways. The Performance Reporting and Analysis Unit (PRAU) produces a weekly report on the volume, though not outcome, of recommendations made by CPPs, and this is shared with detained casework teams. The CPP Team also monitors "compliance", reviewing CID to assess and log whether the casework team have acknowledged the CPP recommendation. This is evidenced

by the caseowner placing a note on CID, stating whether they agree with the recommendation and what action has been or will be taken. Where they disagree with the recommendation, the caseowner should justify their decision. In either case, the CPP recommendation should be included in the next DCPR. Home Office management information, from October 2018 to December 2020, as set out in Figure 22, shows caseowner compliance as evidenced in the recording of the CPP recommendation, outcomes, and actions on CID and in the DCPRs. The graph shows compliance was improving until December 2019, when it started to fall for both CID and DCPRs. Compliance has fluctuated in 2020, falling to a low of 49% compliance in August 2020, with some recovery in the acknowledgement of CPP recommendations in DCPRs by the end of the year.

Figure 22: Caseowner compliance with CPP recommendations reporting on CID and DCPRs, October 2018-December 2020⁸⁴



Further analysis of the data showed NRC caseowners have generally shown 100% compliance since March 2019. FNORC caseowner compliance, while improving, was often below 50% over the period. Despite the poor acknowledgement rates, staff told inspectors that they found CPP recommendations to be useful.

CPP observations, case file reviews and interviews

11.23 Inspectors observed 11 CPPs between July and December 2020. These panels considered different lengths of detention, with different Chairs, numbers of cases under review, and panel members. The inspection team prepared for each panel using CID, referring to the most recent DCPR on record as well as the CID notes and any additional information supplied by the CPP Team. In all panels, a list of cases was provided to panel members ahead of the CPP. In all panels observed, the required panel members were in attendance, though it was rare for DGK staff to attend. The type and length of immigration background experience of panel members varied, but most had substantial experience.

11.24 The CPP Team ensured CID was always on the shared screen and clearly navigated by staff. Inspectors observed that CPP Team staff were professional and efficient, and that they had

⁸⁴ This table contains internal management information provided by the Home Office. It has not been quality assured to the level of published National Statistics so should be treated as provisional and therefore subject to change.

a good grasp of the cases under discussion, often displaying in-depth knowledge of each case. The CPP Team, echoing panel members and the experiences of inspectors themselves, highlighted some of the challenges they faced in preparing for panel meetings, such as DCPRs not always being up-to-date or not including sufficient information, Special Condition flags not being raised where they should have been, or the wrong Special Condition flag being used. There were limited escalation avenues available to the CPP Team, and such issues were, in the main, drawn to the attention of the CPP Chair to raise with the casework leads.

- 11.25** The approach taken by Chairs as to how the CPP would run, and conclude, varied. Chairs did not consistently seek input from every panel member on each case. Some Chairs used a voting system, though it was not clear, nor was it consistent, as to how many panel members needed to agree before moving on to the next case. There was variety in how the Chairs stated and interpreted their responsibility to reach a conclusion, whether it would be they who made the final decision, or whether they would seek consensus, despite the guidance stating Chairs have the final decision not a veto. One Chair, part way through a panel commented, “I will take silence as consent”.
- 11.26** The performance of panel members varied according to their level of preparation. Some were prepared and gave accurate, appropriate comments. Others spoke beyond their remit, indulging in speculation. Some did not appear to have prepared at all and failed to participate, spoke only when called upon by the Chair, or made comments that indicated their lack of preparation. Inspectors observed occasions when panel members, not attending in a shadowing capacity, merely confirmed that they agreed with the voting of the final recommendation when prompted and made no other contribution.
- 11.27** AAR levels were, in the vast majority of cases, mentioned by the CPP Team introducing each case. Panel members often queried the AAR level – either in the first instance, or to query whether someone was at the right level – and appeared driven by an assumption that the level had been overstated. On several occasions, this led to a request to delay the decision until an update on a detainee’s condition, and their AAR level, had been provided by prison or IRC healthcare, even in cases where there was no obvious reason to query (as in it was borne out by information on CID) or where it was not relevant to the question of release. Panel members speculated on medical matters on which they clearly had only limited knowledge. Limited consideration was given to the appropriateness of continuing detention in light of vulnerability concerns, particularly in cases involving FNOs. Where cases were flagged as AAR level 3, there was often little to no consideration or discussion was given as to the negative impact of ongoing detention on a detainee. Vulnerability was not considered as a dynamic concept, and alternatives to detention were rarely considered by the panels.
- 11.28** Panel members were often unclear on the timelines required between the various stages of the deportation process⁸⁵ and actual deportation; this was made more challenging by the inconsistent recording of this information on CID. In one panel, inspectors observed panel members had little understanding of unlawful detention. Two Polish detainees had both been served with a Stage 1 notification (liable to deportation prior to the start of their detention) and service of a Stage 2 deportation decision was still pending. Though the detention of an

85 Stage 1 of the deportation process: notice of liability to deportation for a European Economic Area (EEA) national under either Section 3(5) or 3(6) of the Immigration Act 1971; decision to deport a non-EEA national under either Section 32(5) of the UK Borders Act 2007 Section 3(5) or 3(6) of the Immigration Act 1971. Stage 2 of the deportation process: decision to deport an EEA national under the Immigration (EEA) Regulations 2016; decision to refuse a protection and/or human rights claim (mostly for non-EEA nationals); deportation order (DO) for either non-EEA or EEA national under the above legislation; notice of decision to refuse to revoke a deportation order; notice of decision to refuse further submissions from non-EEA nationals after application of Paragraph 353 of the Immigration Rules (either rejection under this provision, or acceptance as a fresh claim that is being refused). https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/696318/Serving-decisions-on-file-v5.0EXT.pdf

European Economic Area (EEA) national in anticipation of a deportation order is permitted under the EEA Regulations 2016 for a brief period, detention for more than 30 days without the service of a Stage 2 deportation decision is likely to be found to be unlawful. In one of these cases, the CPP discussion identified the potential lack of a lawful basis for detention, but, despite this, detention was maintained. In the other case, a release recommendation was recorded, but the notes in CID made no reference to the possible unlawfulness of detention.

- 11.29** The discussion time per case varied between 6.5 and 30 minutes per case, with the lengthier discussions taken at the 12-months-plus panel. Overall, inspectors observed less time was taken discussing cases towards the end of a panel. Some panel members displayed a lack of understanding of the judicial process, and on two occasions panel members queried whether they had to follow a judgment granting bail. Panel members did not always appear to listen to the contributions made by others, meaning issues were rarely concisely concluded. Inspectors observed three panels in which a single panel member would dominate the discussion, often stating their own opinions rather than the facts of the case, steering the discussion away from vulnerability. These individuals were insufficiently challenged by the Chair, meaning they had a disproportionate influence over the direction of the discussion and appeared to inhibit others from speaking up.
- 11.30** Inspectors observed that CID records were poorly drafted, incorrectly completed, and sometimes out of date, which led to significant confusion over the status of key parts of the case such as barriers or nationality and therefore impeded effective decision-making. Panels were dominated by long periods of time collectively searching the records to understand the status of certain points of a case. Inspectors observed instances in which DCPRs had not been consistently carried out or uploaded to CID.
- 11.31** The Strategic Director release referrals appeared, to inspectors, to act as an obstacle to the discussion where a panel was considering release. Inspectors observed instances where a panel member sometimes hesitated to recommend release in FNO cases if they judged it unlikely that the Strategic Director would approve the referral. The outcomes of these referrals were not consistently recorded, nor were the grounds for refusal.
- 11.32** Final decisions were often left undeclared apart from a query from the Chair: “CPP staff, did you get that?” Detainees, whom it was agreed could be released, had their detention continued to “progress the case”, i.e. an action for the caseowner to arrange a telephone interview with an embassy, and to “make best use of the time while we have them”. For those who had removal directions set for the coming days, and for whom, without these removal directions they would likely be released, there was no consistent attempt to bring them back before the panel if the removal fell through, nor was it clear where responsibility to do so lay.
- 11.33** Accommodation for detainees remained a significant barrier in releases, even for level 3 AAR cases, with progress on these referrals rarely clearly documented. This finding applied both to releases to a private address, particularly in cases in which release addresses required approval from the Probation Service, and to cases in which the Home Office was under a duty to provide bail accommodation. Caseowners often failed to update CID on their progress on sourcing accommodation so it was impossible for a CPP to assess what was happening.
- 11.34** Inspectors observed the impact of IPMs at panels and found that their contributions to the process varied. All made reference to their professional backgrounds in their contributions but were firm that they could not provide current advice based on this background. Inspectors noticed that over five months of CPP observations, IPMs increasingly began to focus discussions

back to considering a detainee’s vulnerability, in line with the expectations of their roles. Inspectors noted examples of IPMs steering the discussion to consider management in the community or other alternatives to detention. The level of understanding that IPMs had of the detention and removal process had also increased over the observation period, and this enabled them to make more nuanced contributions to the discussion. All were forthright in expressing their opinions and made a consistent contribution to the discussion. It was clear to inspectors that all had tried to prepare for meetings, although a lack of familiarity with CID, combined with more general poor recordkeeping, made this problematic, with confusion over the correct AAR level of a detainee a particular issue. IPMs often expressed surprise at the lack of progression on a case, querying why actions had not been followed up in a more reasonable timeframe, and they brought an increased level of expectation to the panel’s scrutiny of caseowner output.

- 11.35** In late 2020, IPMs also started to engage in a formal feedback process with the Home Office, meeting with representatives from DCOIT and caseworking commands. At meetings held in December 2020 and February 2021, IPMs expressed concerns around the quality of caseworking, in response, the Home Office committed to actions including the improvement of compliance with CPP mandated actions through caseowner surgeries.

