

**REPORT OF THE INDEPENDENT ADVISORY PANEL  
ON NON-COMPLIANCE MANAGEMENT**

**March 2014**

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## **FOREWORD BY STEPHEN SHAW, CHAIR OF THE PANEL**

### **To the Minister for Immigration and Security**

I am pleased to present the report of the Independent Advisory Panel on Non-Compliance Management. For the past year we have been reviewing plans, commissioned by the Home Office and produced by the National Offender Management Service's National Tactical Response Group, for a new training package for use by detainee custody officers who escort those being removed from the UK. The package will apply to adults (over 18) only, and will cover in-country and overseas escorts.

The need for a bespoke approach to safe escorting had been acknowledged by the Home Office for some time, but was brought into sharp relief in October 2010 with the tragic death under restraint of an Angolan national, Mr Jimmy Mubenga. The report that follows has been informed by the findings of the Inquest into Mr Mubenga's death that was held in 2013.

The new training, the adoption of which we recommend in this report, includes detailed advice on the equipment and holds that may be deployed by escort staff, and the way in which they are to be taught and assessed. But it places even greater emphasis upon measures to reduce anxiety, to de-escalate tension, and to minimise recourse to restraint. Our aim throughout has been to help the Home Office to adopt the best possible restraints package: one that avoids force whenever possible; one that minimises harm and maximises safety. Although no use of force can ever be entirely risk-free, in large part we believe we have achieved that objective.

I pay tribute to my colleagues on the Panel: Dr Daniel Albert, Dr David Chinn, Mr Kevin Lockyer, Dr June-Alison Sealy, and Dr Richard Shepherd for the many hours they have devoted to our work and the insight and experience they have brought to bear. We have debated the issues before us in a remarkably collegiate and consensual manner. I must thank too those Home Office staff who have most helped our deliberations: Ms Karen Abdel-Hady, Mr Akash Chand, Ms Lorraine O'Hagan, Ms Emma Ross, and Ms Mandy Simmons.

The Panel is also most grateful for the support and assistance that NOMS has offered to us. We have spent a lot of time in the company of the National Tactical Response Group, and have developed a huge regard for their skills notwithstanding the challenging critique we have offered to the various iterations of the training package throughout the last twelve months. We have also been greatly assisted by the current escort contractor, Tascor, by those who manage Immigration Removal Centres (all but one of which we have visited), and by those both in this country and abroad who responded to an invitation to submit formal evidence.

The 21<sup>st</sup> Century presents unrivalled opportunities for international travel: whether to visit, to study or to work. Such opportunities are one of the glories of the modern world. But all nation states exercise control over those who wish to enter or stay within their borders; indeed, such control is part of the very definition of national sovereignty. It is entirely legitimate that those who have no right to remain in the United Kingdom should be expected to leave.

What is perhaps most extraordinary is that, in very large part, those without such a right leave voluntarily when required to do so. Even most enforced removals do not involve an escort. And of those who are escorted, the vast majority do so peacefully. Although enforced removal is necessarily coercive, the actual use of force remains a relatively rare occurrence.

If the new Home Office package is rolled out successfully, we hope and expect that the use of force will decline still further. And where its use cannot be avoided, we believe the techniques and training to be offered will ensure it is as safe as any physical intervention ever can be.

It is perhaps surprising that there are no specific international codes or standards on the use of restraint in immigration removal; the Home Office may wish to consider sharing the expertise and experience it has now built up with colleagues in other countries.

**Stephen Shaw CBE**

**Chair, Independent Advisory Panel on Non-Compliance Management**

**March 2014**

## **PART 1 – INTRODUCTION AND CONTEXT**

### **Use of force in removals**

#### Introduction

1.1 The remit of the Panel has been to advise the Home Office on the development of a bespoke training package, covering the use of force, for use by Detainee Custody Officers (DCOs) who escort adults being removed from the UK.

1.2 Our aims have been to ensure that:

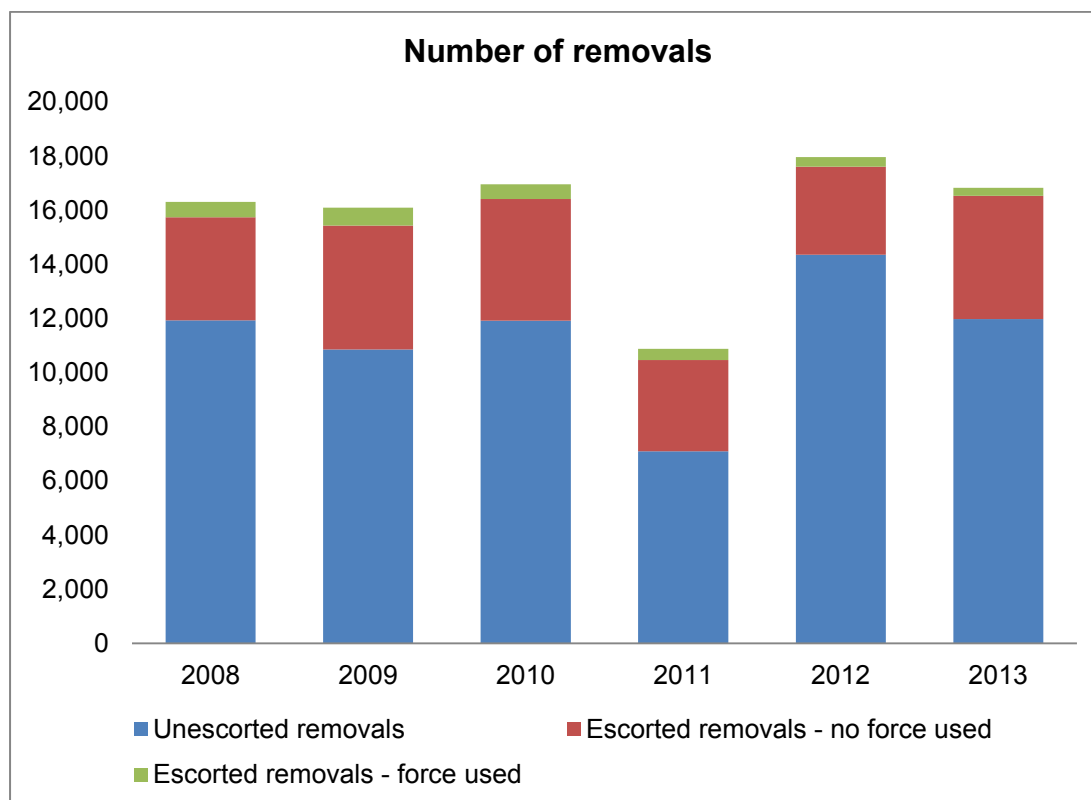
- The UK uses safe and appropriate methods to return individuals to their country of origin, which reflect the diverse range of environments in which they may be required to be deployed (including on board aircraft);
- The needs of those subject to removal are acknowledged and met; and
- The use of force is minimised and only occurs when necessary and proportionate to the circumstances.

1.3 We have sought to ensure that the training developed for DCOs is safe, proportionate to the circumstances that DCOs are likely to face and properly focusses on reducing the anxiety of detainees, de-escalating tension and minimising the use of restraint. And we have worked to support the Home Office desire to achieve a standard of international excellence in the techniques and the training package to support them.

1.4 The Panel recognises that it is entirely legitimate for the UK Government to seek to enforce the removal of those who have no lawful right to remain in the country, whether that is because of an unsuccessful claim for asylum; a failed application for a visa to enter or to remain in the UK or overstaying on an extant visa; or because a criminal conviction means that continued residence in the UK is not conducive to the public good. The work of the Panel has been concerned with the very small minority of such removals which require an escort to ensure that the subject leaves the country and where force is used by escorting staff during that removal.

## Context

1.5 The use of force in the removals process is relatively rare. Figures provided to the Panel by the Home Office illustrate this<sup>1</sup>.



1.6 In respect of escorted removals, force was used in 13% of cases in 2008 and 2009, 11% in 2010, 10% in 2011, 10% in 2012 and 6% in 2013. But where force is used, the evidence suggests that it is used in the final stages of the removal process, predominantly at or before the point of boarding, with around 20% occurring on board the aircraft itself.

1.7 Removals are undertaken by DCOs, employed by private contractors. From 2005 to 2011 the contract was held by G4S, in 2011 it was awarded to Reliance Secure Task Management, now Tascor a subsidiary of Capita.

1.8 Operational instructions governing enforced removals provide that force can be used “to keep a detainee in custody, to prevent violence, to prevent destruction of property of removal centre or of others, and to prevent detainees from seeking to

<sup>1</sup> Figures for 2011 are 1 May – 31 December only

prevent their removal physically or physically interfering with the lawful removal of another detainee". The law requires the use of force to be a last resort and for it to be necessary and proportionate in the circumstances.

1.9 DCOs are currently trained and authorised to use Control and Restraint techniques, developed by HM Prison Service for use in prisons and other custodial environments. These techniques are the only restraint techniques DCOs are authorised to use in respect of adult detainees. All DCOs are required to be trained in Control and Restraint techniques and to be refreshed in their application annually. The techniques, guidance and training methods are specified by the Prison Service and delivered to DCOs by trainers employed by the contractor. Contractors do not have authority to alter either the techniques or the training guidance.

1.10 In respect of children, around 10% of DCOs are trained in an alternative approach, Physical Control in Care, which is designed, as far as possible, not to inflict pain upon young people. PCC comprises a three-phase response consisting of a series of 'holds' that restrict the movement of the child in order to restore calm. This is being replaced by Minimising and Managing Physical Restraint (MMPR) which is currently being rolled out across secure training centres and under 18 young offender institutions. The Home Office are in discussions with the National Offender Management Service to scope the appropriateness of MMPR for Immigration Removal Centres and escorting.

1.11 DCOs also carry rigid bar handcuffs, like those used by the police in England and Wales. The use of rigid bar handcuffs is not included in the Prison Service use of force training or, therefore, in the Control and Restraint training manual. Training in their application and use by DCOs is sourced from the police service.

### **Jimmy Mubenga and the limitations of Control and Restraint**

1.12 The tragic death of Mr Jimmy Mubenga, an Angolan national, after being restrained by DCOs on board a British Airways flight to Luanda at Heathrow Airport in October 2010 brought the limitations of the current restraint techniques into sharp relief.

1.13 The circumstances of Mr Mubenga's death are a matter of public record and do not, therefore, need to be covered in detail here. In brief, Mr Mubenga, having been released from a period in custody following a criminal conviction, was due to be removed to Angola. The removal was due to take place on the afternoon of 12



October 2010. He did not want to be returned to Angola or to be separated from his wife and five children in the United Kingdom.

1.14 About 20 minutes after boarding a scheduled British Airways flight to Angola, Mr Mubenga apparently became non-compliant and the DCOs escorting him used force in order to restrain him. His hands were cuffed behind his back and he was manoeuvred into a seat at the very back row of the plane. Mr Mubenga allegedly continued to struggle until the plane began to taxi towards the runway nearly an hour after he had boarded the aircraft. The DCOs then realised that Mr Mubenga was unconscious and not responding. The plane returned to the stand and paramedics attended and attempted to resuscitate Mr Mubenga. He was transferred to hospital where his death was later confirmed. The post-mortem report concluded that he died from cardiorespiratory collapse, caused by restraint.

1.15 The jury at the inquest into Mr Mubenga's death concluded that it had been caused by the restraint to which he had been subject and that his death was unlawful. The evidence the jury heard was that Mr Mubenga had been held in a "head down" restraint position, using techniques which were not part of the Control and Restraint techniques in which the DCOs involved had been trained. The jury also heard evidence of racist content on the phones of DCOs involved in Mr Mubenga's removal.

