

in information getting to the necessary people for review. In turn, Rule 35 reports and responses are poorly monitored.

The findings relating to lack of information have also been laid to bear in Parliament. On 28 June 2011, Julian Huppert MP's question asked how many people in immigration detention (a) have been diagnosed with serious mental health conditions, (b) are torture survivors, (c) are pregnant, (d) are children and (e) are elderly [61442]. Damian Green, the Minister of Immigration stated in response: 'The UK Border Agency does not hold information centrally about those who have a serious mental health condition or who are torture survivors.' He concluded, 'Where the UK Border Agency accepts that a person's health is likely to be injuriously affected by continued detention, they are normally released.'¹² However, as the results will demonstrate and UKBA's own audit has shown, individuals are not "normally" released at all.

9. UKBA performance in monitoring Rule 35

Importantly, quality control for implementing Rule 35(3) has been identified as lacking in most IRCs. 'The central log of Rule 35 (potential torture of detainees) forms held in the on-site immigration office recorded that 12 forms had been received since November 2009 but only three had been responded to by the UKBA caseworker at the time of the inspection. There had been no follow-up by immigration staff until the first day of the inspection. There were no systems for monitoring receipt of monthly detention review letters or bail summaries.' (HMIP Harmondsworth 2 - 5 Aug 2010)

Without quality control there is no mechanism to flag up where UKBA are failing detainees in their duties to produce Rule 35 responses. Furthermore, it has been found that healthcare services are failing to undertake this too. However, UKBA is responsible for monitoring subcontracted health services; it is their responsibility to identify where Rule 35 is not being implemented and to correct it. Monitoring has been found to be not in place and there is a failure to follow-up indicating a lack of accountability.

Examples of HMIP review recommendations on this topic include:

- *"UKBA and health care records of Rule 35 applications should be investigated and the findings acted on."* (Dover 24 - 28 May 2010)
- *"Accurate and complete Rule 35 report logs should be kept by the UKBA contact management and health care staff."* (Dungavel 21-25 June 2010)
- *"Further recommendation: The central log of rule 35 notifications and caseworker responses should include a copy of the notifications and responses."* Tinsley House 13-15 July 2009, later followed up by, *"Rule 35 procedures were not carried out effectively."* (Tinsley House 7-11 February 2011)

10. Lack of independent oversight

In light of evidence showing that UKBA has consistently failed to implement Rule 35 in acting on concerns of torture, there have been repeated requests made in the House of Lords and in HMIP IRC reports for UKBA to review the way in which Rule 35(3) is implemented.

This has led to the request for independent oversight by the Chief Inspector of HMIP and in the House of Lords. "...It is with that in mind that I asked the BIA [UKBA] to go further than a simple acknowledgement. Perhaps the solution would be to invite an independent person such as Stephen Shaw to carry out a quick audit of the procedures, to see whether the review mentioned by the Minister had adequately addressed the criticism made by the chief inspector, who gets to examine particular IRCs only every few years... The inquiry into procedures at Yarl's Wood highlighted the IND's failure to act when told of allegations of torture, a criticism that the Medical Foundation had been levelling at the Home Office for many months. The last report by the chief inspector, who had been the first to draw attention to the problem, related to February 2006." (HoL 23 November 2007 Lord Avebury.)

The response of Lord Bassam was that this was unnecessary due to HMIP inspections, "HMCIP regularly inspects all removal centres and short-term holding facilities and therefore has ample opportunity to look at issues such as Rule 35 letters—and it does so often." (HoL 23 November 2007 Lord Bassam.)

It had to take the chief inspector of HMIP and repeated calls by Medical Justice and other NGOs to call for an independent audit before it would be considered. On 21 July 2008 HMIP confirmed that they were unable to provide a full in-depth audit when giving evidence to the JCHR: 'I am not really in a position to help you much on that, I am afraid, because we do not inspect the service, we inspect simply the centres. We are looking at what is happening on the ground. I think that is something you may need to raise with other witnesses.' (JCHR mins of evidence, Examination of witnesses.) Instead, HMIP recommended that UKBA undertake an audit; 'UKBA should undertake a comprehensive research audit of the workings of rule 35 with particular attention to whether it is providing the intended important safeguard'. (13/11/09 Yarl's Wood HMIP Detention Centre Report)

First UKBA audit

Following the judgment of D and K, R (on the application of) v SSHD in 2006,¹¹⁴ the then Head of Detention Services, Brian Pollett promised representatives of Medical Justice, to conduct an audit of Rule 35 operations. On 24 October 2006, Baroness Scotland stated in the House of Lords, 'The examination of processes for handling torture reports from centre doctors is under way.'¹¹⁵

An examination of the Detention User Group (DUG) Medical Subgroup (MSG) minutes serves to show the continued efforts by NGOs to raise their concerns about Rule 35. DUG is a forum for NGOs and UKBA Detention Services to discuss detention operational policy and practice. The sub group meets every quarter to discuss medical issues in detention and is chaired by a senior UKBA official. During these meetings, Medical Justice and other NGOs have consistently raised the problems associated with the Rule 35 process and the need for an audit.

