

Date of report: 4 February 2011

DETENTION CENTRE RULE 35 AUDIT.

1. EXECUTIVE SUMMARY

This report is provided following agreement with the Detention Users' Sub-Medical Group to conduct an audit of reports submitted by healthcare professionals in Immigration Removal Centres (IRCs) in accordance with Detention Centre Rule 35. The audit is intended to establish the extent to which the UK Border Agency complies with its policy concerning the detention of persons who claim to be victims of torture, and seeks to address the perception among some NGOs that the UK Border Agency fails to comply with the policy and detains thousands of torture victims every year.

The audit involved an examination of all cases where a report was submitted in November and December 2009 to the UK Border Agency by the healthcare manager of an IRC in accordance with Detention Centre Rule 35, which addresses not only claims of torture, but also where the medical practitioner has concerns about detention being injurious to health or in respect of self-harm or suicide risks. In addition, all case types are represented in the audit – criminal cases, asylum, migration and general enforcement. The references to case owners therefore reflect this wide ownership across the Agency, rather than solely asylum case owners. Where available records suggested that the Rule 35 process had not been followed, we looked at whether any applicant had been removed from the UK without having had any allegation of torture or serious health concerns considered during the case consideration process.

Of 6,666 receptions into IRCs, there were 216 Rule 35 reports recorded; 26 indicated possible duplication, requiring separate analysis and so were removed from the present audit for separate consideration. The remaining 190 records were considered in more detail.

- Of the 190 cases, the initial data suggested that 67 had received a response within 2 working days; a further 60 cases also received a response, but it was outside of the 2 working day requirement.
- This left 63 cases where it initially appeared that Detention Services had logged no response by the owning business area.
- Of those 63, further analysis showed that the Rule 35 evidence was taken into clear account in 37 cases, (although in 12 of those, whilst the information was taken into account in considering the case, a formal response was not issued to the IRC as required).
- This suggested that 26 cases had received no response, (including 13 cases where the business area did not receive the Rule 35 report) but further analysis showed that torture allegations were considered (albeit outside of the Rule 35 process) in 16 of these cases at some point during the asylum/casework process ie at interview, appeal, further submissions etc.

- That appeared to leave 10 cases where the available records seemed to indicate that account had not been taken of the Rule 35 report (which could relate to a claim of torture, or serious health concerns).
- In seeking to clarify whether any of these remaining ten cases had been removed from the UK without having their allegations considered, we found that two of these ten cases had responsibility for considering the substantive claim transferred to a safe third country, two included applicants who had withdrawn their asylum claim (and are still in the UK awaiting removal action), one had been granted Indefinite Leave to Remain in the UK. One is a Foreign National Prisoner (who is no longer detained) has an outstanding appeal against deportation and refusal of asylum, so will have the opportunity to raise allegations of torture or ill-health. One (who is also no longer detained) is soon to be interviewed substantively about their asylum claim and will have the opportunity to raise allegations of torture or ill-health. One signed a disclaimer prior to his removal indicating a willingness to leave the UK. (This was a non-asylum/ overstayer case which involved health issues - not torture). The remaining two cases are failed asylum seekers who are not currently detained and do not involve children or families with children. However their cases will be reviewed prior to taking any action in their cases.

The audit therefore demonstrates that:

- IRCs are largely complying with the policy of referring all Rule 35 reports submitted by healthcare professionals to case owners within 24 hours of receipt, and are maintaining a log of the Rule 35 cases. However, there are some instances where reports are not received by the case owner, which means that administrative procedures to confirm receipt and follow up on late responses should be tightened.
- The level of compliance and the recorded response rate with the timescales set out in published policy falls below the standard required and therefore administrative processes and practices require considerable sharpening.

The audit has shown that the process requires closer scrutiny and performance monitoring and, to this end, a robust action plan has been developed. This includes measures to improve overall performance and compliance and underpins our commitment to improve performance and accountability. In particular, a greater degree of responsibility will be placed on both the business area receiving the notification and the individual case owner, with both expected to afford such cases with the highest priority. This will be backed up by additional, focused training for those involved with the management of detained cases. In support of a much more effective management process we intend to introduce regular reporting of Rule 35 reports and a robust escalation process, to ensure that Directors are aware of their business area's Rule 35 report performance.

2. **POLICY**

The Agency's policy towards the detention of persons who claim to have been victims of torture is covered by a number of over-lapping policy and instruction documents:

- Chapter 55 of the Enforcement Instructions and Guidance (EIG)
- Detention Centre Rules 2001
- Detention Services Order 03/2008
- Asylum Process Instruction (Rule 35)

Annex A provides links to the relevant policy documents, all of which are in the public domain.