1.16 Following an inquest into Mr Mubenga's death, the Assistant Deputy Coroner for Hammersmith and Fulham issued a report under Rule 43 of the Coroner's Rules 1984. The Coroner concluded, amongst other things, that:

- The Control and Restraint training syllabus paid insufficient attention to the delivery of scenario-based training: that is, instruction in the use of the various restraint techniques in circumstances that might be encountered by DCOs in the field
- There was doubt about the suitability of Control and Restraint techniques to the specific circumstances in which DCOs may find themselves, for example in the confined space of an aircraft, or on the steps boarding one
- An unauthorised technique had been used to restrain Mr Mubenga: that is to say, his head had been held down for an extended period of time, while he was in a seated position with his hands cuffed. Although the then contractor's staff had been told not to employ this technique, its use in this case raised concerns about the effectiveness of that prohibition and its enforcement

- Mr Mubenga had been handcuffed with his hands behind his body, despite the well known risks inherent with this technique and advice to DCOs that it was to be avoided for extended periods
- DCOs need to be regularly reminded of the dangers of positional or restraint asphyxia.

1.17 This was not the first time that concerns had been raised about the suitability of Control and Restraint techniques for use in aircraft and other environments in which DCOs may need to use force. In the immediate aftermath of the death of Mr Mubenga, the Home Office had commissioned a review of the current techniques by the National Offender Management Service (NOMS). The Home Affairs Select Committee also noted the limitations of Control and Restraint in 2012<sup>2</sup>. In addition, the Select Committee concluded that it could not be confident that dangerous head-down restraint techniques were never used: a concern which had been raised in Baroness Nuala O’Loan’s earlier report to the United Kingdom Border Agency on the Medical Justice document entitled *Outsourcing Abuse*, which had reported complaints made by detainees about their treatment during the removals process<sup>3</sup>. Such techniques may have been employed because of the perceived lack of utility of the Control and Restraint techniques in which DCOs were trained.

1.18 A number of key concerns were therefore apparent to the Panel and these have informed our work:

- Any framework for the use of force must show due respect to the dignity and rights of those being removed
- There are genuine and widespread concerns about the appropriateness of Control and Restraint techniques in the particular circumstances in which DCOs might be required to use force
- The use of handcuffs, if it is to be continued, needs to be brought within the framework of any new techniques
- DCOs need to be made properly and comprehensively aware of the medical risks involved in the use of restraint techniques
- Training in the use of restraint techniques must be scenario-based
- Any framework for the lawful use of force must be managed, monitored and controlled to ensure that techniques are properly used, in

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<sup>2</sup> Home Affairs Select Committee, Rules Governing Enforced Removals from the UK. Eighteenth Report of Session 2010–12 (HC 563)

<sup>3</sup> Baroness Nuala O’Loan DBE– Report to the United Kingdom Border Agency on “Outsourcing Abuse”, 2010

circumstances where they are wholly justified, and that only those approved techniques are employed.

1.19 We describe below how we have sought to reflect these concerns in our work.

### **International comparators**

1.20 The Panel has had regard to the Standards produced by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). In addressing the issue of immigration removals, the Committee makes it clear that:

- Staff are, on occasion, obliged to use force and means of restraint in order to effectively carry out a deportation; however, the force and the means of restraint used should be no more than is reasonably necessary
- The use of force and/or means of restraint capable of causing positional asphyxia should be avoided whenever possible and that any such use in exceptional circumstances must be the subject of guidelines designed to reduce to a minimum the risks to the health of the person concerned
- Techniques which obstruct the airways (nose and/or mouth) partially or wholly should never be used
- In the event of a flight emergency while the plane is airborne it must be possible to remove immediately any means restricting the freedom of movement of the deportee, upon an order from the crew
- Escort staff must be selected with the utmost care and receive appropriate, specific training designed to reduce the risk of ill-treatment to a minimum
- Effective monitoring systems must be put in place, with appropriate documentation and audio-visual recording considered where appropriate
- It is also beneficial if each deportation operation where difficulties are foreseeable is monitored by a manager from the competent unit, able to interrupt the operation at any time<sup>4</sup>.

1.21 Other jurisdictions vary in the extent to which they follow the broad principles set out in the CPT's guidance. The Panel noted, for example, that the routine use of mechanical restraints appears to be more common in other European jurisdictions

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<sup>4</sup>The CPT standards, CPT/Inf/E (2002) 1 - Rev 2006

and in the United States, with the use of handcuffs and restraint belts (usually of woven nylon manufacture) as a preventative measure rather than in response to specific incidents of violence or other non-compliance.

1.22 We have examined the legal framework and procedures in a number of other jurisdictions. All of those we have examined stress the use of force as a last resort and require such force to be a proportionate response. Most of the frameworks we have examined place greater emphasis on the use of mechanical restraints than do the Prison Service's Control and Restraint techniques. The Canadian approach, for example, relies on the use of "Tri-Fold" restraints (zip-lock style flexible wrist restraints); rigid handcuffs; and a waist restraint belt. Insofar as physical restraint techniques are concerned, these are focussed on breakaway techniques and techniques designed to subdue a subject to enable mechanical restraints to be used. The clear implication is that the more routine use of mechanical restraints creates a more controlled environment.

1.23 The Canadian approach appears to the Panel to be typical of the approach in other jurisdictions.

1.24 What is harder to establish is the extent to which force is employed in other jurisdictions, not least because of the emphasis on the pre-emptory use of mechanical restraints.

### **Development of a new restraint framework**

1.25 Following the death of Mr Mubenga, in 2011 the Home Office formally requested that NOMS' National Tactical Response Group (NTRG) conduct a review of the current restraint techniques being used by escorts, including those used during overseas removals, given the unique environment. Although that review concluded that there was nothing intrinsically unsafe in the current restraint techniques, it noted that improvements could be made, in particular given the diverse physical environments in which the techniques might be required to be used.

1.26 In the wake of the NTRG review, the Home Office commissioned further work from NOMS to develop a bespoke suite of restraint techniques which were fit for purpose and appropriate for use in all environments which are faced by in-country and overseas escort staff (that is, in escort vehicles, at airports, while boarding aircraft and while on board aircraft). The aims of this work, as specified by the Home Office, were to:

- Develop a bespoke restraint training package which meets the needs of UKBA and contractor staff for in-country and overseas escorts
- Write a Fit for Purpose training package and all relevant training material which is externally accredited by Skills for Justice or their equivalent
- Test the restraint system through an independent panel of experts and have it signed off by the relevant Home Office Minister
- Write an evaluation criterion to measure the success of the package and continue to review its delivery
- Develop a package to be used for individuals 18 years and over and to cover all aspects of the escorting process from collection at an Immigration Removal Centre or holding centre to handover to destination authorities.

1.27 It is this work which the Panel has considered and on which it now reports.

## **PART 2 – THE PANEL’S APPROACH**

### **Terms of reference**

2.1 The Panel’s terms of reference were set by Home Office Ministers. They are:

- i. As required by the UK Border Agency<sup>5</sup>, assess the quality and safety of systems of restraint (and equipment) commissioned for use on escort vehicles, at airports, onto, on board and off the aircraft designed by the National Tactical Response Group in the National Offender Management Service. A joint working agreement will be drawn up by UKBA and NOMS setting out how this process will be managed.
- ii. Take account of national/international medical evidence regarding restraint techniques and report findings to the UK Border Agency.
- iii. Reassess physical restraint techniques and medical advice as agreed with the UK Border Agency.

2.2 With the agreement of the Home Office, the Panel has approached the relatively narrow task of assessing the quality and safety of proposed systems of restraint within a wider context. The Panel’s very strong view is that it is not enough to conclude that certain restraint techniques are, or are not, safe to be employed. It is also necessary to have regard to the context in which they are used and the way in which their use is governed and managed. To that end, therefore, the Panel has sought to ensure that those tasked with developing a safe system of restraint have done so with appropriate emphasis on de-escalation and positive behaviour management. We also make recommendations in relation to governance and management of the new restraint system.

### **Our principles**

2.3 The Panel was appointed by Ministers in January 2013. Panel members undertook a series of familiarisation and induction activities. These included:

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<sup>5</sup> We have retained the term UK Border Agency (UKBA) when quoting our terms of reference. Elsewhere, following the abolition of UKBA as a separate entity, we simply refer to the Home Office.

- Visits to a number of Immigration Removal Centres, including observing the use of body-worn cameras
- Observation of a number of in-country detainee escorts
- Observation of a number of removals on charter flights, including the Chairman accompanying one flight to its destination in Nigeria
- Observation of a number of removals on scheduled flights
- Observation of a number of in-country enforcement activities.

2.4 The Panel met for the first time on 25 March 2013 and determined that its first priority should be to establish and to agree a set of principles which would inform its approach to consideration of a proposed new restraints system. Those principles are set out below. We believe that the management of detainees (as with any other individual in the custody of the state) must be underpinned by clear ethical foundations. Any arrangements that govern the type of force which may be used against such individuals, and the circumstances in which it may be employed, should similarly be driven by clear ethical considerations. Such ethical principles should reinforce the legal framework for the use of force, but should also drive correct behaviour on the part of those exercising coercive functions on behalf of the state. Such an approach enables decisions about when and how to use restraint to be based on both the facts of particular situations as well as shared values.

### Principles

2.5 The Panel concluded that it was necessary to take an end-to-end approach to its task. The Panel considered that it was not sufficient simply to advise on restraint methods and equipment without considering the detainees' journey through the system, their personal characteristics (for example, existing mental health problems; language and culture; past criminality; the uncertainty and anxiety engendered by the removal process), and their treatment from the moment they were told they had no legal right to remain in the country. The Panel also concluded that it needed to consider the culture of the Home Office and those companies to whom it subcontracts the responsibility to hold and remove detainees. It should have regard to the recruitment, training, hours of work, and turnover of staff working for those companies. And it should assess whether there were other measures that could reduce the use of restraint, and ensure that it is only used when necessary and proportionate to the circumstances, and in a manner that is as safe as it is possible to achieve.

2.6 The critical need to take account of the characteristics and circumstances of those who may be subject to restraint has been acknowledged by the Ministry of Justice in its design of the system of MMPR (Minimising and Managing Physical

Restraint) that is being introduced into all Young Offender Institutions and Secure Training Centres. Likewise, the focus on reducing anxiety, de-escalating tension and minimising recourse to force. Two relevant extracts from *Minimising and Managing Physical Restraint 2012, Volume 1: Introduction and Instructor Guidance* read as follows:

“Young people detained in custody have a wide range of needs, often at a higher level of intensity than that within the rest of the general population. Their needs often include issues to do with substance misuse, poor relationship skills, lack of formal education or training, physical or mental health problems, behavioural disorders, special educational needs and cultural involvement in deviant or criminal behaviour. Many display a combination of these behaviours and needs. Others may have suffered substantial neglect, physical, sexual or emotional abuse.”

“Restraint minimisation is central to the concept of safe custodial management. Living in a safe environment reduces stress and anxiety, promoting the values of the establishment and encouraging public confidence in the work conducted by those tasked with caring for young people in a secure setting. The consistent implementation of a positive, effective, young person centred, behaviour management programme is essential when providing staff with appropriate ways of responding to all levels of disruption, distress or violence. It is further recognised that the implementation of a positive, effective, young person centred behaviour management programme can reduce tension and challenges within the environment and reduce the need to confront situations in ways which may result in the possible application of restraint.”

2.7 The Panel fully endorsed these conclusions and, taking account of the circumstances surrounding the forcible removal of adults from the UK, sought to apply them to the context of its work as follows:

**Detainees facing removal have a wide range of needs, often at a higher level of intensity than that within the rest of the general population. Their needs often include issues to do with language, culture, uncertainty, indebtedness to people-smugglers, physical or mental health problems, behavioural disorders, involvement in criminal behaviour, and enforced separation from family and friends. They may have been exploited by economic overseers or by traffickers. Others may have suffered physical or emotional trauma in the countries to which they are being returned and/or they may fear for their safety when they return.**



**Restraint minimisation is central to the concept of safe detainee management. Feeling safe reduces stress and anxiety, promoting the values of the Home Office and encouraging public confidence in the work conducted by those tasked with removing those with no right to remain in the UK. The consistent implementation of a positive, effective, detainee centred, behaviour management programme is essential when providing staff with appropriate ways of responding to all levels of disruption, distress or violence. It is further recognised that the implementation of a positive, effective, detainee centred behaviour management programme can reduce tension and challenges and reduce the need to confront situations in ways which may result in the possible application of restraint.**

2.8 Like the Restraint Advisory Board (RAB) that advised the Ministry of Justice as it developed MMPR – and to whose advice and example the Panel is greatly indebted – the Panel concluded that a clear ethical framework should underpin the use of force during removals (and indeed at other stages of immigration enforcement that are not within our terms of reference). That framework should comprise a set of values that then determine proper conduct and standards and which should be a core element in any training package. Only in this way will the objectives of proportionality and effective risk management be achieved.

