

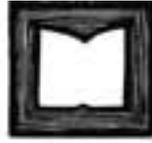


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# Our Hidden Borders

The UK Border Agency's Powers of Detention





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# Foreword

Individuals who are not nationals of the UK are particularly vulnerable to breaches of their human rights. Language barriers, lack of information on rights in accessible forms and the public discourse on migration and asylum can all serve to exacerbate these vulnerabilities. When those individuals are, as is current practice, detained by state agencies in the prison estate, custody suites or removal centres the need for independent inspection and investigation is crucial.

The lack of publicly available information around decisions to detain highlighted a pressing need for an investigation that went beyond an examination of the places of detention to one that examined how those who are not nationals came to be detained in the first place. *Our Hidden Borders* examines the extent to which current law, policy and practice on the detention of perceived offenders of immigration law and asylum seekers is compliant with the UK’s commitments under international human rights law.

The findings of the investigation highlight a range of human rights concerns and the recommendations in this report focus on these. They relate to the policies, law and practice governing the UK Border Agency and to the involvement of the Police Service of Northern Ireland. They have implications for devolved, non-devolved and excepted matters, and will require a range of responses across government departments. In taking forward this work, the Commission is keen to discuss its recommendations with the Home Office, the UK Border Agency and the Police Service of Northern Ireland to enable a positive response from those concerned. The Commission is also keen to ensure that a wide range of bodies become involved in helping to disseminate the findings and progress the recommendations of *Our Hidden Borders*.

I would like to thank the authors of this report for the way in which they applied their investigatory skills to this difficult subject and particularly Dr Nazia Latif who led the investigation from its genesis. I would also like to acknowledge all those who assisted the investigation and hope they find that, through their participation, the human rights of all are better respected, protected and fulfilled.

**Professor Monica McWilliams**  
**Chief Commissioner**

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# Acronyms

<b>AIO</b>	Assistant Immigration Officer
<b>CIO</b>	Chief Immigration Officer
<b>CPT</b>	Committee for the Prevention of Torture
<b>ECHR</b>	European Convention on Human Rights
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>IO</b>	Immigration Officer
<b>LEO</b>	Local Enforcement Office
<b>PACE</b>	Police and Criminal Evidence (NI) Order 1989
<b>PSNI</b>	Police Service of Northern Ireland
<b>UKBA</b>	UK Border Agency

# Executive summary

1. In 2005, the Northern Ireland Human Rights Commission decided to conduct an investigation into how immigration officers of the, then, Immigration and Nationality Directorate arrived at the decision to recommend that individuals be detained.
2. The Commission’s main concern was whether the deprivation of liberty was being authorised in accordance with the requirements of Article 5 of the European Convention on Human Rights.
3. The investigation examines the extent to which human rights are engaged in making the decision to detain and how those detained are then being protected.
4. When the Commission decided to conduct the investigation, people detained under immigration authority were held in the Northern Ireland prison estate. However, a change in UK Border Agency (UKBA) policy, in January 2006, means that immigration detainees and some asylum seekers are transported from police custody suites to immigration removal centres in Great Britain.
5. While the place of detention had changed, the human rights concerns remained and were exacerbated by the fact that people were being transported around the country.
6. Without the statutory powers to compel evidence, the Commission had to rely on the co-operation of the UKBA in order to obtain access to personnel and documentation. Obtaining the necessary access involved lengthy discussions at various levels within the UKBA.
7. The investigation required access to: UKBA staff involved in immigration control in Northern Ireland and PSNI officers seconded to the UKBA; statistics on the numbers of people against whom enforcement action has been taken; UKBA operations; case files relating to individuals in contact with UKBA; and individuals held under immigration authority.
8. Investigators began interviewing UKBA staff in November 2006, using semi-structured interviews, while some outstanding issues regarding access to case files and UKBA operations were being resolved.
9. Investigators observed UKBA operations in Northern Ireland, as well as the briefings prior to and post-operation which were attended by UKBA staff and seconded PSNI officers. In particular, there is substantial concern among practitioners about the way in which Operation Gull is conducted and whether ‘racial profiling’ is used by the UKBA.
10. Investigators interviewed detainees. The UKBA was not aware that investigators would speak to all of these detainees.
11. The investigation report examines the international human rights standards relating to immigration and asylum. It then looks at domestic legislation and policy on immigration and asylum and examines the extent to which this complies with the international standards.

12. The investigation report asserts that domestic legislation and policy leave too much to the discretion of individual immigration officers who make the recommendation for detention, and that this risks individuals being detained on an arbitrary basis and without due process.
13. The investigation involved detailed interviews with immigration officers, assistant immigration officers, chief immigration officers and seconded PSNI officers. As a result of these interviews, the investigation report recommends that greater training in human rights is needed for all those involved in enforcing immigration control and that this training should be audited.
14. In looking at ‘traditional’ enforcement operations, the Commission recommends that magistrates with responsibility for issuing warrants receive greater training in human rights and immigration law.
15. The investigators’ observation of UKBA activities, interviews with detainees, practitioners and custody sergeants are outlined and examined in detail in the report. The findings raise serious concerns about the way in which immigration officers engage with individuals and the way in which they arrive at the decision to make the recommendation for detention.
16. In addition, whether and the way in which detainees are told of their right to access legal advice is examined. The report raises further concerns about the lack of consistent practice among immigration officers in informing detainees of this right.
17. Further, it shows how official government documentation given to all detainees fails to serve the purpose of clarifying their rights how to access them, and the reasons for detention. Investigators found that the overwhelming majority of detainees interviewed were confused about the reasons for their detention. The documentation is entirely in English and is not available in other languages.
18. One of the primary findings is that resource considerations can determine whether detainees have access to an interpreter. In one case, a detainee spent a night in a custody suite without being served with immigration papers or being informed of the reasons for his detention because IOs decided that the cost of calling out an interpreter to a particular custody suite was too great.
19. The investigation leads the Commission to make a number of recommendations to government that will make the experience of those coming into contact with UKBA officials compliant with international human rights standards. In particular, there is a need to ensure that all individuals are afforded the same level of protection and that a uniform process, informed fully by human rights, is applied to all.

# Introduction

## The need for an investigation

The Northern Ireland Human Rights Commission (the Commission) has the power to conduct research under the *Northern Ireland Act 1998*<sup>1</sup> and to carry out investigations.<sup>2</sup> The Commission first identified the need for an investigation into immigration enforcement activity in early 2005 when, in Northern Ireland, some asylum seekers and immigration offenders were being held in the prison estate. That arrangement was unsatisfactory and in breach of international human rights standards. The European Committee for the Prevention of Torture (CPT), for example, condemned this practice in 1997, when it stated:

*On occasion, CPT delegations have found immigration detainees held in prisons. Even if the actual conditions of detention for these persons in the establishment concerned are adequate – which has not always been the case – the CPT considers such an approach to be fundamentally flawed. A prison is by definition not a suitable place in which to detain someone who is neither convicted nor suspected of a criminal offence.*<sup>3</sup>

Indeed, the Commission’s concerns were also not confined to the place of detention and its physical condition, although that policy clearly raised issues relating to Article 3 of the *European Convention on Human Rights* (ECHR) (the right to be free from torture or inhuman or degrading treatment or punishment). The Commission was primarily concerned with government policy which allowed people, such as asylum seekers and perceived immigration offenders, to be detained in the first place. It appeared that the policy was disproportionate in terms of the risk posed to society by such people. Additionally, there was general concern about how individuals came to be detained, that is, what procedures were followed before detention could be authorised; if one consistent set of procedures existed, did it comply with international human rights standards; were

immigration enforcement officers operating on the ground adhering to the criteria; how were decisions reviewed and to what level of independent oversight were decisions subject? The Commission, like practitioners representing detainees, was aware that while an immigration officer (IO) made the recommendation for detention, the authorisation had to come from a chief immigration officer (CIO). However, there was a distinct lack of publicly available information on how that decision was reached (to recommend or to authorise). It was apparent that other powers had to be available and routinely used that equally engaged human rights. For example, IOs must have authorisation to stop, question, arrest and search the belongings of individuals as well as broader powers of investigation. The Commission wanted to know how these were being employed by IOs.

It was decided that although asylum seekers were perhaps in a particularly vulnerable position, the investigation would not focus exclusively upon them. Instead, it would look at the full range of UK Border Agency (UKBA) activities in relation to enforcement and removal and attempt to look into the experiences of perceived immigration offenders as well as asylum seekers. The Commission was concerned that both categories of people were in acutely vulnerable positions: some of them seeking asylum and possibly suffering trauma; many of them with no knowledge of their rights and entitlements while in the UK – a situation compounded as many would have little or no English language skills, no contacts or support networks, and whose presence in the UK’s territories was transient with little opportunity for communication with others about experiences. The investigation, in its approach and findings, also had to take into account the popular discourse around migration and asylum, which results in individuals largely being detained on immigration authority, out of public view and public sympathy.

1 Section 69(6).

2 Section 69(8).

3 European Committee for the Prevention of Torture (1997) *7th General Report on the CPT’s activities covering the period 1 January to 31 December 1996*, Council of Europe, Strasbourg. Available at: <http://www.cpt.coe.int/EN/annual/rep-07.htm> [accessed 6 October 2008].

An investigation was therefore required to shed light on the decision-making process with regard to detention and to measure that process and its outcomes, for the individuals involved, against human rights standards. The main purpose of the investigation was to assess whether the deprivation of liberty was being authorised in accordance with the requirements of Article 5, ECHR. In addition, the investigation examined the extent of human rights which were engaged in making the decision to detain and, therefore, how those detained were then being protected.

### **Immigration enforcement in Northern Ireland**

Immigration enforcement in the UK falls under two broad terms: ‘border control’ and ‘enforcement and removals’. Border control, which includes checking the passports of all arriving passengers, involves monitoring all international arrivals and ensuring that passengers have the necessary visa authorisation to enter the UK. Any person who has arrived in the UK on an international flight will be familiar with at least the public face of this form of immigration control. Enforcement and removal involves IOs actively searching for irregular migrants and putting procedures in place for their removal from the UK. ‘Traditional’ immigration enforcement and removal activities involve teams of IOs acting on intelligence, entering homes or places of work where they believe irregular migrants reside or work and, where appropriate, making an arrest, making a recommendation for detention or temporary release, and putting in place removal directions or reporting arrangements.

Northern Ireland is part of an island and the only region of the UK to share a land border with another EU state. This circumstance has led to a particular form of immigration enforcement. Operation Gull, an exercise discussed in detail in Chapter 6, involves attempting to enforce immigration control at Belfast sea and air ports through monitoring passengers on domestic journeys. It is not, therefore, a form of border control in the same way as immigration

enforcement operations for international arrivals at airports. Operation Gull can be characterised as an anomaly in Northern Ireland and, as such, necessitates detailed discussion in its own right.

At the time of the investigation, in addition to a team of IOs operating in Northern Ireland, there were nine police officers seconded from the Police Service of Northern Ireland (PSNI), who were required to support the enforcement activities. Investigators were informed by UKBA staff working in Northern Ireland that PSNI officers must accompany IOs in Northern Ireland on every enforcement visit so that the visit can proceed. Where support from the seconded team cannot be secured, the UKBA is required to seek support from the PSNI’s District Command Unit (DCU). In addition, the PSNI will provide a community impact assessment of the UKBA’s plans to conduct a visit in a specific location, and the Police Commander will have the final veto over all ‘traditional’ enforcement work. This arrangement is discussed in more detail in Chapter 5.

The UKBA enforcement office comprises a number of different ranks of immigration enforcement personnel. For ease of reference and to ensure that no individual personnel can be identified, the term ‘immigration officer’ (IO) is used throughout this report, unless it is necessary to differentiate between different ranks of personnel. An immigration officer is only empowered to make the recommendation for detention, while the authorisation for detention must come from the chief immigration officer (CIO).

### **Progress of the investigation**

After fairly consistent communications with Home Office representatives throughout 2005 and, what was at the time, the Immigration and Nationality Directorate (IND) for the purpose of discussing the investigation’s terms of reference, it emerged in early 2006 that the IND had decided the prison estate was no longer to be used for immigration detention. Instead, without proper consultation, individuals liable to removal from the UK were to be

transported from Northern Ireland to detention facilities in Great Britain. There was no formal communication to the Commission about this change, despite the engagement that had taken place, and it was left to legal practitioners who were representing clients to communicate the new practice.

The new policy raised a number of further concerns about the treatment of detainees, which included where detainees were being held initially; how they were being transported; the means of transport; the implications for access to legal advice; treatment of detainees *en route*; and the conditions of the detention facility to which they were being transported. As the Commission conducted further enquiries into the operation of the policy, it emerged that, in the first instance, detainees were routinely being held in police custody suites and that their destination outside of Northern Ireland was not simply one immigration removal centre in Great Britain, but could involve several centres before ultimate removal to another country.

While the place of detention had changed as a result of the transportation policy, the human rights engaged and potentially breached as a result remained the rights not to be tortured or subjected to inhuman or degrading treatment or punishment, to be free from arbitrary detention, and the right to privacy and family life.

The changes in the structure of immigration enforcement altered a number of times over the course of the investigation and it is important to outline these:

- In April 2007, the name of the 'Immigration and Nationality Directorate' changed to the 'Border and Immigration Agency'. Then, in April 2008, the name changed again to the current 'UK Border Agency' (UKBA). For consistency, this report refers to UKBA throughout, even when referring to events which took place prior to April 2008.
- In December 2005, the detention policy changed from detaining perceived immigration offenders and some asylum seekers in police custody suites before moving them to the prison estate in Northern Ireland, to detention in police custody suites in Northern Ireland, in the first instance, before transportation to an immigration removal centre in Great Britain.
- There was a change in regional management from the North West regional office to the Scotland regional office.
- A significant change occurred to the enforcement structures in Northern Ireland over a number of months. This resulted in a personnel change from just two immigration enforcement officials to a new structure comprising two chief immigration officers (CIOs), four immigration officers (IOs), nine assistant immigration officers (AIOs) and nine police officers seconded from the Police Service of Northern Ireland (PSNI). In addition, a number of case workers and an intelligence unit also now work from the Northern Ireland enforcement office.
- Two pieces of primary legislation relating to immigration and asylum were introduced (the *UK Borders Act 2007* and the *Criminal Justice and Immigration Act 2008*) and a number of consultation documents mooted changes to the system of immigration and citizenship.

Despite the far-reaching human rights implications of the UKBA's work, in the absence of statutory powers, the Commission relied entirely on co-operation from the Home Office in conducting this investigation. Having taken the necessary time to monitor the implications of the new detention and transportation policy, the Commission wrote to the Director of the then IND in October 2006, requesting:

- interviews with Immigration Service managers with responsibility for key decision-making on asylum and immigration cases, and interviews with immigration officers who interview applicants in Northern Ireland;

- access to all files relating to asylum and immigration applicants stopped and interviewed by the Immigration Service, since the change in policy in January 2006, whether transported/detained or not;
- interviews with other professionals actually, or potentially, involved in immigration control, including the Northern Ireland Prison Service;
- interviews with the agencies responsible for escorting detainees and examination of paperwork held by them;
- interviews with immigration detainees, including asylum applicants, and others with experience of applying for asylum; and
- observation of Operation Gull and ‘traditional enforcement’ work.

The response was patchy and inconsistent, revealing the serious disjointedness within the Home Office, generally, and the UKBA more specifically. For example, when the Commission wrote to the UKBA requesting access to case files and to personnel for interview purposes, the Home Office explained that, having sought legal advice as to how to facilitate the request, the Commission’s jurisdiction did not extend beyond Northern Ireland and the investigation could not look at places of detention in Great Britain. At the time that legal advice was drafted by UKBA officials, the Commission had already undertaken two visits to immigration detention facilities in Great Britain: Dungavel and Yarl’s Wood. Both visits were authorised and co-ordinated by another branch of the UKBA. A comment made by one IO (discussed in Chapter 6) describes aptly the level of communication and co-ordination within the Home Office in relation to immigration enforcement as, “It’s a case of the left hand not knowing what the right hand is doing”.

The UKBA’s major concern, however, was around access to case files which, it stated, raised data protection issues, and observation of the enforcement operations which the UKBA claimed raised health and safety concerns for the

investigators. Indeed, the investigators themselves felt that observations could raise serious ethical concerns for the Commission. While negotiations on these issues were ongoing, the investigators began the process of interviewing UKBA personnel, including CIOs, IOs, AIOs and seconded police officers operating in Northern Ireland, as well as employees of G4S, the private security firm responsible for transporting detainees from Northern Ireland to Great Britain. Eventually an arrangement was agreed that allowed some level of insight into the operation of the UKBA in Northern Ireland and the formal fieldwork for the investigation began in July 2007.

The investigators were given the opportunity to observe Operation Gull over the course of one weekend. In addition, they observed traditional enforcement work through accompanying IOs on their visits to places of work and to homes. Once immigration papers were served, the investigators were permitted to interview the arrested individuals, in private, having first sought their consent.

The Commission discussed in detail the appropriateness of its investigators being present when UKBA personnel entered someone’s home, usually between 6.00am and 7.00am, and searched through personal belongings, with the possibility of children being present. The presence of the investigators at home visits would also have meant that there would have to be at least two additional police officers present to provide the required ‘cover’. The Commission decided that this would not be ethical. Places of work, however, are already quasi-public places and, therefore, the same ethical concerns did not apply. In the end, the Commission’s deliberations on the matter were academic: the UKBA insisted that one officer, usually a seconded PSNI officer, shadow every other officer and all officers were required to wear stab-proof vests. The UKBA struggled to get enough police officers to shadow their own staff and, therefore, could not acquire enough staff to shadow the investigators; nor could they make the

provision for stab-proof vests because these are made to measure and issued to individual officers.

Instead, the investigators attended the briefing session that took place immediately prior to each enforcement visit (either at private addresses or places of work) and, at that point, parted from UKBA and PSNI staff. If an arrest was made, the investigators were informed by the officer in charge of the visit and told of the custody suite that the 'arrestee' was being taken to. There, the investigators, with the detainee's consent and that of the custody sergeant, would observe any further interaction between the detainee and UKBA staff and then, with the detainee's permission, interview him/her in private. The investigators also attended post-visit de-briefs conducted between the UKBA and PSNI officers who had attended the visit.

Observation of Operation Gull proceeded, as planned, since neither the ethical considerations, nor the safety ones, applied because the operation took place in public view (at air and sea ports) and passengers had already proceeded through security prior to boarding. For the purpose of the investigation observations took place at Belfast City Airport. The investigators did not witness procedures at Belfast International Airport or Northern Ireland sea ports.