Internal oversight

- 11.36** The Home Office Analysis and Insight Team carried out an evaluation of the pilot of Independent CPP Members on behalf of the Shaw Analytical Advisory Panel, producing their report in Spring 2020. The evaluation sought to understand the impact of IPMs on the process, conversations, and panel members’ behaviour. The evaluation concluded, based on Panel observations, interviews with IPMs, and the analysis of panel performance data, that IPMs did not have a significant impact on panel outcomes. However, they had “a small but positive effect on levels of scrutiny and discussion quality”.

External oversight

- 11.37** In 2018, the Home Office invited the UNHCR and British Red Cross to attend Case Progression Panels as non-participatory observers for internal review purposes only. The UNHCR and British Red Cross carried out three sets of observations, met with Home Office staff to discuss findings, and provided internal reports. The first observations took place between November 2018 and March 2019, and a report was submitted to the Home Office in May 2019, with six recommendations on casework accuracy, panel discussion, and post CPP actions. In response, the Home Office set out an action plan to address the recommendations, including a mandated DCPR before each panel, the creation of the ‘Minimum Review Checklist for Chairs’, updated training, and the implementation of a weekly report on CPP recommendations for casework teams.
- 11.38** The second round of observations concluded in November 2019, with a written report to the Home Office provided on 4 February 2020. The report considered the Home Office response to the previous recommendations and acknowledged that improvements had been made, including better chairing and the introduction of the minimum requirements checklist. However, the report highlighted ongoing issues around the quality and availability of DCPRs. A further 15 recommendations were made, including for more focus on the AAR policy during discussions and improved processes to monitor the impact of CPP actions and recommendations. In response, the Home Office undertook to review and amend the CPP training, guidance, and documentation.

- 11.39** Finally, the UNHCR and the British Red Cross observed six panels in July and August 2020, and their report was sent to the Home Office in January 2021. This report shows that early progress and engagement with improvements appeared to have stalled and echoed similar observations to those of inspectors, namely the poor quality of DCPRs and inadequate conclusions to case discussions. The report also noted that whilst the checklist was used by the majority of Chairs at the start of the meeting, it was not used throughout the meeting to guide discussions on individual cases, as had been the case on previous observations. UNHCR highlighted the increased scrutiny of vulnerability by panels albeit due to inaccurate ratings made by caseowners. The report also found the AAR policy was inconsistently applied and noted that despite NRM guidance being made available for panel members ahead of the CPP, updated guidance relevant to the CPP discussion was not referenced during the discussion. The report made 12 recommendations; seven were accepted, one was partially accepted and four were rejected. The resulting Home Office action plan cited “wash-up” sessions for every panel in order to capture feedback on individual performance and casework issues, implementing a standardised process for securing panel representatives, and monthly meetings with the IPMs, Panel Chairs and casework leads. Some of this work was in train during the period of this inspection. The Home Office committed to progress work on the recommendations and meet with UNHCR again in May 2021.
- 11.40** Inspectors observed a Multi-Agency Public Protection Arrangements (MAPPA) panel, chaired by the Probation Service and, although caveated with the acknowledgement that MAPPA make decisions while CPPs assure decisions, useful best practice could be drawn from the MAPPA model. Cases considered by MAPPA are required to have the most up-to-date information available, the Offender Manager is present, the panel can provide access to services and process relevant to the individual case such as accommodation, and assurance mechanisms are in place to ensure actions for caseowners are complied with.
- 11.41** Case Progression Panels have been the subject of continual review and oversight since their inception, and while the team charged with developing CPPs have shown themselves to be open to feedback and committed to improving the process, it is clear that much work remains. Fundamentally, CPPs are undermined by poor caseworking, leading one senior manager to comment that they function to “signpost bad caseworking” rather than as an assurance process. Panel members are hindered in their preparation and subsequent discussion as the right information is not available to them. Meaningful consideration of vulnerability and case progression is thus undermined by the constant search for the correct information. On a basic level, there would be merit in caseowners either appearing before the panel to answer for their poor caseworking and substandard administrative activities, or at least require that before consideration, each case must be ‘panel ready’, a process overseen by an SEO or Grade 7 manager. Such an approach would need to ensure that poor caseworking does not delay the review of a case by a CPP. CPPs have also shown themselves to lack effective, relevant and appropriate guidance and training for the fundamental aspects of their operation, with the role of Chair, in particular, suffering from a lack of structure and purpose and the guidance was not always consistently followed. Moreover, CPP’s lack of power to make binding decisions, and the poor engagement of caseowners with the panels’ recommendations, further undermines their effectiveness.

12. Caseworking

Background

- 12.1** It is by the caseworking function of the Home Office that the Adults at risk (AAR) policy is most keenly tested. Caseworking did not form part of the inspection’s original scope; however, following inspectors’ observations of Case Progression Panels, and review of case files, it became clear that how the Home Office manages the cases of vulnerable detainees was key to understanding the effectiveness of the AAR policy.
- 12.2** Inspectors sent surveys to and interviewed caseowners from the National Returns Command (NRC)⁸⁶ and the Criminal Casework Directorate (CCD), renamed during the inspection as Foreign National Offender Returns Command (FNORC). The primary focus of this inspection was FNORC caseworking, reflecting the fact that FNOs made up the majority of the detained population throughout the period of the inspection.

Cultural changes across all detained caseworking commands

- 12.3** Assessing cultural change in any organisation is difficult, but it was notable to inspectors how caseowners spoke about the Adults at risk policy and vulnerability, and how this changed depending on their location. Overall, at interview, all caseworking staff were positive about the need to engage with vulnerability and the value that this focus brought to their work. There was less recognition that vulnerability was dynamic and could increase with time spent in detention. Staff stated they understood why the Home Office should be, and why it was, encouraging a better consideration of vulnerability. On numerous occasions inspectors were told by staff at all grades about the “journey the Home Office had been on in recognising vulnerability”. One senior manager commented, “You don’t just see it in data, you see it culturally. [There is] much more awareness than six or seven years ago”.
- 12.4** At interview and in survey responses, all caseworking staff claimed they understood the principles behind the AAR policy and could explain how it applied to their work. However, they also consistently highlighted their concerns about the abuse of the safeguards provided by the policy. Though primarily focused on Medico-Legal Reports, in survey responses and during interviews, staff raised suspicions about the submissions received from detainees highlighting a change in their vulnerability, such as making an asylum claim, or having an NRM referral made. It is clear to inspectors, and staff, that there is likely some abuse of the safeguards. However, the lack of clarity around the extent of the problem, and the steps taken to address the concerns, was impacting how Home Office caseowners, and others within the detention system, considered vulnerability, their confidence in the policy’s safeguards and had led to concerns that the “genuinely vulnerable” were being missed. Staff told inspectors their suspicions would not inhibit them from following the steps required by the AAR policy; inspectors found this was broadly borne out in case files and observations of CPPs. However,

⁸⁶ The Command charged with effecting the enforced return of those with no lawful basis to remain in the UK and supporting the voluntarily return of those also unlawfully in the UK.

inspectors noted that the pace at which these steps were taken was not always prompt and found a number of cases where CID notes indicated that an email had been sent to an IRC or prison healthcare requesting more details about an individual's health, but no response had been received, and only limited efforts had been made to follow-up on the request.

Foreign National Offenders Returns Command (FNORC)

12.5 In his foreword to the first AAR inspection report, the Chief Inspector wrote:

“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 caseowners 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.”

Undoubtedly, FNORC caseowners face particular challenges in firstly, assessing and monitoring individuals' vulnerability and potential for public harm, and secondly, progressing these cases to either release or removal. It is the FNORC caseowners for whom the balancing act required in the Adults at risk policy is most acutely tested. This was summarised by a senior manager:

“This tension [between immigration compliance, public protection and vulnerability] is really difficult. Having considered release referrals I can see how difficult it can be, where there is vulnerability in the individual but also vulnerability of the victim [of the crime] and risk of reoffending.”

12.6 Chapter 55 provides guidance to FNORC caseowners and emphasises that for these cases there should be an assumption that a person should be granted immigration bail unless the particular circumstance of the case require detention. The presumption of liberty is weighed against the risk of reoffending and absconding, with “particularly substantial” weight to be given to these risk factors when an FNO has committed a “more serious” offence. The guidance indicates that in these cases, bail is only likely to be “the proper conclusion” in “exceptional cases when the factors in favour of release are particularly compelling”. The guidance also states 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.” The guidance stipulates that decisions not to detain or to bail (phrased as such in the policy) must be agreed by a G7/AD and authorised at Strategic Director level.

12.7 At Emerging Findings and in interviews, Senior Civil Servants shared with inspectors their concerns about the operational and political consequences of decision-making in this space: “FNOs have a particular reputational resonance and risk, in a way that even British nationals don't,” said one, “That all goes back to the fact that incorrect decisions lost the Home Sec [Secretary] his job in the past”. This concern about political and reputational risk resonated across the grades of FNORC.

12.8 Inspectors circulated a survey to FNORC managers, to be cascaded to caseowners as no centralised email list of all caseowners could be provided. Twenty-one full responses were received. The results revealed the poor perceptions staff had of their capabilities – only 57% of caseworking staff surveyed ranked themselves between 4 and 5 (5 being the highest) in terms of having a robust and practical understanding of public protection risks and 24% of respondents indicated they did not understand the AAR policy. Despite this, most staff (76%)

were clear they knew how to balance immigration factors and vulnerability considerations when making decisions on detention.

Information sharing

12.9 Senior managers asserted that their staff understood that vulnerability was dynamic, and that “there is frequent dialogue between case owners and places of detention, and regular updates so new information is shared”. One expressed confidence that “where there are developments in vulnerabilities that raises the AAR levels, that is passed to the case owner (sic).” But managers went on to indicate that it was often difficult to get information from IRC and prison healthcare, particularly if the detainee was unwilling to have their medical records shared with the caseowner. Case files and CPP observations bore out some of these challenges identified by senior managers. However, inspectors identified, through the review of case files, a significant number of cases in which the submission of a Part C, often an indicator of a change in vulnerability, had not triggered a reconsideration of the suitability of detention, with Part Cs not consistently recorded in the Detention and Case Progression Review (DCPR).