2.9 Experience in the Prison Service has demonstrated the success of a values-based ‘decency agenda’. Recent events in the National Health Service have also emphasised the importance of such an approach: the concepts of respect and dignity, compassion, and a commitment to the quality of care, all from the NHS constitution, have a direct read-across to immigration detention and removal.

2.10 The Panel identified the following core values to inform its work and which in turn should inform the Home Office’s approach to removal:

- A strong ethical framework must be the basis of any system that permits the use of physical force (whether it be the deployment of particular equipment or the use of particular holds)
- Everyone – both staff and detainees – has a right to be treated fairly and with respect
- Everyone – both staff and detainees – has a right to protection from harm and for their welfare to be promoted

- Detainees are owed a duty of care by virtue of their detention. We require a detainee-centred approach on the part of escorts, while mindful that detainees themselves must take responsibility for their own actions
- All use of force necessarily contains some risk. For that reason, the use of force should always be the last, not the first, resort. The law determines that no more force should be used than is necessary and that force must not be applied for longer than necessary
- In promoting safe restraint procedures, at least equal emphasis must be given in training to restraint minimisation and measures to reduce anxiety and de-escalate tension at all times
- The quality of initial and refresher training is critical to reducing the use of restraint and ensuring that, when restraint is used, it is as safe as it possibly can be
- Issues of communication, cultural awareness, and an understanding of the particular needs and insecurities of those facing enforced removal are core elements of an effective training programme
- As the RAB acknowledged, a safe system of restraint requires effective governance and independent validation and continuing oversight.

2.11 The Restraint Advisory Board identified the following elements of good practice in decision-making against which to assess evidence of decision-making in the use of restraint (in turn, this was based on a Welsh Health Circular, WHC (2007) 076: *An ethical framework for commissioning health services to achieve the healthcare standards for Wales*):

- Openness and transparency
- Inclusiveness
- Respect
- Proportionality

- Accountability
- Reasonableness and lawfulness
- Effectiveness and efficiency
- Exercising a duty of care
- Reviews and complaints.

2.12 While endorsing this approach, the Panel added the following riders in the context of immigration removal:

- Unlike in an institution, the use of restraints may be an act carried out in public
- Decisions about use of restraints may have to be taken more speedily (say, in the case of disruption on an aeroplane)
- Those escorting detainees have a far shorter opportunity than those in an institution of getting to know those in their charge (contact between staff and detainee is necessarily self-limiting)
- Compared with an institution, restraints may have to remain in place for a longer period
- The physical lay-out of transport vehicles, entry steps onto planes, and the seat configurations on the planes themselves necessarily present problems that are not likely to apply elsewhere
- Notwithstanding the Panel's emphasis upon an ethical framework and approach, we are sympathetic to the development of technological approaches to the safeguarding of both staff and detainees – in particular, the use of video-recording (although the Panel was conscious that, as some videoing would take place in public spaces at airports and on board planes, this is not a matter solely within the gift of the Home Office)

- The Panel believes that an holistic approach must be adopted to the detainee experience if restraint is to be minimised; moreover, at least equal emphasis must be given in training to restraint minimisation and the reduction of anxiety and tension, and to the particular circumstances, needs and insecurities of those facing enforced removal.

2.13 These principles have informed the Panel's approach to its work and have provided a critical framework against which to judge the proposed restraint system. Most importantly, the principles provide a clear ethical framework within which to consider specific proposals. We have also sought to ensure that these principles, and the clear ethical framework which they create, permeate the proposed new system of restraint.

### **Assessment criteria**

2.14 Having identified the values and principles that should underpin any system of restraint the Panel's second priority was to formulate the criteria that it would use to assess the adequacy of the operational specifics of any restraint system it was invited to assess.

2.15 The Panel differentiated between **contextual** and **situational** criteria. Contextual criteria linked specifically to the principles set out above. That is, they provided a basis against which to assess the general and specific approach to the use of force as set out in any proposed set of techniques. Situational criteria provide a basis on which the Panel would assure itself that specific techniques are safe and appropriate in a range of situations, reflecting in particular the varied and challenging physical environments in which restraint techniques may need to be employed.

### Contextual criteria

2.16 The Panel would need to satisfy itself that any proposed techniques reflected the core values set out in paragraph 2.10 above.

2.17 Translating these values into assessment criteria, the Panel determined to ask the following questions of any proposed system of restraint:

- Is it based on the use of force as part of an overall approach to behaviour management, located within an approach to staff training and development which stresses de-escalation and soft approaches to compliance management?
- Does the framework for the use of force stress proportionality, with reference to the risk of harm (to the detainee and others)?
- Is it underpinned by effective governance and independent validation and continuing oversight?
- Is it supported by a training package which adequately addresses issues of communication, cultural awareness and related issues?

### Situational criteria

2.18. The Panel has been aware that any restraint techniques may need to be employed in a range of challenging physical environments, including in vehicles, whilst boarding aircraft and on board passenger aircraft, including in flight. Therefore for each specific technique to be recommended, the Panel determined to ask the following questions:

- Is it safe, effective and ethically acceptable in all of the contexts in which it might be employed and, if it is proposed to be used in some physical environment and not others, is any distinction on applicability clear?
- Are there clear operational definitions of and guidance on the nature and duration of each proposed restraint technique?
- Is each proposed restraint technique straightforward to execute in practice? (The Panel examined the technical complexity of each restraint technique, such as the number of separate steps involved in its application.)
- What is the potential margin for error of each restraint technique and to what extent are the risks inherent in its use exacerbated if it is

executed incorrectly? Do these risks change across the various physical environments in which the techniques might be employed?

- Are any proposed mechanical restraints (handcuffs etc) safe, effective and ethically acceptable in all of the contexts in which they might be employed and, if it is proposed that they should be used in some physical environments and not others, is any distinction on applicability clear?
- Are the proposed training materials appropriate and, to the extent that it is possible for the Panel to judge, will they be fit for purpose?

2.19 These criteria provided the Panel with a consistent set of practical requirements for any proposed restraint system to meet if it was to be considered safe, ethical and appropriate. The criteria have equal status but at the heart of the new approach are restraint holds and positions which have been subject to the most rigorous scrutiny possible for their relative safety and to realistic assessment of the risks associated with their use.

2.20 The Panel also noted the findings of the *Review of the Medical Theories and Research Relating to Restraint Related Deaths*, a report by Caring Solutions (UK) and the University of Central Lancashire, commissioned by the Independent Advisory Panel on Deaths in Custody and which we have found particularly helpful. The Review says:

“Throughout the literature there is evidence that certain groups are more vulnerable to risks when being restrained, whether because of biophysiological, interpersonal or situational factors or attitudinal factors. These groups are those with serious mental illness or learning disabilities, those from Black and Minority Ethnic communities, those with a high body mass index; men age 30-40 years and young people (under the age of 20).”

2.21 The review continues:

“The physiology of deaths under restraint in any setting where there is a duty of care on the state is difficult to investigate as internationally the numbers of restraint-related deaths are small and classification by pathologists varies in different countries. Findings from experimental studies are not completely valid as there is limited generalisability to the real situation. The studies in this review which have increased validity are those with large numbers of

retrospective case histories and autopsies but these are mostly published in literature from the USA. The frequency and acceptance of excited delirium syndrome as a cause of death in restraint incidents in this body of literature, and the use of 'hobble' restraint methods as the most common technique in these cases, make inferences and associations with UK deaths in custody more problematic.

"Simply restraining an individual in a prone position may be seen as restricting the ability to breathe, so lessening the supply of oxygen to meet the body's demands. Restriction of the neck, chest wall or diaphragm can also occur when the head is forced downwards towards the knees. Laboured breathing and cessation of resistance may demonstrate collapse and indicate a medical emergency rather than cooperation from the individual. Other theories, besides positional asphyxia, were examined. These included acute behavioural disturbance and excited delirium, stress-related cardiomyopathy and the role of alcohol and drug abuse.

"Six of the thirty eight deaths noted in this report involved individuals with pre-existing conditions that may have increased the risk of cardiac arrest: e.g. ischaemic heart disease, diabetes and four people suffered from epilepsy. Sixteen cases had a history of mental illness, specifically psychosis. Positional asphyxia appears to be implicated in at least twenty six deaths (whether or not given as a verdict) because of struggle/physical stressors prior to restraint, number of staff involved and, in particular, because of the length of time of the restraint and position of the individual.

"Expert opinion and reviews were sought. There was consensus that there was a gap in reporting restraint-related deaths. Overall concerns were raised as to whether direct cause and effect can be determined in deaths as they often involve a mixture of complex factors and situations. **The general view was that it should be assumed that everyone is at a potential risk rather than try to profile individuals only medically at risk. This is a class of death not fully understood and is multifactorial.**" (Emphasis added)

## How we worked

2.22 As noted at paragraph 2.3 above, the Panel undertook a range of induction activities immediately after appointment in order to develop an understanding of the removal process and the wider context of immigration enforcement. These activities included observation of the processes from arrest, through detention in an Immigration Removal Centre, and ultimately to removal from the UK on both charter and scheduled airline flights. These observations were essential to the Panel's

understanding of the circumstances of detainees and the context in which DCOs may be required to manage challenging detainee behaviour.

2.23 The Panel determined, in the light of these observations, that it was essential not to see the process of removal in isolation. Any individual subject to removal action is at the end of a process which may have begun some weeks or months earlier, and which may have involved arrest and a (sometimes lengthy) period of detention in an Immigration Removal Centre before removal action is undertaken. For the detainee, the process of removal is, therefore, the last stage in what may have been a lengthy and stressful journey. DCOs charged with effecting the removal of an individual need to be both conscious of their role in an end-to-end process, not least because it is directly relevant to understanding, and managing, non-compliance.

2.24 The Panel had no role in commissioning the development of the proposed package of restraint techniques, the development of which was underway before the Panel was appointed. But the Panel did meet with the NOMS staff developing the package early in its programme of meetings. This was both in order to understand progress and to ensure that the staff concerned were aware of the approach the Panel would be taking.

2.25 Although the Panel understands the need for the Home Office to have acted promptly to review the restraint techniques available to DCOs and to commission work on the proposed new techniques, we think that a more considered approach might have achieved better, and speedier, results. In particular, the Home Office might have considered a competitive process for sourcing the proposed techniques and might, too, have included an independent element in the selection and assessment process for the chosen provider. This is not to criticise NOMS, which has worked hard and imaginatively to produce a good package of techniques, but there would have been potential value in looking beyond the correctional services for advice and securing independent input early in the process.

2.26 Even if NOMS were to have emerged as the successful bidders, such an approach would have led to a clearer specification of expected outputs and a timetable for their delivery. It might also have encouraged a distinction between the design of appropriate techniques and the design of appropriate training materials. Finally, such an approach would have signalled a more rigorous process of project management than we have observed.

2.26 We therefore **recommend** that any further revisions of the proposed restraint package, or separate commissioning of bespoke arrangements for detainees aged under 18 years, should be subject to a competitive commissioning process.



2.27 The Panel's assessment of the proposed restraint package was undertaken through a combination of reviewing written material and observing demonstrations of the proposed techniques and associated equipment.

2.28 The written material produced by NOMS staff that we considered included volumes of guidance material designed for trainers' use in delivering instruction in the proposed techniques, along with learners' workbooks and associated slides. (These volumes have been combined into a single manual – at our suggestion – in the final version we have approved.) The Panel judged whether the training material:

- Adequately demonstrated the proposed techniques and did so using realistic and appropriate scenario-based training, where this was appropriate
- Established an appropriate legal and ethical context for instruction in the proposed techniques
- Properly reflected health considerations and the safety of detainees and others
- Constituted well-presented and appropriate learning resources, that were likely to be effective with the intended audience.

