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[Immigration Enforcement](#)

[Independent
Chief Inspector
of Borders and
Immigration](#)

Policy paper

Home Office response to the third ICIBI inspection of adults at risk in immigration detention

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Contents

[Recommendation 1](#)

[Recommendation 2](#)

[Recommendation 3](#)

[Recommendation 4](#)

[Recommendation 5](#)

[Recommendation 6](#)

[Recommendation 7](#)

[Recommendation 8](#)

[Recommendation 9](#)

[Recommendation 10](#)



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The Home Office response to the Independent Chief Inspector of Borders and Immigration's report: Third annual inspection of adults at risk in immigration detention.

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

The Home Office is grateful to the ICIBI for this third annual inspection, which follows inspection reports in 2020 and 2021 respectively. This represents continued progress from both of Stephen Shaw's reviews focused on the welfare of vulnerable persons in immigration detention. Although there are aspects to this report that the Home Office does not agree with, we feel that the recommendations set out in this report will drive positive reform around the Rule 35 process which has been the focus of this inspection.

The department has accepted or partially accepted all the ICIBI's 10 recommendations.

Recommendation 1

As a matter of priority, commission an independent review to develop an in-depth, robust understanding of the abuse of Rule 35. It should be evidence-based and make assessments as to the prevalence, shape, and impact of the abuse, with particular reference to how perceptions of abuse may impact how staff undertake their roles. It should assess the impact that abuse may have on the effectiveness of Rule 35 and make recommendations for improvement.

Partially accepted

The Home Office will commission Home Office Insight and Analysis (HOIA) to review the possible misuse of Rule 35 and how perceptions of misuse subsequently impact on staff behaviours. This will be overseen by the Immigration Detention Reform and Improvement Board and form part of the department's ongoing evaluation of immigration detention reform (originating from the Stephen Shaw Review). Once this independent research has been scoped, we will decide whether it is appropriate to put forward a proposal for independent review in Q1 2023/24.

As with the Home Office report on 'issues raised by people facing return from detention', published on 16 March 2021, the Home Office intends to publish this analysis and any resulting action plan that stems from it.

Recommendation 2

Within one month, issue communications to staff setting out who has responsibility for making a referral to the National Referral Mechanism (NRM) or submitting a Duty to Notify (DtN), where modern slavery and/or trafficking indicators are

included in a Rule 35 report; and mandating that the Rule 35 team check, and where required follow-up, on whether an NRM / DtN has been made.

Partially accepted

The Home Office Immigration Enforcement Competent Authority, established in November 2021, have now issued, and will continue to regularly reissue communications on the First Responder and NRM referral process in relation to those in immigration detention.

In parallel, the Rule 35 Team will update their standard operating procedure (SOP) relating to an NRM referral in immigration detention. Clarity around responsibilities relating to modern slavery and /or trafficking claims made within Rule 35 reports will be included. It is expected that the SOP and any associated guidance for specific teams will be circulated in the first quarter of 2023.

Due to the relatively short period of time in which the Rule 35 Team have oversight of an individual, the Home Office does not accept further assurance of NRM referrals should sit with the Rule 35 team. Outside of the initial check undertaken by the Rule 35 team, this will continue to remain with caseworking teams, who have overall responsibility for case progression.

Recommendation 3

Within three months, review the accessibility, value for money offered, consistency and quality of service provided by current interpreting and translation services used in Immigration Removal Centres (IRC), considering opportunities for improvement including the provision of in-person interpreting for detainees' most common first languages (such as Albanian).

Partially accepted

The Home Office consider there are sufficient interpreter services available in IRCs and a new Detention Services Order, 02/2022, on the use of interpretation services and electronic translation devices, was published on 3 August 2022. This new DSO sets out the provisions, including interpretation services and translation devices, available for individuals held in immigration detention and the circumstances in which these should be used.