Assurance

12.10 The first AAR inspection found caseowners often failed to acknowledge Case Progression Panels’ recommendations. At interview for this inspection, FNORC caseowners and managers articulated the value they perceived CPPs to bring in terms of additional oversight. However, engagement with the panels was very much perceived to be primarily administrative rather than as a spur to action. Of the 48 FNORC cases reviewed by inspectors that had appeared before a CPP, caseowners had only acknowledged the recommendation in 24 of them.

Case study 4 – pace of case progression

Mr Z is managed by FNORC caseowners. In 2010, Mr Z was convicted of a sexual offence against a child and sentenced to ten months imprisonment and placed on the sex offenders register for life. In 2017, he failed to comply with notification requirements and was sentenced to a further ten months imprisonment. In 2017 he was served with a Stage 1 deportation decision and, in January 2018, he was served with and signed a Deportation Order. At the end of his sentence, on 16 February 2018, he was held in prison under immigration powers.

Removal was planned for April 2018, but was aborted as the Emergency Travel Document (ETD) was no longer valid. Further attempts to remove him also failed. Mr Z made further representations and claimed asylum. In June 2019 he had exhausted all of his appeal rights. In August 2019, further asylum-based representations were raised, which deferred removal planned for the same month. A further representation refusal with no appeal rights was served on him in March 2020, and he was considered to have no barrier to removal.

From November 2019 until January 2020, CPPs recommended releasing Mr Z from detention. From March 2020 until April 2021, CPPs have recommended maintaining his detention. A DCPR noted “26 June 2020 – Grade 5 recommended release due to him being detained for 2 years and 6 months, failed removal due to Administrative error and he has not committed any further offences.” On 14 July 2020, Mr Z was discussed at a Criminal Casework Internal Review Panels (CCIRP). The panel

were provided with an estimated timescale for removal as three months, and the following actions were set:

- “1) Review situation with RL [Returns Logistics] on 31/07/20.
- 2) Maintain detention for 28 days as the world is opening up.
- 3) If there is no progress after one month submit a release referral.”

Mr Z’s DCPR inaccurately records this panel’s recommendation as “16 July 2020 – CPP recommended release. If there is no progress after one month submit a release referral”.

From July 2020 the caseowner made attempts to establish whether Mr Z could reside at a particular address (though no response was received from the homeowner).

In September 2020, a CPP recommended maintaining detention as, “Removal Directions can be requested.” But also recommended “If RD’s [removal directions] are not set within 1 week C/O to release Mr Z”.

Mr Z is MAPPA cat 1 level 1 which means he can be managed by an Offender Manager, rather than the MAPPA process, and is not eligible for Approved Premises (specialist bail accommodation). Mr Z is assessed as at high risk of absconding, and medium risk of reoffending and harm, however there is no record or reference to an OAYSys report [a risk assessment tool] in his record. He is not flagged as an adult at risk.

Mr Z indicated he did not want to return to his home country and therefore he required an escorted removal. Currently there are no barriers to his removal. Removal directions were set for 26 April 2021 but were cancelled by the airline. Mr Z has spent more than three years in detention.

ICIBI comments

This case is illustrative of how, despite repeated recommendations from CPPs, flaws within the removal process have meant that despite being barrier-free since March 2020, his removal has yet to be executed. Furthermore, the slow progress in case progression, in terms of the Strategic Directors’ release referral process, and the lack of follow-up in identifying and securing accommodation which recognises the public protection concerns in this case, has meant an extended period of detention for Mr Z with no obvious prospect of prompt resolution.

Home Office comments

Removal directions were in place for August 2019 but deferred days prior due to a claim being raised. In March 2020 Mr Z was barrier free by which time the unprecedented impact of the pandemic temporarily effected (sic) returns. Regular updates were sought from the returns colleagues, both by the casework team and in the panels, as to envisaged timescales for routes and securing documentation. The HO [Home Office] acknowledges that release was recommended by CPPs in 2019 to early 2020 but thereafter maintaining detention has been recommended. Consideration has been given to the prospects of removal, likelihood of reoffending, harm and absconding risk as well as the length of detention. The AAR policy is not

engaged in this case. CPPs provide only recommendations, though the casework team should engage with their comments and ensure that internal databases are fully noted with any follow up actions taken including those relating to accommodation. Case developments and updates bearing on progression towards removal are also relevant.

Foreign National Offenders Returns Command – assessing and managing risk

Governing principles

- 12.11** Central to the management of TSFNOs is an understanding and assessment of risk. As well as ‘Chapter 55, Enforcement Instructions and Guidance’, FNORC decision-making is governed by ‘Criminal Casework guidance on detention’, version 1 (2014), which states that “public protection is a key consideration underpinning our detention policy”. At the time of the inspection, the Home Office told inspectors that the guidance was due to be amended after ‘OASys PC 03/2014 (England and Wales)’ had been updated, though no timeline was provided for this work to be completed. Caseowners must, when considering if an individual should be detained, reflect on the following:
- “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?
 - Is there a previous history of complying with the requirements of immigration control?
 - What are the person’s ties with the UK? ...
 - What are the individual’s expectations about the outcome of the case? ...
 - 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?”
- 12.12** Chapter 55 further notes that “if detention is indicated” – notwithstanding the general “presumption in favour of immigration bail” – “because of the higher likelihood of risk of absconding and harm to the public on release, it will normally be appropriate to detain as long as there is still a realistic prospect of removal within a reasonable timescale”.
- 12.13** The Prison Service guidance, ‘Risk Assessment of Offenders’⁸⁷ described the Offender Assessment System (OASys), introduced in 2001, as a combination of:
- “the best of actuarial methods of prediction with structured professional judgement to provide standardised assessments of offenders’ risks and needs, helping to link these risks and needs to individualised sentence plans and risk management plans.

There are two main types of risk:

⁸⁷ ‘Risk assessment of offenders’, <https://www.gov.uk/guidance/risk-assessment-of-offenders>

- likelihood of future re-offending and reconviction – the probability that someone will offend, be arrested, and reconvicted within two years
- risk of serious harm – if reconvicted, the probability that the offence will be one of ‘serious harm’.”

Home Office guidance sets out the request of the OASys report as a prerequisite for FNORC caseowner considerations for DCPRs, for bail applications, and for deportations in EEA cases.

- 12.14** The National Probation Service (NPS) uses actuarial or clinical risk assessment and static or dynamic information within their core risk assessment tools when assessing an offender’s risk of harm, risk of reoffending and risk of absconding.⁸⁸ FNORC staff referred to the significance of the risk assessments used by the NPS; all of the staff spoken with stated the advantage of accessing an OASys report to inform decision-making. Staff told inspectors they felt confident in their understanding of the content of these assessments. However, OASys reports could be challenging to understand. One senior manager commented, “The problem with OASys reports themselves is that it can be hard to find info that you need; they can be 45 pages long.”
- 12.15** Inspectors reviewed 122 cases files, 92 of which were FNORC ‘owned’, including 52 cases in which the individual had received a sentence of 12 months or more. In 45 (86%) of these 12plus month cases, inspectors found no reference to an OASys report or a record of any engagement with either the Home Office’s embedded probation officers, the community Offender Manager, or any HMPPS staff. Of the overall FNORC cases reviewed, inspectors found that caseowners assessed risk using a limited evidence base: 41 cases (44.5%) had made reference to the nature of conviction(s) to support an assessment of risk, 9 (9.8%) cases were assessed on the basis of judges’ sentencing remarks, and in 22 cases (24%) the basis of the risk assessment was unclear. In only 9 (9.8%) cases was an OASys report referenced. A review of the CID notes in the reviewed cases showed a lack of requests for OASys reports by caseowners. In contrast, at interview, staff told inspectors that “you will get the odd one [case] where an OASys hasn’t been done because of COVID-19 but then you can ask for the risk of harm, absconding and risk of reconviction. You can work around that.” Inspectors’ observations of CPPs found that OASys reports were inconsistently considered at panels, reflecting their inconsistent reference in the case record, and the fact that the reports cannot be uploaded onto CID.
- 12.16** The Strategic Director release referral process must be followed by an FNORC caseowner who considers a detainee should be released, and requires the decision to release to be considered and authorised by Immigration Enforcement’s Strategic Director for Casework and Returns, a Grade 3 Senior Civil Servant. Although the release referral process did not require a reference to an OASys report, the Returns Director requests they are provided when available and where the judgements within are likely to provide more insight on the harm risk; an interview with the Strategic Director indicated that caseowners complied with this request. When inspectors explored the limited reference to OASys reports in case records with the Strategic Director, he commented this did not reflect his experience:
- “the review of OASys reports is a very regular thing, certainly in the cases I have seen. There are two things that I ask for and that is the OASys reports and judges’ sentencing remarks. If officers are not getting the OASys, that is a concern but if they are not requesting the OASys, then that is a bigger concern.”
- 12.17** Individuals with sentences of less than 12 months, who committed offences prior to the Offender Rehabilitation Act (2014), are not provided with a licence. Whilst Criminal Casework

88 ‘Risk assessment of offenders’, <https://www.gov.uk/guidance/risk-assessment-of-offenders>

Detention Guidance states that public harm from reoffending or the risk of absconding should be evidenced by a past history of a lack of respect for the law, inspectors found no specific guidance for caseowners on how to conduct a professional and coherent risk assessment. Inspectors also found no clear statement underpinning the definition of public harm. Where individuals are given a sentence of 12 months or less, the risk of reconviction and risk of recidivism (RSR) is still calculated by the HMPPS, in line with the NPS requirement of proper case allocation processes, known as the Case Allocation System (CAS).⁸⁹ CAS is calculated by the NPS at the time of sentence for all offenders regardless of sentence length, and consists of three sections: i) Risk of serious Recidivism (RSR); ii) Revised Risk of Serious Harm Screening; iii) Case Allocation Decision.⁹⁰ This framework allows a professional judgement to be made based on case-specific circumstances. Inspectors did not find any evidence of such information being requested by caseowners, despite its potential usefulness as a tool in the absence of a full OASys report and in cases in which a detainee does not meet the threshold for the completion of a full NPS risk assessment.⁹¹ There was no requirement for caseowners to obtain the CAS information from the NPS. When interviewed, staff did not acknowledge the CAS, despite all FNOs being risk screened under CAS. All of the staff inspectors spoke to stated that there was no risk assessment provision for offenders sentenced under 12 months.