Once the fieldwork was underway, UKBA operations did not take place regularly or often. It was important that the investigation covered an appropriate number of visits that would reveal some patterns in enforcement activity but, given the relatively small number of enforcement visits, the investigation fieldwork could not go on indefinitely. The original terms of reference had indicated a three-month period for conducting fieldwork. However, after observing one briefing session, in which no arrest was made, in July 2007, no opportunity arose for another visit until September 2007. The investigators therefore decided that a further three months were required for the purposes of observing enforcement activity and so this continued until December 2007.

Interviews with personnel continued into early 2008. However, access to case files was an issue requiring ongoing discussion.

Having observed Operation Gull and traditional enforcement work, and having interviewed a number of detainees between September and November 2007, the Commission wrote to the UKBA in early January 2008, requesting access to a number of specified case files. The investigators also requested access to case files relating to some of the interviewed detainees and a number of randomly selected case files arising from the statistics. For the purposes of the investigation, it was vital that the Commission was aware of how IOs recorded interactions, which the investigators had observed, as well as hearing the detainees' accounts in the follow-up interviews. It was also crucial that there was an analysis of the information that CIOs and more senior officials had sight of when detention decisions were being made and subsequently reviewed. Much discussion took place between the investigators, the regional office in Scotland and at local level about how these files might be physically located. The investigators discovered that there was no easy way of locating the files once they left the Northern Ireland enforcement office and that the Home Office database could not be searched according to original port of entry or detention/detection. The UKBA, however, gave an undertaking to provide the files if they could be located.

Despite the UKBA claim that efforts were being made, these files could not be made available to the investigators until early August 2008, which was too late for them to be taken into account in this report. The Commission remains seriously concerned that it took the UKBA eight months to locate the files, despite claims that efforts were being made to do so. The practical implications of this difficulty in locating the IOs' records of what takes place during the interaction between them and members of the public, in terms of an audit trail and/or assessing complaints against IOs, is discussed further in Chapter 7.

Once the investigation was underway, the investigators thought it would be useful to observe the meetings in which specific enforcement visits were allocated – referred to as the ‘tasking’ meetings. The investigators felt this would shed light on the types of intelligence that UKBA acted upon in relation to deciding its enforcement visits, as well as the range of other factors taken into consideration. However, the investigators were told categorically by the UKBA that this would not be permitted on the basis that it might reveal too much about methods of intelligence gathering and that the investigator’s presence would alter the dynamics of the meeting.

### **The investigation report**

This investigation report presents the evidence gathered during the course of the fieldwork, as well as information already available from secondary sources. Chapter 2 examines the key international standards that govern both immigration control and the enforcement and asylum processes. It refers to the international human rights standards to which the UK is a party, as well as ‘soft law’ standards that ought to inform states in meeting their human rights commitments. Chapter 3 looks at the domestic legislation and policy on immigration and asylum, the extent to which it complies with international standards and the statutory powers of IOs. Both chapters also provide the context for the assessment of the UKBA’s activities.

The following chapters analyse the way in which these activities comply with the international standards and domestic law. Importantly, the investigation report examines whether the domestic law in practice leads to a divergence from the international standards. Given the nature of the powers of search, investigation and detention granted to IOs, the Commission believed a crucial element of the investigation concerned the attitudes and opinions of the IOs, themselves. Where statutory provisions leave so much to the discretion of individuals (see Chapter 3), it was felt that interviews with the personnel involved would inevitably shed some light on the reasons behind

IOs’ decisions and recommendations. Chapter 4, therefore, reveals the outcome of those interviews and the various ways in which IOs and others in Northern Ireland involved in immigration enforcement articulate the rationale behind their work and the decisions they take, as well as the pressures they face. As the discussions in Chapters 5 and 6 show, those attitudes and opinions cannot be wholly removed from the way in which immigration enforcement duties are executed in Northern Ireland, and they have a crucial impact on the human rights protections of those who are subject to immigration control.

Chapter 5 discusses, in detail, the findings of the fieldwork in relation to traditional enforcement work. It explains the methodology for that fieldwork and shows how visits are conducted, arrests made and detentions authorised. It also looks at the implications for human rights protections of the use of police custody suites for the purposes of immigration detention.

Chapter 6 discusses the findings of the fieldwork in relation to Operation Gull, which is distinct from traditional enforcement work by virtue of the way in which it is conducted and the reasons for it. Chapter 7 goes on to look at the level of independent and impartial oversight to which the activities of IOs are subjected, and examines whether the current arrangements are sufficient. Underlying the entire investigation report, and explored in depth in Chapter 7, is the crucial question of whether any level of oversight sufficiently addresses the powers that IOs currently hold. Therefore, would human rights concerns be positively addressed if there was simply an appropriate mechanism for independent scrutiny of IOs? Or, does there need to be a more radical and thorough re-think around the powers that IOs already have in order to ensure appropriate human rights protections?

The concluding Chapter 8 examines the purpose these powers are intended to serve – that is, more efficient immigration control in the UK. This is an important aspect of the policy, given that Chapter 5

shows that efficient immigration control, as executed and understood in the context of Northern Ireland, is not simply about ensuring that only those with valid documentation are permitted to remain in the UK. In fact, in Northern Ireland, IOs routinely question the motives and future intentions of those who have the necessary permission to be here.

Having looked at the specifics of immigration control in Northern Ireland, the concluding chapter also examines the broader perspectives on immigration control – the viewpoints that attempt to justify it and, indeed, strengthen it. The chapter unpacks the rationale for immigration control and suggests that notions of inextricable links between increased immigration and increased benefit fraud,

criminality and social tensions are questionable. The point is asserted that, in any case, the state as fundamental guarantor of human rights must balance the often articulated need from its agencies and the wider public for greater powers and resources against the indisputable duty to afford human rights protections to those within their territories. Inherent in that duty, is the need for government to challenge the views and opinions that lead to the call for inappropriate legislative and policy proposals around immigration control. The report, therefore, concludes with a number of recommendations which government must positively address if it is to meet the letter and spirit of its human rights commitments.

## International standards

### Introduction

Immigration enforcement procedures engage a number of rights which are protected through international standards. These include, among others, the *UN International Covenant on Civil and Political Rights* (ICCPR), the *UN Convention on the Status of Refugees* (the Refugee Convention), the *European Convention on Human Rights* (ECHR) and the *UN Convention on the Rights of the Child* (CRC), which should lead national practice.

Such enforcement is also an area where the potential for infringement of human rights is widely recognised, as evidenced by court cases, reports of official inspection bodies and research reports by support organisations.

The nature of immigration enforcement, together with the exercise of the wide-ranging powers of immigration officials, detention officers and the police mean that the protection of the right to liberty, freedom from torture, inhuman and degrading treatment or punishment, and the right to family life all lie at the centre of the enforcement process.

This chapter looks at international standards established for immigration and law enforcement, but discusses only those provisions which are directly applicable to the focus of this investigation.

### Arrest and detention

Freedom from arbitrary detention and the right to freedom of movement have long been recognised in international human rights standards. All major international treaties place these rights at the heart of protection of a person’s liberty from arbitrary intervention by states.

Article 9 of the ICCPR provides that everyone has the right to liberty and security of person. The ICCPR also provides for protection from arbitrary detention and states that a person can be detained only on such grounds and in accordance with such procedures as are prescribed by law:

1. *Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*
2. *Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.*
3. *Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.*
4. *Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.*
5. *Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.*

The ICCPR is not prescriptive in relation to situations when detention would be lawful, that is, when the right to liberty can be limited by state action. It does, however, provide procedural rights: the right to information, including information on access to legal advice, and the right to challenge the decision to detain. Article 10 outlines additional rights of individuals in detention, namely, that anyone deprived of their liberty should be treated humanely and with respect for their inherent dignity.

The meaning of the right to liberty under the ICCPR has been explained in *General Comment Number 08* by the UN Human Rights Committee:

*Article 9 which deals with the right to liberty and security of persons has often been somewhat narrowly understood [...] The Committee points out that paragraph 1 [of Article 9] is applicable to all deprivations of liberty, whether in criminal cases or in other cases such as [...] immigration control, etc. It is true that some of the provisions of article 9 [...] are only applicable to persons against whom criminal charges are brought. But the rest, and in particular the important guarantee laid down in paragraph 4, i.e. the right to control by a court of the legality of the detention, applies to all persons deprived of their liberty by arrest or detention.*<sup>4</sup>

In the case of *A v Australia* (1997), concerning immigration detention of asylum seekers, the UN Human Rights Committee considered its opinion on the interpretation of paragraph 4 of Article 9 of the ICCPR, which guarantees the right to challenge the lawfulness of detention. In this case, Australia argued that the applicant could only challenge the lawfulness of detention under national law, in which circumstances deprivation of liberty in his particular case was lawful. The Committee disagreed and, in an opinion in the judgment, one of the Committee Members stated:

*[...] it was argued on behalf of the State that all that article 9, paragraph 4 [...] requires is that the person detained must have the right and opportunity to take proceedings before a court to review of lawfulness of his/her detention and lawfulness must be limited merely to compliance of the detention with the domestic law. [...] this would be placing too narrow an interpretation on the language of article 9 [...] which embodies a human right. It would not be right to adopt an interpretation which will attenuate a human right. It must be interpreted broadly and expansively.*<sup>5</sup>

The Committee was of the view that if the review of detention was only understood through the prism of the lawfulness under domestic law, the State could potentially enact laws that would justify any type of detention. The Committee stated that any review must reach the threshold of ‘non-arbitrariness’ under international standards:

*[...] the notion of ‘arbitrariness’ must not be equated with ‘against the law’ but be interpreted more broadly to include such elements as inappropriateness and injustice. Furthermore, remand in custody could be considered arbitrary if it is not necessary in all the circumstances of the case, for example to prevent flight or interference with evidence: the element of proportionality becomes relevant in this context.*

In terms of access to legal advice, it is interesting to note the UN Human Rights Committee’s Concluding Observations on Australia (2000):

*The Committee urges the State party to reconsider its policy of mandatory detention of ‘unlawful non-citizens’ with a view to instituting alternative mechanisms of maintaining an orderly immigration process. The Committee recommends that the State party inform all detainees of their legal rights, including their right to seek legal counsel.*<sup>6</sup>

The ICCPR also protects the right of freedom of movement of those who are lawfully within the territory of a certain state (Article 12). In the context of this report, it is worth mentioning that the Human Rights Committee’s case law recognises that a person who has duly presented an application for asylum is considered to be “lawfully within the territory” of a certain state.<sup>7</sup>

In countries of the Council of Europe, signatories to the ECHR – of which the UK is one – the right to liberty and security of a person is protected by Article 5 of the Convention. Article 5 allows for deprivation of liberty in a number of specified

<sup>4</sup> CCPR General Comment No 08: Right to liberty and security of persons (Art 9): 30/06/82.

<sup>5</sup> *A v Australia* (560/93) 3/4/97.

<sup>6</sup> UN doc. A/55/40, para 527.

<sup>7</sup> See: *Celep v Sweden*, CCPR/C/51/D/456/1991.

situations, and only if the detention or other lawful infringement happens in accordance with a procedure prescribed by law:

- (1) *Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:*
  - (a) *the lawful detention of a person after conviction by a competent court;*
  - (b) *the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;*
  - (c) *the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority of reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;*
  - (d) *the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;*
  - (e) *the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts, or vagrants;*
  - (f) *the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.*
- (2) *Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and the charge against him.*
- (3) *Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this article shall be brought promptly before a judge or other officer*

*authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.*

- (4) *Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*
- (5) *Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.*

One of the lawful bases for deprivation of liberty, as provided for by Article 5 (1)(f), relates to situations when the arrest or detention of a person is to prevent them from gaining unauthorised entry into the country, or of a person against whom action is being taken with a view to deportation or extradition.

Article 5 provides individuals who are subject to arrest and detention with a number of procedural rights that need to be accorded to them following deprivation of liberty. Of relevance to immigration detention, in particular, is the right to be informed promptly, and in a language that the person understands, of the reasons for their arrest and any charges against them (Article 5(2)). Article 5(4) guarantees the right to have one’s detention reviewed by a court and to immediate release, should the detention be judged unlawful. Article 5(5) guarantees the right to compensation for anyone whose detention contravenes the Convention.

In the most recent case relating to immigration detention, that of *Saadi v The United Kingdom*, the Grand Chamber of the European Court of Human Rights had to consider the meaning of Article 5(1)(f) and Article 5(2) in relation to such detention. In this case, the applicant, an Iraqi Kurd, claimed asylum in the UK on his arrival in London in 2000. He was granted “temporary admission” due to a

lack of places in Oakington Reception Centre and was required to report to immigration authorities on a regular basis. After reporting on the fourth day, he was detained and transferred to Oakington where his claim was to be decided using the ‘fast-track’ procedure.

The applicant was given a standard form outlining the reasons for detention and bail rights (form IS91R which is discussed in greater detail later in this report and is included at Appendix 2). While the form included reasons for detention such as the risk of absconding, it did not include the option for detention for fast-track processing at Oakington. Detailed reasons for his detention were given to the applicant’s legal representative 76 hours after he had been detained. The applicant was held at Oakington for seven days and then released, pending the outcome of his appeal of the decision to refuse him asylum.

While the applicant was subsequently granted asylum on appeal, his initial detention, and the applicability of Article 5, was separately reviewed before courts in the UK. In the judicial review, the judge stated that it was not permissible under the ECHR to detain, solely for purposes of administrative efficiency, an asylum seeker who had followed the proper procedures and presented no risk of absconding.<sup>8</sup>

This judgment was later overturned in the Court of Appeal and, again, in the House of Lords, which both stated that the applicant’s detention pursued a legitimate aim and that considering the number of asylum claims processed in the UK every month, temporary short term detention to speed up the resolution of that claim is not unreasonable.

In this case, the European Court of Human Rights had to consider for the first time the meaning of the first part of Article 5(1)(f), that is, whether the detention was for the purpose of preventing “an unauthorised entry to the country”. The Court agreed with the UK’s Court of Appeal and the House of Lords’ view that, until a state has

“authorised” entry, any entry is “unauthorised” and the detention of a person in such circumstances will fall within the remit of Article 5(1)(f). The Court stated that such detention should be in line with other international standards and guidelines, including those of the UN High Commissioner for Refugees, which allow for the detention of asylum seekers in certain circumstances.

The Court stated, however, that:

*To avoid being branded as arbitrary [...] such detention must be carried out in good faith; it must be closely connected to the purpose of preventing unauthorised entry of the person to the country; the place and conditions of detention should be appropriate, bearing in mind that “the measure is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country” (see: Amuur, § 43); and the length of the detention should not exceed that reasonably required for the purpose pursued.*

In this particular case, the Court held that the detention of the applicant was not arbitrary, and therefore there was no violation of Article 5(1)(f).

On the second question of whether the applicant was informed properly of the reasons for his detention, the Court held that the 76 hours delay between the actual detention and provision of the form IS91R, and giving the real reasons for it to the legal representative, was significant. The Court, therefore, found that the UK had violated the right to information by not giving the reasons sufficiently “promptly”.

Similarly to the ICCPR, the ECHR also protects the right to freedom of movement while lawfully in the territory of a state (Article 2 of Protocol 4, as referred to in Chapter 3). This right, which applies to everyone – citizens and non-citizens – can only be limited in certain circumstances and for legitimate reasons (such as the prevention of crime) and the restrictions always have to be in accordance with the law, as well as necessary and proportionate.

<sup>8</sup> *R (on the application of Saadi and others) v Secretary of State for the Home Department* [2001] EWHC Admin 670.

## Soft law standards relating to arrest and detention

In 1988, the UN issued the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*<sup>9</sup> which are applicable to immigration detention. The Principles underline that all detained people should be treated in a humane manner and with respect for their inherent dignity, and without discrimination on any grounds. Principle 2 states that arrest and detention should only be carried out in accordance with the law and by those who are authorised to do so.

The Principles set a number of procedural standards which should be observed and these include opportunity for the detained person to be promptly heard by a judge or other authority and to be represented by legal counsel (Principle 11, together with Principle 17); the right to information and explanation of the detainee’s rights, and how to avail themselves of those rights (Principle 13); the right to interpretation (Principle 14); and the right for family or others to be informed of the detention including, in the case of foreign nationals, his or her diplomatic representative (Principle 16).

The Principles also outline a number of standards which have to be observed when detention continues:

- a) *the detainee has the right to be visited by and to correspond with, in particular, members of his family and shall be given the opportunity to communicate with the outside world* (Principle 19);
- b) *a proper medical examination should be offered to the detainee* (Principle 24);
- c) *the detainee has the right, with some restrictions, to obtain reasonable quantities of educational, cultural and informational material* (Principle 28).

Detention of asylum seekers, in particular, has been a focus of a number of international human rights ‘soft law’ guidelines. In 1986, the Executive Committee of the UN High Commissioner for

Refugees’ Programme adopted the *Conclusion relating to the detention of asylum seekers*,<sup>10</sup> later adopted by the UN General Assembly, in which it:

- a) *noted with deep concern that large numbers of refugees and asylum seekers [...] are currently the subject of detention or similar restrictive measures by reason of their illegal entry or presence in search of asylum, pending resolution of their situation;*
- b) *expressed the opinion that in view of the hardship which it involves, detention should normally be avoided. If necessary, detention may be resorted to only on grounds prescribed by law to verify identity; to determine the elements on which the claim to refugee status or asylum is based; to deal with cases where refugees or asylum seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; or to protect national security or public order;*
- c) [...]
- d) *stressed the importance for national legislation and/or administrative practice to make the necessary distinction between the situation of refugees and asylum seekers, and that of other aliens [...].*

In 1995, the UNHCR issued guidelines (later revised in 1999) on detention in which, while stressing that it should always be used as a last resort, it outlined the situations in which states can detain people seeking asylum:

*[...] detention of asylum seekers may only be resorted to, if necessary: (i) to verify identity [...] (ii) to determine the elements on which the claim for refugee status or asylum is based. This statement means that the asylum seeker may be detained exclusively for the purpose of a preliminary interview to identify the basis of the asylum claim. This would involve obtaining the essential facts from the asylum seeker as to why asylum is being sought and would not extend to a determination of the merits or*

<sup>9</sup> GA res 43/173, annex, 43 UN GAOR Supp (No 49) at 298, UN Doc A/43/49 (1988).

<sup>10</sup> No 44 (XXXVII) – 1986.