The Home Office is conducting a review looking at the extent and appropriateness with which interpretation services are being used across Immigration Enforcement. This includes both detained and non-detained settings and will focus on the service provided to all. The review will outline current guidance relating to the use of interpretation services; determine the extent/appropriateness with which they are being used; understand and examine capacity within the system; and identify opportunities for improving access or streamlining current processes.

The Immigration Detention Reform and Improvement Board will consider appropriate next steps, from this report and its recommendations, in relation to aspects that link to immigration detention. Relevant Home Office business areas will take forward agreed actions.

Recommendation 4

Within three months, ensure that planned training on Rule 35 for doctors draws on feedback from the Rule 35 team, and is tailored to the identified needs of doctors, to enable the production of consistent, and high quality, Rule 35 assessments and reports.

Accepted

A Rule 35 training package, for medical practitioners working across the immigration removal estate, has been developed by the Home Office. This should improve the quality of notifications and aid Home Office consideration of vulnerability to inform decisions around the suitability of ongoing detention. To ensure this training meets the needs of all those involved in the Rule 35 process, engagement with the National Health Service Practice Plus Group is ongoing. This training will be delivered alongside further training being developed to improve the standard of reporting in relation to medical issues.

It is expected that both training packs will be completed and delivered by the end of the 2022/23 financial year.

Recommendation 5

Within three months, develop wider training, complemented by regular communications with healthcare, contractor and Home Office staff on the purpose and process of Rule 35, including raising awareness of the psychology of trauma.

Partially accepted

The Home Office considers that elements of this recommendation are already in place with wider training on Rule 35 being a regular component of existing training programmes. This includes the existing detained caseworker training which is mandatory for all detention decision-makers, who receive annual refresher training. Additionally, the mandatory 'Management of Adults at Risk in immigration detention' training - which accompanies the latest version of the published Detention Services Order (DSO) - continues to be delivered to IRC staff – this began in October 2022. All Home Office Immigration Enforcement staff also attend a mandatory Vulnerability training course. Our contracted service providers deliver ITC (Initial Training Course) training focused on resident vulnerability and mental health. These courses are tailor-made to provide staff with the appropriate

knowledge level relevant to their role. Training for Doctors and Healthcare staff has been signposted in our response to recommendation 4.

In reference to regular communications regarding the purpose and process of Rule 35, in addition to the psychology of trauma; the raising of a Rule 35 report is the responsibility of medical practitioners that have concerns about an individual and consequently, the Rule 35 process is by its nature, intrinsically based on a medical assessment by suitably qualified medical professionals. The vulnerability training packages naturally cover issues of torture and modern slavery and/or human trafficking, but it is considered that training to the level of recognition of the psychology of trauma is a medical analysis and therefore not appropriate to those outside the healthcare profession.

The Home Office has reminded all staff within immigration removal centres (IRC) about the Rule 35 process. There are engagement sessions for IRC welfare and safer detention leads scheduled every 6 weeks with an opportunity to discuss any concerns or issues about the operation of any IRC process which includes Rule 35.

Communications regarding Rule 35 are a regular feature of quarterly IRC Healthcare forums, a setting in which Healthcare providers engage with Home Office officials to address common issues and discuss concerns. Going forward, Rule 35 will be added as a standard agenda item in this forum.

Recommendation 6

Within three months, develop a plan to address the resourcing challenges experienced by the Detention Engagement Teams to ensure they can efficiently and effectively deliver on all aspects of their role, with particular reference to Rule 35.

Accepted

The creation of Detention Engagement Teams ((DET); originally Pre-Departure Teams) in 2017, increased the ratio of Home Office staff to those detained significantly, ensuring an increase in in-person engagement as had never occurred before. Working in an IRC is different to an office and can be challenging, particularly when dealing with some Foreign National Offenders who resist returning home.

The DETs have focused on recruiting new staff and retaining those already in post for the last 12-18 months. Staffing levels are not where the Home Office want them to be and there remain vacant posts. However, as of November 2022, DET have the highest proportion of staff in post that they have had in 18 months.