12.18 Inspectors found that the failure to obtain crucial risk assessments, and the absence of engagement with HMPPS and NPS, meant caseowners were unable to demonstrate that detailed consideration had been given to salient factors influencing a decision to detain or release. In some cases, caseowners inappropriately based assessments of risk on the length of a sentence, and in other's they confused the high risk of reoffending assessment with the risk of harm assessment, leading to the incorrect classification of "low harm" offenders as "high risk". Inspectors saw a systematic disadvantage for some TSFNOs assessed inaccurately as "high risk".

12.19 One of the challenges expressed by caseowners was the difficulty in getting information from the NPS. When asked about the relationship between FNORC teams and the NPS, staff told inspectors that accessing relevant information to assist decision-making could be challenging and one caseworker claimed that, as a result, "we have to detain people as we don't have the information available to put up to the AD [Assistant Director]." The guidance available to staff, Chapter 55, does not include a list of risk factors to be considered, nor how much weight should be attached to each possible component, relying instead on the OASys report. Staff facing difficulties with obtaining information from NPS, obtaining licenses or identifying Offender Managers, should make a referral to their team leader or Assistant Director. The guidance instructs, "Where NOMS [now HMPPS] are unable to produce a risk assessment and the offender manager advises that this is the case, case owners will need to make a judgement on the risk of harm based on the information available to them. Factors relevant to this will be the nature of the original offence, any other offences committed, record of behaviour in prison and or IRC and general record of compliance. A PNC [Police National Computer] check should always be made."

89 'Case Allocation' National Offender Management Service (2014),

<https://www.justice.gov.uk/downloads/offenders/probation-instructions/pi-05-2014-case-allocation.doc>

90 'Case Allocation' National Offender Management Service (2014),

<https://www.justice.gov.uk/downloads/offenders/probation-instructions/pi-05-2014-case-allocation.doc>

91 "Case Allocation' National Offender Management Service (2014),

<https://www.justice.gov.uk/downloads/offenders/probation-instructions/pi-05-2014-case-allocation.doc>

Training

- 12.20** Effective decision-making relies on accurate information, clear criteria, and training. Fundamental to the decision-making process for FNORC caseowners is an understanding and assessment of an FNO's risk. The obligation to ensure the fair and impartial presumption of bail is underpinned by the caseowner reviewing accurate information about that risk. This is informed by a robust, professional understanding of the risk of harm, reoffending, and absconding. Further, when considering the vulnerability of an FNO, in line with the Adults at risk policy, any assessment must balance the risk of harm to the individual against public protection factors. Therefore, it is imperative that the information used in these decisions is evidence-based, accurate, and auditable; that caseowners have been appropriately trained to understand and assess this information; and that their work is supported by guidance. FNORC caseowners are provided mandatory training, covering detention legislation, policy, and process, including the Adults at risk policy and MAPPA indicators. Seventy-one per cent of FNORC caseowners who responded to the inspectors' survey agreed that the training they had received equipped them with the skills required to effectively manage and progress the cases of individuals being considered for removal or deportation. At interview, most staff referred to receiving the AAR training, and 67% agreed that the Home Office provides staff with adequate guidance to enable them to perform their role effectively.
- 12.21** In terms of risk-specific training, part of the mandatory training includes an exercise considering risk, and a session on Detention and Case Progression Reviews (DCPR). Detention refresher training is completed annually and covers the OASys report process and content. The Home Office stated that this training covers "how to assess the risk of harm and reoffending when an OASys report is not available". Staff are also provided with an HMPPS guidance note on OASys tailored specifically for Immigration Enforcement.
- 12.22** Inspectors interviewed staff from several FNORC teams who highlighted their confidence in assessing risk of harm and particularly noted the resources they would draw upon to help inform these decisions, including the OASys report, embedded probation officers, a review of the offences and sentences, judge's sentencing remarks, and Offender Managers in prisons. Those surveyed also cited an individual's behaviour in prison, immigration history, medical conditions, Home Office guidance, and advice from their manager as factors to consider in determining risk. Fifty-seven per cent of respondents felt they had a robust and practical understanding of public protection.

Absconding

- 12.23** Caseowners are also required to consider an individual's risk of absconding, and Chapter 55 notes that "a conviction for one of the more serious offences is strongly indicative of the greatest risk of harm to the public and a high risk of absconding". This risk is assessed by considering the offence together with previous convictions, immigration history, immigration status, offending history as relates to non-compliance (such as breach of conditions), and their current stage in the deportation process, together with community links (which functions as an incentive to remain in contact). Inspectors found limited evidence in the case files reviewed as to how the risk of absconding was assessed, with assessments too often focusing solely on the method of entry into the UK or on the conviction without a holistic consideration of all of the factors influencing the decision to detain as outlined in the guidance. The isolated scrutiny of these factors fails to test sufficiently a detainee's willingness to comply with reporting instructions, or with the restrictions on their licence. Further, it appeared that the lack of an opportunity to be tested on reporting functioned as the basis for being deemed

a high absconding risk. This echoed comments from NPS staff who noted that Home Office caseowners sometimes considered risk of absconding and harm to be the same thing.

12.24 In submissions to the ICIBI, stakeholders stated that a consideration of the assessment of the absconding risk made by HMPPS is crucial. Evidence-based HMPPS assessments take social factors, including attitudes, lifestyle, and thinking and behavioural skills, into account, and can therefore provide a more robust range of factors for consideration. The Home Office indicated that “occasionally an Offender Manager will raise concerns about an abscond risk, but this is rare.” Further collaborative working with relevant agencies is needed to consolidate the understanding of the roles both the FNORC and HMPPS play when assessing the level of risk posed to the public, in addition to providing an increased set of robust conditions to reduce the risk of absconding. It is evident that caseowners are aware of the significance of embedding an NPS risk assessment into their own examination of risk, however inspectors did not see this manifested in the cases reviewed.

Probation officers

12.25 Currently, the Home Office has two seconded probation officers embedded in FNORC to enhance the National Probation Service’s (NPS) “effective partnership working with the Home Office Immigration Enforcement and to drive up joint performance, with specific regard to the detained FNO population” and to “provide support with obtaining risk assessments, OASys reports and accommodation”. These roles are overseen by an NPS manager based outside the Home Office. FNORC staff in prison hubs were also able to benefit from direct access to probation officers based in prisons.

12.26 While the probation officers embedded in the Home Office were referenced by some FNORC staff during interviews with inspectors, there was limited evidence on CID of their assistance in the cases reviewed, and they represent a sparse resource for a large caseworking command. Reflecting this, embedded probation officers told inspectors one of their challenges was their lack of visibility across the FNORC. However, those FNORC staff familiar with the embedded officers spoke of the value they added to their work, such as providing probation officer contacts and details of MAPPA levels, and the subsequent benefits this contact brought to case progression.

12.27 The embedded probation officers considered their role was to “unblock the system”, by providing advice and connections to counterpart staff at NPS. But the embedded officers did not have access to any Home Office systems such as CID, and instead relied on Home Office colleagues to provide information to them. Although this was not considered a significant burden, it impacted the pace of some of the probation officers’ activities. Probation staff considered Home Office risk assessments to be variable in quality, and they cited instances in which Home Office caseowners had been dismissive of NPS risk assessments.

12.28 Part of the challenge in the broader working relationship between the Home Office and the NPS was illustrated by the misconceptions held by Home Office caseowners as to how the National Probation Service and its processes worked. This was a particular issue observed at the 12-month-plus Case Progression Panels, where confusion commonly arose over the types of FNOs eligible for ‘probation’ accommodation and over the timeframes in which applications should be submitted to access this accommodation. Probation staff also cited instances in which a lack of coordination resulted in the undoing of NPS efforts to arrange for the appropriate management and supervision of an individual due for release:

“You may have an FNO approaching conditional release date, and you see an automatic knee-jerk reaction [from the Home Office] – IS91 [a decision to detain] – where the Offender Manager has secured them an Approved Premises bed, with highest level of supervision available, to ensure compliance with licence conditions ... That is a lot of work that gets scuppered. It’s bonkers. This person isn’t going to be removed.”

12.29 The result of this approach was that TSFNOs spent longer periods than required in detention. This tied in with another challenge – the misalignment of timeframes – whereby late decision-making by the Home Office on detention under immigration powers meant that those TSFNO who may require specific support in place could not access this as an application had not been made in time. The first AAR inspection found the Home Office needed to start considering next steps for an FNO significantly ahead of the point at which they currently make decisions on detention to allow for smoother, more effective and coordinated engagement between HMPPS, NPS, and the Home Office. A Service Level Agreement between Immigration Enforcement and HMPPS was signed in January 2020 to “clearly define roles and provide clear timelines for FNOs to be advised of decisions and detention outcomes” and a Home Office narrative indicated that, “where the sentence is short, systems are in place for considering imminent release cases and we have an SLA for notifying FNOs 30 days before conditional release date (again sentence permitting) if they are to move to IS detention”. Inspectors found evidence this system was not functioning as efficiently as anticipated.