*otherwise of the claim. (iii) in cases where asylum seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum. [...] asylum seekers who arrive without documentation because they are unable to obtain any in their country of origin should not be detained solely for that reason [...].*

Similarly, the Council of Europe, in its Recommendation on the issue, agreed in 2003, stated<sup>11</sup>:

*The aim of detention is not to punish asylum seekers. Measures of detention [...] may be resorted to only in the following situations: (a) when their identity, including nationality, has in case of doubt to be verified, in particular when asylum seekers have destroyed their travel or identity documents or used fraudulent documents in order to mislead the authorities of the host state; (b) when elements on which the asylum claim is based have to be determined which, in the absence of detention, could not be obtained; (c) when a decision needs to be taken on their right to enter the territory of the state concerned; or (d) when protection of national security and public order so requires. [...] Measures of detention of asylum seekers should be applied only after a careful examination of their necessity in each individual case. Those measures should be specific, temporary and non-arbitrary and should be applied for the shortest possible time. Such measures are to be implemented as prescribed by law and in conformity with standards established by the relevant international instruments and by the case-law of the European Court of Human Rights. [...] Alternative and non-custodial measures, feasible in the individual case, should be considered before resorting to measures of detention. [...]*

### **Freedom from torture, inhuman or degrading treatment or punishment**

In the context of immigration enforcement, the right to be free from torture, inhuman or degrading treatment or punishment can be looked at from two

perspectives. On the one hand, how this right is to be protected during arrest and detention needs to be considered. On the other, it is necessary to look at the consequences of enforcement operations for a particular person – for instance, whether a removal to a certain country can lead to a breach of this right.

Prohibition on torture, inhuman and degrading treatment or punishment is enshrined in a number of international human rights instruments – the ICCPR (Article 7), the ECHR (Article 3) and in the UN Convention against Torture (CAT). This right has an absolute character, which means that no restrictions are permitted in any circumstances, and no derogation is possible.

Essentially, all the provisions prohibit three kinds of behaviour by the state: that of torture, that of inhuman treatment or punishment and that of degrading treatment or punishment.

It is recognised, in international law and practice, that torture can cause both physical and mental suffering, and that the severity of it has to reach a certain, quite high, threshold to be classified under this term. An agreement on what that threshold is, however, not clear.

In a controversial ruling, in *Ireland v the United Kingdom*, the European Court of Human Rights held that even the combined effects of the use of “five techniques” for interrogation of terrorist suspects in the UK did not reach the necessary threshold, and that they fell under the definition of ‘inhuman treatment’ rather than of torture.<sup>12</sup> The five techniques included the hooding of detainees, subjecting them to constant noise, sleep deprivation, deprivation of food and drink, and making the detainees stand for long hours. Similar practices by Israel were, however, criticised by the UN Committee against Torture in 1997.<sup>13</sup>

The first verdict of torture under the ECHR was determined in the case of *Aydin v Turkey*, in 1997, where the European Court held that interrogation techniques used on the applicant, including

<sup>11</sup> Recommendation Rec(2003)5 of the Committee of Ministers to member states on measures of detention of asylum seekers.

<sup>12</sup> *Ireland v UK* (1979-80) 2 EHRR 25.

<sup>13</sup> See, for example: UN doc CAT/C/18/CRP1/Add 4; see also: Joseph S *et al* (2004) *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (2nd edition), Oxford University Press, Oxford.

repeated rape, reached the necessary threshold to be classified under this part of the provision of Article 3.

In the context of immigration detention, the UN Human Rights Committee considered a case of an applicant who claimed that long-term stay (over two years) in immigration custody caused him to develop a serious mental illness.<sup>14</sup> He stated that the authorities knew about his severe mental state, but he was not released and that this constituted a violation of Article 7 of the ICCPR. The Committee agreed with the applicant’s assertion and stated:

*In the Committee’s view, the continued detention of the author [the complainant] when the State party was aware of the author’s mental condition and failed to take steps necessary to ameliorate the author’s mental deterioration constituted a violation of his rights under article 7 of the Covenant.*

The standards of Article 7 of the ICCPR, Article 3 of the ECHR and the provisions of the CAT have a bearing on the conditions of detention, not only in immigration removal centres but also in police stations.

In one of the recent decisions in the case of *Dougoz v Greece*, the Court found that conditions of detention in a detention centre, and in a police station at which the applicant was held while awaiting his removal from the country (overcrowding, lack of access to telephones, lack of hot water and exercise facilities), amounted to “inhuman and degrading” and therefore breached his rights under Article 3 of the Convention.

Protection against expulsion to a country, where a person can face torture or other behaviour falling within the scope of this right, is directly enshrined in Article 3 of the CAT. A number of cases have been considered by the UN Committee against Torture and states have been found to be in breach of the provisions where substantial evidence existed that the person would be subjected to

torture, or other prohibited behaviour, upon their removal.<sup>15</sup>

The UN Committee against Torture is also very clear that the protection of Article 3 rights prevents states from instituting asylum proceedings that automatically prevent certain nationals from claiming asylum. As has been pointed out, the Committee has criticised lists of ‘safe countries’ which operate in Finland or Estonia.<sup>16</sup>

Similar protection from expulsion, in cases where torture or other treatment falling within the prohibition may be a consequence of removal, is not expressly included in the ECHR. Nevertheless, the European Court has considered a number of cases where it held that expulsion of a person to a country where they can face torture, or be subjected to other kinds of inhuman or degrading treatment, will constitute a breach of Article 3.<sup>17</sup> However, as Merrills and Robertson point out:

*For removal to amount to a violation of Article 3 it is not enough to show that there is a mere possibility of ill-treatment, but rather that there are substantial grounds for believing that the applicant faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment.*<sup>18</sup>

## The right to private and family life

In the context of immigration enforcement, the right to family life and the right to private life are engaged in situations both relating to entry into the UK (for example, to join a partner) and removal from the country. The right to privacy and the right to family life are not absolute and are subject to such restrictions as are in accordance with the law, necessary in a democratic society and in order to achieve a legitimate aim (such as, protection of the public or the prevention of crime).

The ICCPR includes two provisions protecting the right to privacy and family life (Article 17) and outlines rights relating to the protection of a family (Article 27, which incorporates the right to marry).

<sup>14</sup> *C v Australia* (900/99).

<sup>15</sup> See, for example: *Mutombo v Switzerland* (CAT 13/93); *Khan v Canada* (CAT 15/94).

<sup>16</sup> Joseph S *et al*, cited above, p 245.

<sup>17</sup> See, for example: *Chahal v UK*, *Soering Sweden*, *Kerboub*.

<sup>18</sup> Merrills J and Robertson A (2001) *Human Rights in Europe: A study of the European Convention on Human Rights* (4th edition), Manchester University Press, Manchester.

Article 17 states that:

*(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*

*(2) Everyone has the right to the protection of the law against such interference or attacks.*

As Joseph *et al* argue, the meaning of the right to privacy is difficult to define.<sup>19</sup> The Human Rights Committee’s *General Comment 16*, and a number of cases considered by it, while not defining the meaning of the term itself, give some examples of situations where state actions can potentially constitute interference with a person’s privacy. Such situations have included interference with choosing and changing one’s own name (*Coeriel and Aurik v The Netherlands*), interference with confidentiality of correspondence (*Pinkey v Canada*), and home searches (*Rojas Garcia v Colombia*).

From the point of view of this investigation, it is important to note the applicability of Article 17 in relation to home searches, which could well extend to searches of luggage and other personal items:

*Searches of a person’s home should be restricted to a search for necessary evidence and should not be allowed to amount to harassment. So far as personal and body search is concerned, effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched.*<sup>20</sup>

In relation to family life, while Article 17 protects from unlawful and arbitrary interference, its protection in other areas is mostly understood as falling under the provisions of Article 23, which states in paragraph 1:

*The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*

A number of cases relating to immigration removals have been considered by the Human Rights Committee under Article 23. In the case of *AS v Canada*, the Committee considered whether the right was violated by the decision not to allow an adult adoptive daughter, who was Polish, to join her parents, who were Canadian citizens, in Canada. The Committee considered that because the family had not lived together during the preceding 17 years, the right to family unity under Article 23 was not violated as it was not established that an effective family life existed before the decision was taken.

In a separate case, the Committee considered the expulsion of a foreign national who committed offences in a state-party and the effects of the deportation on his family life. In the case of *Stewart v Canada*, the applicant, who resided in Canada for most of his adult life, was being deported to the UK following a criminal conviction. The applicant was able to challenge the decision to deport and he was represented by legal counsel. With some Committee members dissenting on the majority verdict, the Committee held, nevertheless, that there was no violation of the applicant’s rights under Articles 17 and 23:

*The Committee is of the opinion that the interference with Mr Stewart’s family relations that will be the inevitable outcome of his deportation cannot be regarded as either unlawful or arbitrary when the deportation order was made under law in furtherance of a legitimate state interest and due consideration was given in the deportation proceedings to the deportee’s family connections.*

In the case of *Winata v Australia*, the Committee considered the situation of two Indonesian nationals who overstayed their visas in Australia, where they later started a relationship. Their son was born in 1988 and acquired Australian

<sup>19</sup> Joseph S *et al*, cited above, p 476.

<sup>20</sup> CCPR General Comment No 16: Article 17 (Right to Privacy). *The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of*

*Honour and Reputation*, OHCHR, Geneva. Available at: <http://www.unhcr.org/refworld/pdfid/453883f922.pdf>.

citizenship 10 years later. The parents were refused a number of visas in Australia and were to be deported. The choice for their son, who was 13 at the time, was to move to Indonesia with his parents or to stay behind in Australia. The parents alleged that their removal would violate their son’s rights under Articles 17 and 23, as he was fully integrated into the Australian society and had no cultural or linguistic connections to Indonesia. The State argued, in this case, that the parents should not have had a legitimate expectation that they would be able to stay and that the element of unlawful establishment of a family weighs in favour of the state’s right to deport them. The Committee disagreed and held that the parents’ deportation would violate provisions of Articles 17 and 23 of the ICCPR.

The right to private and family life is also protected by Article 8 of the ECHR, which states:

1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health and morals, or for the protection of the rights and freedoms of others.*

The decisions of the European Court of Human Rights recognise that removals sever social ties in the country of removal and that this action by immigration authorities engages, in particular, the right to family life. Decisions of the Court in this area have, for a number of years, supported the right of the state to regulate its immigration processes and taken the view that families in particular can re-locate to other countries where they can enjoy their rights without interference.<sup>21</sup> A number of more recent decisions, however, have taken a slightly different view.

The application of Article 8 to immigration procedures was first confirmed by the Court in the case of *Abdulaziz, Cabales and Balkandali v UK*, in 1985. The Court held that, even though the exclusion of a non-national prevented the person from joining their spouse legally resident in the UK –

*The duty imposed by Article 8 cannot be considered as extending to a general obligation on the part of a Contracting State to respect the choice by married couples of the country of their matrimonial residence and to accept the non-national spouses for settlement in that country.*

The view of the Court, held in this and other cases that followed, was that should the family be able to establish itself in a different country without obstacles, the state cannot be held to have breached Article 8 rights.

In line with the established principle that the state has the right to control who resides in its territory, the European jurisprudence in this area has been consistently supportive of the contracting states throughout the 1980s and 1990s.

In contrast to the case of *Winata v Australia* (ICCPR) mentioned above, for example, the then European Commission of Human Rights found that the application in a similar case of *Sorabjee v UK* was “manifestly ill-founded”. The applicant in this case argued that removal of a mother to Kenya would breach her right to enjoy family life with her child, who was a British citizen. The Commission took the view that both mother and child could move to Kenya, and that there were no obstacles to their enjoyment of family life there, since the child was of an “adaptable age”.

In one of the most criticised decisions, in the case of *Gul v Switzerland*, the Court held that there were no obstacles to the applicant and his wife returning to Turkey where they could enjoy family life with their 12-year-old son, despite the fact that the applicant’s residency permit in Switzerland was based on humanitarian grounds.

<sup>21</sup> Wadham J, Mountfield H and Edmundson A (2003) *Blackstone’s Guide to the Human Rights Act 1998* (3rd edition), Oxford University Press, Oxford.

These judgments have, however, been recently reversed in *Sen v The Netherlands*, which considered whether a couple should re-locate to Turkey to join one of their children who lived there. The Court considered that, given the length of time spent by the couple and the rest of their children in The Netherlands, they should not be expected to move to Turkey to join the remaining child. The Court also held that Article 8 required the granting of leave to enter The Netherlands for the child, despite the fact that she had spent her whole life in Turkey and lived with her relatives there, rather than with her parents in The Netherlands.

A number of decisions of the European Court also firmly support the right of states to deport individuals who commit criminal offences, even if they had a history of long-term residency in the state.<sup>22</sup>

More recently, however, the Court has made a number of judgments which seem to break away from this perspective. In the case of *Boultif v Switzerland*,<sup>23</sup> the applicant (an Algerian national) was refused a continuous residence permit following a conviction for criminal offences. The applicant, who was married to a Swiss national, was told by the Swiss authorities that, while they recognised that it would not be easy for the applicant’s spouse to relocate to Algeria, it was not entirely impossible. The applicant was ordered to leave Switzerland in 2000, and subsequently moved to Italy.

The applicant in this case argued that, as a result of the decision not to renew his residence permit, the Swiss authorities separated him from his wife who could not be expected to follow him to Algeria. The Court stated:

*The Court recalls that the Convention does not guarantee the right of an alien to enter or to reside in a particular country. However, the removal of a person from a country where close members of his family are living may amount to an infringement of the right to respect for family life as guaranteed in Article 8(1) of the Convention.*

*[...] the refusal to renew the applicant’s residence permit in Switzerland interfered with the applicant’s right to respect for his family life [...]*

The Court then needed to consider whether the interference was legitimate within the meaning of paragraph 2 of Article 8. While agreeing that the interference was lawful, the Court outlined a number of guiding principles in deciding whether the decision not to renew the residency permit was necessary. The Court stated:

*In assessing the relevant criteria in such a case, the Court will consider the nature and seriousness of the offence committed by the applicant; the duration of the applicant’s stay in the country from which he is going to be expelled; the time which has elapsed since the commission of the offence and the applicant’s conduct during that period; the nationalities of the various persons concerned; the applicant’s family situation, such as the length of marriage; other factors revealing whether the couple lead a real and genuine family life; whether the spouse knew about the offence at the time when he or she entered into a family relationship; and whether there are children in the marriage and, if so, their age. Not least, the Court will also consider the seriousness of the difficulties which the spouse would be likely to encounter in the applicant’s country of origin, although the mere fact that the person might face certain difficulties in accompanying her or his spouse cannot in itself preclude expulsion.<sup>24</sup>*

Taking those guiding principles into consideration, the Court found that the applicant presented only a limited danger to the public, and that his wife should not be expected to make her life in Algeria as she had no ties to that country. In this particular case, the State had breached the applicant’s right to respect for his family life.

<sup>22</sup> See, for example: *Boughanemi v France* and *Bouchelkia v France*.

<sup>24</sup> At para 48.

<sup>23</sup> 2001, Application No 54273/00.

## The Refugee Convention and seeking asylum

The review of applicable international human rights standards in the context of this investigation would not be complete without mentioning the relevant provisions of refugee law, particularly those included in the *Convention Relating to the Status of Refugees* (1951) (Refugee Convention) and its Protocol (1967). While the scope of this report does not allow for detailed analysis of refugee law, it is necessary to look at aspects that are most relevant to the investigation. These aspects include the principle of *non-refoulement*, and the right not to be penalised on account of illegal entry into the territory of the state of potential asylum. They also include provisions of the *UN Convention on the Rights of the Child* (CRC) relating to the protection of asylum seeking and unaccompanied children.

Article 1A(2) of the Refugee Convention<sup>25</sup> defines a ‘refugee’ as a person, who:

*[...] owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.*

The Refugee Convention requires states to apply its provisions to all refugees, without discrimination on grounds of race, religion or country of origin (Article 3). The Convention also protects people, who are seeking asylum, from expulsion from the state or returning to a country where the refugee’s life or freedom would be under threat (Article 33) – a provision known as the ‘principle of *non-refoulement*’:

*No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality,*

*membership of a particular social group or political opinion. [...]*

The only situations in which the refugee may not be able to avail of this protection is when there are reasonable grounds for him/her to be considered a danger to the security of the receiving state, or where the refugee who, having been convicted by a final court judgment in a particularly serious crime, constitutes a danger to the community of that state (Article 33(2)). As stated earlier, however, expulsion of such a person may amount to a breach of Article 3 of the ECHR or the provisions of the *UN Convention against Torture*, in circumstances where the person could be subjected to torture, inhuman or degrading treatment or punishment in the country to which he/she is to be expelled.

Article 31 of the Refugee Convention affords certain protections to individuals who are unlawfully in the country of refuge. It states:

- 1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened [...], enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.*
- 2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. [...]*

An analysis, by Goodwin (2003), of the origins of Article 31 explains the scope of this provision in the following terms:

*Article 31 [...] includes threats to life or freedom as possible reasons for illegal entry or presence; specifically refrains from linking such threats to the refugee’s country of origin; and recognises that refugees may have ‘good cause’ for illegal entry other than persecution in their country of origin.*<sup>26</sup>

<sup>25</sup> As amended by Article 1(2) of the 1967 Protocol.

<sup>26</sup> Goodwin G ‘Article 31 of the 1951 Convention Relating to the Status of Refugees: non-penalization, detention and protection’ in Feller E *et al* (eds)

(2003) *Refugee Protection in International Law: UNHCR’s Global Consultations on International Protection*, Cambridge University Press, Cambridge.

The use of administrative detention has been recognised in international legal debate as falling within the definition of ‘penalties’ under Article 31. Commenting further on the scope of this provision, Goodwin submits:

*Although expressed in terms of the ‘refugee’, this provision would be devoid of all effect unless it also extended, at least over a certain time, to asylum seekers or [...] ‘presumptive refugees’.*<sup>27</sup>

Immigration enforcement often includes the removal and/or detention of people under the age of 18. This is particularly true in the case of removal of families, but can also concern the reception and removal of unaccompanied, or separated, children.<sup>28</sup> Additional protection of children seeking asylum or children with refugee status is afforded by the provisions of the CRC:

*[...] the enjoyment of rights stipulated in the Convention is not limited to children who are citizens of a State party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children – including asylum-seeking, refugee and migrant children – irrespective of their nationality, immigration status or statelessness.*<sup>29</sup>

Article 3(1) of the CRC contains an overarching principle that should govern any actions by the state in relation to children – the principle of the best interest of the child:

*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*

In the case of unaccompanied or separated children, the UN Committee on the Rights of the Child (the Committee) offers the following guidance on the application of this principle:

*In the case of a displaced child, the principle must be respected during all stages of the displacement cycle. At any of these stages, a best interests determination must be documented in preparation of any decision fundamentally impacting on the unaccompanied or separated child’s life.*<sup>30</sup>

Referring to the existence of positive obligations on the state in relation to offering appropriate protection to children, the Committee goes on to state:

*The positive aspects of these protection obligations also extends to requiring States to take all necessary measures to identify children as being unaccompanied or separated at the earliest possible stage, including at the border, to carry out tracing activities and, where possible and **if in the child’s best interest**, to reunify separated and unaccompanied children with their families as soon as possible.*<sup>31</sup> [emphasis added]

In *General Comment Number 6*, the Committee also offers guidance to state parties in relation to the actions that should underpin the determination of what is in the best interest of unaccompanied or separated children. It states, in particular, that what is essential to such determination is “a clear and comprehensive assessment of the child’s identity, including his or her nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs”.<sup>32</sup> Access to the territory of the state of potential refuge is therefore necessary to afford such comprehensive

<sup>27</sup> As above.