Given broad recruitment challenges, it is not possible for the Home Office to commit to having no DET vacancies, but the Home Office is considering providing financial incentives to improve recruitment and retention for those that work in enclosed institutions like Immigration Removal Centres and Prisons.

The role of DET within the Rule 35 process will be reviewed as part of the planned review of the Detention Centre Rules (see Recommendation 8) to ensure that what is expected can be delivered and that this safeguards those detained and provides the value for the Home Office.

Recommendation 7

Within six months, together with NHS and contractor partners, review the effectiveness of the additional screening and assessment model developed at Derwentside IRC, with a view to informing the design and delivery of any equivalent models in other IRCs.

Partially accepted

The Home Office and NHS England will work together to undertake an assessment of the effectiveness of the additional screening and assessment model developed at Derwentside Immigration Removal Centre (IRC). The assessment will be led by the local healthcare team with input from the IRC supplier and local DET. The assessment will be cleared through the Immigration Detention Reform and Improvement Board, before going to the NHS England to consider at a future NHS-HO Partnership Board (given that any further roll-out would be for local healthcare teams, commissioned by the regional NHS body to resource).

However, Derwentside IRC is a bespoke female IRC and was designed to provide specific services to those who could potentially be the most vulnerable in immigration detention. For these reasons the Home Office does not intend to have comparable healthcare services at all IRCs.

The Home Office, through the NHS, intends to complete this assessment and have begun taking forward actions stemming from it by the end of the 2022/23 financial year.

Recommendation 8

Within six months, expedite the planned review of the Detention Centre Rules which includes the review of Rule 35, considering the findings of this inspection, with particular reference to the development of a resilient, operational model for the Rule 35 team, to enable it to effectively meet peaks in volumes of Rule 35 reports received.

Partially accepted

The Home Office has restarted work to review the Adults at Risk in Immigration Detention (AAR) policy and Detention Centre Rules 2001 (which include the R35 process), after this was put on pause in 2021 to allow for a wider review of the immigration system, culminating in the New Plan for Immigration which led Nationality and Borders Act 2022.

This recommendation will be considered as part of that review and with, the intention of work commencing by the end of the 2022/23 financial year.

Recommendation 9

Within six months, enhance the quality assurance process for Home Office Rule 35 responses, specifically by:

- i. increasing the proportion of Rule 35 responses subject to second-line quality assurance
- ii. and utilising outcomes from the quality assurance process to inform continuous improvement, including feedback to doctors and identifying Home Office and contractor training needs.

Partially accepted

The Home Office is currently reviewing the Rule 35 guidance, including first and second-line assurance processes. The Home Office has already refined internal management information to better identify areas of improvement and to enable improved feedback to all Home Office staff involved. Work is also being undertaken to improve feedback mechanisms with medical practitioners to improve the standard of Rule 35 reports being received.

It is expected all work will be complete by the end of the 2022/23 financial year.

Recommendation 10

Within six months, develop a process whereby in the event second line assurance identifies a Rule 35 response with the incorrect outcome, Home Office electronic records are updated to reflect the correct outcome and circumstances of the case at the point second line assurance is completed and, in cases where the report was fundamentally flawed, and the individual still detained and the circumstances in favour of maintaining detention had changed, the report should be reissued.

Partially accepted

Alongside a review of the Rule 35 guidance, we will specifically review the assurance of process and feedback mechanisms. This work will be complete by the end of the 22/23 financial year.

The Home Office would only correct a response, re-issuing the decision, if the individual was still detained and it is clear that the initial outcome was incorrect given the evidence available at the time the decision was made – rather than on the circumstances of the decision at the time the second line assurance took place. If following second line assurance, the outcome is considered disproportionate as a result of evidence received after the Rule 35 response was issued, the case

working team will be asked to undertake a review of detention and take appropriate action relating to maintaining detention or release.

[↑ Back to top](#)

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