2.1 *Detention of torture victims*

Chapter 55.10 of the EIG sets out that certain persons are only considered suitable for detention in very exceptional circumstances. These include “those where there is independent evidence that they have been tortured.” However, it also sets out that in cases where a person is being deported from the UK because of a criminal offence, the further risk of offending or harm to the public must be carefully weighed against the reason why the person may be unsuitable for detention. There may therefore be cases where a person remains in detention when they otherwise would be released.

2.2 *Identification of persons claiming to be torture victims*

Detention Centre Rule 35¹ requires:

- The medical practitioner to report to the centre manager any case of any detainee whom he is concerned may have been the victim of torture (35(3)).
- The manager to send a copy of any report submitted under Rule 35(3) to the Secretary of State without delay (Rule 35(4)).

Detention Services Order 03/2008 provides a template report for the medical practitioner to complete.

For the purposes of complying with the Rule, the report is passed to a member of the on-site UK Border Agency team, representing the Secretary of State.

2.3 *Notification of persons claiming to be victims of torture*

Detention Services Order 03/2008 requires the UK Border Agency’s on-site contact management team to:

- Fax the report to the case owner with responsibility for the decision to detain within 24 hours of receipt.
- Keep a log of all reports received from healthcare.

There is also a separate requirement to follow up on reports which have not received a response from the case owner after two working days.

2.4 *Detention reviews of persons claiming to be torture victims*

Chapter 55.8 of the Enforcement Instructions and Guidance (EIG) requires case owners to undertake a detention review where a person claims to be the victim of torture.

Asylum Instruction (Rule 35) sets out for case owners how they are to consider Rule 35 reports from IRCs. In summary they are to:

¹ *The Detention Centre Rules 2001 are a statutory instrument, and provide the legal framework in which the UK Border Agency’s detention estate is operated.*

- Consider the content of the report – accepting that it may not necessarily constitute independent evidence that a person has in fact been the victim of torture;
- Come to a view whether an individual has been a victim of torture; and then
- Conduct a detention review as to whether continued detention is appropriate;
- Fax a response back to the IRC within two working days of receiving the report.

3. **AUDIT RESULTS**

3.1 ***Detainee receptions***

There were 6,666 new receptions into IRCs during the period of the audit. Centres were asked to count all new arrivals which would not include those returning from a failed removal. The figure does include those persons transferred between centres, but not those discharged and returned to the same centre after having attended outside hospital appointments.

The following table details the number of receptions in each centre.

Centre	Total number of receptions in November and December 2009
Brook House	593
Campsfield House	413
Colnbrook	1527
Dover	385
Dungavel	424
Harmondsworth	436
Haslar	211
Lindholme	155
Oakington	952
Tinsley House	693
Yarl's Wood	877
Total	6,666

3.2 Rule 35 Reports submitted

Centres were asked to provide the total number of reports submitted by healthcare in accordance with Detention Centre Rule 35.

The following table sets out the total number of reports submitted by centres in accordance with Detention Centre Rule 35 during the period.

Centre	Reports submitted to the UK Border Agency by centres in November and December 2009 in accordance with Detention Centre Rule 35	
	Number of reports submitted	Ratio of reports submitted to number of detainee receptions
Brook House	8	1:74
Campsfield House	7	1:59
Colnbrook	27	1:57
Dover	7	1:55
Dungavel	8	1:53
Harmondsworth	11	1:40
Haslar	4	1:53
Lindholme	1	1:16
Oakington	58	1:16
Tinsley House	14	1:50
Yarl's Wood	45	1:19
Total	190*	1:35

* excludes 26 duplicates

The number of reports submitted by each IRC was broadly consistent with expectations, other than at Lindholme.

3.3 *Applications made by families*

The following table sets out the number of claims submitted by families that they had been the victims of torture, separated between the parents and their children.

Centre	Number of claims submitted by families that they have been the victims of torture	
	By parents	By their children
Dungavel House	1	0
Tinsley House	0	0
Yarl's Wood	3	0
Total	4	0

3.4 *Timing of the claim by detainees*

The following table sets out the time between the detainee first entering the detention estate and making the claim that they had been a victim of torture.

Number of days in detention before making a claim to having been tortured	Number of detainees	% of claims made
0 - 2 days	79	42%
3 – 4 days	28	15%
5 – 10 days	14	7%
Over 11 days	69	36%
Total	190	100%

The following table sets out when the Rule 35 report was issued, in the context of the timing of any asylum claim (excluding 26 duplicate records).

Stage at which the Rule 35 report was issued	Number of detainees	% of claims made
Before an application for asylum	5	3%
At the time of an application for asylum	3	2%
After an application for asylum (of which post-dated the asylum decision) (of which post-dated the asylum appeal determination)	173 (97) (35)	91%
No application for asylum made	9	5%
Total	190	100%

3.5 *Response to the Rule 35 report by the UK Border Agency case owner*

The following table sets out the time taken by the UK Border Agency case owner to provide a response to the report.