Oversight

12.30 Due to the specific risks attached to FNORC decision-making, the Home Office has developed several additional oversight and assurance mechanisms for these cases beyond that provided by Case Progression Panels. The first is the Criminal Casework Internal Review Panel (CCIRP). It is chaired by the FNORC Director and attended by operational Assistant Directors and Deputy Directors, representatives from Returns Logistics and Litigation Operations, and an embedded Probation Officer. A senior manager described CCIRPs as the “team giving their own prompt, peer-group challenge ... The point about FNOs is, CPPs have their place, but that team has familiarity about the challenges of that group. It is the healthy thing to do.” No feedback is provided to a caseowner on the assessment of their case by a CCIRP, but feedback is shared with the senior managers in attendance.

12.31 The second oversight mechanism, the Strategic Director Release process, as set out in “Chapter 55”, requires that “any decision not to detain or to grant immigration bail to a time-served foreign national offender must be agreed at grade 7 (assistant director) level and authorised at strategic director level.” The process requires referrals completed on a Bail 407 form, authorised by the relevant manager, and forwarded to the Returns Directorate Strategic Director with a covering email which summarises the key points, and has the AAR level noted in the email subject line. The Strategic Director can seek further clarification of points within the referral before deciding to approve or reject the referral.

12.32 In response to the ICIBI’s Recommendation 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”, the Home Office committed to “undertake a review of the process for obtaining Strategic Director authorisation for the release of Foreign National Offenders from detention, who have been assessed as level 3 under the current AAR policy”. Inspectors were provided with details of this review which sought to examine the “practical workings of the Strategic Director Release Referral process and how it impacts those accepted to fall within level 3 of the Adults at risk policy (AAR)”. The review primarily focused on the timeliness of the process, ignoring

significant questions about how the release referral process functioned, such as the criteria used for deciding release, and the weighting applied to risk and vulnerability factors. In this respect, inspectors did not consider that the review met the requirements set out by the ICIBI recommendation and failed to effectively engage with broader issues of effectiveness, transparency and consistency. Further, the review process faced challenges from the limited availability of relevant data on CID.

- 12.33** The review concluded a significantly higher proportion of referrals for AAR level 3 cases were concluded within one working day (92% compared to 75% of other cases), but the timescales for the actual release from detention following agreement by the Strategic Director were broadly similar for other FNORC cases, and faced significant delays due to problems accessing appropriate accommodation. The review found inconsistent records of the process on CID. The review's four recommendations focused on improving the audit trail around the process and setting a four-hour deadline for decisions in AAR level 3 cases. A deadline of one business day for such decisions was agreed to, as were the other recommendations resulting from the review.
- 12.34** Inspectors requested information about the number of release/bail referrals made to the Strategic Director, with outcomes, since April 2019, including details of the basis for the referral (for example release recommendation arising from a DCPR) and were told that there was "no existing mechanism to report this data", although the Home Office accepted "there is a gap in our assurance process, and we are working to develop a mechanism to allow this data to be accurately captured in the future." This lack of data collection is made more problematic by the minutes of a discussion at the Detained Casework Oversight Board (October 2020) which indicated that a request to keep a record of referrals to enable further review was accepted, but not initially considered necessary by the relevant SCS.
- 12.35** Staff from the DGK, FNORC, and attendees at CPPs voiced their concerns about the Strategic Director Release process, including their perceptions the process lacked transparency, the fact the mechanism hinged on the decision-making of one individual, and the high benchmark which the referral needed to meet to ensure agreement. Inspectors observed, at Case Progression Panels, how staff perceived this process, including examples of staff commenting on the difficulties in getting a release referral agreed. In contrast, survey responses indicated that FNORC staff were not perturbed by the criticism of the process: 85% would recommend release in a case even if they thought their recommendation might be rejected by senior managers, leaving 15% who would not recommend release, even if the case required it. In response, the Strategic Director said of the process:

"I don't see it as a power. I see it as a responsibility. Recommendations to release are made at different levels, but responsibility lies with me.... I feel we have a series of authorities in the FNO world that are commensurate with level of risk that that decision brings about."

Response to COVID-19

- 12.36** In response to COVID-19, the Home Office undertook a series of steps to mitigate the pandemic's impact on the operation of immigration detention and removals. The Home Office told inspectors that in late January 2020, updated guidance was provided to the DGK on the

availability of returns to certain countries such as China, as well as guidance for IRCs. NRC cases were reviewed and all had been released from detention by 26 March 2020⁹².

- 12.37** On 20 March 2020, the Home Office issued an instruction requiring any detainees with medical conditions considered by Public Health England to lead to a higher risk from COVID-19 to be designated as an AAR level 3. Following an undertaking given by the Home Office to the High Court in a case brought by Detention Action on 18 March 2020, the Home Office reviewed the suitability of detention for all FNO detainees, beginning with those considered at a higher risk from COVID-19, then AAR level 3 cases and so forth, as a matter of urgency.⁹³ This case review process followed the methodology used in Criminal Casework Internal Review Panels (CCIRP). Each case was reviewed individually and considered vulnerabilities (especially where assessed as AAR level 2 or 3), the nature of offending, risk of harm to the public or to a specific individual or individuals should the FNO be released, risk of absconding, barriers to removal and the prospect of the resumption of travel, and whether the individual could be returned in a reasonable timescale. The Home Office decided to pause all Case Progression Panels for six weeks, from 20 March to 4 May, to enable these reviews to be completed.
- 12.38** According to a subsequent paper provided to the Detention Casework Oversight Board, four COVID-19 review panels were set up, each chaired by a Director or Deputy Director and with a FNORC caseowner and Returns Logistics (RL) staff member present. Each panel met remotely via Skype, with typical panels running for two hours and sometimes sitting twice per day. The panels based their decisions on information recorded on CID, with assistance from the RL representative who provided the latest country-specific information regarding the availability of consulate support for documentation and any travel restrictions. Between 23 March and 3 April 2020, 987 detained cases in total were reviewed by panels. Assuming they sat twice a day, this equates to an average of two to three minutes of discussion per case.
- 12.39** One stakeholder raised a number of concerns with the process following an audit of their organisation's caseload of 30 cases which were subject to the review. Issues identified with these cases included the fact that:
- “i. People were still being held despite there being little prospect of removal. Of the 30 clients analysed, 22 came from one of the 49 countries to which the Home Office had said they were no longer removing people. A further seven came from countries where the International Air Transport Authority advice at the time said travellers were not allowed to or airports were closed ... ii. Detainees with underlying conditions were not being released despite having conditions which put them at increased risk of severe illness from COVID-19. Of the 30 clients' cases analysed, seven had COVID-19 comorbidities ... According to the AAR policy, all seven should have been classed as level 3 and released from detention except in exceptional circumstances. iii. Detainees with underlying conditions were not being released despite having conditions which put them at increased risk of severe illness from COVID-19”.
- 12.40** Those FNORC cases that were recommended for release were then referred to the Strategic Director, who made a final decision on whether to release, to maintain detention, or to move the detainee “to a shielding facility established by DES so social distancing can be practised

92 At the factual accuracy stage, the Home Office stated that there was a “weekly ‘IRC PHE at Risk’ report circulated from DES colleagues, with input from other areas of the business, wherein any individual who is identified as being vulnerable to COVID-19 are reviewed. This is then circulated on a weekly basis across casework commands, encouraging internal review from caseworkers to ensure consistent application of the Adults at risk policy. Failings identified by this report led to an Awareness Brief being prepared and circulated on 06/01/2021 for local distribution, encouraging greater compliance with the interim COVID-19 instruction.” Inspectors were not sighted on these documents and therefore did not assess their efficacy.

93 See judgment: <https://www.judiciary.uk/wp-content/uploads/2020/04/Detention-Action-v-SSH-D-CO-11012020.pdf>

effectively”. The COVID-19 Release Panel reviewed 987 cases, of which 201 were designated: “Release Referral in Progress”; “Release agreed pending accommodation”; or “Agreed for release by panel pending SD [Strategic Director] clearance”. These outcomes, at the end of the process on 3 April are shown at Figure 23.

Figure 23:

Outcomes from the COVID-19 Release Panel (23 March to Friday 3 April 2020)⁹⁴

| Outcome | Numbers reviewed |
|---------------------------------------------------------|------------------|
| Maintain detention | 384 |
| Maintain detention pending further enquiries | 201 |
| Agreed for release pending Strategic Director clearance | 125 |
| Released under Immigration Judge bail | 112 |
| Released under Secretary of State bail | 64 |
| Release agreed pending accommodation | 43 |
| Release referral in Progress | 33 |
| Deported | 25 |

- 12.41** Of these cases, a further update on 21 April 2020 found that only 56 of the 201 designated for release had actually been released; of the remainder, 113 had their status changed to “Maintain pending further enquiries”, while 32 showed as “Release agreed pending accommodation”. Thirty-seven of those individuals who remained in detention were Black, Red, Amber, Green (BRAG) rated black on the basis of COVID-19, though no definition of this rating was included in the table. When inspectors reviewed case records, they found that for 28 eligible cases considered by the COVID-19 Panel, all had had their detention maintained.
- 12.42** The results of the COVID-19 Release Panel were recorded on CID and a letter, drafted by the caseowner and quality assured by an HEO team leader, was served on the detainee. Inspectors reviewed the letters attached to the case files examined as part of this inspection and found significant variations in the quality, with some letters providing clear logic as to how the decision had been reached, while others contained more limited information.
- 12.43** An internal analysis of the operation of the panel that was presented to the Home Office’s Detained Casework Oversight Board concluded that the process would have benefited from “wash-up sessions” to ensure consistency, and it highlighted the fact that data quality issues had resulted in delays to some reviews. The document also noted the inconsistent application of AAR level 3 status in the COVID-19 context, flagged examples of poorly drafted or minimal Part Cs from IRC and prison healthcare which undermined their use in reviews, and pointed to a need to improve the comprehensiveness of notes made at the review panels. The Home Office provided inspectors with examples of release decisions which illustrates these points.

24/03/2020

Ad hoc review in light of notification from healthcare highlighting that Mr. B as (sic) a possible vulnerable detainee due to COVID-19.