<sup>28</sup> The UN Committee on the Rights of the Child defines the two categories of children in the following terms: “[...] ‘**unaccompanied children**’ (also called unaccompanied minors) are children [any person under the age of 18] who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so”; and “[...] ‘**separated children**’ are children [...] who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members”, (UN Committee on the Rights of the Child *General Comment No 6* (2005),

*Treatment of unaccompanied and separated children outside their country of origin*, CRC/GC/2005/6).

<sup>29</sup> As above, para 12.

<sup>30</sup> UN Committee on the Rights of the Child *General Comment No 6* (2005), *Treatment of unaccompanied and separated children outside their country of origin*; CRC/GC/2005/6, para 19.

<sup>31</sup> As above, para 13.

<sup>32</sup> As above, para 20.

assessment, and this should be undertaken in a “friendly and safe atmosphere by qualified professionals who are trained in age and gender-sensitive interviewing techniques”.<sup>33</sup>

The Committee, in its commentary, also stresses the particular importance of the principle of *non-refoulement* when dealing with unaccompanied and separated children. In such cases, not only must states fully respect their obligations in relation to this principle, they are also legally prevented from returning a child to a country –

*“[W]here there are substantial grounds for believing that there is a real risk of irreparable harm to the child, [...] either in the country to which removal is to be effected or in any country to which the child may subsequently be removed.”<sup>34</sup>*

# UK immigration law and policy

## Introduction

In the UK, immigration and asylum have tended to be treated as a distinct and largely inseparable area of policy by successive governments, and seen to require one single stream of legislative and policy provisions. Immigration law has tended, therefore, to apply to migrants seeking entry to the UK at domestic ports, immigration offenders (perceived or proven), as well as asylum seekers.<sup>35</sup> Yet, as the previous chapter shows, asylum seekers and refugees and persons migrating are in fact governed by different bodies of international standards. The disparity between domestic and international approaches to immigration and asylum will be returned to later.

This report cannot seek to provide a comprehensive review of immigration law in the UK, but it highlights those aspects of the legislation that have particular bearing on the terms of reference of this investigation. This chapter will focus on those aspects of UK law and policy that raise serious questions about individual human rights as outlined in the *Human Rights Act 1998*, the international human rights standards and concerns raised by the fieldwork. The chapter focuses on the provisions that permit detention in the first place, the right to legal advice and the implications of detention for the rights not to be subjected to inhuman, degrading or cruel treatment and punishment (Article 3, ECHR) and to privacy and family life (Article 8, ECHR). The chapter will conclude with a general comment on the UK provisions in relation to immigration and asylum and the way in which these converge with broader international standards.

Since the basic framework was laid down in the *Immigration Act 1971*, a total of 12 immigration bills have reached the statute books. The most recent of these is the *Criminal Justice and Immigration Act 2008*. At the time of writing, the *Borders, Immigration and Citizenship Bill* is proceeding through Parliament and a Simplification Immigration Bill is planned for 2009/2010. In addition, a number of

legislative provisions relating to civil proceedings and, indeed, criminal law are also routinely applied to immigration detainees, particularly at the point of arrest and initial custody.

The Home Office’s *Operation Enforcement Manual* provides guidance to immigration officers (IOs) on the execution of their duties. It is referred to extensively by legal practitioners and the Home Office in judicial review proceedings in the Northern Ireland courts. Yet, the legal status of this particular document has still to be clarified. Individual IOs, at different times, refer to it as simply guidance, while others claim it to be Home Office policy and therefore binding through its provisions.<sup>36</sup> Needless to say, immigration law in the UK is highly complex and this is compounded by the dearth of specialists practising in the field.

## The domestic power to detain

The power to detain is not exclusive to IOs, in that the *Nationality, Immigration and Asylum Act 2002* extended powers to decide to detain individuals to Home Office caseworkers. However, for the purposes of this investigation, it is important to concentrate on the powers of IOs in this area. The *Immigration Act 1971* provides the basic framework for IOs to detain individuals arriving at UK ports. The powers are intended to enable IOs to question arriving passengers in order to ascertain their eligibility to enter the UK. Schedule 2, paragraph (2) of the Act empowers an IO to examine any person arriving in the UK for the purpose of determining their immigration status and whether they should be granted or refused leave to enter the UK. Paragraphs 16 to 18 specifically permit the detention of individuals subject to examination under Paragraph 2, under the authority of an IO, pending a decision being made on refusal, or leave, to enter.

The *Immigration and Asylum Act 1999* further reinforces the power of IOs to authorise the detention of individuals. The period of fieldwork,

<sup>35</sup> In recent years, legislation on criminal justice and counter-terrorism has, quite deliberately, had serious implications for immigration and asylum, raising further concerns with regard, to compatibility with human rights protections for those within the territory of the UK State.

<sup>36</sup> Available at: <http://www.ukba.homeoffice.gov.uk/policyandlaw>.

and the statistics made available to the Commission, indicate that section 10 is the power often used for authorising detention during Operation Gull. Section 10 of the Act specifically authorises removal from the UK but of course for removal to take place individuals must first be detained when detected by an immigration officer. Section 10 authorises the removal of an individual under the following circumstances:

- (1) A person who is not a British citizen may be removed from the United Kingdom, in accordance with directions given by an immigration officer, if –*
- (a) having only a limited leave to enter or remain, he does not observe a condition attached to the leave or remains beyond the time limited by the leave;*
  - (b) he has obtained leave to remain by deception; or*
  - (c) directions (“the first directions”) have been given for the removal, under this section, of a person (“the other person”) to whose family he belongs.*

When the UK Government first consulted on the provisions to be contained in the *Immigration and Asylum Act* in its 1998 White Paper, *Fairer, Faster and Firmer – A Modern Approach to Immigration and Asylum*, it stated that while regrettable, the power to detain must be retained in the interests of maintaining an effective immigration control. However, the White Paper gave a commitment that detention would only be used as a last resort and that it would, most usually, only be appropriate:

- *in order to effect removal*
- *initially to establish a person’s true identity on the basis of their claim; or*
- *where there is reason to believe that the person will fail to comply with any conditions attached to the grant of temporary admission or release.*

That commitment is restated in the Home Office’s *Operation Enforcement Manual*, which asserts that, “In all cases detention must be used sparingly, and for the shortest period necessary”.<sup>37</sup> As can be seen, even under the terms of the White Paper and subsequently the *Operation Enforcement Manual*, the circumstances under which detention is deemed

‘appropriate’ were extremely broad and left much to the discretion of the IO, who makes the recommendation to the chief immigration officer (CIO) for detention to be authorised. In criminal proceedings, for example, an individual would not normally be detained for a period between a number of hours and a number of days, on the basis of a police officer simply having ‘a reason to believe’ that the person would otherwise abscond. It is notable that neither the White Paper nor, indeed, the legislation requires substantive evidence to support the IO’s belief.

As subsequent chapters will show, section 10 of the Act is used frequently by IOs in Northern Ireland to detain and remove individuals, many of whom in fact hold valid visas for entry into the UK. The investigation’s observation of UK Border Agency (UKBA) activity cites very specific examples of the inconsistencies both in decision-making and in the reasons for authorising detention.

Under the *Immigration Act 1971*, the Secretary of State has the power to enforce removal directions under a range of circumstances. Under section 62 of the *Nationality, Immigration and Asylum Act 2002*, a free-standing power to authorise detention in such cases was introduced.

In addition, section 42 of the *Immigration, Asylum and Nationality Act 2006* empowers IOs to detain an individual, who is leaving the UK, for up to 12 hours for the purposes of establishing whether he/she is a British citizen and, if not, the nature of his/her identity and immigration status.

A range of provisions therefore exist within UK laws that permit the detention of foreign nationals at UK ports of entry and at designated locations.

The *Borders Act 2007* further cements and, indeed, expands the powers to interfere with the right to liberty. It empowers designated IOs to hold, at ports, individuals who are thought by the IO to be liable for arrest under various provisions of the *Police and Criminal Evidence Act 1984* (PACE) and its Northern Ireland equivalent, the *Police and Criminal Evidence (Northern Ireland) Order 1989*. Additionally, if the individual is found to be subject to an arrest

warrant, he/she may be held pending the arrival of a police officer, for up to three hours.

Routine operations conducted by the UKBA in Northern Ireland and, indeed, throughout the UK involve visits to places of residence and work for the purposes of arresting individuals who are believed to have breached immigration rules. Referred to by UKBA staff in Northern Ireland as ‘traditional enforcement work’ (as opposed to Operation Gull, which is unique to Northern Ireland), warrants to enter and search premises are generally obtained by IOs under sections 28(b) and 28(d) of the *Immigration Act 1971*. An arrest made following entry and search will result in a deprivation of liberty for the purposes of ascertaining identity, effecting removal or preventing absconding.

In the situation of asylum seekers, an IO may make a decision to detain at the screening stage if he/she believes that the claim for asylum can be referred to the Fast Track Programme. In practice, the investigation shows that all claims for asylum are referred to the National Intake Unit in England, which operates the Detained Fast Track Asylum Processes and makes the decision on the basis of the applicant’s nationality. If the asylum seeker is from a country considered to be ‘safe’ and therefore likely to be unsuccessful in a claim, they will be detained through the ‘fast track regime’. This policy which results in automatic detention, and the notion of ‘safe’ countries, has been highly criticised by, for example, the Independent Asylum Commission and, as recently as September 2008, by the Council of Europe’s Commissioner for Human Rights, Thomas Hammarberg.<sup>38</sup>

With the exception of the *Immigration, Asylum and Nationality Act 2006*, which applies to departing passengers only, UK immigration law does not place a limit on the length of time that an individual may be held. The length of time likely to be served in detention is intended to be one of the factors considered by the IO before making the decision to detain in cases involving perceived immigration

offenders and asylum seekers. So, for example, if an IO is aware that it would take a considerably long time to obtain emergency travel documents for a particular individual in order for them to be removed, he/she should grant ‘temporary release’ rather than authorise detention. However, this guidance does not arise from legislation but from policy norms, and is dictated by the National Intake Unit.

### Article 5 ECHR – Protection from arbitrary detention

Most notable for the purpose of this section of the report, is the provision under Article 5(1)(f) of the ECHR which allows for the deprivation of liberty for reasons related to immigration. Article 5 states that “Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law”. Article 5 (1)(f) then qualifies the right in the following terms: “the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition”.

However, there exists a significant volume of case law at domestic level and at the European Court of Human Rights that directs states on the reasonable periods of, and treatment during, detention on immigration authority. Blake and Husain (2003) have summarised<sup>39</sup> case law of the European Court as recognising that the process of examining those who are seeking entry to another country involves incidental and necessary interference with liberty at port. They point out that this process of questioning, rather than detaining by the authorities, is governed by Article 2, Protocol 4 rather than by Article 5. Article 2, Protocol 4, states:

1. *Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*

<sup>38</sup> See, for example: Independent Asylum Commission report (2008) *Deserving Dignity: The Independent Asylum Commission’s Third Report of Conclusions and Recommendations* and Memorandum by Thomas Hammarberg following a visit to the UK in 2008. Available at: <http://tiny.cc/e7KyF>.

<sup>39</sup> Blake N and Husain R (2003) *Immigration, Asylum and Human Rights*, Oxford University Press, Oxford, p 114-162.

2. *Everyone shall be free to leave any country, including his own.*
3. *No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety for the maintenance of ‘ordre public’, for the prevention of crime, for the protection of rights and freedoms of others.*
4. *The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.*

However, where the conditions of confinement reach a certain level of severity by being of undue length or disproportionate, the European Court will consider there to have been a deprivation of liberty under Article 5. This is illustrated in the case of *Amuur v France*<sup>40</sup> where the Court held that holding an asylum seeker for 20 days in the international zone of an airport, where he was subjected to constant police surveillance without legal or social assistance, amounted to a deprivation of liberty.

More recently, the UK High Court, in the case of three Algerian nationals who had been held for over a year at Colnbrook Immigration Removal Centre, ruled that the detention had been unlawful because there was no prospect of their removal to Algeria within a reasonable time.<sup>41</sup>

As is evident, the domestic legislation gives clear provision to IOs to detain individuals at port and beyond, for the purposes of immigration control and for locating, arresting and removing certain categories of migrants already in the UK. The following chapters in the report will reveal the very stark, practical implications which those powers have for individuals in Northern Ireland who, for a variety of reasons, become subject to them. The investigation revealed that UKBA officials go beyond the necessary and incidental interference with liberty and that there is an over-zealousness in putting removal directions in place. The practicalities of immigration control in Northern

Ireland very much engage a deprivation of liberty for often lengthy periods, and certainly go beyond the point of officials’ attempts to simply establish identity and clarify immigration status.

## Article 6 ECHR – The right to a fair trial

1. *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*
2. *Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
3. *Everyone charged with a criminal offence has the following minimum rights:*
  - (a) *to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
  - (b) *to have adequate time and the facilities for the preparation of his defence;*
  - (c) *to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
  - (d) *to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
  - (e) *to have the free assistance of an interpreter if he cannot understand or speak the language used in court.*

<sup>40</sup> *Amuur v France* (1996) 22 EHRR 533.

<sup>41</sup> *A and others v Secretary of State for the Home Department*, High Court, February 2008.

It must be noted that the main subject of the Commission’s investigation is the process by which individuals come to be detained by UKBA officials and the applicability of human rights standards in the process of that detention. The wider decisions regarding the decision to grant or refuse entry to the UK, or to challenge deportation, come under the remit of the Asylum and Immigration Tribunal. While this report makes the point that the decision to detain is closely linked to decisions to refuse entry for permanent settlement or to grant asylum, it cannot comment on the quality of decisions in relation to those broader issues.

It has been established at the European Court of Human Rights, in *Maaouia v France*<sup>42</sup>, that Article 6 of the ECHR is not applicable in the field of immigration. In this case, the Court concluded that decisions regarding the entry, stay and deportation of aliens did not concern the determination of an applicant’s civil rights or obligations or of a criminal charge against him, within the meaning of Article 6(1).<sup>43</sup> Resting on Article 6(1) are the further rights under Article 6(3) regarding time and facilities to prepare for the defence and, before that, to be informed of the nature and cause of the accusation in a language the individual understands.

Commentators, while conceding the point with regard to the applicability of Article 6 in the field of immigration, have asserted that under common law, the right of access to the appellate authorities (that is, in immigration and asylum tribunals) is regarded as a fundamental or basic constitutional right, akin to the common law right of access to the courts.<sup>44</sup>

In addition, of course, there are a number of procedural rights guaranteed under Article 5 of the ECHR, including the right to be informed of the reasons for detention in a language understood by the detainee, as well as the right to have the

lawfulness of detention decided by a court. These procedural rights are fundamental to the terms of this investigation and it is the standards of common law and the procedural rights guaranteed under Article 5 against which domestic legislation and practice will be evaluated in this report, as well as the requirements of Article 6.

The logical corollary of the comparison with the common law provision of the right to a fair trial would suggest strongly that a right to interpretation and, indeed, legal representation is equally guaranteed under common law. A High Court decision in *R (on the application of (1) Predrag Karas (2) Stanislava Miladinovic) v The Secretary of State*,<sup>45</sup> involved a Croatian couple who were to be removed from the UK without being given the right to access legal advice. Mr Justice Munby stated that access to legal advice is one of the fundamental rights enjoyed by every citizen under the common law.

It is the right to legal representation that has been the subject of considerable debate among immigration practitioners in Northern Ireland. Domestic legislation and policy appear to have addressed the right unsatisfactorily. As will emerge in subsequent chapters, the investigation’s fieldwork revealed conflicting views held by the IOs and some custody sergeants on the right to legal advice prior to a decision for removal, which also conflicted with the experiences of those subject to immigration control. The various legislative provisions relating specifically to immigration do not contain a right to legal advice at the point of being detained by an IO. The right to legal advice upon arrest and entering police custody is, however, explicitly addressed by PACE and associated Codes of Practice, as well as by the Home Office’s *Operation Enforcement Manual*, albeit inconsistently.

<sup>42</sup> *Maaouia v France* [2001] 33 EHRR 22.

<sup>43</sup> Available at: <http://www.echr.coe.int/eng>.

<sup>44</sup> Blake N and Husain R (2003) *as above*, p 215.

<sup>45</sup> *R (on the application of (1) Predrag Karas (2) Stanislava Miladinovic) v The Secretary of State for the Home Department* [2006] EWHC 747 (Admin).

Chapter 50 of the *Operation Enforcement Manual* regarding the ‘Applicability of PACE codes to IOs’ states clearly:

*If an IO wants to interview a person about immigration offences at a place other than a police station, the person must be advised that he is entitled to legal representation but that he should arrange this himself and finance it where necessary.*

The manual continues:

*Every effort should be made to contact a particular solicitor, or firm of solicitors, who have been dealing with the person’s immigration situation, unless the person specifies otherwise.*

In relation to the applicability of PACE, the manual states:

*On arrival at a police station, the custody officer must advise the person of his right to consult and communicate privately with a solicitor, and of the fact that independent advice is available free of charge. Whenever legal advice is requested, the custody officer must act without delay to secure the provision of such advice.*

However, the manual appears to conflict with Code of Practice ‘C’ arising from the Order. Paragraph 1.12(ii) of the code states that the code’s provisions do not apply to people in custody who have been:

*[...] arrested under the Immigration and Asylum Act 1999, section 142(3) in order to have their fingerprints taken nor to those whose detention is authorised by an immigration officer under the Immigration Act 1971.*

Once a decision for removal has been made, detainees, under the manual, are to be given 72 hours to take legal advice and challenge the decision to remove. However, during the course of the fieldwork for the investigation, a new approach relating to access to legal advice emerged. At police custody suites, detainees were presented with the option of signing an IS101 form (see

Appendix 3). In essence, the form constitutes a waiver to accessing legal advice on the understanding that the detainee would be removed from the UK within 72 hours. The practicalities of this proposal and arrangement will be discussed again in Chapters 6 and 7.