2.29 Each of the volumes of guidance material was considered in detail by the Panel, and responses provided, in writing, to NOMS. Each volume went through a number of iterations before approval by the Panel.

2.30 In addition to consideration of the written guidance, the Panel received demonstrations of the proposed techniques on 17 and 18 June, 2 December 2013 and 3 February 2014. These demonstrations were undertaken at the Virgin Atlantic training centre, involving the use of an airline simulator training environment, and at the Tascor depot at Heston, involving the vehicles in use by the contractor.

2.31 The Panel considered a range of other evidence. A list of reports and other publications that the Panel took into consideration is at **Appendix 2**. The Chair of the Panel also sought views from a range of interested parties. Those that responded are listed at **Appendix 3**, and a summary of their responses is at **Appendix 4**.

## PART 3 – A SAFE FRAMEWORK FOR THE USE OF FORCE

### Context

3.1 As set out in detail in Part 2 above, the Panel took the view that its work should be underpinned by a clear values-based framework. Such a framework recognised that the use of force by Detainee Custody Officers did not occur in isolation and that it was not sufficient, therefore, to focus on the narrow issue of whether particular restraint techniques were, in themselves, safe.

3.2 The Panel was, therefore, clear that any proposed new framework for the use of force would need to:

- Have at its heart the requirement that force only be used when it is legally justifiable: in other words, when it is necessary, reasonable and proportionate
- Framed by a clear focus on de-escalation and the use of techniques short of force wherever possible
- Reflect the particular circumstances of detainees at the stage in the removal process where force may become necessary
- Be safe, where force was necessary, in the circumstances in which DCOs might find themselves (for example, on aircraft).

3.3 The Panel was also acutely conscious of the Coroner's comments following the Mubenga inquest. In her Rule 43 letter to the Secretary of State, the Coroner made, *inter alia*, a number of important points relating to the use of force by DCOs, and the training required to underpin it. As well as concluding that the current Control and Restraint training did not pay sufficient attention to the physical environments in which DCOs were required to operate, the Coroner raised fundamental concerns about bad practice by DCOs. In particular:

“the evidence at the Inquest revealed, distinct from concerns about the adequacy of C&R or its training, the existence of bad practice. In particular, the evidence disclosed the existence of a practice known as “*Carpet Karaoke*.” This referred to a technique adopted for controlling disruptive deportees in an aircraft seat. It comprised pushing a deportee's head

downwards so that any noise that he or she made would be projected towards the floor (*"singing to the carpet"*)."

3.4 This appalling practice, in the Panel's opinion, reflected two fundamental failures: firstly, a failure to ensure that DCOs were trained in techniques that enabled them safely to control violent, aggressive or disruptive detainees on board an aircraft; and secondly, a failure to act ethically and in a way which seeks to preserve the rights and dignities of the detainee. The Panel has been clear, therefore, that it is not enough simply to replace one set of restraint techniques with another set which may be safer, from a narrow medical perspective. It is also necessary to ensure that, insofar as it is possible through a programme of training, the culture amongst DCOs is one in which detainees are treated as individuals and their rights and dignities are respected and where the use of force is seen absolutely as a last resort.

3.5 It is necessary for such a culture to exist amongst DCOs as a prerequisite for ensuring that the decisions they take in respect of individual detainees are informed both by the **facts** of the situation and by the correct **values**. This is what the Restraint Advisory Board referred to as values-based practice and it is an approach the Panel endorses and has sought to extend to the current situation.

### **An effective end-to-end process**

3.6 The process of removing a detainee is not an isolated episode. Nor is that individual's management through the immigration system a series of unconnected episodes. It is, especially for the detainees themselves, a single process, which may have begun with apprehension by the authorities and which continues through to eventual removal. The experience of the detainee must be understood by staff and others involved at each stage of the process towards removal.

3.7 At every point, the detainee retains the right and expectation to be treated decently, in accordance with the law, and in a way which preserves his or her fundamental rights. For DCOs effecting a removal, and who may be faced with a detainee who is not compliant, or who shows signs of aggression, this means:

- That they must understand this wider context and have an appropriate appreciation of the experience of the detainee
- That they must be informed of relevant information about the detainee, in order that they may make properly informed decisions concerning his or her management

- That actions and behaviours, on the part of the detainee, can be put in their proper context.

3.8 The Panel has, therefore, expected these requirements to influence the design of a new use of force framework but, more importantly, to imbue the delivery of the training for such a framework.

### **Minimising the use of force**

3.9 In an ideal world, it would not be necessary to use force to secure the lawful removal of individuals from the UK. But the Panel recognises that the world is not ideal and that there will be occasions in which DCOs have no choice other than to use force to manage detainees who offer violence or otherwise do not comply with what is lawfully required of them.

3.10 Legally and ethically, the Panel is clear that the use of force must always be a last resort. But simply to say as much is not, in the Panel's opinion, good enough. To be effective in achieving this aim, any framework for the use of force must be supported by:

- Effective training which reflects the context within which DCOs are working, and the impact that their actions might have on detainees
- A clear focus on the rights of detainees
- Explicit expectations about the culture, behaviour and values of DCOs
- Effective training in the skills necessary to de-escalate potentially violent situations
- Techniques that are sufficiently effective, in the particular contexts of a removal, to ensure that DCOs do not feel the need to use unauthorised techniques.

3.11 The Panel has sought to ensure, therefore, that the Home Office has worked, with the NOMS experts it has commissioned, to develop both a set of restraint techniques which are intrinsically as safe as possible (and which may be safely employed in a realistic range of physical environments) and a training package which is designed to instil the right values and behaviours in those who receive it.

3.12 More broadly, the importance of the process leading up to the final removal of a detainee – the provision of complete and timely information, treatment while in detention and so on – has a material bearing on behaviour at the point of removal. The Panel has observed inconsistency of practice in preparation for removal at the IRCs we have visited. The Panel therefore **recommends** that the Home Office review these practices to ensure consistency and an approach which is based in good practice.

### **Minimising risk**

3.13 As did the Restraint Advisory Board before us, the Panel has taken a precautionary approach to the treatment of the medical risks arising from restraint. We have proceeded on the basis that any individual is at risk as a result of being restrained, rather than to try to profile specific types of risk for particular types of person.

3.14 The Panel noted the approach taken by the Restraint Advisory Board, which rested on a particularly thorough and detailed approach, judging the risk of each proposed technique under nine types of potentially adverse impact of reducing gravity:

- involving airway
- with breathing
- with circulation
- fractures/dislocation
- nerve injury
- ligament/tendon damage
- soft tissue swelling
- muscle damage
- bruising.

3.15 For each technique, risks were considered against two axes: the likelihood of the specified risk (that is, the probability of it happening) and the consequences (impact) if it did. Each risk was marked on a scale from 1 to 5 against these two axes.

3.16 The Restraint Advisory Board considered detailed assessments for each proposed technique, prepared by NOMS, with expert clinical advice.

3.17 The Panel has taken a slightly different approach to the assessment of risk than that adopted by the Restraint Advisory Board. First, the Panel concluded that it was both possible and preferable to take a less complex approach, without compromising the strength and validity of the outcomes. And second, the Panel concluded that it should conduct its own assessment of the risk of the proposed techniques, rather than rely on risk assessments undertaken on NOMS' behalf. We did so for two reasons:

- To satisfy ourselves that the risk assessments undertaken by NOMS in developing and recommending the proposed techniques were appropriate and applied with due diligence
- To fulfil our obligations to the Secretary of State to provide demonstrably independent advice on the safety and suitability of the proposed techniques, drawing on the clinical and other expertise of the Panel.

3.18 The Panel therefore devised a less complex, but robust, risk assessment framework which was used to assess the risk of each of the proposed restraint techniques. For each technique risks were considered against three areas of potential clinical harm:

- Risk of compromise of airway, breathing or circulation
- Risk of fracture or dislocation; and
- Risk of soft tissue and nerve injury.

3.19 Against each risk factor, the risk of each technique was assessed as High, Medium, Low or Nil. In each case where the risk was other than Nil, the Panel identified appropriate mitigation.

3.20 In each case, the Panel considered (in the light of demonstrations by NOMS) the specific risks posed by the use of the proposed techniques in the specific circumstances in which DCOs were likely to be working: for example in aircraft and in escort vehicles.

3.21 The Panel's conclusions on the risks associated with each of the proposed techniques are set out in Part 4 below.

3.22 As important as it has been for the Panel to assess the risk presented by each of the techniques proposed by NOMS, we believe that key to minimising the risks associated with the use of the techniques is the effective training of DCOs combined with robust systems of governance to ensure that force is used correctly (and only when necessary).

3.23 The Panel has been pleased with the focus NOMS has placed on providing a strong medical context to the delivery of training in the proposed techniques. The Panel has worked to support NOMS to ensure that the medical element of the proposed training:

- Is delivered in a way which will engage DCOs and ensure effective learning
- Focuses on the key clinical risks
- Reinforces the need for techniques to be applied correctly and with any limitations as to the duration or circumstances of application made absolutely clear.

3.24 The Panel's conclusions on governance are set out in detail in Part 5 below, but in the context of the minimisation of risk the Panel is clear that significant risk arises both from the incorrect use of approved techniques and the use of unapproved techniques. In either case, the regular review of use of force incidents, effective management supervision, and thorough investigation of incidents in which unlawful force is alleged, are critical to developing and embedding a culture in which risk is minimised.

## **PART 4 – THE PROPOSED TECHNIQUES**

### **Context**

4.1 In assessing techniques proposed by NOMS, the Panel has:

- Considered a number of iterations of the proposed training materials
- Attended three demonstration sessions, covering all of the proposed techniques and their use in a number of relevant environments (including escort contractor vehicles and the Virgin Atlantic training facility at Gatwick)
- Designed and applied a risk assessment matrix to each of the techniques, as described in Part 3 above.

4.2 For each of the proposed techniques, the Panel asked the questions set out in paragraph 2.18 above. That is:

- Is it safe, effective and ethically acceptable in all of the contexts in which it might be employed and, if it is proposed to be used in some physical environment and not others, is any distinction on applicability clear?
- Are there clear operational definitions of and guidance on the nature and duration of each proposed restraint technique?
- Is each proposed restraint technique straightforward to execute in practice? (The Panel has examined the technical complexity of each restraint technique, such as the number of separate steps involved in its application.)
- What is the potential margin for error of each restraint technique and to what extent are the risks inherent in its use exacerbated if it is executed incorrectly? Do these risks change across the various physical environments in which the techniques might be employed?



- Are any proposed mechanical restraints (handcuffs etc) safe, effective and ethically acceptable in all of the contexts in which they might be employed and, if it is proposed that they should be used in some physical environment and not others, is any distinction on applicability clear?
- Are the proposed training materials appropriate and, to the extent that it is possible for the Panel to judge, will they be fit for purpose?

### **The proposed techniques**

4.3 NOMS revised the proposed core techniques in the light of the Panel's comments and, after several iterations, the Panel was asked to approve the following 12 core techniques:

1. Guiding hold
2. Figure of four arm hold
3. Isolating the arm
4. Head hold
5. Arm hold
6. Inverted wrist
7. Mandibular angle technique
8. Wrist flexion
9. Thumb flexion
10. Detainee on the ground – supine
11. Detainee on the ground – prone
12. Restraint recovery position.

4.4 In addition, the Panel was asked to approve four items of restraint equipment:

1. Waist restraint belt
2. Leg restraints
3. Rigid bar handcuffs
4. Mobile chair.

### **Pain inducing techniques**

4.5 The Panel has given consideration to the principle of the use of restraint techniques designed solely to induce pain in the subject in order to secure compliance. This is in contrast to restraint techniques that may be painful in their application, but which are intended to enable a DCO to achieve physical control of a detainee. Pain inducing techniques are not painful as a side-effect: they use pain in order to secure compliance.