⁹⁴ Figure 23 contains internal management information provided by the Home Office. It has not been quality assured to the level of published National Statistics so should be treated as provisional and therefore subject to change.

Part C Part C received from [staff] on 23.03.20: This detainee has a diagnosed medical condition and is on medication.

In light of this Mr. H [sic] is to be released on reporting conditions. Release reason – AAR other

- 12.44** Another COVID-19 release review, following the same process, was undertaken in December 2020, following an increase in UK COVID-19 infection rates, the introduction of a national lockdown, and “to ensure that PHE guidance in relation to COVID-19 has been considered” by caseowners. The selection of cases for review was left to caseowners, although the experience of one FNORC manager who was asked to review the cases considered by her team as eligible for the COVID-19 release review on the basis of their AAR level calls into question the thoroughness with which caseowners carried out this exercise. Though the initial data provided to the manager indicated that 14 cases had been identified, her additional review resulted in the identification of a further 65 cases, the majority of which were held in prisons. The difference in the number of cases identified was, according to the manager, the result of a failure by caseowners to raise a Special Condition flag which denoted the individual was an adult at risk. The additional 51 cases were identified by reviewing CID notes and DCPRs.
- 12.45** A spreadsheet of the outcomes of this December COVID-19 review contained information about individual detainees’ casework barriers and the nature of their offences, but no information on the individual’s medical conditions or whether they were considered vulnerable to COVID-19.

Record keeping

- 12.46** The review of case files undertaken by inspectors illustrated how shortcomings in record keeping inhibited case progression and the effective identification and safeguarding of vulnerable individuals. Examples of poor record keeping included:
- failures to record AAR levels correctly across the whole file, and in individual parts of a file, and in some cases within the same document
 - failures to raise or close a Special Condition flag as required; inspectors found 20 cases where either the AAR level did not have a corresponding Special Condition flag or the AAR level had a Special Condition flag but the AAR level was not accurately reflected in the Detention and Case Progression Review (DCPR)
 - failures to acknowledge CPP recommendations or provide details of any actions taken following a recommendation
 - failures to document Strategic Director referral decisions
 - failures to document caseworking activities in a way which indicated a case was being progressed such as the prompt sourcing of accommodation and
 - inconsistent uploading of documents; in 6% of cases reviewed, there was no current IS91 included in an individual’s electronic record (the Home Office subsequently confirmed these missing IS91s were available in paper form). In a small number of cases reviewed, the current IS91s uploaded after the period of detention had begun.

12.47 Inspectors also found:

- missed opportunities to identify and safeguard vulnerable detainees. In 44% of cases reviewed where the detainee was on an ACCT/ACDT, this had not had this recorded in their DCPR, and 64% of those on a Vulnerable Care Action Plan had not had this recorded in their DCPR
- instances when a caseowner failed to explore escalating signs of vulnerability
- patchy, inconsistent, and tardy engagement with IRC and prison healthcare staff
- insufficient oversight by authorising managers of the quality and content of DCPRs, for example, approving incorrect, factually inaccurate, or poorly worded reviews.

12.48 Inspectors drew Home Office managers' attention to these findings, and the Home Office identified that a number of caseowners required additional or refresher training. Additionally, communications were sent to staff about the importance of accurately recording a detainee's Adults at risk level. Inspectors' findings align with discussions held at the Detention Casework Oversight Board which showed problems with the poor administration of CID records and highlighted concerns around data quality. However, one senior manager commented at interview that, "in an organisation of 2,000 people, you are going to get a degree of variability. Some teams are better than others". More broadly, some efforts had been undertaken to address poor record keeping though details were vague, with reference to a "massive transformation exercise". At the time of the inspection, efforts to identify and rectify substandard caseworking practices were piecemeal and relied on laborious escalation processes, such as that undertaken by the CPP Team.

Impact on data quality

12.49 Poor record keeping directly impacts upon the quality and robustness of the data drawn from these records, which in turn influences the shape of decisions made by the Home Office. If Special Condition flags are not opened on CID when an individual's AAR level changes, then the record (and individual) will not be identified as an adult at risk for reporting purposes, meaning the Home Office has no sight of the levels of vulnerable detainees held in the detention estate. Equally, where a detainees' level is incorrectly recorded, for example as level 1 rather than level 3, then they will not receive the additional attention from caseowners in the priority monitoring and progression of level 3 cases, and any review of the suitability of detention. Inspectors also encountered problems with the quality of the data provided by PRAU, with an example identified of an individual denoted as being in detention, despite actually being released in 2018. When this issue was raised, the Home Office "acknowledge[d] there can be challenges with the accuracy of data provided by PRAU."

12.50 As with the first AAR inspection, senior managers focused their response on concerns about poor data quality on the functionality of CID, indicating that the roll out of Atlas, the Home Office's new caseworking system, would solve some of these issues as Atlas contained more structured data fields.

12.51 The introduction of Atlas was seen as a panacea to the problems with poor data and led the first AAR inspection to recommend:

"(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.”

- 12.52** The Home Office rejected this recommendation, making reference to a consultation and a review then under way on the kinds of information published and the need to align any such work with Atlas.⁹⁵ While the Home Office has partly begun the roll out of Atlas, with staff entering data on both Atlas and CID, timelines for when Atlas would be fully operational were vague and staff from across the caseworking teams interviewed voiced concerns about the extent to which Atlas would provide the functionality and data required.
- 12.53** Inspectors regularly reviewed information circulated to senior managers including data on the numbers of detainees designated adults at risk in detention (and their levels), food and fluid refusal, and age dispute cases. It was not always clear why the information had been collected or structured in a particular way – a spreadsheet listing AAR level 3 cases regularly contained duplicate entries. When inspectors queried this duplication with the distributor of the spreadsheet, they were told double entries should act as a trigger for a caseworking manager to amend the entries though this justification (or call to action) was not articulated in the spreadsheet itself.⁹⁶
- 12.54** Senior managers highlighted recent work undertaken to redesign the DCPR form which, in their view, was now easier to complete and should effectively address poor record keeping. Inspectors reviewed the guidance (published on 22 December 2020) which accompanied this revised form and noted the increased focus on vulnerability as well as the instruction that “the document is completed to a high standard of accuracy and professionalism”.⁹⁷ The new form appears to address two previous concerns: the lack of clarity on case progression; and missing facts that should be known. The new form begins with “CASE PROGRESSION ACTIONS” and specifically asks the caseowner to outline progress since the last review – an attempt to prevent the copy and pasting of text from previous DCPRs. Inspectors examined completed examples of the revised form and found this section had been used effectively to provide a succinct update on what has happened with the case. The revised form requires caseowners to include known dates and facts about the case, such as “When was the ETD [Emergency Travel Document] applied for” and “Timescale for issue according to the returns logistics”. The accompanying guidance noted that a failure to complete the form properly, “poses litigation risks which may result in judicial reviews, reputational damage and significant financial costs were detention to be found to be unlawful”, although no reference is made to the impact of wrongful detention on the detainee, or an indication of the consequences for a caseowner if they fail to comply with the guidance (i.e. disciplinary action). The guidance is clear on the oversight role of the authorising officer requiring it to be more than a tick box exercise.

95 ‘Response to the annual inspection of adults at risk in immigration detention’, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/882002/Response_to_the_annual_inspection_of_adults_at_risk_in_immigration_detention.pdf

96 At the factual accuracy stage, the Home Office stated “In response to this feedback, a specific instruction was added in the explanatory notes of the report from 17/02/2021: “Please note that the inclusion of duplicates in the below is intentional, as this is both a DQ [data quality] error and can also present false representation over the length of time an individual has been detained at Level 3 for. ADs [Assistant Directors] are asked to ensure that any duplicates flags are closed, as appropriate, during the course of the review.”

97 Detention and Case Progression Review (v.1.0), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/966108/dcpr-operational-guidance-v1.0-ext.pdf

Time-served Foreign National Offenders

Background

12.55 The first Adults at risk inspection found time-served Foreign National Offenders (TSFNO) detained in prisons 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 resulting recommendation (4.8) focused on closing the gap in treatment between those held in prisons and those held in IRCs. While some work has been undertaken by the Home Office in response to this recommendation, the pace of this work has been slow, and inspectors found that many of the challenges faced by TSFNOs identified in 2018 remain unaddressed. TSFNOs held in prisons remain significantly disadvantaged relative to detainees in IRCs, a situation which has been made more acute by the COVID-19 pandemic.⁹⁸

12.56 As part of this inspection, inspectors spoke to TSFNOs at HMP Pentonville, as well as prison and healthcare staff, and observed the operation of the prison. Inspectors also spoke to TSFNOs held in IRCs.

Identification of, and engagement with, TSFNOs

POP teams

12.57 The management of TSFNOs in prisons is undertaken by the Prisons Operations and Prosecutions (POP) teams who, at the time of the inspection, numbered 134 staff, plus eight operational support assistants, and were carrying nine vacancies. Part of the Foreign National Returns Command (FNORC), POP teams are based across eight geographical hub prisons and are assigned local spoke prisons to visit on a rotating basis.⁹⁹ TSFNOs are spread across the prison estate, often in small numbers. For example, in January 2021, 86 prisons held TSFNOs, though 45 of these prisons held five or fewer detainees, with 20 prisons holding only one TSFNO. There are also two FNO-only prisons – HMPs Huntercombe and Maidstone – though they hold a mix of FNOs serving custodial sentences and TSFNOs held under immigration powers.

12.58 Asked to describe their roles, 86% of POP staff who replied to a survey circulated by inspectors agreed with the statement that they functioned as a useful connection between the FNORC caseowner and the TSFNO, and a similar number considered themselves a useful connection between the Home Office and HMPPS staff.

Immigration decisions

12.59 Both the inquiry of the Home Affairs Select Committee (HASC) into immigration detention (March 2019)¹⁰⁰ and the first ICIBI inspection on AAR noted that the lack of promptness in

⁹⁸ Rec 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.