In 2007, the audit was conducted by UKBA on 21 Rule 35 reports. The results were never published despite NGO efforts to see the data.

On 25/6/09, an action that arose from a DUG MSG meeting was noted as: "details of UKBA's audit of Rule 35 reports to be sent to Juliet Cohen (Freedom from Torture)". However, details were not sent and in the following meeting on 12/10/09, the following point was made: '1.3 ...there is no formal document – a sample of 21 cases were looked at to see what happened and what the character of the cases were'.

After further promises to release the data, Simon Barrett (the chair of DUG MSG) stated at a DUG meeting on 12/1/10 that the audit data had been lost: '1.1 ...The audit of the Rule 35 process had been commissioned in 2007 by Stuart Hyde, then Senior Director for the Enforcement and Compliance Directorate. Simon Barrett confirmed that efforts to locate details of the audit had proved fruitless.' Thus, since Brian Pollett's initial promise in July 2006 and Baroness Scotland's assertion that examination was underway in October 2006, it was only in January 2010 that UKBA representatives claimed it was lost.

Second UKBA audit

At a similar time, UKBA was also promising to conduct a second audit. On 26/10/09, Phil Schoenenberger of Detention Services UKBA, was confirmed to be overseeing an audit of Rule 35. The audit would be based on an analysis of the responses over a period of two months from 1 November 2009.

On 21/9/10, following significant delay, Freedom from Torture (FTT) made an FOI request for the information but it was denied on the basis that the information would be published by the end of 2010. This never came and on 4/1/11, a further FOI was submitted by FTT and again rejected. On 4 February 2011, over 15 months later, the report was finally published. This is despite the fact that the report contained no substantive analysis and is 13 pages long.

Second Audit Results¹¹⁶

216 Rule 35 reports were reviewed for the 2009 audit on Rule 35. Key findings and our conclusions are listed below.

- ▶ 65% of cases failed to receive a response within the 48 hour time limit, with:
- ▶ One third of the cases got no response at all.
- ▶ One third of the cases got a late response.

Conclusion: case owners fail in their requirements to respond to Rule 35 reports 65% of the time.

- ▶ 9% of the cases resulted in release. However, in these cases, the reason for release was not detailed.
- ▶ 91% of Rule 35 reports failed to secure release.

Conclusion: Most Rule 35 reports are rejected. Rule 35 reports do NOT provide a safeguard to torture survivors. Of the 9%, the fact that a person was released does not indicate that the person was accepted to have been a victim of torture. The exact reasons for release were not examined. It is therefore possible that none of the individuals were released through the Rule 35 process.

- ▶ Stage of case: 47% of the cases were refused and removed.
- ▶ 39% of the cases were refused and ongoing.

Conclusion: No substantive analysis was contained in the audit so UKBA were not able to demonstrate the quality of their responses or decisions.

The results of the audit are extremely disappointing. Very little analysis was conducted and where data was presented on release, no reasons were given: thus the 9% release figure was supplemented by the statement that release may not have been on the basis of torture. There was no analysis of the content of the reports or the quality of the detention review or the assessment of medical evidence. Without this information, the audit is essentially redundant.

The audit report demonstrates how little UKBA understand about the extent to which its systems are failing. For some time, Medical Justice has been demanding the raw data of this audit in order to see where and how the process fails. On 1 March 2011, Nicola Blackwood MP stated: 'To ask the Secretary of State for the Home Department whether the UK Border Agency plans to publish in full an unedited audit of forms completed in accordance with Rule 35 of the Detention Centre Rules on victims of torture and others with special illnesses and conditions'. Damian Green responded: 'The UK Border Agency audit report in relation to Detention Centre Rule 35 will be published in a full and unedited format in the near future.'¹¹⁷ However, we are yet to see this and Simon Barrett, UKBA Chair of DUG MSG, maintained in the DUG MSG meeting on 16/1/12 that the published report is the "unedited" audit.

The audit was a very specific exercise that focused on reviewing response figures and timeframes for execution. However, as noted over the years of criticism, the problems of Rule 35 are not solely administrative. In order to