4.6 The use of pain to secure compliance raises clear ethical issues and the Panel has considered these techniques carefully.

4.7 We have concluded that there are circumstances in which pain inducing techniques are both necessary and justifiable. In the Panel's judgement, they are justifiable only when:

- The use of such techniques is the safest and most appropriate way of dealing with an incident, or of gaining control of a violent subject. In such circumstances, the use of pain inducing techniques to achieve compliance would carry less risk than other means. For example, the use of a pain inducing technique may be the least risky way of releasing a detainee's grip on a person or on a railing or similar object

- They are used only when absolutely necessary and when alternative approaches may cause greater harm
- They are used for the shortest possible period and repeat applications of the same technique are avoided.

4.8 In these circumstances, the Panel has concluded that pain inducing techniques are justifiable, in the interests of reducing the risk of injury to detainees and to staff. But we have been clear about the circumstances in which we consider that their use is acceptable and NOMS has accepted our view on the maximum duration of application of the relevant techniques.

4.9 To date, the Panel has not been presented with an academically sound, peer-reviewed study to persuade us that pain-compliant techniques can be wholly dispensed with. We also note that pain compliance remains an aspect of MMPR. We have not seen evidence that ethically acceptable, pain-free techniques could successfully form part of this package. Were such evidence to be forthcoming in the future, it would need to be taken very seriously by the Home Office.

## **Risk assessment**

4.10 As described at paragraph 3.18 above, the Panel applied a simple but rigorous approach to assessing the risk of each of the techniques proposed by NOMS. A summary of the risks assessed in each case is set out below.

4.11 As noted above, for each proposed technique, the Panel assessed the risk as High, Medium, Low or Nil against three dimensions of potential harm to the subject: airway, breathing and circulation; fracture or dislocation; and soft tissue injuries.

## The techniques

### Guiding hold

	<b>Airway, breathing &amp; circulation</b>	<b>Fracture or dislocation</b>	<b>Soft tissue injury</b>	<b>Comments</b>
<b>Assessed risk</b>	Nil	Nil	Nil	None

4.12 A simple technique, involving a technical use of force (in that it involves guiding the subject by the arm). The Panel could see no objections to inclusion in the proposed package and judged there to be no risk involved in its use.

### Figure of four arm hold

	<b>Airway, breathing &amp; circulation</b>	<b>Fracture or dislocation</b>	<b>Soft tissue injury</b>	<b>Comments</b>
<b>Assessed risk</b>	Nil	Nil	Low	Mild risk of bruising

4.13 A hold used in the current C&R and MMPR restraint systems. The Panel concluded that the hold was safe, carrying only a minor risk of superficial bruising.

### Isolating the arm

	<b>Airway, breathing &amp; circulation</b>	<b>Fracture or dislocation</b>	<b>Soft tissue injury</b>	<b>Comments</b>
<b>Assessed risk</b>	Nil	Low	Low	1. A risk of injury to the elbow joint as a result of over-extension

				2. Mild risk of bruising
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4.14 A hold used in the current C&R and MMPR restraint systems. The Panel concluded that the hold was safe, with a minor risk of injury to the elbow if the technique was incorrectly applied and the elbow joint over-extended.

#### Head hold

	<b>Airway, breathing &amp; circulation</b>	<b>Fracture or dislocation</b>	<b>Soft tissue injury</b>	<b>Comments</b>
<b>Assessed risk</b>	Low	Nil	Low	<p>1. Risk to airway, breathing or circulation is nil if correctly applied. The risk comes as a result of misapplication – it is essential, therefore, that DCOs employ the technique correctly, in particular when the subject is struggling.</p> <p>2. Mild risk of bruising</p>

4.15 The Panel accepts that there is a need for the approved system of restraint to contain an appropriate technique for the restraint of the subject's head. Such a technique may serve two purposes: to support the detainee's head while (for example) they are moved under restraint; or to control the movement of the subject's head in order to prevent injury to others, including the escorting staff.

4.16 The employment of a technique to control the subject's head in either of these circumstances forms part of the traditional Control and Restraint techniques and is part of the MMPR package. There is, therefore, nothing unique in its use by DCOs.

4.17 The Panel accepts that an appropriate head control technique is a critical element of a safe and coherent restraint system. If correctly applied, the proposed approach, when applied to a standing subject, is safe and the risks of injury (as noted above) are small. But the margin for error involved with this technique is also very small. The report of the Restraint Advisory Board presented evidence, from the young persons' custodial estate, which suggested a relatively high proportion of restraint incidents which were examined under the "exception reporting" process then in place, were caused by complaints of difficulty in breathing while head control was being applied.

4.18 The training material prepared by NOMS underlines this point:

"Instructors must at all times emphasise the correct position of the hands on the chin ensuring that they do not interfere with or compromise breathing and continue to emphasise communication with a view to removing the hand from the chin at the earliest opportunity. Instructors should also bear in mind that bringing the head forward/down also decreases the angle between the chest and lower limbs and can affect lung inflation and may contribute toward breathing difficulties."

4.19 The Panel strongly endorses these cautionary messages.

4.20 The Panel has concluded that a technique for controlling the subject's head is a necessary part of a safe system of restraint and that, correctly applied, the technique proposed by NOMS is appropriate. But we note that the margin for error makes it essential that DCOs are properly trained in its application; that they are properly and comprehensively apprised of its risks; and that their training is regularly refreshed.

4.21 The Panel was also satisfied that NOMS had paid specific and appropriate attention to the need for varied head control techniques to be applied in seated situations, in vehicles and on aircraft. In both cases, the proposed techniques involve support of the subject's head from the side, not from the rear or front. The Panel was satisfied that the approach proposed was sufficiently safe and that it actively discouraged the deployment of techniques involving restraint of the head from either the rear or the front, both of which pose significant risks of obstructing the subject's breathing.

#### Arm hold

	<b>Airway, breathing &amp; circulation</b>	<b>Fracture or dislocation</b>	<b>Soft tissue injury</b>	<b>Comments</b>
<b>Assessed risk</b>	Nil	Low	Low	1. A risk of injury to the elbow joint as a result of over-extension  2. Mild risk of bruising

4.22 A hold used in the current C&R and MMPR restraint systems. The Panel concluded that the hold was safe, with a minor risk of injury to the elbow if the technique was incorrectly applied and the elbow joint over-extended.

#### Inverted wrist

	<b>Airway, breathing &amp; circulation</b>	<b>Fracture or dislocation</b>	<b>Soft tissue injury</b>	<b>Comments</b>
<b>Assessed risk</b>	Nil	Low	Low	1. A risk of injury to the

				wrist as a result of incorrect application  2. Mild risk of bruising
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4.23 A hold used in the current C&R and MPR restraint systems. The Panel concluded that the hold was safe, with a minor risk of injury to the wrist if the technique was incorrectly applied and the elbow joint over-extended.

#### Mandibular Angle Technique

	<b>Airway, breathing &amp; circulation</b>	<b>Fracture or dislocation</b>	<b>Soft tissue injury</b>	<b>Comments</b>
<b>Assessed risk</b>	Low	Nil	Low	1. A minor risk of compromise to airway or breathing as a result of misapplication.  2. Is misapplied, a minor risk of causing cardiac complications due to compression of the carotid sinus  3. Mild risk of bruising



4.24 The Panel was satisfied that the mandibular angle technique is a safe technique. The risks deriving from its correct application are small and the margin for error sufficiently wide as to make the risks of incorrect application similarly small.

4.25 As set out in paragraphs 4.5 to 4.9 above, the Panel considered the role of pain inducing techniques with great care. Although the mandibular angle technique is safe, the Panel had to weigh this against the ethical considerations related to the use of pain to secure a detainee's compliance. Having accepted that there are circumstances in which the use of pain to secure compliance is justifiable, the Panel has wanted to be assured that the techniques will not be used gratuitously or as a measure of first resort. The Panel is pleased, therefore, to see such concerns reflected in the final training package produced by NOMS. We welcome the strict limits proposed for the duration of the technique (five seconds).

#### Wrist flexion

	<b>Airway, breathing &amp; circulation</b>	<b>Fracture or dislocation</b>	<b>Soft tissue injury</b>	<b>Comments</b>
<b>Assessed risk</b>	Nil	Low	Low	<p>1. A risk of injury to the wrist as a result of incorrect application</p> <p>2. Mild risk of bruising</p>

4.26 The Panel applied the same judgements in respect of this technique as with other pain inducing methods. We are satisfied that there are circumstances in which such a technique is an appropriate response to a situation in which alternative approaches could be less safe. We support NOMS in the strict time limit to be imposed on the use of wrist flexion.

### Thumb flexion

	<b>Airway, breathing &amp; circulation</b>	<b>Fracture or dislocation</b>	<b>Soft tissue injury</b>	<b>Comments</b>
<b>Assessed risk</b>	Nil	Low	Medium	1. A minor risk of compromise to airway or breathing as a result of misapplication of the technique.  2. Raised risk of bruising

4.27 The Panel was content with this technique, with the same caveats as other pain inducing techniques.

### Detainee on the ground

4.28 The proposed training package includes the application of the techniques described above with the detainee on the ground, in either supine or prone positions. Although these are not distinct restraint techniques (they cover the application of techniques to particular circumstances of a detainee on the ground), the Panel concluded that they required separate assessment.

4.29 As a matter of principle, any restrained detainee should be returned to a standing (or sitting) position as quickly as possible. Restraining a detainee on the ground presents an inherently more dangerous scenario than restraint in the standing position. And the restraint of an obese detainee or a pregnant woman on the ground presents very significant risks.

4.30 In the supine position, the Panel assessed the risks as follows:

	<b>Airway, breathing &amp; circulation</b>	<b>Fracture or dislocation</b>	<b>Soft tissue injury</b>	<b>Comments</b>
<b>Assessed risk</b>	Low (but greater in pregnancy and the risk increases as pregnancy advances)	Dependent on which of the above techniques is used	Dependent on which of the above techniques is used	1. Restraint of a detainee on the ground to be avoided if at all possible  2. Subject to be returned to standing as soon as practicable

4.31 In the prone position, the Panel assessed the risks as follows:

	<b>Airway, breathing &amp; circulation</b>	<b>Fracture or dislocation</b>	<b>Soft tissue injury</b>	<b>Comments</b>
<b>Assessed risk</b>	High	Dependent on which of the above techniques is used	Dependent on which of the above techniques is used	1. Restraint of a detainee on the ground to be avoided if at all possible  2. Subject to allowed to stand as soon as practicable

4.32 The Panel is content that the proposed training package reflects its concerns about the restraint of detainees on the ground and the need for this to be avoided.

We are also content that the additional risk posed when someone is prone on the ground is appropriately flagged.

#### Restraint recovery position

4.33 The proposed techniques include what is (confusingly) referred to as a restraint recovery position. This is intended to be a response to any apparent distress on the part of the detainee, whether self-reported or observed by DCOs, and involves the relaxation of any restraints in a controlled manner. It is not the recovery position employed in a first aid incident.

4.34 The Panel had no difficulty with the proposed approach itself. As it involves the release of restraints, the technique offers no risk of harm to the subject. The Panel's only concern was that the technique should be used only when appropriate and not as an alternative to the true recovery position, when the latter is the correct response (for example, when the subject becomes unconscious). The training delivered to DCOs on this point will need to be both clear and unequivocal.

#### Restraint equipment

4.35 The Panel was presented with four items of proposed restraint equipment, with which NOMS proposed to supplement the physical restraint techniques. Three of these pieces of equipment are novel, in that we are not aware of their use (in the form proposed) by any other UK law enforcement agency. The Panel is aware of the use of some of them (waist and leg restraints) in other jurisdictions, but their use in enforced removals would be a new development.

4.36 We consider each of the three new items of equipment in turn.

#### Waist restraint belt

4.37 NOMS presented to the Panel a custom-designed piece of restraint equipment, manufactured from manmade fibres and using plastic snap-locks and Velcro fasteners, designed to be worn around the subject's waist. Soft cuffs, with plastic snap-lock and Velcro fasteners, are attached to the belt by retractable cords.