⁹⁹ POP teams were renamed Immigration Prison Teams in March 2021.

¹⁰⁰ Home Affairs Select Committee (HASC) inquiry into immigration detention (March 2019), <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/913/91302.htm>

immigration caseworking and decision-making for FNOs. This meant that, in some cases, FNOs were told very close to their release date that they were to be detained for a further period under immigration powers. This approach was used despite the late service of immigration decisions functioning as a known trigger for increasing a detainee's risk of suicide and self-harm (as most expected to be released rather than further detained). FNORC staff set out some of the reasons why an FNO might receive late notice that they are to be detained under immigration powers: An individual held on remand for a period of time might be time-served immediately upon conviction; an individual might meet the deportation criteria despite receiving a short sentence; the prison service might make a late referral of an FNO for potential immigration detention; or an individual previously assumed to be a British citizen might be identified as an FNO at a late stage. The Home Office told the HASC that "where the sentence is short, systems are in place for considering imminent release cases and we have an SLA for notifying FNOs 30 days before conditional release date (again sentence permitting) if they are to move to IS detention". Despite this, inspectors were told by Home Office and probation staff that the late service of immigration decisions was still an issue due to limited Home Office oversight of FNOs, the late identification of FNOs eligible for deportation, and slow decision-making.

- 12.60** POP staff told inspectors that the identification of FNOs was not always straightforward, commenting that "prison staff serve deportation work and they are not trained; they [the prisoner] sign paperwork, but they don't understand what they're signing for." The ICIBI's 'Inspection of the Home Office's use of language skills in the asylum process' (2019)¹⁰¹ highlighted difficulties in accessing interpreters in the prison environment and the consequences this had for FNOs. This also matched what TSFNOs in prisons told inspectors; Home Office communication on their immigration case was patchy, unclear, and tardy. One recalled his own experience and said, "After five month (sic) they stop you on the gate they come your door, say it is your release day but they have immigration officer with them."
- 12.61** The experience of the late service of immigration decisions was echoed in interviews with Home Office, embedded National Probation officers, and HMPPS staff, who highlighted the consequences of this slow detention decision-making process and the disruptive impact it had on release planning, for example in accessing accommodation. Prison staff working with FNOs echoed these sentiments, noting there was a particular challenge for those given short sentences and where the Home Office did not respond sufficiently promptly when these individuals were eligible for release, and where either immigration detention was required or an authorisation to release should be completed. Prison staff indicated that the process ran more smoothly when an individual was serving a longer sentence. Inspectors spoke to a number of TSFNOs in prisons and to others who had been transferred to IRCs for removal and were told that immigration decisions were often poorly explained to them. Staff told inspectors that, as found in the previous AAR and 'Inspection of the Home Office's use of language skills in the asylum process' reports, access to interpreting services was challenging, and other prisoners were sometimes used as translators. One detainee commented:

"It's impossible. I should have been released [from prison] on 12th November. They transferred me here on 20th January. Nobody tell me nothing [to explain] why I am here in prison longer than I need to be. No one contacted me. I got a paper from court saying I should be released 12th November...I thought I would be released.

101 'Inspection of the Home Office's use of language skills in the asylum process' (2019), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/933930/An_inspection_of_the_Home_Office_s_use_of_language_services_in_the_asylum_process.pdf

They gave me one piece of paper about immigration. Nobody answer my question. Nobody. Nothing.”

- 12.62** The perceptions about the levels of oversight the Home Office had of TSFNOs held in prisons, and the extent to which the prison service engaged with the particular needs of TSFNOs were mixed. One prison officer described how this group was treated, commenting, “Once a man is time-served, on an immigration warrant, quite frankly he gets forgotten about until we get the next update [on his immigration case].” This perception of forgetting about TSFNO was also shared with reference to the limited frequency of POP officer visits to prisons.
- 12.63** Intersecting this challenge, as was the case in the previous AAR inspection, is effective access to immigration legal advice. One stakeholder noted that as there is no equivalent to the IRC Detention Duty Advice Scheme (DDAS) in prisons: “It is up to the prisoner, who has no access to the internet, to contact a legal aid solicitor and persuade them to visit the prison in order to take instructions and open a file to represent them.”
- 12.64** Currently, access to immigration legal advice falls outside the framework of the Home Office’s prison parity work but is being considered by the Ministry of Justice. Further, TSFNOs are prohibited from accessing communication tools such as the internet and mobile phones, unlike their IRC counterparts, which would improve their ability to contact immigration lawyers and NGOs in prisons. On 25 February 2021, the High Court found, in *SM v Lord Chancellor*, that “the failure to afford immigration detainees held in prison access to publicly-funded legal advice to an extent equivalent to that available to immigration detainees held in IRCs under the DDAS, is in breach of [European] Convention [on Human Rights] rights.”¹⁰² The Lord Chancellor is currently undertaking a review of the legal aid arrangements, which includes a consideration of equal access to immigration and asylum advice to immigration detainees across the detention estate.
- 12.65** The late identification of FNOs and limited access to POP teams had an impact on the processing of FNO asylum claims. Both in survey responses and at interview, POP staff indicated that the combination of a widely dispersed TSFNO population, challenges accessing interpreters, and COVID-19, had meant that TSFNOs were finding it challenging to lodge asylum claims or be interviewed as part of their claim. Consequently, the slow processing of the claim impeded an individual’s removal. Inspectors examined 122 files, of which 91 were TSFNOs, and found in 34 (28%) TSFNO cases reviewed, the most significant barrier to removal was an asylum claim. In contrast, a recently published Home Office paper, based on internal management information and heavily caveated, found that asylum claims were much less common among FNOs (with asylum claims in just 6% of FNO detentions in 2019), in contrast to non-TSFNOs detained, of whom 47% raised an asylum claim.¹⁰³
- 12.66** More broadly, operational challenges for POP teams echoed the findings of the first AAR inspection such as difficulties in accessing private rooms to deliver immigration news. As contact between POP teams and TSFNOs was often disjointed, and access to the Home Office caseowners could not be executed at the same time the POP team met with a TSFNO, the information exchange between Home Office and detainees was similarly delayed and disrupted. To address this issue, stakeholders have argued for the roll out of a DET-style model for TSFNOs in prisons.

102 See [https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Admin/2021/418.html&query=\(duncan\)+AND+\(lewis\)](https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Admin/2021/418.html&query=(duncan)+AND+(lewis))

103 ‘Issues raised by people facing return in immigration detention’, <https://www.gov.uk/government/publications/issues-raised-by-people-facing-return-in-immigrationdetention/issues-raised-by-people-facing-return-in-immigration-detention>

12.67 Prisoners who spoke with inspectors indicated that their access to POP team staff was limited and irregular, even when they were based in a hub prison. COVID-19 had had an impact on how POP teams accessed prisons and on the regime within prisons. POP staff told inspectors that they were no longer able to hold surgeries with prisoners, relying on video interviews or a much reduced visit schedule. The Home Office highlighted the collaborative working with HMPPs “to maintain a full and effective presence at our hub prisons and to arrange access to our spoke prisons”, noting the initial focus on the service of decisions and the rollout of new ways of working.

Monitoring vulnerability

12.68 The identification and monitoring of TSFNOs’ vulnerabilities are undertaken by prison staff as part of their normal duties in respect of all prisoners, and by the POP teams visiting the prison. For POP teams, the initial induction they carry out with a detainee is the first point at which a vulnerability might be identified by Home Office staff. Survey responses from POP staff showed under half (43%) believed that the induction process achieved its intended purpose. Discussions with POP staff indicated that while the induction process was an opportunity for detainees to raise vulnerabilities, staff relied on their previous prison experience to explore signs of vulnerability. POP staff interviewed considered that the ten induction questions were, in their view, limited in scope.

12.69 Seventy-one per cent of POP team officers surveyed stated that they agreed with the statement, “The training I have received has equipped me with the skills required to effectively conduct my engagement work”, and in response to subsequent questions as to their ability to identify and safeguard a vulnerable detainee including victims of trafficking or torture, staff stated they were confident in their abilities to do so.

12.70 Eighty-five per cent of POP staff surveyed agreed or strongly agreed that they had good working relationships with prison staff such as wing staff, though this fell to 28.6% when considering the relationship with prison healthcare staff. Forty-three per cent of those surveyed agreed that “Prison staff support me as I carry out the administrative part of my role (e.g. sharing information with me)”, and the same number agreed with the statement that “I am supported by prison staff as I physically circulate within the prison estate (e.g. as I serve paperwork)”. POP staff commented at interviews with inspectors:

“We are always trying to spot if someone is distressed.... if someone was getting upset, they would speak to the officers on the wing [who would] facilitate a phone call to the solicitor, or maybe we would open an ACCT.”

POP officers indicated they were comfortable making referrals to in-prison mental health teams and alerting wing staff to vulnerable detainees.

12.71 The extent to which information about an individual’s vulnerability was shared with caseowners and acted upon was more challenging to establish. POP staff were clear that they used CID to record these issues, but that the responsiveness of caseowners was mixed and did not consistently lead to a reassessment of the suitability of detention, or to followup inquiries with relevant prison teams. However, POP officers also told inspectors they were content to follow up with caseowners, utilising management escalation mechanisms if required. Only 57% of POP officers agreed that they understood the Adults at risk policy and only 14% said they referred to it as part of their role. Discussions with POP teams, together with survey comments,

showed that they were more likely to rely on existing prison processes such as an ACCT (suicide and self-harm monitoring) to protect vulnerable TSFNOs than the AAR policy.

Rule 21

12.72 As noted in Chapter 9, the Rule 35 process does not apply in prisons; rather, Rule 21 applies as set out in the Prison Rules 1999, which states:

“Special illnesses and conditions

21.—(1) The medical officer or a medical practitioner such as is mentioned in rule 20(3) 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.”¹⁰⁴

In this process, it is a prison medical practitioner who reports to the prison governor. There is no opportunity for the TSFNO to request a Rule 21 report, unlike a Rule 35 assessment in an IRC, and there is no equivalent trigger for a reconsideration of detention as set out under the Adults at risk policy.