The Commission’s investigation revealed that early access to effective legal advice can prove vital in deciding the ultimate fate of immigration detainees and asylum seekers who are eligible for the fast track procedure and, therefore, in detention while a claim is decided. Indeed, in terms of criminal proceedings, it is not difficult to understand why access to legal advice is fiercely protected under common law, as well as being a fundamental human right. This report will highlight, as has the case involving the Croatia couple, the need for the right to be extended to immigration procedures. It is of significant concern that domestic provisions are not definitive in ensuring this protection to non-UK nationals and, indeed, that practices across IOs are not consistent with making individuals aware of the right of access to legal advice.

## **Article 8 ECHR – The right to privacy and family life**

1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

The right to protection of privacy, family life, home and correspondence is of considerable significance in the context of the Commission’s investigation. The right is engaged on a wide spectrum: from the domestic legislation which empowers IOs to enter and search homes, to the long-term implications

emanating from a decision to detain and remove a particular individual or an entire family from Northern Ireland in the first instance, and ultimately from the UK.

It is important to point out that a detailed examination of the broader secondary legislation, the *Immigration Rules*,<sup>46</sup> in relation to family reunification is not possible within the confines of this report. However, the report will reveal that the rules determine why some individuals attempt to come to, or remain in, the UK undocumented; for example, where UK and Irish residents are unable to obtain visas or residence permits for spouses and other family members. The *Immigration Rules* also play a major role in the culture of UKBA activities down to IO level, particularly in terms of the line of questioning employed by staff working in Northern Ireland, some of whom have worked as entry clearance officers<sup>47</sup> outside the UK. In short, the rules appear to be built around the assumption that IOs will routinely be told lies.

In addition, as discussed above, IOs routinely obtain warrants to enter and search homes for the purposes of immigration control, as well as having powers to search at places of residence, work and ports of entry. IOs will also, through the interview process, routinely ask questions about individuals’ personal circumstances including details of spouses, dependants and other relationships. The implications, therefore, of the UKBA’s work for the protections afforded by Article 8 (the right to privacy and family life) and Article 12 (the right to marry and found a family) of the ECHR are apparent. The focus of this section of the report is the legal boundaries within which IOs are required to operate and whether these are compatible with the requirements of the ECHR in this context.

In fact, the legislative provisions leave much to the discretion and tactics of individual IOs. As discussed earlier, the *Immigration Act 1971* provides for IOs to obtain warrants for entry and search, as

well as to conduct questioning to establish identity and immigration status. Part VII of the *Immigration and Asylum Act 1999* expanded those powers to search of premises and individuals, and to seize and retain relevant material. There appears to be little in the legislation that establishes clear boundaries which must not be crossed by IOs in the exercise of their duties. Following the implementation of the 1999 Act, a number of undertakings were given to Parliament about how the powers would be used in practice, and it is these undertakings which were intended to inform the work on a practical level, rather than the legislation itself. For example, Parliament was assured that IOs would not carry out speculative visits to private residences and that no IO would exercise the powers of arrest and search without proper training. The practical guidance, by way of fleshing out the ministerial undertakings, again comes from the *Operation Enforcement Manual* rather than from statute, namely the chapters on ‘Detention and temporary release’ (Chapter 38), ‘Enforcement visits’ (Chapter 46), ‘Guide to enforcement interviewing’ (Chapter 56) and ‘Family detention visits’ (Chapter 58).

In terms of conducting reconnaissance visits to residences, an activity regularly undertaken by UKBA staff and seconded PSNI officers in Northern Ireland, it would appear that the restrictions of the *Regulation of Investigatory Powers Act 2000* apply, by virtue of the Home Office being cited as a relevant public authority in Schedule 1.

The restrictions are, however, couched in language that urges IOs to approach this element of the job with caution and sensitivity. For example, Chapter 46 states that “visits to home addresses, places of employment etc constitute a most sensitive area of immigration work...”. Also apparent, is the explicit need for IOs to clearly document enforcement activities.

<sup>46</sup> *Immigration Rules* (HC 395).

<sup>47</sup> Entry clearance is the method whereby certain categories of traveller wishing to come to the UK are checked by entry clearance officials overseas

(entry clearance officers) to ensure that they qualify under the Rules for admission to the UK prior to travelling there. In some cases it is a mandatory requirement for a person to obtain prior entry clearance; in others it is optional.

Conversely, the manual explicitly authorises IOs to split up families for the end purpose of removal. In Northern Ireland, this would mean that following an enforcement visit, the family head might be detained in a police custody suite while the remaining family members are given temporary release.

Of the manual’s chapters described above, it is only Chapter 38 on ‘Detention and temporary release’ which makes reference to Article 8 protections. It does not, however, recognise that detention of part of the family may in itself amount to a breach of this right. On the contrary, the chapter justifies detention practices on grounds of the economic well-being of the country as well as for the prevention of crime and disorder:

*It is well established that the interests of the State in maintaining an effective immigration policy for the economic well-being of the country and for the prevention of crime and disorder, justifies interference with rights under Article 8 (1). It is therefore arguable that a decision to detain which interferes with a person’s right to family life in order to enforce immigration control and maintain an effective immigration policy pursues a legitimate aim and is in accordance with the law.*

The conflation of migration and criminality is consistently articulated in the media, in political discourse and, indeed, by enforcement officials interviewed during the investigation.

The detention of families and children warrants a full discussion in its own right. The policy of detaining families does not only engage Article 8 of the ECHR, but also numerous provisions under the *UN Convention on the Rights of the Child* (CRC), including Article 3 under which the best interests of the child shall be a primary consideration in all actions concerning children. Under Article 37(b), detention of children is to be used only as a measure of last resort. Despite these provisions, the *Operation Enforcement Manual* and

immigration legislation fail to make any distinction between the detention of families with children and single adults. As a recent report by the charitable organisation, Bail for Immigration Detainees, points out, “no exceptional circumstances” are required under the legislative and policy framework for detaining families with children.<sup>48</sup> Indeed, as the report highlights, the level of harm caused to children in detention may, in some cases, reach the threshold of Article 3 of the ECHR.<sup>49</sup>

The majority of case law at domestic and European levels has concentrated heavily on the outworkings of the *Immigration Rules* and related legislation with regard to Articles 8 and 12 of the ECHR. Indeed, there are obviously major and far-reaching implications of government refusal to allow the spouses or close family members of UK nationals and residents to join them. However, as will become apparent in the discussion below, domestic or European jurisprudence and, indeed, academic literature have not commented to any great extent on the considerable statutory powers and more subtle tactics available to IOs during their enforcement work.

While the investigation’s study indicates there is nothing in the legislation that might amount to being wholly incompatible with the ECHR, it is precisely the considerable discretion available to IOs that is problematic in the protection of Article 8 rights. Further, that range of discretion is available:

- at port, from the decision to stop one individual as opposed to another up to the decision to search their luggage and detain; and
- on enforcement visits, from the decision to target one address as opposed to another and who to question upon arrival at that address.

<sup>48</sup> Bail for Immigration Detainees (2007) *Obstacles to Accountability: Challenging the immigration detention of families*. Available at: <http://www.biduk.org> [accessed 26 March 2008].

<sup>49</sup> As above.

### Article 3: the threshold of ‘degrading’

*No one shall be subjected to torture or to inhuman or degrading treatment or punishment.*

A considerable degree of time has been devoted to the positive obligations placed on states as a result of Article 3 of the ECHR and Article 3 of the *UN Convention Against Torture* (CAT). Most notably in the sphere of immigration law, commentators and the courts have discussed in detail the *non-refoulement* provision, originally to be found in the 1951 Convention, but cemented further and interpreted more widely in the decision of the European Court in *Chahal v UK*.<sup>50</sup> In that much cited case, the UK sought to deport a Sikh activist on the grounds that he represented a threat to national security. The UK argued that, whereas a contracting state to the ECHR could not inflict torture or inhuman or degrading treatment or punishment within its own borders, on national security grounds it could expel a foreign national if the assessment of the risk of ill-treatment, as a consequence of the expulsion, was difficult and uncertain. The Court rejected this reasoning and ruled that where the threshold test for preventing an expulsion was met, the reasons prompting the expulsion were irrelevant.

The threshold of degrading treatment was ruled to have been crossed in the case of *Limbuella v Secretary of State*. In 2005, the House of Lords ruled that the application to date of section 55 of the *Nationality, Immigration and Asylum Act 2002*, which allowed for the withdrawal of support to asylum seekers who do not make their claim for asylum within a reasonable period of time, was not compatible with the UK’s commitments under the ECHR.<sup>51</sup> The Court stated:

*Unless and until the time comes when it can no longer be said that a substantial number of people will fall below the threshold, Art. 3 will prevent the State from standing by and letting them do so.*

The ruling indicates that Article 3 places a positive duty on states to provide basic food and shelter to

those within its territory, if the individual has no other means of obtaining these basic essentials. A state’s conscious decision to withhold that provision risks subjecting individuals to degrading, inhuman and cruel treatment or punishment.

For the purposes of this report, however, the threshold to be explored is that which applies to treatment and physical conditions during the enforcement, interviewing and detention processes.

While not all forms of racial discrimination will be seen by the courts as amounting to degrading treatment and, therefore, to be a violation of Article 3, humiliation or discrimination linked to a person’s racial origin may be seen by the domestic and European courts as an aggravating factor. It is of note that the prohibition on public authorities to discriminate on grounds of nationality, race or ethnicity under the *Race Relations (Amendment) Act*, and its Northern Ireland equivalent the *Race Relations (Amendment) Regulations (Northern Ireland) Order 2003*, does not apply to immigration authorities. Under the domestic provisions, an IO, acting on the instruction of a Minister, may discriminate on grounds of nationality, or ethnic or national origin. In this way, the practice of racial profiling, condemned by international standards is not categorically outlawed in the UK. However, the UK’s differential treatment on grounds of racial origin has amounted to a breach of Article 3 in the past. Following the UK’s refusal to allow British nationals to re-enter the UK having been expelled from their country of origin in East Africa, the European Commission observed:

*Special importance should be attached to discrimination based on race; publicly to single out a group of persons for differential treatment based on race might, in certain circumstances, constitute a special form of affront to human dignity, and that differential treatment of a group of persons on the basis of race might therefore be capable of*

<sup>50</sup> *Chahal v UK* [1996] ECHR 54.

<sup>51</sup> *Regina v Secretary of State for the Home Department (Appellant) ex parte Adam (FC) (Respondent); Regina v Secretary of State for the Home*

*Department (Appellant) ex parte Limbuella (FC) (Respondent); Regina v Secretary of State for the Home Department (Appellant) ex parte Tesema (FC) (Respondent) (Conjoined Appeals)* [2005] UKHL 66.

*constituting degrading treatment when differential treatment on some other ground would raise no such question.*<sup>52</sup>

The following discussions will examine the extent to which the UKBA relies on the exemption under domestic legislation and whether its activities amount to, first, racial profiling and, second, acts incompatibly with international standards, including the ECHR.

In terms of physical conditions of detention, the international standards, including those set by ‘soft law’ (discussed in the previous chapter), provide clear guidance to states on the minimum requirements for places designated for detention purposes. It will be of no surprise that UK domestic legislation does not explicitly permit treatment or physical confinement that would reach the threshold of Article 3. Moreover, there are a number of oversight bodies, established by statute, that are intended to ensure that certain minimum standards are met in the treatment of detainees by carrying out regular inspections to places of detention and making recommendations to government on how to improve conditions.

In Northern Ireland, independent oversight of the treatment of detainees in custody suites falls to custody visitors. The custody visiting scheme was made statutory under the *Police (Northern Ireland) Act 2000* and custody visits are made to detainees held under Code C of the *Police and Criminal Evidence (NI) Order 1989*, the *Terrorism Act 2000* and the *Immigration Act 1971*. Separately, immigration removal centres in Great Britain are routinely inspected by Her Majesty’s Inspectorate of Prisons (HMIP). As discussed in the introduction to this report, the Home Office view was that the Commission’s statutory remit did not allow it to visit detention centres and comment on conditions in Great Britain.

The implications and shortcomings of the official approach in relation to oversight mechanisms will be discussed in greater detail in Chapter 7.

## Domestic and international approaches: compatibility or divergence?

In 1993, the *Asylum and Immigration Appeals Act* incorporated obligations under the 1951 *Convention Relating to the Status of Refugees* (the Refugee Convention). Section 1 of the Act defines an asylum claim as “a claim made by a person (whether before or after the coming into force of this section) that it would be contrary to the United Kingdom’s obligations under the Convention<sup>53</sup> for him to be removed from, or required to leave, the United Kingdom”. The *Immigration Rules* were simultaneously amended in light of Section 2 of the Act, which stated that nothing in the Immigration Rules shall be contrary to the Refugee Convention and included a set of criteria that the Home Secretary must take into account in determining an asylum application.

While some of the provisions of the Act are to be welcomed, domestic and international legal approaches to immigration and asylum are, in many other ways, at divergence. Aside from the policy and legislative frameworks discussed above, a number of subsequent laws would appear to be clear breaches of the provisions of the Refugee Convention. The majority of these relate to the process around making decisions on asylum claims, as well as withdrawal of state benefits for asylum seekers in certain circumstances. Further discussion of these provisions is not possible within this report. However, this chapter will conclude with some general observations on the international and domestic standards. Asylum, in the international arena, is governed by a distinct set of standards, most notably, by the Refugee Convention. The asylum process is seen as a separate one, not to be confused with attempts at immigration control by states, the pursuit of which the majority of international standards are, in many respects, sympathetic. However, in the UK, immigration and asylum in legislation and policy and in political discourse are often confused, seen

<sup>52</sup> Blake N and Husain R (2003) as above, p 75.

<sup>53</sup> That is, the 1951 *Convention Relating to the Status of Refugees* and its Protocol.

as one and the same thing. Moreover, the Government's primary target is overwhelmingly articulated as being about controlling, indeed reducing inflows of migration and asylum. For example, the UKBA collates statistics on asylum and immigration under the heading of 'control of immigration'.<sup>54</sup> In February 2008, the news page of the Home Office website ran the headline, 'Asylum figures lowest in 14 years' and 'one person deported every eight minutes'.<sup>55</sup> However, the Home Office fails to explain the decreasing number of asylum applications against the increasing number of civil and international conflicts, environmental disasters and repressive regimes that lead people to seek asylum in the first place.

When the language of rights is used in the context of discussions around immigration and asylum it is often couched in terms of the rights of UK citizens being threatened by any rights that asylum seekers and migrants may claim when in the UK. While many personnel involved in immigration control interviewed for the purposes of the investigation voiced criticism at what they saw as undue political interference in Home Office policy on immigration and asylum, they also, to considerable extent, voiced very similar sentiments. Many interviewees expressed the need to protect the rights of those already in the UK from those non-UK nationals that

might want to come to the UK and claim similar rights for themselves. Such an ethos is problematic in light of the very founding principle of human rights as political philosophy and a body of international law – the principle of the universality of human rights as rights that are due to everyone by virtue of being human rather than by virtue of nationality.

The preceding discussion reveals the ambiguities in existing legislation and policy and the considerable discretion given to IOs. The following chapters will reveal the extent to which such discretion and, indeed, lack of independent oversight proves problematic in the protection of the rights of individuals dealt with by the UKBA. Legal certainty that applies throughout society is a primary requisite for democratic regimes which claim to value and protect fundamental human rights. Yet, the legislative provisions for immigration and asylum and the practical implications have come to mean that many non-UK nationals are entered on a daily basis into some form of lottery, in which an individual's stay in the UK as an asylum seeker, immigration offender or even long-term resident, comes to be decided by individual government officials on a discretionary basis.

<sup>54</sup> Available at: <http://www.homeoffice.gov.uk/rds/pdfs05/hosb1405.pdf> [accessed 4 April 2008].

<sup>55</sup> Available at: <http://www.homeoffice.gov.uk/about-us/news/asylum-figures-2008> [accessed 4 April 2008].

# The enforcement people

## Introduction

Immigration enforcement in Northern Ireland has intensified in recent years, and a Local Enforcement Office (LEO) was organised in 2006 to work alongside officers from border control who have the responsibility for passport control on entry to Northern Ireland. For the purposes of co-ordination, Northern Ireland and Scotland fall under one regional UK Border Agency (UKBA) office based in Glasgow. There is one inspector with responsibility for enforcement in Northern Ireland, who is the senior manager overseeing the work of the Belfast LEO.

Currently, the LEO in Belfast employs two chief immigration officers (CIOs), four immigration officers (IOs) and nine assistant immigration officers (AIOs). The AIOs had just started the job and were being trained when the fieldwork was conducted. Additionally, there are nine police officers on secondment to the unit. The initial secondment arrangement was to last for two years, 2006 to 2008, with the possibility of extension for another year. While the UKBA staff of the LEO is made up of roughly equal numbers of women and men, there was only one female police officer in the unit at the time of the Commission’s investigation. There was also a striking under-representation of members of ethnic minority communities among the staff.

Operation Gull has its own dedicated team of officers who are normally based in Liverpool. While some of the immigration and police officers from the Belfast LEO occasionally provide operational support or conduct screening interviews in cases of asylum claims, they would not normally be part of Operation Gull. Seconded police officers are present at sea ports and airports for Operation Gull, but are only called upon when there is suspicion that the person who has been stopped has committed a criminal offence (for example, because of forged documents or being sought in relation to another offence).

Due to the nature of immigration enforcement in Northern Ireland and the use of police custody for

immigration detainees, the Police Service of Northern Ireland’s (PSNI) custody sergeants play a significant role in the process. Custody sergeants authorise detention at the police station and are responsible for the safety and welfare of detainees until their removal from Northern Ireland.

The on-site detention (during Operation Gull) and transport functions (covering both traditional enforcement operations and Operation Gull) are carried out by personnel from G4S, a private security firm which has a contract with the Home Office for the provision of transport and detention services in immigration removal centres in Great Britain (including Dungavel in Scotland).

A number of officers from An Garda Síochána joined the LEO staff on secondment at different stages before, and during, the investigation fieldwork. Unfortunately, due to jurisdictional restrictions of the Commission’s remit, it was not possible to interview these secondees for the purposes of the report.

The following sections are based on interviews and fieldwork observations, and discuss the skills and experience of people involved in enforcement operations, as well as reporting their views on immigration processes and policies.