In the “free” position, although still connected to the belt, the cords are long enough to allow the subject relatively free movement of his arms and hands (for example, for eating). In the “retracted” position, the subject’s hands are pulled in to the front of the belt, where they can be further secured by a snap-lock fastened mesh.

4.38 The initial proposal from NOMS was that the belt should be worn by all, or nearly all, detainees subject to enforced removal. The reasoning was that such a belt, which facilitates relatively quick and easy control of a subject’s arms and hands, presented an easier and safer method of restraint than the techniques described elsewhere in this report. Whatever the benefits may be, however, the Panel was clear that such indiscriminate use of the restraint belt was not justifiable ethically or legally.

4.39 The belt therefore remains part of the proposed set of techniques only for use on the most disruptive and difficult detainees.

4.40 We are satisfied that the waist restraint belt has been well designed and is essentially safe to be used as proposed by NOMS. It is clear that it provides a means of restraining the most disruptive detainees in circumstances where continued physical restraint by other methods would be practically impossible for the DCOs concerned and physically dangerous for the detainee. The belt has the significant advantage over rigid bar handcuffs, for longer-term application, of being relatively comfortable, free from hard edges and not potentially painful to the subject’s wrists.

4.41 The Panel assessed the risk of the belt as follows:

	<b>Airway, breathing &amp; circulation</b>	<b>Fracture or dislocation</b>	<b>Soft tissue injury</b>	<b>Comments</b>
<b>Assessed risk</b>	Low	Nil	Low	<p>1. Very low risk of impeding circulation if the belt is over-tightened. The risk is heightened in obese subjects</p> <p>2. Minor risk of bruising</p>

4.42 The Panel has reservations about the practicality of applying the belt to a detainee who is resisting violently in the confines of a passenger aircraft. Although the Panel has seen the application of the belt demonstrated in a simulator, this did not reflect fully the confined nature of an aircraft. The application of the belt to a non-compliant detainee in such circumstances will, therefore, need to be judged very carefully indeed.

4.43 During demonstrations of the belt, the Panel expressed serious reservations about proposed techniques for carrying detainees who were restrained by both the belt and leg restraints, for example to negotiate aircraft steps. The Panel was, therefore, pleased that NOMS has proposed a different approach to managing those detainees who steadfastly resist boarding an aircraft via steps. This approach is described further in paragraphs 4.51 to 4.53 below.

4.44 The Panel has considered the use of the waist restraint belt very carefully. As with the use of any mechanical restraint equipment, the belt presents difficult ethical issues. On the one hand, the Panel is satisfied that the belt is safe to use and presents a low risk of harm to the subject. Indeed, there are circumstances (in the case of a particularly disruptive detainee) where use of the belt is safer and more sustainable than other techniques available to DCOs. But, on the other hand, long-term use of the belt, in particular in circumstances which would expose the subject to the public, would be inimical to the subject's dignity and potentially to his or her right not to be subject to inhuman or degrading treatment.

4.45 Although the Panel considers the belt to be safe and that it may be a proportionate response to particularly disruptive detainees, it does not envisage that it would be used other than when justified by a robust risk assessment. The Panel envisages that:

- The belt would generally only be used on charter flights (on the basis that the most disruptive detainees would be removed by this method)
- Use of the belt as a pre-emptive measure would require robust and transparent assessment of risk and would be an exceptional measure; and
- The belt would not form part of the equipment routinely available to escorts using scheduled flights, but could be applied pre-emptively as described above. It would also be available to in-country escorts and be carried on escort vehicles.

4.46 Ultimately, it is not for the Panel to say whether this new means of physical restraint should be introduced. That is a matter for Home Office Ministers. There is a careful balance to be struck between ensuring that DCOs are able to manage the most disruptive and violent behaviour in a manner that is safe for them and for others, and making certain that the belt is only used when circumstances demand it.

#### Leg restraints

4.47 NOMS also proposed a type of leg restraint, consisting of a soft fabric strap fastened with Velcro, for use in conjunction with the waist restraint belt to immobilise the legs of particularly violent detainees. Such an item might be used, for example, on board an escort vehicle or to support the use of the mobile chair (see paragraphs 4.51 to 4.53 below).

4.48 The Panel assessed the risk of this item of equipment as follows:

	<b>Airway, breathing &amp; circulation</b>	<b>Fracture or dislocation</b>	<b>Soft tissue injury</b>	<b>Comments</b>
<b>Assessed risk</b>	Low	Nil	Low	1. Very low risk of impeding circulation if the leg strap is over-tightened  2. Minor risk of bruising

4.49 The Panel's view is that similar considerations apply to the use of leg restraints as to use of the waist restraint belt. They are an acceptable and proportionate response to the most violent detainees and are appropriate in order to preserve the safety of the detainee, DCOs and others. They must not be used routinely and only in circumstances where the waist restraint belt would also be employed.

4.50 Use of the waist restraint belt and leg restraints together render the subject immobile. For this reason, NOMS originally presented proposals to the Panel for detainees to be carried, by at least two DCOs, in circumstances where relocation of the detainee was necessary, but where there was sufficient concern about behaviour to warrant continued use of both restraint devices. The Panel was unconvinced by the proposed approach for anything other than the shortest of distances: a few paces at most. This appeared to the Panel to carry very significant risks, in particular the risk of dropping the subject in circumstances (such as an attempt to ascend aircraft stairs) in which the consequences could be catastrophic.

#### Mobile chair

4.51 In response to the concerns expressed by the Panel about their proposals for carrying detainees while restrained, NOMS proposed the use of a folding mobile chair (adapted, by the manufacturer, from the folding metal wheelchairs which are required to be carried on scheduled passenger flights). The NOMS proposal was to use this adapted chair as a means of moving detainees who are subject to restraint with the waist belt and leg strap and to facilitate, for example, movement between a



vehicle and an aircraft, without resorting to carrying the detainee. NOMS also demonstrated the use of the chair to take a detainee up the steps to an aircraft.

4.52 The Panel accepted that, *in extremis*, it might be necessary to move a detainee who was entirely uncooperative in order to effect a legitimate removal. In such circumstances, relying on DCOs to use physical restraint techniques alone carries significant potential risk. The chair provides a means to move such uncooperative detainees with a minimum of risk of harm to the detainee and to the escorting staff.

4.53 The Panel expects the chair to be used extremely rarely and, like the waist restraint belt, to be employed only on Home Office chartered flights. It is demonstrably a safer way of effecting the removal of the most uncooperative detainee, but its use should be seen as an exceptional measure.

4.54 The Panel assessed the risk of use of the chair as follows:

	<b>Airway, breathing &amp; circulation</b>	<b>Fracture or dislocation</b>	<b>Soft tissue injury</b>	<b>Comments</b>
<b>Assessed risk</b>	Nil	Nil	Nil	

#### Rigid bar handcuffs

4.55 In addition to the three novel items of restraint equipment described above, the Panel encouraged NOMS to consider the role of rigid bar handcuffs in the system of proposed restraints.

4.56 In its initial proposals, NOMS did not include the use of rigid bar handcuffs, but this was in the expectation that the waist restraint belt would be used frequently and as a pre-emptive measure. Having rejected this assumption, the Panel asked

NOMS to develop an approach in which rigid bar handcuffs could be used as a safe and quickly deployable method of securing control over a subject.

4.57 The Panel is satisfied that the use of rigid bar handcuffs, in the circumstances proposed by NOMS, is a safe and appropriate technique. There will be times, for example on board an aircraft, when handcuffs provide a means to secure control more quickly and more safely than alternative methods.

4.58 Rigid bar handcuffs can also be used to secure compliance through the application of pain. The considerations set out in paragraphs 4.5 to 4.8 above apply, as they do for any other pain compliance technique. The Panel considers that such an approach is justifiable and appropriate in circumstances where other techniques would be more risky, but such application should comply with the time limits set out in the NOMS training curriculum.

4.59 The Panel assesses the risk for the use of rigid bar handcuffs as follows:

	<b>Airway, breathing &amp; circulation</b>	<b>Fracture or dislocation</b>	<b>Soft tissue injury</b>	<b>Comments</b>
<b>Assessed risk</b>	Nil	Low	High	1. Low risk of fracture or similar injury in subjects who are not pain-responsive  2. Significant risk of bruising or other soft tissue injury to the wrist

## **Training for the proposed techniques**

4.60 The Panel has scrutinised NOMS' proposals for training DCOs in the new techniques with particular care. In particular, the Panel has:

- Sought to satisfy itself that the proposed training has an appropriate focus on the use of realistic scenarios, reflecting the circumstances in which DCOs might be expected to employ the proposed techniques
- Considered whether the time allocated to each aspect of the training by NOMS is achievable
- Pressed NOMS to develop a suitable training module to cover behaviour management, in order to equip DCOs with greater ability to avoid using force wherever possible
- Sought to satisfy itself that the proposed training package has an appropriate focus on the medical risks associated with the use of restraint techniques
- Sought to ensure a rigorous assessment regime by which the competence of DCOs in the new techniques will be assessed.

### Scenario training

4.61 The Panel considered that use of realistic scenarios in the training regime for the proposed techniques was absolutely essential. DCOs must be trained in their use in circumstances that reflect those in which they will be employed in the field. The most consistent criticisms of the Control and Restraint techniques have been that they are not designed specifically for use on aeroplanes and other means of transport in which DCOs may need to employ them, and that the traditional Prison Service approach to training in the techniques has not been tailored to scenarios that realistically reflect the working circumstances of DCOs.

4.62 The Panel was pleased, therefore, that the training package produced by NOMS builds on tuition in the proposed techniques by developing realistic scenarios following the removal process from IRC through to the interior of an aircraft. In each case, the Panel is satisfied both as to the appropriateness of the scenarios included

in the training and the application of the proposed techniques in each of the scenarios. The Panel has considered both the written description of the scenarios and the techniques to be used, and the scenarios as demonstrated to us by NOMS instructors (in some cases more than once).

4.63 The Panel also considers it essential that training takes place in realistic surroundings. It is not enough to run through otherwise realistic scenarios in a gym or dojo. The Panel attended three sessions of demonstrations of the proposed techniques at the Virgin Atlantic training suite in order to enable it to form a view on the suitability of the techniques and of the proposed training scenario on board an aircraft. The Panel is convinced, in part by this experience, that DCO training needs to be delivered in an appropriately equipped facility, including aircraft simulators and with escort vehicles. We have been very pleased to learn that the Home Office has invested in such a facility.

4.64 In assessing the safety of the proposed techniques, and NOMS' proposals for scenario-based training, the Panel has identified significant problems with the vehicles currently in use by the contractor. None of the various types of vehicle seen by the Panel seemed to us to be entirely fit for purpose. None of them appeared to be designed to facilitate safe restraint of disruptive detainees and basic tasks, such as entry and egress with a struggling detainee, were in most cases made more difficult than they should be.

4.65 We therefore **recommend** that the Home Office take the first available opportunity to review the specification of the vehicles to be used by the contractor and to ensure that these risks are addressed.

### Behaviour management

4.66 The Panel has been clear from the start of its work that it expected the training package proposed by NOMS to have a strong emphasis on behaviour management, communication skills and conflict resolution. The Panel is pleased that, after a number of iterations, the final proposal from NOMS has a substantive module covering these areas.

4.67 The Panel considers this element of the training to be essential. The safest form of restraint is no restraint at all and, as far as it is possible, DCOs should be equipped with skills which enable them to identify, manage and resolve possible conflict before it reaches the stage where force is necessary. And they should be briefed prior to any escort to ensure that they are properly oriented to the task they are required to undertake. The final product proposed by NOMS meets these needs and the Panel was very pleased with the willingness of NOMS to revise the proposed material very substantially in the light of the Panel's comments. The resulting approach is good.

4.68 However, the Panel remains uncertain how well this module in the training produced by NOMS fits with the current general initial training provided to DCOs by their employer. Despite several requests to see the training material in question, we have not seen sufficient detail to enable us to judge whether the approach proposed by NOMS meshes with that taken in the DCOs' initial training course. We therefore **recommend** that the Home Office ensures that these two separate training packages are consistent.