12.73 Just as Stephen Shaw noted in his follow-up report (2018) that he “was unable to find any information on how often Rule 21 is used in prisons”¹⁰⁵, this inspection found that HMPPS staff, prison healthcare, Home Office staff in prisons, and caseowners all had limited knowledge of the Rule 21 process. In none of the files examined as part of this inspection was a record of a Rule 21 report found. Inspectors requested information on the number of instances in which Rule 21 has been used in prisons for individuals detained under immigration powers since April 2019. The Home Office responded, in October 2020, that “data for Rule 21 applications in prison is not recorded centrally. Implementing a process for recording and processing Rule 21 applications is one of the workstreams being developed as part of the prison parity work being taken forward by the Home Office and HMPPS”, though progress on this work had been slow.

12.74 While TSFNOs are reviewed by caseowners through the monthly detention review process, inspectors’ review of case files showed that on the limited occasions that a Part C was submitted by prison staff and recorded on CID, this Part C was not always then reflected in the monthly DCPR, even if the concern raised was indicative of increasing vulnerability. Overall, CID notes for TSFNOs tended to contain less information than those of detainees held in IRCs, as the mechanisms by which the Home Office would access such information on the condition of individuals in the detention estate – via DET engagement, Rule 35 reports, or Part Cs – either did not apply to TSFNOs in prisons or prison staff were unaware of the available mechanisms.

12.75 As those with the most contact with TSFNOs in prisons, it is prison staff who are most likely to identify an individual’s vulnerability and to be in a position to monitor the individual’s wellbeing. However, fundamental within this context is the principle that the prison system is

¹⁰⁴ Prison Rules (1999), <https://www.legislation.gov.uk/uksi/1999/728/made>

¹⁰⁵ ‘Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons: A follow-up report to the Home Office by Stephen Shaw’, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728376/Shaw_report_2018_Final_web_accessible.pdf

constructed in such a way as to manage vulnerabilities effectively to enable the continuation of the custodial sentence rather than to raise a question as to an individual's suitability for continued detention. As a result, prison staff are more likely to use existing prison mechanisms to manage vulnerabilities, engaging with healthcare for example, than to flag the vulnerability to the Home Office. Prison staff would not necessarily be clear on an individual's immigration status, and the prison regime would not distinguish between members of the prison population on this basis. As a result, they would be treated in the same manner as a regular non-TSFNO prisoner. Inspectors echo therefore the conclusion drawn by Stephen Shaw in his 2018 report where he stated:

“Prisoners held under immigration powers may well be subject to wider vulnerability issues, and I do not believe the current system is likely to pick this up. This is a worrying gap and needs to be remedied.”¹⁰⁶

Broader experience of the prison system

- 12.76** TSFNOs are subject to the regime of the prison in which they are detained. During COVID-19, these regimes often moved to extended lockdowns, with the cessation of activities, education, and visits. HMIP's thematic review “What happens to prisoners in a pandemic?” (February 2021) noted that “most adult prisoners were still locked in their cell for an average of 22.5 hours a day, seven days a week”. In their exploration of prisoner wellbeing, HMIP inspectors commented on the limited provision of books, and the difficulties for non-English speakers.¹⁰⁷
- 12.77** While TSFNO access to healthcare was not an issue identified in this inspection, stakeholders raised concerns at the limited experience that medical practitioners in the prison system may have of torture and other experiences specific to FNOs.
- 12.78** TSFNOs present prison staff with several particular challenges: the basis of their detention does not come with any rehabilitative work attached, which meant they were less able to access purposeful activities¹⁰⁸; the lack of certainty about the length of their stay has a negative impact on their wellbeing; and their often limited language skills impede their ability to effectively participate in prison activities. Language-based isolation also gives rise to concerns about the accessibility of initiatives aimed at reducing suicide and self-harm, such as Listener services¹⁰⁹ and telephone access to Samaritans.

Release and removal

- 12.79** Nearly three-quarters (72%) of those leaving detention in 2020 were bailed, an increase of 11% from 2019, and likely a reflection of the impact of COVID-19.¹¹⁰ For TSFNOs, more detainees, by quite some way, applied for Immigration Judge (IJ) bail than Secretary of State (SoS) bail (2,647 compared to 715 between April 2019 and June 2020). The grant rate for IJ bail between April 2019 and April 2020 was 56%, rising to 60% in June 2020; by contrast, for SoS bail, the grant rate was 52% for the same period, declining to 44% in June 2020. Stakeholders highlighted

106 ‘Assessment of government progress in implementing the report on the welfare in detention of vulnerable persons A follow-up report to the Home Office by Stephen Shaw’, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728376/Shaw_report_2018_Final_web_accessible.pdf

107 ‘What happens to prisoners in a pandemic? A thematic review by HM Inspectorate of Prisons’, <https://www.justiceinspectors.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2021/02/What-happens-to-prisoners-in-a-pandemic.pdf>

108 Though rehabilitative work had likely been completed prior to becoming time-served (and thus should be considered as part of the risk of reoffending assessments).

109 A scheme run by the Samaritans which uses other prisoners (volunteers) to provide emotional peer support.

110 Immigration Statistics (Dec 2020), <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-december-2020/how-many-people-are-detained-or-retained>

that the Home Office was losing an overwhelming percentage of bail cases at the height of COVID-19, which they considered indicated that the Home Office was still detaining too many people than was legitimate during a pandemic.

- 12.80** The time taken to make decisions in SoS bail applications (effectively an internal Home Office process) was, in just over 50% of cases, completed within three days, as set out in Figure 24.

Figure 24:
Time taken to reach a decision on SoS bail application between 1 April 2019 and 30 June 2020¹¹¹

| Days taken | Number of applications |
|----------------------|------------------------|
| Up to 3 working days | 2,106 |
| 4 to 5 working days | 834 |
| 6 to 10 working days | 407 |
| Over 10 working days | 195 |
| TOTAL | 3,542 |

- 12.81** For TSFNOs however, the granting of bail does not necessarily mean automatic release. The need for conditions to be attached to the release, a reflection of public protection considerations, and most often related to accommodation, means that there are often delays to an individual’s release. The extent, and full nature, of the delays in the release system were hard to quantify. Inspectors requested data from the Home Office on the length of time between a detainee being granted bail in principle (subject to the provision of suitable accommodation, for example) and being released, but the Home Office indicated this information could not be provided as the relevant information was not collected on CID.
- 12.82** The difficulties faced by TSFNOs who require specialised accommodation are often caused by slow decision-making at the point at which it is confirmed they will be further detained under immigration powers. This detention decision can mean that an opportunity for release with effective management in the community is missed (as NPS arrangements for supervision upon release are then undone; when/if the TSFNO is later released, either these arrangements have to be worked up from scratch, or, if the licence period has ended, the opportunity for management in the community has been missed entirely).
- 12.83** The first AAR inspection also found that problems accessing suitable accommodation lead to delays in the release of TSFNOs. The pressure brought by the COVID-19 pandemic has not improved the situation. In seven of the cases reviewed by inspectors, IJ bail was granted in principle but then lapsed (despite this taking 28 days), due to accommodation issues. An ‘Information Reference Guide – Case Progression Panels and the COVID-19 Pandemic’ produced in response to the judgment in *Detention Action v SSHD [2020]*¹¹² noted the challenges faced. This document indicated that COVID-19 had put additional pressure on a system already under strain, and referred to a “bottleneck” caused by an increase in release referrals, and the difficulties in moving individuals out of accommodation to enable others to move in.

111 This table contains internal management information provided by the Home Office. It has not been quality assured to the level of published National Statistics so should be treated as provisional and therefore subject to change.

112 *Detention Action & Ravin v SSHD [2020] EWHC 732 (Admin)*.

- 12.84** Part of the challenge of accessing accommodation was also found in the misconceptions of caseowners as to how the process worked. The threshold required for an individual to be eligible for Approved Premises was not clear to case owners so applications were submitted incorrectly, or too late ahead of a release. HMIP’s [Report on a scrutiny visit to Harmondsworth IRC](#) (March 2021) found systemic issues with the provision of release addresses.¹¹³
- 12.85** The relationship between bail and accommodation is set out in the Interim Bail Guidance, published in October 2020, following the judgment of OH A and WP [2020] and sets out for decision makers how to access accommodation as provided for under Schedule 10 (Immigration Act 2016). Home Office guidance on immigration bail requires caseowners to work with Offender Managers to prepare a release plan which should include a consideration of their accommodation needs if they were to be released on immigration bail. It notes that FNOs granted bail whilst still under prison licence will need to have their proposed bail address approved by HMPPS (or devolved equivalents in Scotland and Northern Ireland) within a nine-week timeframe. One stakeholder highlighted that, in their experience, this exercise was rarely carried out and provided inspectors with a summary of the results of 37 requests for disclosure of their clients’ release plans. This summary showed that 32 of these requests were ignored, and three provided information that was not relevant to the release plan process described in the policy. Only two responses provided information about what kind of accommodation would be provided if the client were to be released on bail. This resonated with inspectors’ analysis of case files and observations of CPPs, where it was rare that a release plan had been prepared in advance. The subsequent impact on caseowners was extensive engagement with the police, probation service, and Offender Managers in trying to source the appropriate accommodation for a detainee.

113 HMIP Report on a scrutiny visit to Harmondsworth immigration removal centre by HM Chief Inspector of Prisons 15–16 and 23–24 March 2021, <https://www.justiceinspectorates.gov.uk/hmiprison/wpcontent/uploads/sites/4/2021/04/Harmondsworth-IRC-SV-web-2021.pdf>

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 their 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 them 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 they have 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: ICIBI's expectations

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 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 (BICS) '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; and
 - stakeholder engagement (including customers, applicants, claimants and their representatives).

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