## Reasons for joining the Immigration Service

It would appear that the choice of career as an IO is usually governed by life circumstances rather than by particular interest in immigration enforcement work, although in some cases IOs admitted that they were “inspired” to join by television documentaries about immigration into the UK. Other reasons for joining the service ranged from the need to pay off university fees through to career progression, sometimes from other professions such as the military, the Prison Service, customs or the police. One of the AIOs interviewed described the job as being different from a regular desk job:

*“It’s the action part of it, the physical part, being out and about. I don’t mind the office, but I like the variety.”*

Staff responsible for enforcement operations in Northern Ireland had a range of experience. Some IOs have been working in the field for a considerable time (for over 20 years in the case of one manager), often having experience of working in different departments within the Immigration Service. Others had joined more recently, with newly appointed AIOs in training at the time of fieldwork. From observations by the investigators, it appeared that this difference in experience influenced the way in which officers approached detainees and their level of confidence on enforcement operations.

In the main, police officers on secondment had used the opportunity to join the unit for career progression and to try something new, as well as to extend their experience into a new area. Bringing their skills and experience in dealing with people from other cultural backgrounds into immigration enforcement in Northern Ireland was also a significant ‘pull’ factor. Some police officers had come in contact with nationals of other countries in the course of their previous duties, including work abroad; but, more commonly, in relation to work on criminal offences or as minority liaison officers. Previous, though limited, experience of immigration enforcement in a support function was also quoted as a reason for taking up the secondment.

### Required skills

Immigration staff told the investigators that their training includes not only information about the law and their powers, but also extensive practical, situational training sessions based on role-play. These sessions include planning and execution of operations, as well as interview techniques. Speaking about the training, one of the IOs said:

*“[Have] to deal with worst-case scenarios to learn how to deal with them in real life, how to deal with pressure.”*

*“[We] are encouraged to develop [...] own styles, but have to be mindful of the fact that immigration control is not about ‘catching people out’.”*

Immigration staff involved in traditional enforcement are also provided with arrest training. Following the first training, each member of staff is assigned a mentor who assesses them after the training is finished. Initially in Northern Ireland, seconded police officers performed a significant role in the mentoring arrangements. Those officers who are arrest-trained are obliged to renew their training every year. The Commission’s investigators understand that, other than the newly-appointed AIOs, the only non-arrest trained officers are those who conduct Operation Gull. This is of serious concern, as Operation Gull routinely leads to arrests and detention of large numbers of people.

Arrest training was seen as a major contribution to the IOs’ enforcement skills. The police officers, who had a mentoring role, explained:

*“[...] the training in arrest is like a ‘badge of honour’.”*

*“They take it very seriously and all procedures are strictly followed. IOs go by the book [...].”*

The police officers also recognised, however, that IOs have different experiences of arrests and that this understandably influences their confidence:

*“IOs are very cautious with the arrests, overly cautious even. Some officers are more confident with it, others are quite nervous. It’s not surprising – if someone is at the control at Heathrow and then starts with enforcement, and suddenly they are supposed to arrest people.”*

Seconded police officers had been offered practical training which they generally saw as very useful. All seconded staff spent a week in training and had an opportunity to visit Glasgow, Aberdeen, Manchester and Liverpool where they were able to observe enforcement operations. While they had been provided with relevant materials by the UKBA, they told the investigators that the materials were not specifically designed for police officers and the training was not ‘tailor-made’.

Training provided to G4S staff extends to four weeks and covers detainees’ needs in relation to religious requirements, food requirements and

cultural awareness. G4S staff are also trained in First Aid and control and restraint techniques. The latter requires an annual refresher course, similar to that of arrest training for IOs.

The prevailing view of the IOs that were interviewed was that no particular skills are required for the job, although some of them referred to the training they were given on diversity and race relations. One of the IOs said:

*“Maybe ‘skills’ is not the right word. Enforcement is easy – you ask people about their identity and immigration status. The only thing is experience – people are giving you scenarios and you need to know when something doesn’t fly.”*

Almost all of the interviewees stated that what is needed most is patience. There was also some recognition that the work requires good communications skills, as well as a professional approach to the duties:

*“Being a good listener is important and taking people and your job seriously. The forms are all in English; you have to make sure that people understand what you are saying to them. They are entitled to know what is going to happen to them.”*

A number of interviewees stressed the importance of cultural awareness in the work:

*“[...] you have to understand various cultures [...]. If someone does not look you in the eye it does not necessarily mean that they are lying. For instance, Hasidic Jews would not look a woman in the eye, it is against their religion. [...] This is what I learned on the job.”*

*“[...] you have to have the knowledge. You rely on your knowledge to work for the BIA [UKBA]. You know a lot about different cultures.”*

The staff identified some gaps in their training. One told the investigators that there was nothing in basic training for IOs relating to children’s welfare, although there is specific training on how to interview minors. Others stated that although First Aid training is provided, IOs are not trained specifically on any medical issues. The most

important issue for the police officers was the continuous “learning on the job”:

*“We really want to be more informed about what enforcement is about.”*

In the course of the interviews, staff involved in enforcement operations were asked whether they ever came across a situation they couldn’t cope with. Separate enforcement staff members, while admitting that the work can be “emotionally draining”, stated that they were yet to face such a situation:

*“Not really so far, the training given is excellent [...].”*

*“It doesn’t bother me, the work is done with common sense. No one would thank you for going into their home.”*

*“I’ve had people shake my hand when I’m sending them home so you can do that and do it well, but you have to keep your distance.”*

The commitment to their work also helped IOs to deal with emotional pressures of the job:

*“The emotional side of it – it’s difficult at times [...]. I couldn’t do the job if I thought it was morally wrong. I think I always really fall back on that.”*

All IOs and AIOs were aware of the support arrangements available should any of them require counselling or advice, as well as the availability of occupational health services. G4S staff also had access to similar support.

Some of the IOs recognised that the job could lead to “burn out”, but in the interviews they were adamant that this was not the situation in Northern Ireland:

*“Sometimes [...] immigration personnel can get jaded and make snap judgments about people they are dealing with. Also, sometimes officers who are going on enforcement visits [...] are high on adrenaline. It is not like it here, in Northern Ireland. Personalities are different and there is more co-operation from the people who are facing removal.”*

*“There are other ways of talking to people when doing enforcement than waving a badge and warrant at them. Some people get better over time.”*

Work in immigration enforcement is seen by some as an opportunity to develop skills and knowledge that can be used elsewhere later on. G4S staff told the investigators that they find it interesting to meet people from other parts of the world and get to know some of their circumstances. The view of police officers is that the time with the immigration unit will be of benefit to their careers and will, more generally, enable them to bring back the skills to their day-to-day duties in the PSNI.

### Human rights training

It is the understanding of the investigators that not all IOs working in the enforcement role were trained in the *Human Rights Act 1998* and their respective obligations under this legislation. A number of officers, working in Belfast at the time of the fieldwork, joined the service before the introduction of the Act and none of them mentioned receiving additional training in the area following their appointment, although one officer said that they were “made aware of it”. This is in contrast to, for example, the personnel of G4S whose training includes the Act and how it governs their respective duties. AIOs, on the other hand, confirmed that human rights training forms part of their preparation for duties. When asked for some detail on this, however, their responses varied:

*“Family life, that’s one that’s important [...]. There’s the prohibition on torture and that you can only use reasonable force.”*

*“You’re taking somebody away, that’s somebody’s liberty. You’re taking someone’s liberty away.”*

There was some confusion as to the nature of the training provided. For example, seconded police officers said that the training they received placed a lot of emphasis on human rights, diversity and race relations. On the other hand, one of the managers stated that training for IOs included only basic information on the issues.

Most of the IOs interviewed thought that if they were “reasonable” and “respectful” towards the people they stop, their work would be human rights compliant anyway. Referring to the period before the introduction of the Human Rights Act, one of the IOs said:

*“[...] on a day to day basis people were practising the things that human rights protect – understanding, access to food, prayer, etcetera.”*

There was a strong feeling among IOs that showing respect is at the centre of their work:

*“We are all treating people like we would like to be treated. We are doing our job.”*

While stating that since the introduction of the Act, the policies are generally more human rights compliant, another added:

*“If you have respect for people you are dealing with, treat them fairly and explain to them what is going to happen to them and why, you talk about rights.”*

There was also strong belief among the seconded police officers that immigration policies are human rights compliant:

*“[...] people would get a fair hearing in the UK. That is one of the reasons why they are coming here.”*

*“UK gives them a fair hearing. ‘Britishness’ is in their minds equivalent to fairness and fair deal. Britain follows rules, other countries may not.”*

The IOs did not seem to be concerned that, although they are legally obliged to observe the *Human Rights Act*, a number of them were not provided with appropriate training on what this entails. They acknowledged, however, that the introduction of the Act changed the way in which immigration enforcement works. As one IO said:

*“Before the Human Rights Act was in place, people who had problems explaining their immigration status would have been detained for longer, forever if needed be [...]. Now, being aware of their rights, you make more effort to find out quicker and remove them [...] faster so they don’t have to be detained.”*

## The importance of immigration control for the UK

It was of concern to the investigators that immigration control was understood mainly as protectionist policy, rather than a way of assisting those who are in need of asylum. For some of the interviewees, the focus of enforcement seemed to be on the prevention of ‘abuse’ rather than on provision of refuge:

*“I dislike people abusing the process. Always have done.”*

*“I feel the asylum system here is abused. Fifty per cent of people we arrest claim asylum, even though they’ve been here for five or six years and not claimed then.”*

There was also little recognition of the potential differences in dealing with failed asylum seekers (who may, for example, have a history of trauma) and immigration offenders.

*“If an asylum claim has been decided and it failed, then it has nothing to do with us.”*

*“[The process of removal] It’s exactly the same, yeah, no difference.”*

One of the IOs said:

*“It is all about protecting people who are already living here and the economy. Ideally, movement of people should be free but there are only so many jobs, land, houses to share between those who are resident in the UK.”*

For others, reasons such as potential criminality was the main focus:

*“We have to monitor who is coming. We do have sexual offenders coming in, you know.”*

This view was shared by most of the police officers. One stated that with more people now coming to Northern Ireland, there are “also more offences committed by members of such communities”. In the opinion of others, there was a direct correlation between immigration and serious crime. Immigration control should, in

their view, be used to stop the crime “at source”. As one of the IOs said:

*“Immigration control is about security of people, background checks should be performed.”*

Interestingly, it was the G4S staff whose views differed significantly in this respect. For them, the role of immigration control was to protect the “genuine asylum seekers” from those who want to abuse the system. The investigation found a similar view among some of the police officers who, while agreeing that control was important “because of the economic and financial integrity of the UK”, stressed that immigration work was also about protecting “those who are genuinely in need of protection and need to be moved here from their countries of origin”.

In the opinion of some of the IOs, the system is not one to prevent legal immigration into the UK:

*“The thing is, there are right and wrong ways of doing things. Some people go through the system, get visas. The other lot without a visa, thinking that they can’t do it the right way, they are then surprised that they could. It is lack of education; people will tell them it is hard to get a visa here. You explain there are other ways.”*

There was some frustration over the way in which policies relating to immigration enforcement are agreed within the Home Office. One IO told us:

*“Policies come from government; I’ve never been asked what I think. We had a meeting about the A2 [the accession states of Bulgaria and Romania which joined the EU in January 2007]. They either are in Europe or they are not. [The] majority of people I’m working with have the same view. There were [no] A2 arrested in NI yet, but they couldn’t be removed because there is no bar on their free movement.”*

*“Policy-wise it’s not worth going into; everyone has a personal view of it, it tends to go in a cycle.”*

Another IO agreed:

*“Sometimes you get an email about priorities but I don’t think they are realistic.”*

Some felt that decisions about priorities can be politically motivated:

*“It becomes more of an issue when votes are needed. [...] we shouldn’t differentiate, we should be treating all with the same priority.”*

During interviews, it also became clear that IOs don’t always agree with what is expected of them. This conflict of views does not, however, influence their commitment to the work:

*“I don’t necessarily agree with all the policies, but it is my job and it is paying me to do that.”*

*“You would probably do the same if you were in their plight. But we are civil servants with a job to do. We have a lot of compassion for people, but the job has to be done.”*

## **The role of the PSNI in immigration enforcement**

At the time of the investigation, the co-operation within the team seemed to be working efficiently, although there were some differences in the understanding of respective roles between the PSNI and the UKBA staff.

One of the IOs acknowledged that there were some “teething problems in relation to co-operation with the PSNI for the first two or three weeks”, and it seemed that most of the immigration staff saw the role of police officers as one of providing security back-up and mentoring in relation to arrest skills. The police officers, on the other hand, saw their role primarily in relation to dealing with criminal offences. They also stated that they have much more involvement in operations in Northern Ireland than elsewhere:

*“In England, the police work with immigration as security back-up, so it is different. Here, the PSNI is more ‘hands-on’. It is the police who perform the searches and fill in the search record. ... The ... team is a hybrid at the moment. In time, maybe it will be moved closer to the English model of enforcement with lesser role for the police.”*

IOs acknowledged the positive role played by the PSNI officers, particularly in relation to the introduction of more stringent recording systems. The police also influence the way in which operations are conducted in Northern Ireland. For example:

*“Police here would object to enforcement visits very early in the morning, for historical reasons.”*

The difference in scrutiny to which police officers are subject in Northern Ireland in comparison to the rest of the UK means, for example, that immigration operations in Northern Ireland maintain more detailed search records. One IO said:

*“Being more scrutinised puts you under more pressure but it is not to say that it is a bad thing.”*

Another added:

*“Everyone had issues with the RUC, so I understand where it comes from in relation to the police. I don’t think that immigration officers should be treated any different.”*

The presence of the PSNI officers on the team also played a role in ensuring that appropriate procedures are followed. Police officers told the investigators that while usually there are no differences in understanding the tasks or respective powers:

*“There was one case where the immigration officers asked the PSNI to arrest someone to conduct an interview. Immigration officers have no power to arrest for interview. The PSNI told them that under PACE they are not authorised to do it and therefore can’t do it. There wouldn’t be any authority for custody officers to keep such person in detention.”*

There was intimation of difficulties arising between the enforcement team and custody sergeants, but the IOs felt that these problems should be reported to the police command or UKBA’s management:

*“Custody sergeants are a wee empire. Some things are about personalities, but the bottom line is that you are not doing anything unlawful. If they have any concerns, they have to report them upwards.”*

It was a view shared by the IOs and police officers, that police presence on operations in Northern Ireland will be needed for a number of years yet. Most interviewees stated that the security situation is not yet such as to allow Immigration Services to conduct operations on its own. The PSNI also plays a considerable part in assessing the community impact of enforcement operations and its District Command Unit has a final veto on whether a specific operation will go ahead. This role is unlikely to diminish any time soon.

### Issues influencing the work of the Local Enforcement Office

Nearly all interviewees stated that the biggest problem faced by the team is a lack of resources. Being based at two different locations – Belfast International Airport and Templepatrick Police Station – negatively influenced morale and impacted on the sense of being part of a team.

*“The accomodation problem came from left-field, not by anyone’s fault, but it certainly had effect on morale.”*

Access to IT was also a problem. The system of ‘hot desking’ and working on laptops meant that

access to email and necessary electronic resources was limited and differed significantly from day-to-day:

*“The physical environment is pretty bad, but it’s the lack of IT is the main problem as I see it. ... it’s no good ‘cos all our work really is computer based so we have to go over to Borders’ building [at Aldergrove] and try and beg computers over there.”*

The staff also felt that there were not enough of them to conduct as many operations as they would expect:

*“There are fewer enforcement visits as there is not enough staff, also in intelligence. ... Morale certainly suffers [and] accomodation is a problem. I am supposed to be an immigration officer to arrest people and this is not happening at the moment. I don’t like sitting in the office.”*

The difficulties, however, are not of such gravity as to discourage most of the officers from further work in Northern Ireland:

*“It is hard to work at the premises we have, but then we are better off than some offices. ... Here, I am part of paving the way for immigration enforcement.”*

# Traditional enforcement

## Introduction

The term ‘traditional enforcement’ is used by the UK Border Agency (UKBA) staff to differentiate their day-to-day duties in the area of immigration control from special operations such as Operation Gull. Traditional enforcement is the responsibility of the Local Enforcement Office (LEO) and refers to the removal of individuals with no leave to remain in the UK – because a claim for asylum has failed, a visa expired or because he or she never had a valid visa to enter the country (for example, he or she entered from the Republic of Ireland, was smuggled into the UK or arrived on forged documents).

This type of enforcement usually involves two kinds of operations – ‘visits’ to private homes (places where the person, or a family, is known or suspected to reside in Northern Ireland) or ‘visits’ to places of work if the person is known or suspected to be working without permission.

The Commission’s investigation revealed that traditional enforcement does not always involve targeting identified individuals. Often, operations are planned to arrest a named individual but will include arrests of individuals who are in the same place at the same time, even though they were not ‘targets’ of the original operation. Additionally, operations are also conducted where intelligence received by the UKBA suggests that there may be people at premises who do not have work permits or valid visas but no particular, named individual is being ‘targeted’.

Traditional enforcement is led by national priorities set down by the Home Office. Sometimes, such operations target certain groups – such as failed asylum seekers. At other times, individuals of certain nationality are prioritised for removal. The fieldwork revealed that some of the operations were based on very vague intelligence, indicating the existence of racial profiling in enforcement work. For example, one of the ‘visits’ observed during the investigation, was based on information presented during the pre-operation briefing that “individuals of Middle Eastern appearance [were]

known to work on the premises”. As it turned out, the visit resulted in no arrests being made.

Enforcement visits are carried out by immigration officers (IOs) and seconded police officers, with occasional additional support from the local Police Service of Northern Ireland (PSNI). The operational requirements of staff safety meant that one operation is conducted by no fewer than five or six people (a minimum of one police officer to one IO). The high number of usually uniformed officers involved was of significance, particularly in relation to home ‘visits’. While the Commission was assured by the UKBA staff that not all officers enter the individuals’ homes, one of the detainees interviewed during the fieldwork told the investigators that the house was entered by “a lot of” officers at once. The investigators also had particular concerns, discussed below, about the high number of officers conducting family removals.

## Observations during enforcement visits

The conduct of traditional enforcement operations can be divided into four ‘stages’: the briefing, the ‘enforcement visit’, serving of immigration papers following arrest, and ‘the aftermath’ – the time spent in custody before transfer to a detention centre, removal or release.

As part of the fieldwork, the investigators were invited to observe the conduct of traditional enforcement operations by the UKBA. The initial offer would have involved the investigators taking part in all stages of the operation, including the actual visit to a place of residence or a place of work. This presented the investigation team with important ethical considerations.