#### Medical risks

4.69 No system of physical restraint is without risk. But any comprehensive approach to restraint must be designed to reduce that risk to a minimum. The Panel is satisfied, as set out in detail above, that the proposed restraint techniques themselves are safe and appropriate, in the contexts in which it is intended that they should be employed and with the training package proposed by NOMS.

4.70 It is essential, too, that the training designed to support implementation of the package allows DCOs to understand the risks associated with restraint and to be able to mitigate those risks effectively. To this end, the Panel is satisfied that the:

- Core training syllabus for the proposed restraint techniques attaches sufficient importance to the nature of the medical risks associated with each technique and provides appropriate approaches to the mitigation of those risks
- Core training syllabus stresses an appropriate response to any perceived medical emergency and that this is prominent in the training material

- Proposed training module which is dedicated to the understanding of medical risks has appropriate content and is presented to a reasonable standard.

4.71 In summary, the Panel is satisfied that the proposed training attached sufficient priority to the identification, understanding and management of the medical risks associated with this (and any) package of restraint techniques. This training will, of course, need to mesh effectively with the general first aid training also received by DCOs.

### Assessment

4.72 The Panel believes that training in the new techniques should be assessed on a pass or fail basis. This is particularly important as the training needs to be delivered, in the first instance, to staff who have been trained in (and are experienced in using) Control and Restraint techniques. The process of ‘unlearning’ the old approach and assimilating new skills and techniques is not straightforward and it is, therefore, essential that there is an objective measure of individual success.

4.73 The Panel supports the approach suggested by NOMS which would be based on two assessment methods: a written examination and assessment based on realistic work-based scenarios. We are content with the methodology of written examinations presented by NOMS, but we have reservations about the proposed scenario-based assessments. We are content with the proposed scenarios and we are pleased that a scenario-based assessment methodology will be used. But any scenario-based assessment regime must have transparent and replicable standards and it must be possible to see consistency of assessment across candidate cohorts and over time. The current NOMS proposals fall short of these requirements and the Panel therefore **recommends** that the Home Office work closely with NOMS to improve the assessment framework.

4.74 The Panel makes two further **recommendations** in relation to the delivery of the proposed training.

4.75 The first is that there should be some form of independent monitoring of training delivery, both during the initial phase of re-training existing contractor staff

and to ensure the quality of ongoing training. Such independent monitoring would provide Home Office Ministers with assurance that key standards are being maintained, both as to the techniques themselves but, as importantly, with regard to the supporting knowledge and attitudes required of DCOs.

4.76 Second, the Panel recommends that a formal review of the package be undertaken no later than after the first year in order to refine the content in the light of the initial roll-out. The Panel believes that the package will inevitably be developed and improved over time and it is crucial to build in a review process to formalise this.

## **PART 5 – GOVERNANCE**

### **Context**

5.1 Good, safe, restraint techniques, supplemented by appropriate training in communication and behaviour management will never, on their own, be sufficient. For example, the staff escorting Mr Mubenga were trained in the use of restraint techniques that were, in themselves, not unsafe. The fact that those same staff employed unauthorised techniques may have reflected at least three fundamental issues:

- The belief that, because authorised techniques were not effective in some circumstances in which staff found themselves, it was both necessary and appropriate for staff to improvise
- A lack of fundamental respect for the detainee and his rights and legal protections
- A belief on the part of the DCOs concerned that their approach was acceptable and expedient.

5.2 The proposed restraint techniques which the Panel have assessed respond directly to the first of these factors. They provide DCOs with the ability to deal with incidents in the full range of physical environments they are likely to encounter.

5.3 The Panel has also, as noted above, attached great importance to ensuring that the proposed training for DCOs pays sufficient attention to ensuring that, at all times, DCOs behave appropriately and professionally towards detainees.

5.4 This Part of the Panel's report addresses the last of these issues: any belief on the part of DCOs that they could use unauthorised restraint techniques without consequences for them.

5.5 The Panel's view is that effective governance of the use of force by DCOs has three key components:

1. Effective operational oversight



2. Regular operational assessment and review
3. Rigorous external oversight.

## **Operational oversight**

5.6 DCOs, by the nature of their role, often operate remotely from the oversight of managers and more senior staff. Although charter flights provide the opportunity for regular on-site management oversight, removals using scheduled flights do not. Nor do movements by vehicle from IRCs to airports and elsewhere.

5.7 The Panel's view is that regular management oversight of all removals is essential. DCOs must know that what they do will be subject to regular and unpredictable management oversight. And the contractor's managers must be present to provide leadership and guidance to DCOs working in otherwise isolated circumstances.

5.8 The Panel also saw a demonstration of body-worn video cameras in an IRC. The Panel is aware that such cameras are used to reportedly good effect in several prisons and by a number of police forces. The use of such cameras provides a potentially valuable source of evidence when incidents do occur and allows DCOs' actions to be reviewed, lessons learned and good practice shared. The Panel therefore **recommends** that the Home Office examine the role body-worn cameras might play in providing additional safeguards in the removals context.

## **Operational assessment and review**

5.9 In the Panel's opinion, every use of force by DCOs must be assessed and reviewed by the escort contractor. If DCOs know that, every time they use force on a detainee, there will be an internal review of the circumstances and the action they have taken, it will inevitably guide and influence their behaviour.

5.10 The Panel therefore concludes that the current, and any future, escort contractors must establish, as a minimum:

- An internal review process for every incident in which force is used

- A review panel, involving operational managers of sufficient seniority, to undertake a developed review of any incident in which there are questions about the circumstances in which force was used or the nature of the force employed.

5.11 In addition, the Panel considers that (as a matter of good practice) escort contractors should arrange for independent review of a proportion of incidents in which force is used.

## External oversight

5.12 Regular and rigorous oversight by Home Office monitors is a critical element of the governance process. The Panel's view is that this should consist of:

- A proportionate review of every incident in which force is used. This might consist of a paper-based sift, supplemented by a more detailed review by a suitably experienced office in cases of complexity or where there are concerns
- Regular presence by Home Office monitors of escorts
- Robust investigation of any allegations of mistreatment and all incidents in which there is evidence of unlawful use of force.

5.13 In addition, the Panel considers it essential that all Home Office monitors should be trained to the same standard as DCOs, in order to provide effective and knowledgeable oversight.

5.14 We also commend the Independent Monitoring Boards for the oversight they provide. We have been hugely impressed by the diligence shown by IMB members, often late at night, in monitoring the treatment of detainees. This is voluntary activity of the highest order, all too often unrecognised by the authorities and the public at large.

5.15 The Panel **recommends** that the Home Office develop and implement a governance structure reflecting the minimum requirements we set out above.

5.16 In addition, the Panel has been impressed by the use of force minimisation strategies in place in the IRCs we have visited. These reflect similar approaches

taken in a number of prison establishments. Such strategies are an effective vehicle for ensuring that managers focus on learning the lessons of incidents in which force is used. And they help managers to identify and spread good practice. The evidence is that such approaches help to reduce the number of incidents in which force becomes necessary without compromising safety or security. The Panel therefore **recommends** that the immigration removals contractor be required to adopt such a strategy.

## PART 6 – CONCLUSIONS AND RECOMMENDATIONS

### Conclusions

6.1 The Panel has, in its deliberations, sought to bring together three sets of considerations:

- Ensuring that the proposed restraint techniques are safe, appropriate and ethically defensible;
- Seeking the development of an approach to the management of non-compliant detainees which avoids force as far as possible and which equips DCOs with a range of knowledge and skills to achieve this; and
- Supporting the development of a first class training package to implement the new approach.

6.2 On the first of these points, the Panel is satisfied that the proposed set of restraint techniques, and the associated equipment, is safe to be used in the circumstances described in this report and that such use is appropriate and ethically defensible. The Panel has been impressed by the responsiveness of NOMS to the requirements of the Panel and the positive way in which they have responded to requests for change.

6.3 We therefore **recommend** that the proposed techniques be adopted. We also **recommend**, subject to our further comments below, that the training package proposed by NOMS also be adopted.

6.4 On the second point, the Panel has worked particularly hard with NOMS to ensure that the proposed restraint techniques form part of a wider approach that emphasises the need for strong, professional relationships with detainees and which seeks to resolve potential conflict without the use of force. The Panel is satisfied that the resulting training package strikes the right balance.

6.5 On the final point, the Panel concludes that the training package is of an acceptable standard. Whether it meets the aspirations of the Home Office to be 'world class' is, of course, an entirely subjective judgement. The Panel considers that there are significant improvements that could be made to the presentation of the training material and, if more time were available, is sure that a more polished product might result. But the current version is fit for purpose and the priority is to get

staff trained in the new techniques as quickly as possible. There will be opportunity to further refine the training package over time.

6.6 But the Panel has reservations about whether the package can be delivered in the timescales currently envisaged by NOMS and is particularly concerned that insufficient time would be available to deliver the communications elements of the training effectively. We therefore **recommend** that the Home Office review the timings suggested for the delivery of the training before roll-out.

6.7 However, we must emphasise that Panel has not seen the training package in its completed typeset version, and cannot comment beyond the typescripts we have reviewed.

## Recommendations

6.8 The Panel's recommendations are summarised in the following table.

Paragraph	Recommendation
2.26	Any further revisions of the proposed restraint package, or separate commissioning of bespoke arrangements for detainees aged under 18 years, should be subject to a competitive commissioning process
3.12	The Home Office should review practice at IRCs around preparation of detainees for removal to ensure consistency and an approach which is based in good practice
4.65	The Home Office should take the first available opportunity to review the specification of the vehicles to be used by the contractor and to ensure that the risks inherent in their design are addressed
4.68	The Home Office should ensure that the behaviour management elements of the NOMS training are consistent with the initial training for DCOs
4.73	The current NOMS proposals for assessing DCO competence fall short of the requirements for consistency and transparency and the Home Office should work closely with NOMS to improve the assessment framework
4.75	There should be independent monitoring of training delivery, both during the initial phase of re-training existing contractor staff and to ensure the quality of ongoing training
4.76	A formal review of the training package should be undertaken after the first year in order to refine the content and delivery in the light of the initial roll-out
5.8	The Home Office should examine the role body-worn cameras might play in providing additional safeguards in the removals context

5.15	The Home Office should develop and implement a governance structure reflecting the minimum requirements set out in this report
5.16	The immigration removals contractor should be required to adopt a use of force minimisation strategy
6.3	The proposed restraint techniques and the associated equipment should be adopted, along with the training package as proposed by NOMS
6.6	The Home Office should review the timings suggested for the delivery of the training before roll-out, to ensure that the entire package can be delivered effectively

## **APPENDIX 1**

### **MEMBERSHIP OF THE PANEL**

#### **Chair**

Stephen Shaw CBE previously served as the chief executive of the Office of the Health Professions Adjudicator and is a former Prisons and Probation Ombudsman for England and Wales. He is currently Independent Assessor of Complaints for the Crown Prosecution Service.

#### **Members**

Dr Daniel Albert is currently the clinical lead GP for homeless people and asylum seekers for Leeds Community Healthcare, a practising rural hospital medical practitioner for Dumfries and Galloway Health Board and a non-executive director for Leeds South and East Clinical Commissioning Group.

Dr David Chinn is a practising medical practitioner for HMP Peterborough and honorary board director for the charity Drinksense with long previous experience in Primary Care and substance misuse services.

Mr Kevin Lockyer is currently an independent management consultant providing advice to organisations in the criminal justice and offender management sectors. He is a former prison governor and senior civil servant in the Ministry of Justice.

Dr June-Alison Sealy is a magistrate, chairs the adult court and is a member of the family panel for Inner London. She has held a number of senior level roles at the CBI prior to retiring in July 2012, and has a successful track record of working in the private and voluntary sectors.

Dr Richard Shepherd is currently a member of the Independent Advisory Panel on Deaths in Custody, a visiting professor at Chester University and an honorary consultant in forensic pathology for the Royal Liverpool Hospital.