NB: Published policy requires the case owner to respond within 2 working days of receipt of the report.

Number of working days taken by the case owner to respond to the report	Number of reports	% of total number of reports
0 - 2 working days	67	35%
3 – 5 working days	34	18%
6 – 10 working days	16	8%
Over 11 working days	10	5%
No response received (excludes 6 potential duplicate reports)	63	33%
Total	190	100%

Timeliness: 35% of responses were received within the two working day target, with 53% being received within five working days. There were also a significant number of forms where no apparent response was received.

3.6 *No Response Received*

Analysis of the data suggested that there were 63 cases where Rule 35 reports were sent and did not receive a response.

However on further analysis it was clear that in some cases, case owners addressed the issues raised in Rule 35 reports through direct correspondence with detainees and legal representatives, so therefore in some cases torture claims or serious health concerns were considered outside the formal Rule 35 process (the formal process requires a completed pro forma to be returned to the IRC team).

As a result of these findings, further detailed analysis has been carried out from an examination of case files. For a minority of cases where the paper file could not be located and obtained in

time for the audit, the Case Information Database (CID) was examined. Where available records suggested that the Rule 35 process had not been followed, we looked at whether any applicant had been removed from the UK without having had any allegation of torture or serious health concerns considered during the case consideration process. This case by case analysis suggests:

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- That appeared to leave 10 cases where the available records seemed to indicate that account had not been taken of the Rule 35 report (which could relate to a claim of torture, or serious health concerns).
- In seeking to clarify whether any of these remaining ten cases had been removed from the UK without having their allegations considered, we found that two of these ten cases had responsibility for considering the substantive claim transferred to a safe third country, two included applicants who had withdrawn their asylum claim (and are still in the UK awaiting removal action), one had been granted Indefinite Leave to Remain in the UK. One is a Foreign National Prisoner (who is no longer detained) has an outstanding appeal against deportation and refusal of asylum, so will have the opportunity to raise allegations of torture or ill-health. One (who is also no longer detained) is soon to be interviewed substantively about their asylum claim and will have the opportunity to raise allegations of torture or ill-health. One signed a disclaimer prior to his removal indicating a willingness to leave the UK. (This was a non-asylum/ overstayer case which involved health issues - not torture). The remaining two cases are failed asylum seekers who are not currently detained and do not involve children or families with children. However their cases will be reviewed prior to taking any action in their cases.

Whilst we will review the available information on these remaining cases, it is clear that there have been administrative errors in processing cases. Indeed the level of compliance and the recorded response rate with the timescales set out in published policy falls below the standard required and therefore administrative processes and practices require considerable sharpening. Steps to facilitate this are outlined on Page 10 in more detail at the end of the report.

3.7 Outcome of Detention Review

The following table sets out the outcome of the detention review conducted by the case owner following receipt of the report.

Outcome of the detention review	Number of reports	% of total number of report
Released from detention (either temporarily or under restrictions)	20	9%
Detention maintained	196	91%
Total	216*	100%

* Includes 26 duplicates

NB The fact that a person was released does not indicate that the person was accepted to have been a victim of torture. The exact reasons for release were not examined.

3.8 Outcome of the case at the conclusion of the audit

The following table sets out the immigration status outcome in respect of each individual (excluding 26 duplicate cases).

Immigration status at the end of October 2010 of those detainees who had submitted an allegation of torture during the audit period (November & December 2009)	Number of detainees	% of total number of detainees
Refused refugee status or other leave and removed	90	47%
Granted refugee status or other leave, either by the case-owner or following success at appeal.	26	14%
Refused/Other cases with ongoing action	74	39%
Total	190	100%

4. ACTIONS AND NEXT STEPS

SUMMARY OF ACTIONS:

We have developed changes to our IT systems which will ensure that the Rule 35 process is properly monitored; these changes will be reflected in guidance which will be published and implemented before the end of March 2011.

We have already implemented interim administrative procedures which are ensuring that compliance with current guidance is being properly monitored and any incidents of lack of compliance are being raised and dealt with immediately.

1. ROBUST PROCESS SUPPORT MEASURES

The audit highlighted various weaknesses in the overall administration of the Rule 35 process. Many of these weaknesses can be attributed to insufficient communication processes regarding case owner identification, report notification and confirmation of action and response completion.