First, the inclusion of Commission staff in the operations would have required police cover to be assigned to each of the investigators for every operation. That meant that the number of people present would be increased by at least four. As described in the previous section of this chapter, the number of officers involved in operations was already of concern and the investigators decided

that their presence would add unnecessary volume to the numbers of enforcement officers entering premises, and could increase the level of distress to individuals who were ‘targeted’ for removal.

Second, it was considered that the presence of Commission staff, who were only allowed to observe the operations but were in no way authorised to intervene, could compromise the Commission’s independence and be confusing to individuals subject to removal about the role of observers in the enforcement process.

As mentioned in the introduction to this report, a decision was made to take a different approach to the investigation of enforcement operations. The investigators were informed by the UKBA staff of upcoming enforcement operations. Arrangements were then made to observe the pre-operation briefing, and to re-join the UKBA staff following the operation. Where an operation resulted in detention of an individual, the investigators observed the serving of papers in the custody suite and any other procedures that were taking place, including Emergency Travel Documents interviews (referred to by UKBA as ‘bio-interviews’). The investigators ensured that their further access to detainees took place after all procedures were conducted and insisted that they should conduct a further interview with the detainee in private. This was accepted by the UKBA and the PSNI. Where no detention resulted from an operation, the investigators observed a de-briefing session or received an update on the outcome, by telephone, from the officer in charge (OIC) of the operation.

The following sections describe the observations and findings of the investigation and identify concerns in relation to each of the stages in traditional enforcement work. As there are some differences in the procedure concerning removal of families, this is discussed in a separate section at the end of this chapter.

## Operational briefings

Each operation is preceded by a briefing delivered by the officer in charge. It is the Commission’s understanding, from interviews with senior managers, that standards of procedures require the preparation of a written briefing for each enforcement visit. The investigators are not clear whether this requirement includes the presentation of a paper sheet handed out to all officers involved in the operation. During the course of fieldwork, it became clear that the style of briefings differs between individual IOs and not all handed out written material at the start of each operation. Some provided the team with verbal information that they had written in their notebooks. One of the IOs commented in an interview:

*“I think, well, I think the briefing needs to be done. I don’t think that there is any absolute requirement that it needs to be in paper form, but we need to have a briefing. My point of view – I think I would much prefer that there is something there on paper for people to see.”*

All briefings, whether written or verbal, had similar structure and discussed the intention of the visit, operational methods, arrangements for contingencies, administrative arrangements, powers of entry, search and arrest, legal basis for questioning, risk assessment and staff safety needs. They also mentioned human rights and diversity issues which were engaged in the visit.

Powers of entry and search by IOs are exercised on the basis of relevant sections of the *Immigration Act 1971*. Use of those powers requires a warrant which, in Northern Ireland, is issued by a lay magistrate,<sup>56</sup> or a letter from the assistant director of the UKBA unit authorising operations which do not concern named individuals but, rather, target specified premises.<sup>57</sup>

Some of the IOs were keen to “do things by consent” without necessarily using a warrant to search people or premises. During the fieldwork,

<sup>56</sup> Section 28(b) in relation to search and arrest of a named individual. Section 28(d) in relation to entry and search of premises for documents and relevant evidence.

<sup>57</sup> Section 28CA of the 1971 Act.

the investigators witnessed a situation where doubts were expressed about the accuracy of an address on a warrant which would make it null and void. The officer in charge of the operation took a decision that – should this prove to be true – the operation would go ahead “by consent”. It appeared to the investigators that, at least in some cases, warrants were treated more as a formality than a requirement.

It is the Commission’s understanding, from interviews conducted in the course of the investigation, that obtaining a warrant for every operation in Northern Ireland is a relatively new procedure (since about 2004). Prior to that, warrants were not obtained in every case and operations would have gone ahead by “informed consent”. The change seems to have been influenced by the police who, as the investigators were told by one of the IOs, “prefer to have a warrant”.

During the investigation, doubts were expressed, in particular by legal practitioners, as to whether magistrates in Northern Ireland are properly informed to issue warrants in immigration cases. The prevailing opinion among this group seemed to be that magistrates conduct “literally no questioning as to the merit”. When questioned about how familiar magistrates are in Northern Ireland with immigration enforcement and the law, one IO stated:

*“Not really, they haven’t seen much of it before. ... They are happy that you know what you’re doing. Only once here, I was asked to explain.”*

*“They ask about people’s circumstances rather than about the law.”*

Another IO referred to personal experience:

*“Lay magistrates seem to be much more au fait with immigration law now. They are inquisitive, particularly when children are involved. They want to know why we want to go to a certain address, what impact will it have on the local community and how we are proposing to alleviate the situation.”*

From the interviews conducted with immigration staff the investigators understood that information provided to magistrates when requesting a warrant includes: the name of the person being sought; the reason they are sought; the available, relevant information about the person’s status; whether the person has any family in Northern Ireland; whether the person has any medical problems; and whether there are any criminal matters involved. Some of the IOs also said that they bring copies of relevant law with them in case they are questioned by magistrates about the legal basis for the warrant:

*“I would always take the ‘intel’ file with me and also be aware of the powers we’re doing it under and the powers that we are asking the warrant to be granted under. [I] make myself aware of those before I go [to ask for a warrant].”*

The practice of issuing warrants appears to be far from identical in all cases:

*“It depends on the magistrates too. Some of them will ask a lot of questions and some of them won’t.”*

The Commission has some reservations about the amount of time available to magistrates to make themselves familiar with the materials presented before issuing a warrant. In one case, the magistrate came to the police station five minutes before the briefing was scheduled to begin. The briefing was only slightly delayed. Of concern to the investigators, was not just that the time given to the magistrate to familiarise themselves was very short, but also that the operation was planned, organised and officers were already waiting for a briefing before the warrant was even issued.

Human rights and diversity considerations were mentioned at most of the briefings but these were more in passing than in detail. This included the listing of Articles from the *Human Rights Act* that are potentially engaged by the operation, and a statement that all officers should remember that “considerations of diversity apply”. The listed rights included Article 3 (freedom from torture, inhuman and degrading treatment or punishment); Article 5 (the right to liberty); Article 8 (the right to

private and family life); Article 9 (freedom of religion) and Article 1 of Protocol 1 of the ECHR (the right to peaceful enjoyment of one’s possessions).

It was also evident that on some of the written briefings the section entitled ‘Human Rights’ did not refer to the rights, but instead included the following statement:

*All officers must be aware of the basic rights and privileges **these** individuals enjoy and which we, as representatives of the Home Office should ensure continue whilst in our detention. (emphasis added)*

The investigators asked whether consideration of human rights was a standard procedure in the planning of operations. They were told by one of the IOs that individual officers in charge conduct briefings in different ways and that human rights are not always “read out”. They added that officers are trained in human rights and that “they are part of their preparation for the job, so they would be aware that way”. The investigators were concerned at the lack of discussion at the briefings of the actual applicability of specific rights to a particular operation, particularly since the Commission understands that not all officers were trained in human rights standards.

Every operation is planned with the consideration of information from the police about the locality of the visit and the likely community impact. This includes assessment, for example, of any community tensions in the area. The investigators were told on a number of occasions by the IOs and the seconded police officers that due to the security situation in Northern Ireland, there would be occasions when operations are cancelled or postponed due to community tensions. As mentioned in the previous chapter of this report, the PSNI’s District Command Unit has a final say as to whether a certain operation can take place.

The investigators were present at a briefing where available information indicated that there were racial tensions in the target area, with paramilitary organisations “not happy with immigrants”.

The operation proceeded, however, with ten immigration and police officers present at that particular ‘visit’. It is questionable whether consideration of staff safety justified such a high number. It is the Commission’s view that the issue of community tensions in the area was not, in this particular case, given appropriate attention.

There is some understanding among IOs about the issues faced by the people they are tasked to remove from the UK. One IO said:

*“Removing economic migrants who are here illegally is the hardest. You always have some sympathy; they work hard trying to support their families, but the law is the same for them and you just have to do it.”*

While another added:

*“As I said to you earlier, it’s an accident of birth that we are from the UK, [a] pretty affluent society... and you’d understand why people want to come here. But, at the same time we need to have control over that.”*

The most often used justification from the point of the necessity of enforcement visits, however, was that the “operation is necessary to protect the UK economy from illegal workers,” and that it was “unfair” that some employers were getting “a head start” in the market place because they did not have to pay National Insurance contributions or taxes.

While the investigators have come across many arrests of individuals working in restaurants, etc., they did not come across a single case where the employer would have been prosecuted for using undocumented workers in the course of their business. Lack of prosecutions, or issuing of fines to employers in Northern Ireland was later confirmed in a meeting with UKBA managers, in May 2008. This situation was present despite the knowledge among the immigration staff that there are “unscrupulous employers who are knowingly employing people here illegally”. One of the interviewees told the investigators that it was a “cut-throat business”.

At the time of the fieldwork, employers hiring undocumented workers and discovered after an enforcement visit were supplied with a copy of the *Home Office Comprehensive Guidance for United Kingdom employers on changes to the law preventing illegal working* (produced in April 2004, and referred to by the IOs and police officers as the “Section 8 booklet”).<sup>58</sup> It is our understanding that employers were later sent a letter by the UKBA explaining that a second offence would be subject to prosecution. One of the staff at the Unit told the investigators that employers usually got away “scot-free”, even though legislation required them to satisfy themselves that the employee is in Northern Ireland legally.

Enforcement of work permit rules by the UKBA changed after the investigation was finished and are not, therefore, discussed in the current report.

## Operations

Due to the ethical considerations explained earlier in this chapter, the Commission's investigators decided not to take part in the actual enforcement visits. Unfortunately, although this decision was made for clear and important reasons it significantly restricted access to first-hand observation material. The investigators did, however, interview detainees who had been arrested during the operations to gain insight into the methods used by the UKBA and the actual conduct of the ‘visit’. This section is based on those interviews and information gathered through pre-visit briefings and debriefings with immigration staff.

The officers told the investigators that visits to places of work are planned in such a way so as to minimise disruption to the business and care is taken that the questioning of any individual takes place out of sight of customers. Where possible, in cases of visits concerning named individuals in work places, a manager will be asked to assist with bringing the person to an area where he or she can be questioned.

This was largely confirmed by the detainees in their interviews. In some cases, however, the detainees stated that other employees were present while they were being questioned by the immigration staff. One also told us that “a lot of” immigration and police officers had entered the restaurant at one time and, in another situation, a small toilet area was reportedly entered by four officers. It was only after the officers spoke to the detainee that they spoke to his manager. One of the ‘targets’ of a home visit also reported that the house was entered by many officers and, in some cases, interviewees said that they could not differentiate between police officers and immigration officers.

It also appeared that, particularly with regard to visits to work places, the existence of a warrant for a named individual did not preclude the questioning of other people about their immigration status. One of the IOs explained:

*“Invariably, when you’re going on a visit, you will find that some people are legal and some people are illegal, so we do speak to everybody. If it’s a named individual we are looking for, once we’ve found them that ends our visit, so we don’t get to them and then speak to others to see if there is anybody else there, but until we’ve established that named individual we can, we do, speak to everybody.”*

The UKBA staff confirmed that often the visit was quite upsetting for the people they encounter:

*“Sometimes they’re scared. They’re scared probably because a lot of them... not a lot of them... some people that we encounter would have had dealings with law enforcement agencies in their own countries. [...] But, I think once we’ve talked to them for a while and explain, they see it’s not going to be the same way they’re used to, then they tend to calm down.”*

The seconded police officers thought that most people are resigned to the fact that they will be removed:

<sup>58</sup> The fieldwork for the investigation took place before the introduction of new enforcement measures that were publicised by the BIA in a media campaign at the beginning of 2008. The new enforcement measures include higher level of fines for employment of undocumented workers. It is to be seen whether the new measures will prove to be more effective.

*“So far, there were no problems on removal visits, people have been generally co-operative and compliant. It is almost like they are holding up their hands to it.”*

It was the view of some of the seconded police officers that, if someone is arrested they cannot be questioned until they are brought to the custody suite and only after the custody sergeant decided on the lawfulness of detention. Yet, the majority of questioning to assess the person’s situation takes place before the arrest is decided. All individuals were questioned at the premises or at their homes about their immigration status and whether they had passports or other documents with them. The decision to detain and remove is taken on the basis of this information – in practice, prior to transport to a police station and prior to contact with a solicitor.

The practice in relation to provision of information after arrest seemed to differ from one operation to another, and this was of significant concern to the investigators. While the majority of detainees said that they were given some basic information on the way to the custody suite (for example, where they were being taken to and what was going to happen next), some were left with no knowledge of what was happening:

*“I was at the back of the van. They didn’t tell me where they were taking me.”*

It was also of concern that even in cases where information was given, detainees did not receive information as to why they were being sent to Scotland and that they were to be transported to an immigration detention centre, where they could stay for a lengthy period of time.

While some of the individuals arrested had the opportunity to collect their belongings, or ask friends to do this for them, one of the detainees interviewed said that he had not been allowed to take his belongings with him after being arrested at his home address:

*“I just wanted to take my Bible, but they didn’t let me. I only took my glasses.”*

Another detainee, who was taken home from his place of work to get his documents, stated:

*“They didn’t let me pack or take any clothes. In my opinion, I had lots of clothes and shoes to pack. ... Here, I only have my bag and some documents.”*

In the report on the recent inspection of Dungavel Immigration Removal Centre, HM Chief Inspector of Prisons, Anne Owers observed:

*The main problems for new arrivals was missing property, left at home following unexpected detention or at police stations where many were initially detained.<sup>59</sup>*

From observations of the operations, it became clear that detainees were not advised of what to do about their belongings. A number of detainees were very worried about their bank savings and no information was provided to them as to how to deal with practical arrangements for their removal to the country of origin. It is our understanding that detainees are assisted by staff in Dungavel in making the necessary arrangements, but even this brief information was not given on arrest. The lack of information about the process of removal left the detainees very anxious and worried.

### **Serving the removal papers**

Following arrest, detainees are transported to the nearest available custody suite. There, a two-part process takes place: the first involves the ‘booking in’ of the person to custody (by police custody sergeants) and the second involves the serving of immigration papers (by IOs).

Traditional enforcement operations place significant burden on custody suites in Northern Ireland. The general rule about the use of custody close to the place of arrest means that local police stations, which are not ready for reception of immigration detainees, are expected to take them at short notice and often hold them in cells for a considerable time.

One of the custody sergeants told the investigators that although there is no direct pressure on them to free-up cells to receive immigration detainees, they

<sup>59</sup> HM Inspectorate of Prisons (2007) *Report of an announced inspection of Dungavel House Immigration Removal Centre, 4-8 December 2006* by HM Chief Inspector of Prisons, HMIP, London.

would nevertheless feel pressured to do so. For some of the smaller custody suites, this means having to transport detainees held under the *Police and Criminal Evidence Act* (PACE) to other custody suites, sometimes as far as 40 miles away from the place of arrest. The need for transport also requires the resources of operational PSNI officers from local police stations, and this was clearly frustrating for custody sergeants:

*“Immigration offenders are being dealt with, but those who commit crimes are not.”*

Some custody suites become very busy, particularly at weekends, and immigration detainees have to wait for a considerable time either in police cars (which are unmarked) or in the UKBA’s minibus (referred to by some of the officers as “the happy bus”). In one situation, detainees waited on the bus for almost two hours in the carpark of Musgrave Street Police Station in Belfast.

Upon arrival at the custody suite, detainees are booked in by custody sergeants. In accordance with PACE procedures, detainees are asked for their personal details, medical conditions, dietary needs and they are informed about their rights while in custody. Detainees are later asked to hand over their possessions and they are examined by a doctor.

A full set of rights, including the right to legal advice, is read out to detainees at this stage, although after the immigration papers have been served the detainee is no longer held under the terms of PACE. Custody sergeants explained to the investigators that this only meant that 24-hour review of detention does not take place (as it would be under PACE) but that all other rights, such as the right to food, water, medical attention, etc., would continue for all of the time spent in custody.

The issue of access to legal advice is a serious one. Even among police officers on secondment with the Immigration Service, there are differences of opinion as to when, and by whom, the person should be told that he or she has the right to contact a solicitor. Some officers told the

investigators that this would take place at the custody suite when detainees are told about their PACE rights by custody sergeants. Others were adamant that the IOs would tell detainees at the suite. One of the IOs said that their preference was to tell detainees about the right to legal advice at the point of arrest, but that the view of senior managers was that this should be done after the person had been transported to a police station.

In relation to arrangements for access to a solicitor, the Memorandum of Understanding between the PSNI and the, then, Border and Immigration Agency (BIA), stated:

*“Where a solicitor is required, the Custody Sergeant will arrange for either the detained person’s nominated solicitor or the duty solicitor to attend the custody suite, in the normal way. (BIA staff should brief the Custody Officer as to the details of any solicitor acting on behalf of the detained person.) Custody Sergeants will ensure that the detained person is made aware of his/her right to a solicitor upon arrival at the custody suite.”*

Although the detainee should be able to choose his or her own solicitor, and a list of immigration solicitors has been supplied to all custody suites by the Law Centre (NI), the investigators observed a number of instances where specific names were verbally mentioned to detainees rather than providing them with access to the full, written list.

Worryingly, access to legal advice was seen by some of the immigration staff interviewees as something that would be disadvantageous to the detainee – a view that was shared equally by some of the IOs, seconded police officers and by G4S personnel:

*“We found solicitors are sometimes prolonging the time in detention by prolonging the process.”*

Such views may lead to a practice of discouraging the use of solicitors. Anne Owers, HM Inspector of Prisons, refers in her most recent inspection of Dungavel to a case, from Northern Ireland, of a detainee who sought legal advice because of a lack of understanding of what was happening to him:

*The problem of getting and maintaining suitable advice was considerably worse for those who have been detained in Northern Ireland. A young man who had been detained for four nights in a Belfast police station told us he had asked for legal advice because he did not understand what the detaining immigration officer told him, but was only told there was no point engaging a solicitor in Belfast as he was due to be moved to Scotland.<sup>60</sup>*

The serving of immigration papers constituted the second part of the procedure at the police station. All detainees arrested through traditional enforcement operations should have received the following set of papers, outlining the reasons for their detention and procedure for removal:

- a) form IS91 authorising detention under immigration law (a copy of which is to be provided to the custody staff and G4S staff)
- b) form IS91R explaining the reasons for detention and bail rights (see Appendix 2)
- c) form IS151A informing detainees of their immigration status (for example, specifying that they are an ‘illegal entrant’), and
- d) form IS86, served on every individual who is fingerprinted and photographed, explaining the reasons why the fingerprints and the photograph are taken and how long they will be kept for.