## APPENDIX 2

### REFERENCES AND FURTHER READING

#### Official publications

House of Commons Home Affairs Committee – 18<sup>th</sup> Report: Rules Governing Removals from the UK, HC563, 2012

<http://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/publications/previous-sessions/Session-2010-12/>

The Government Response to the Eighteenth Report from the Home Affairs Committee Session 2010–12, HC 563, 2012

<http://www.official-documents.gov.uk/document/cm83/8342/8342.pdf>

Prison Service Order 1600 – Use of Force

<http://www.justice.gov.uk/downloads/offenders/psipso/psipso-1600.doc>

Independent Advisory Panel on Deaths in Custody – Common Principles for Safer Restraint

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

National Offender Management Service – Use of Force Training Manual, 2006

Ministry of Justice - Minimising and Managing Physical Restraint training manual, 2013

Ministry of Justice – Minimising and Managing Physical Restraint: Safeguarding Processes, Governance Arrangements and Roles and Responsibilities, 2013



Restraint Advisory Board – Assessment of Minimising and Managing Physical Restraint for Children in the Secure Estate, 2012

Ministry of Justice – Government Response to the Restraint Advisory Board, 2012

All the above are at:

<http://www.justice.gov.uk/youth-justice/custody/behaviour-management/minimising-and-managing-physical-restraint>

#### Other publications

Baroness Nuala O’Loan DBE – Report to the United Kingdom Border Agency on “Outsourcing Abuse”, 2010

<http://www.medicaljustice.org.uk/content/view/1139/88/>

Citizens UK – Final Report of the National Independent Commission on Enforced Removals, 2012

<http://tinyurl.com/c4nx4rp>

Inquest – Updated Briefing on the Death of Jimmy Mubenga, 2013

[http://www.inquest.org.uk/pdf/briefings/INQUEST\\_briefing\\_Jimmy\\_Mubenga\\_updated\\_may\\_2013.pdf](http://www.inquest.org.uk/pdf/briefings/INQUEST_briefing_Jimmy_Mubenga_updated_may_2013.pdf)

## **APPENDIX 3**

### **LIST OF RESPONDENTS**

#### **International**

Immigration authorities in the following countries:

Australia

Belgium

Canada

New Zealand

Sweden

Switzerland

United States of America.

#### **Domestic - organisations**

Citizens UK

Freedom From Torture

Geo Group UK

HM Inspectorate of Prisons

Immigration Law Practitioners' Association

Independent Chief Inspector of Borders and Immigration

Independent Monitoring Boards at:

Brook House IRC

Heathrow IRC

Yarl's Wood IRC

Liberty

Medical Justice

Prisons and Probation Ombudsman for England and Wales

Tascor

Youth Justice Board

**Domestic – individuals**

Professor Sue Bailey

Professor John Parkes

Lord Ramsbotham

## APPENDIX 4

### SUMMARY OF RESPONSES

#### Introduction

1. The Independent Advisory Panel on Non-Compliance Management (IAPNCM) was established in 2013 by Home Office Ministers to offer independent advice on the quality and safety of a new training package for use by detainee custody officers who escort those being removed from the UK. The package will apply to adults (over 18) only, and will cover in-country and overseas escorts.

2. The focus of the Panel's work is on the management of non-compliance by those adults subject to removal. This emphatically means reducing anxiety, de-escalating tension, and minimising recourse to restraint, as well as any equipment and holds that may be deployed. The Panel's remit does not cover wider issues of immigration policy, nor how that policy affects particular individuals. Its key aim is to help the Home Office to adopt the best possible restraints package: one that avoids force whenever possible, which minimises harm and maximises safety.

3. To ensure that the Panel's work is carried out in as open a manner as possible, and to ensure that this is informed by as many people with an interest in this country's immigration laws and practices, the chair wrote to over 100 interested parties in the UK on 8 April 2013 and to around a dozen European immigration authorities and other international interested groups on 29 April.

4. Both letters emphasised the Panel's role and focus, and invited responses. In addition, the Panel noted that it was:

‘ particularly keen to learn of any good practice that is available internationally, and any matters relating to the medical aspects of restraint. Issues of communication and cultural awareness are also on our agenda ’

5. The Panel received a response rate of 33%, some of which were confidential. This paper summarises the substantive points received under main headings and on a non-attributable basis.

### **Control and Restraint (C&R)**

6. Respondents argued that it is difficult to carry out a safe and professional restraint of a highly resistant person in a confined area such as an aeroplane and particularly in a seated situation. This, it was argued, is compounded by the reduced atmospheric pressure in an aircraft.

7. Any procedures developed for the purpose of restraining detainees on an aircraft should be subject to medical evaluation. It was accepted by some respondents that it may be unavoidable to use manual restraint with a person who suddenly and unpredictably becomes aggressive during a flight. This therefore necessitates that the techniques for manual restraint on an aircraft need to be developed and correctly taught to ensure that no escort responds with untried, *ad hoc*, 'spontaneous' techniques that can result in fatalities. All levels of force must be kept consistently within safe parameters.

8. A number of respondents noted that escorts are given no specific training in how control and restraint techniques should be adapted for closely confined, seated restraint in an aeroplane. Respondents also noted that if restraint is carried out in a seated position, then it must be strongly emphasised to all escorts that the detainee is kept upright – not leant forwards – *at all times*.

### **Compliance and holds**

9. Manual restraint usually relies upon a superiority of numbers to allow staff to safely restrain a person. Some respondents noted that, for a highly resistant person, this may be four or more staff. If the level of force is increased in order to achieve control, then the risk of injury and discomfort to the detainee is increased. To avoid such dangers, escort staff will need comprehensive training in the eventual, approved restraint techniques.

## Training and Monitoring

10. The training of escorts is necessary and critical to ensure the safety of detainees, escorts and when on an aircraft, the other passengers.

11. Responses argued that the current training, and training material provided to the escorts is unclear concerning medical issues, and was 'insufficient to equip them to successfully restrain an individual under the circumstances and environment' in which they find themselves.

12. Respondents noted that no restraint procedures should be tested for the first time in the confused and challenging circumstances of a real life situation. They should be learnt and tested via realistic simulation in genuinely representative environments. This includes an aircraft on the ground and/or aircraft cabin simulator, along with safe methods to board an aircraft with a non-compliant detainee. Training in a classroom using rows of ordinary seats must not be considered adequate escort training.

13. Some respondents noted that the current detainee escort officer refresher training is only required to take place once a year. One expert respondent noted:

'an annual one day refresher course is unlikely to bring all of the required complex, specialist skills up to date.' the staff engaged in the specific actions involved in removals by air 'should be more highly trained than prison officers where backup and support together with medical assistance and advice are rapidly obtained.'

14. Cultural awareness, rather than cultural stereotyping, should form part of an officer's training course. Inevitably, officers will on occasions encounter non-compliance, but their understanding should start from a high-point rather than risk any possible denigration of a detainee because of the detainee's adverse behaviours.

15. As to the monitoring of situations, some respondents considered that more extensive use of CCTV (and not just for planned removals) may help to reduce the

risk of escalation as both detainee and staff will be aware that an objective record of their action is being maintained. Any CCTV should be operational in the escort vehicle and be supported by equipment that can operate outside of this. Sound recording should also be sufficient on board vehicles to capture all conversations.

16. Respondents generally agreed that, whenever a resisted removal is anticipated, then the full procedure (from start to finish and without gaps) should be recorded by video camera for the protection of both the detainee and the escorting staff. This will require liaison with aircraft staff and in some instances may be prohibited.

17. The Panel was urged that any techniques developed should be documented in detailed protocols which include photographs and/or diagrams of the approved technique.

18. Where there has been an incident requiring use of force, the highest level of independence must be evident when an officer writes up their report. Everything should be done to prevent collusion.

### **Mechanical restraints**

19. A number of respondents raised the issue of a perceived over-reliance on the use of handcuffs.

20. Concerns were raised by some respondents regarding detainee safety during take-off (when all seats need to be in an upright position) and landing, especially if the brace position becomes necessary.

21. Respondents also argued that, if handcuffs are placed on a detainee, these must be applied to the front both for safety, and to minimise discomfort.

22. The Panel has been advised that, for particularly disruptive and/or violent removals, it may need to consider an enhanced level of mechanical restraint such as a waist restraint belt, forms of which are used for example in Sweden.

## **Detainee removals**

23. Where faced with a 'difficult removal', an IRC instanced their approach which is centred on a multi-disciplinary, individual strategy meeting. This includes a member of the healthcare team to provide medical input. The IRC's aim is to achieve a successful handover to the overseas escorts and to minimise the risk of having to use force to achieve this.

24. The Panel was informed that in the USA policy requirements on cultural sensitivity include making certain that instructions and requirements are given to the detainee in a language the detainee understands. Detainees who cannot read must be given verbal instructions.

25. In New Zealand, a risk assessment must be carried out for all custodial deportation cases ahead of determining the appropriate level of security escort requirements.

26. Respondents observed that a dedicated security area, or holding room at an airfield, can help to maintain a calmer atmosphere as it removes detainees from public gaze.

27. Respondents observed with concern that some detainees can be confined to the removal vehicle for over six hours. This can lead to heightened stress levels as they are first transported from the IRC and then must sit and watch as each detainee is removed one by one to the aircraft, noting that their turn is yet to come.

## **Detainee dignity/modesty**

28. The use of the toilet facilities, including on an aircraft, remains an issue as officers are not permitted to allow the detainee to lock the door.



29. Concerns have been raised about detainees who remove all of their clothes by way of a protest; as a consequence, several respondents have questioned whether some form of disposable gown with fastenings could be provided for the flight to maintain a detainee's modesty.

30. On a scheduled flight, a flash point can arise when passengers take pictures of a detainee on their mobile phones. This can lead to detainee agitation and subsequent non-compliance.

## **Medical**

31. A number of respondents have suggested that all escort staff should be medically trained, able to place an unresponsive person in the recovery position and, where necessary, able to carry out cardiopulmonary resuscitation (CPR) as required. If a situation arises on a scheduled flight, the escorting officers should know how to liaise with, and to seek, prompt medical help from the airline staff.

32. Concern was expressed by a number of respondents that the current escort officer training fails to focus and underscore the risk of positional asphyxia in *any* seated or splintered position (i.e. when the head is below the heart). Nor, it is argued, is a distinction made as to the difference in warning signs between the onset of positional asphyxia as opposed to excited delirium. Respondents therefore suggest that all staff should not only be taught about the possibility and danger of positional asphyxia, but should also be fully trained in assessing the risk and symptoms, and be capable of correctly applying their training when carrying out their duties.

33. One respondent claimed that medical escorts on charter flights are not all trained to the level suggested by their title, and was concerned that this may give escorting officers a false sense of security and confidence.

34. A number of respondents argued that mental health problems feature high on the list of detainee health complications. Assessment of such medical issues should be clearly diagnosed within the IRC setting and should then be noted on the PER. Escort officers should be warned concerning the signs for which they should monitor if a potentially vulnerable detainee's health deteriorates during the removal process.

35. Some respondents took the view that many of the signs and symptoms currently taught to escort officers are inappropriate as a warning as they relate to symptoms that occur too late for remedial action.

### **Liaison with detainees**

36. Repeated mention was made that there should be better preparation with a detainee *prior* to the removal process to ensure a calm, successful procedure. The issue of detainees' misplaced belongings can often be the trigger for non-compliance, with the detainee being asked to sign that all their belongings have been safely handed over to the overseas escort team - when in fact items have been misplaced and are yet to be found. Incomplete paperwork and missing travel documents can also trigger disruptive behaviour.

37. It was stated that some UK detainees can become stressed when they realise that the flight has gone to a third, unexpected and unexplained country, fearing that they may be 'dumped' in the unknown destination. In such situations better detainee liaison before the flight could greatly ease tensions.

### **Conclusion**

38. The Panel is grateful to all those organisations and individual experts who have replied to its call for evidence.

39. The Panel thanks all respondents for their replies and trusts that this summary gives assurance that their evidence has been fully documented and will help to inform and guide the Panel's work.