ACTION: Immediate changes to the Rule 35 process have been introduced, to ensure that the key principles of the policy are met straight away, with further improvement measures to follow. To ensure compliance with the formal response requirements of the Rule 35 process, key actions in report allocation, transfer and follow up are now supported by confirmatory telephone calls, the transactions of which are all recorded for further management oversight. This process is being monitored by a weekly performance report sent to the Head of Immigration, as well as to the relevant senior managers in the Agency.

2. TRANSMISSION OF RULE 35 REPORTS

The system in place before the audit relied on fax transmission of Rule 35 reports between the various IRCs to the wide number of offices across the country. It is believed that some of the communication problems (as mentioned above) may, in part, have been because of faxes going astray or being delayed in reaching the file.

ACTION: We have already begun to scan and email Rule 35 reports where facilities exist, and where practical, we will look to extend these facilities to all IRCs. As referred to previously, all transmissions (regardless of type) is now being backed up by telephone confirmation of receipt.

3. DIFFERENTIATION OF RULE 35 CASE TYPE

Rule 35 reports address not only claims of torture, but also where the medical practitioner has concerns about detention being injurious to health or in respect of self-harm or suicide risks. The audit did not differentiate in respect of different Rule 35 report types, and although it is important that all report types are taken seriously and receive prompt and diligent consideration and response, better differentiation will enable clearer monitoring of trends, as well as of performance against specific measures.

ACTION: Changes to case monitoring are being undertaken, to enable future data to differentiate between Rule 35 categories.

4. USE OF CASEWORK INFORMATION DATABASE (CID)

The Detention Services audit data was drawn up following a review of locally held IRC Rule 35 manual logs, which enabled the identification of cases where Rule 35 reports were issued. To improve efficiency and monitoring, the introduction of CID markers for Rule 35 reports will replace the local recording of data and provide the following benefits:

- An auditable record available for IRCs to use to track Rule 35 reports out and in;
- A resource which immediately identifies cases involving Rule 35 reports;
- Prompt production of complex performance reports for performance management or for public disclosure (either centrally or by regions or teams). The reports could be quickly configurable to a wide range of variables, such as particular date periods, key events, case outcomes, appeal outcomes, regions, teams, etc.;
- Ability for operational teams to monitor their performance levels and to check against paper records in case of doubt.

ACTION: The above functionality is being incorporated into CID, with accompanying guidance on usage. Systems are being put in place to monitor compliance.

5. TRAINING

Before the audit, there was not a comprehensive training programme in place to raise awareness of the policy and process steps required in respect of Rule 35.

ACTION: Training networks have already been mobilised to raise awareness amongst key Agency officers responsible for detained case management. Further mandatory tailored training/awareness will be provided for officers and managers who are involved in detained case management across UKBA.

6. ACCOUNTABILITY

Gaps in process and management information obstruct the ability of business areas to drive up performance.

ACTION: Steps have been taken already and will be taken moving forward to improve communication across UKBA business areas including to regional directors, requiring them to action the following:

- **Raise the profile of Rule 35 across relevant business areas, including in asylum cases - via their asylum leads and senior caseworker networks.**
- **Appoint named responsible monitoring officers to drive improvements via team managers to ensure that appropriate and timely actions are being carried out consistently and recorded correctly. The nominated officer would also take responsibility for Rule 35 performance and liaising with Detention Services.**
- **Arrange the roll-out of improved recording and monitoring systems.**
- **Support this with a system of follow up sampling and data quality checks which will be reported back to the deputy director on a monthly basis with prompt attention being given to any necessary remedial action or training issues.**
- **Implement minimum performance threshold levels which would – if not met – trigger a report at director-level.**

7. DETENTION SERVICE MONITORING & ESCALATION

[Detention Services Order 03/2008](#) states: “A log should be kept of forms that are sent to detention/case-working offices, and the log should include a record of the receipt of the confirmation. A review should be conducted no later than 2 working days, starting on the working day after the pro-forma has been faxed, to ensure that such confirmation has been received and a review of the decision to maintain detention completed.”

The audit describes a follow-up procedure operating within Detention Services, whereby Agency officers in the IRCs proactively enquire into reports which have not received a response from the case owner after two working days. This process has been tightened as part of the immediate actions undertaken. The DSO will soon be updated to reflect this and the wider process improvements. .

ACTION: To amend DSO 03/2008 to reflect the clearer requirements now in place for Detention Services officers in IRCs to follow up and monitor report returns, and to escalate reports at the appropriate points.

8. FURTHER REVIEW

ACTION: A further audit should be carried out after six months.

Annex A – Policy Documents

Chapter 55 of the Enforcement Instructions and Guidance

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/>

Detention Centre Rules 2001

<http://www.legislation.gov.uk/ukxi/2001/238/contents/made>

Asylum Policy Instruction (Rule 35)

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/>

Detention Services Order 03/2008

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/detention-services-orders/>