Any person arrested for an immigration offence has the right to make legal representations for 72 hours after being detained and served with the papers. The investigators have serious reservations about the purpose of an additional form – IS101 (see Appendix 3) – which is given to all detainees with an explanation that if he or she wishes to leave for their country of origin before being formally removed, he or she can waive the right to legal representation by signing the form.

The official reasons for the introduction of the IS101 were communicated by the UKBA as follows:

*Following a High Court case it is practice across the UK in most enforcement cases to delay removal for 72*

*hours to allow the person to obtain legal advice and challenge their removal, if they wish. If a person decides they wish to leave the country as soon as possible then they are invited to confirm this in writing. It does not prevent their getting legal advice, it simply expedites their departure. They are free to change their mind at any time. It would be unlawful if, when they did want to leave, we prevented them from doing so. Since the power to detain is ancillary to the power of removal. In these circumstances, if an individual wants to leave, we must facilitate that as quickly as possible.*

*The main purpose of the IS 101 is to enable an expedited departure. The sentence on the form saying that the person is aware they have the right to legal advice but do not wish to exercise it, is there to prevent accusations later that they were not given an opportunity to get legal advice.<sup>61</sup>*

However, it is important to note that actual removal within three days happens very rarely and, in more cases than not, detainees were still at the police station, or in Dungavel or another detention centre, 72 hours after being arrested. The investigators observed only one case where the IO informed the detainee that removal couldn’t be guaranteed within three days but that they would try to arrange it. In all other cases, no such information was given.

The investigators also came across a situation where the detainee stated that the IO did not mention the IS101 form or what signing it would entail, yet the signed form was among the forms that the detained person had with him in the cell.

One of the IOs, interviewed in the context of Operation Gull, told the investigators that the form originated in policy, rather than in legislation, and that it served as a record of individual detainees waiving their right to make representations. They also sought to assure us that if the detainee were to change his or her mind between signing and the actual removal, they would be given access to a solicitor.

When we spoke to the detainees, those who had signed the IS101 form were not, in fact, aware that they could still ask for a solicitor at any time during custody. The message was confusing – custody sergeants, in some cases, told the detainees that they had the right to consult a solicitor at any time, while the IOs presented them with papers which the detainees thought would mean they were relinquishing that right for good. Such conviction effectively prevented them from seeking legal advice at a later stage of the process.

In the course of the fieldwork, the investigators came across a number of cases where detainees were not provided with a complete set of necessary papers. At least two were not provided with the IS91R form. Another was not given the bail forms. The time that lapsed in some situations, between detention and the serving of papers, was also of concern. In one situation, the papers had still not been served to a detainee after 21 hours.

The investigators were informed by a number of custody sergeants that if papers are not served within 24 hours, the detainee would be released as there would be no authority to keep him or her at the police station. During the period of the investigation, however, no situations of this type arose.

In most situations, either interpreters were present when papers were being served to individuals who did not speak English, or the Language Line service was used to assist with the process. Some custody sergeants were unhappy with the use of Language Line and preferred to wait until face-to-face interpretation became available. Unfortunately, the presence of an interpreter in some situations was determined by the availability of resources rather than by the rights of the detainee. In one situation, the serving of papers was significantly delayed because the available interpreter had to travel in the evening by taxi-cab from their home town, which was approximately 45 minutes away from

the police station. The IOs decided that the cost of a taxi-cab would be too high and that they would therefore wait until the morning when the interpreter could travel by bus.

The UKBA’s *Operation Enforcement Manual* states:

*It is important that the detainee understands the contents of the IS91R. If he does not understand English, officers should ensure that the form’s contents are interpreted. Failure to do so could lead to successful challenge under the Human Rights Act (Article 5(2) of the ECHR refers).*

Of concern, is that the depth of explanation received by detainees about the content of the papers depends on the IO present on the operation. In some situations, detainees were taken through all relevant papers and provided with a reasonable explanation. In others, the information provided was minimal. In one particular situation, the detainee was told, “just speak to your solicitor”.

The investigators were also concerned about the detainees’ level of understanding of the forms and their content. In a number of situations, interviews that were conducted with detainees by the Commission’s investigators indicated a very limited knowledge of the English language among the detainees. This, unfortunately, had not been picked up by the IOs who were serving the papers and, consequently, no translation was provided.

Where a detainee does not have a passport, an emergency travel documents (ETD) interview is conducted by IOs. During the course of the fieldwork, the investigators observed two such interviews. The kind of information collected (bio-interview) varied, according to country requirements. Both interviews were lengthy and took considerable time to conduct. It was of concern that one of the detainees was interviewed for well over an hour, despite a warning by the forensic medical officer that the person was unfit for a lengthy interview.

The investigators have some reservations regarding the conduct of the interviews they observed, particularly in relation to some of the comments

that were passed by IOs during the process and the way in which they appeared to be trying to 'catch the detainees out' on information they were providing. The various 'catching out' techniques seemed to be employed not only to obtain accurate information, but also as a kind of a 'show of authority':

*"I will let them know I know they're lying. I'll question them with different questions. I can't do anything about it, but I can let them know [...] that I'm not a mug."*

In one situation, three IOs were present in a small room with one detainee who was significantly older than the officers. Throughout the interview, the IOs called the detainee by his first name, and one used phrases such as "good lad" when the detainee was compliant. One of the IOs explained that the detainee's fingerprints had to be taken and joked:

*"No difficulty with that, have you, no broken fingers?"*

The IOs explained to the detainee what was going to happen to him after the interview. The detainee was entirely resigned to what was happening to him (that he was going to be removed from the UK), and tried to be very co-operative. He asked what the IOs wanted him to do to make that happen. One of the IOs answered:

*"I can't represent you. I can't tell you that, I can't give you independent advice. I'm part of the organisation that arrested you. This is what we are proposing. You're getting legal advice. We are going to leave you here in the capable hands of the police."*

The investigators felt that was not an answer to the detainee's question. They also had serious reservations about the IOs body language in this instance – with one foot on a chair, leaning across a table towards the detainee in a pose which could, at worst, have been perceived as intimidating and aggressive or, at best, as disrespectful.

In bio-interviews observed by the investigators, detainees had to provide the names, addresses, dates of birth, etc., of their relatives, including parents and siblings. In both situations, some

relatives were deceased and both detainees found it very upsetting to talk about the people who had died, particularly in the circumstances which they now found themselves in.

When asked how they felt about questions about their deceased relatives, one of the detainees told the investigators:

*"It was hard, it was very bad to remember. I didn't want to open up to them – the way they were talking to me."*

Another detainee was very distressed by questions about his deceased father and started to cry during the interview. He later told the investigators that he had been unable to attend his father's funeral and that remembering the experience during the interview was very upsetting.

The investigators were also very concerned at the lack of interest shown by IOs in situations which potentially involved the smuggling or trafficking of people into Northern Ireland. In one situation, the detainee made a direct reference to having been smuggled into the UK for a considerable amount of money. None of the officers present reacted to this information and no further explanation was sought from the detainee. The IOs were more interested in proving to the detainee that he had lied to them about his lack of knowledge of his brother's whereabouts.

The detainee was asked about his brother's address and telephone number. He replied that his brother had moved one year ago and that he didn't know the details. The questioning about siblings' addresses and other details continued for a while. At this stage, the IO who was conducting the questioning showed the detainee a letter from a bank confirming transfer of money between the detainee and his brother. The detainee got visibly distressed and said that this did not belong to him:

IO 1:

*"But your name is on this letter and your brother's. It says you transferred money to your brother."*

IO 2:

*“We are not interested in the money; we are just saying that he must be keeping in touch with you.”*

Detainee:

*“I had to borrow a lot of money for illegal entry.”*

IO:

*“I’m not interested in the money.”*

Detainee:

*“He told me address by phone.”*

IO:

*“So you have his phone number then? Do you have a number for your sister as well?”*

While the Commission understands that one of the tasks of IOs is to collect correct information for travel documents, it regards the above exchange as an example of trying to ‘catch someone out’ – a feature which, according to the IOs, was not a purpose of immigration control.

## The aftermath

According to policy and the Memorandum of Understanding between the PSNI and the UKBA, a person can be held in police custody in Northern Ireland for up to five days. This limit rises to seven days providing that removal directions within 48 hours, from day five, are in place. Those days are often spent in custody with little or no information about what is going to happen to the detainees next. This causes stress and anxiety among the detainees who are uncertain about their position, adding to the fear of what is going to happen to them upon arrival to their countries of origin: “Going home to Africa is like going to hell”, one of the detainees told the investigators.

While the initial, very limited information was usually provided to detainees at the time of the arrest, very little information was exchanged between the custody suite and the IOs once the papers had been served. In interviews, one of the IOs stated:

*“They are being told what they need to know at each stage. They are being told that they are being taken to a police station first. After the interview and when referral and removal are agreed, then they are being told what is going to happen to them next and where they are going. We are letting them know as much as they need to know at any given stage.”*

From observations and interviews with detainees it seems, however, that even that rule is not particularly respected. In discussions with the Commission’s investigators, the custody sergeants admitted that lack of information following arrest is not only frustrating for the detainees but also for them.

Custody staff are often asked by the detainees about what is going to happen to them, and when and where they are to be transferred. Most of the custody staff only get to hear anything about a detainee’s situation when they receive a telephone call, often at very short notice, to say that G4S staff are on their way to collect a person for transfer. Poor information exchange was confirmed to us by custody visitors:

*“Communications between the PSNI and immigration is minimal; custody officers are waiting for days to hear from them.”*

Custody visitors’ frustration with long periods of stay in custody suites was very clear when they asked the Commission’s investigators:

*“Is it still that people are sitting in cells because immigration has a day off?”*

*“[...] is it bureaucracy? Financial issues? Do they need a ‘bus of bodies’ for the removals to be viable?”*

These problems are compounded by difficulties in communication with people who do not speak English. Custody sergeants are not equipped to communicate with detainees who are in the suite for considerable lengths of time. While many are using Language Line or interpreters for the ‘booking in’ procedure and to assist the serving of papers by the IOs, most of the rest of time in custody is spent in very little contact with detainees.

There were examples of very creative ways of dealing with language limitations. For example, custody sergeants utilised interpreters, at the early stage, to write out basic words for use by the custody staff – words such as ‘toilet’, ‘food’, ‘water’. The investigators also saw, and heard about, many examples of good will by the police officers who are responsible for the detainees and who attempt to accommodate their needs if their duties allow them to do so.

Examples have also been brought to the Commission’s attention, of custody staff facilitating exercise, books and magazines, providing a compass to a Muslim detainee who wanted to establish the correct direction for his prayer mat, or allowing for times out of lock-up for two or more detainees who can converse with each other.

However, the investigators have also seen and heard of the negative side of communication problems. Immigration detainees are often not aware that they can ask for a change of clothing, for a toothbrush and toothpaste, or that they can ask to use the shower. Some detainees wear the same clothes for the length of their stay in detention, sometimes more than five days. Information about access to facilities in custody or personal belongings should be given to detainees upon their arrival in the police station to avoid such situations.

Many of the custody staff stated that cells in police stations are entirely inappropriate for holding detainees for that length of time and that police stations are not a solution for immigration detention. One of the custody visitors compared the cells available in police stations to punishment cells in one of Northern Ireland’s prisons. Police officers were often unable, or found it difficult, to meet detainees’ requests. One of the custody sergeants told the investigators that his “head would be spinning” with other detainees and that, even with good will, it was difficult to meet the needs of immigration detainees.

This was particularly true in relation to providing detainees with the opportunity for physical exercise. Most custody suites used for immigration detention are not equipped with exercise yards. With detention often lasting four to five days, the need for exercise is recognised by the custody staff. Police officers tried to facilitate it “out of the goodness of their hearts”, but found it almost impossible when custody suites were busy. In the view of the custody visitors:

*“The PSNI does not have the time or facilities to treat immigration detainees any different, just because of lack of time. There is a sense of helplessness in the PSNI.”*

*“The PSNI would say that they are ‘babysitters’.”*

Most disturbingly, the Commission’s investigators were told by the custody visitors that many detainees they came across were unable to eat while in custody. They were also told by custody staff that some of the detainees were refusing food for days. This issue needs urgent attention and instances of food refusal should be closely monitored.

The custody visitors were very clear in their views on immigration detention:

*“It is not the kind of treatment [an] immigration detainee should receive and it is a harsher regime than for PACE prisoners.”*

## Family removals

Family removals differ slightly from other types of immigration enforcement. These removals usually concern failed asylum seekers, with all rights to appeal exhausted. Prior to the establishment of the Local Enforcement Office (LEO) in Belfast, family removals were conducted by a dedicated family team based in Liverpool, England.

During the course of the fieldwork, no such removals took place and the investigators were therefore unable to conduct first-hand observations of operations involving families. Awareness about

the Commission’s investigation among legal practitioners, in particular, led, however, to information being provided to the Commission about a number of cases. This information is included in the findings presented below.

In cases of family removals, the enforcement ‘visit’ is preceded by a ‘pastoral visit’ during which IOs check the family’s circumstances and check the accuracy of records kept by the Home Office (for example, to check whether there are further representations made on behalf of the family).

Pastoral visits are not used to prepare families for removal and no information is given that the removal will take place. As IOs told us:

*“We do not tend to say that we are going to come back because you don’t know what is going to happen.”*

*“We don’t tell them; if you tell them, they will disappear.”*

The lack of information and preparation means that the family needs to pack their belongings on the day of removal, often early in the morning. This practice has been confirmed through information provided to the Commission by third parties.

In one case, a family (mother and three children) was ‘lifted’ at 7.00am. The mother was not allowed to pack even though the family was being transported to Dungavel and then to Yarl’s Wood the same day. While in this case a ‘pastoral visit’ took place, no indications had been given to the family that they would be removed. It is the Commission’s understanding that in the second case, the family (mother and four children) was not at home when the pastoral visit was to take place. IOs did not return to the address until the removal visit.

There is significant discrepancy between what the IOs told the investigators about procedures for family visits and the understanding of the process by the seconded police officers. Some of the

interviewees from this group stated that the pastoral visit is used to tell families that they will be removed and how that will happen. Police officers believed that families have at least a week to pack, although they confirmed that belongings are usually not packed on the day of removal.

IOs admitted that removal is stressful for the families:

*“It is heartbreaking; young children, in particular, they have to pack their toys, etcetera. They often think they are going on a visit; it is often more heartbreaking for them than for us. With the parents it is a lot different; it hits them that we are taking them away.”*

*“There was one time this boy was upset and wanted a shirt ironed. I ironed his shirt and got his case and it helped.”*

Some of the officers also admitted that such operations can be a difficult experience for them, and that they had asked the management of the LEO not to be involved in family removals.

*“[...] when you have children yourself, you want to protect all of them, so dealing with kids in immigration enforcement situations is hard.”*

*“I found it hard. There was a little child just clinging to me. I found it hard.”*

The investigators were, however, very concerned that some information presented during the course of the investigation alleged inappropriate behaviour on the part of officers conducting family removals. In one of the cases, the investigators were told that IOs entered the children’s bedrooms, telling them to get up. The mother was reportedly told to stop crying and to “control herself”, and then asked to tell the children to “do as they were told”. The family was reportedly not allowed to use the bathroom with the door closed and not allowed to gather belongings.

It was of serious concern to the investigators that family removals were conducted by a large number

of officers arriving at the house early in the morning. One of the IOs stated:

*“On the day of the visit, there is the usual number of IOs and police officers [one police officer to one IO ratio]. The one I went to, there were five IOs, I think, two of those stayed outside, and uniformed police officers.”*

*“We would usually go in around 7am before the kids go to school. We also try to go early so the neighbours are not up. There is a lot of racial tension in Northern Ireland. We are trying not to cause further problems.”*

One of the families consisted of a mother and three small children, and yet they were removed by up to ten officers present. Should this be the case, it is the Commission’s view that this is disproportionate and not justified, even in the context of general staff safety concerns.

It is the Commission’s understanding that both families have been removed despite a claim for asylum having been lodged in December 2006. Screening interviews did not take place until March 2007 and this was recorded as the date of the asylum claim. This resulted in the Home Office assessing the claim as not made ‘within reasonable time’.

It is also the Commission’s understanding that delays in screening interviews were caused by a lack of UKBA personnel available to conduct them. But it was the families who bore the consequences of the agency’s inefficiency. Delays in screening interviews, in general, are acknowledged by the enforcement staff who were brought in to assist with casework:

*“Now we are dealing with a backlog of screening interviews. ... backlog happened as there were no interpreters here and small staff. ... People can be waiting for months for it.”*

Family removals are supposed to be planned in a way which enables the transport of the whole

family to a detention centre on the day of the operation. The IOs explained that it is Home Office policy that families are not kept in custody and that they are not split:

*“We don’t take families to custody. The family would be lifted by G4S at a reasonable time so they don’t have to wait for too long for the boat. If there is a delay for whatever reason, we would hold them in an area where there are no other people. We may bring them to the airport here and they will be provided with breakfast, access to toilet, their mobile phones will be with them. Then G4S would take them to the ferry.”*

The investigators were, however, also told by IOs and others involved in enforcement operations that, on occasion, the father would be kept in custody (if he was arrested at his workplace, for example) while the family is being prepared for removal. Other cases of detention of the father, or ‘head of family’, until such time as the family can be removed, were also brought to the investigators’ attention. In those cases, it is the Commission’s understanding that the mothers and children were given a temporary release until the date of transport to Dungavel or another detention centre.

It is important to note the situation of families who are being removed from Northern Ireland to the Republic of Ireland where they are legally resident. From the information gathered during the course of the investigation, it has become clear that in such cases families are first removed to Dungavel only to be later removed from there to the Republic of Ireland as a ‘third country’. The reason given for such a procedure was that the right to appeal the decision and make further representations within 72 hours has to be made from within the UK.

This practice is different to that employed during Operation Gull, where the investigators had a chance to observe first-hand removal arrangements being made to take people, who are legally resident in the Republic of Ireland, straight to the border. This, despite the fact that people stopped during

Operation Gull have the same right to appeal and to make representations regarding their status.

Such an arrangement means that the family has to endure the experience of being transported twice, and face a stay – even if short-term – in an immigration removal centre. With the existence of an easily accessible land border, and already functioning arrangements for Operation Gull, this type of arrangement is clearly unjustifiable and unnecessary.

# Operation Gull

## Background

Operation Gull is carried out by the UK Border Agency’s (UKBA) immigration officers (IOs) at Northern Ireland ports: Belfast City Airport, Belfast International Airport, Belfast City Docks and Larne Docks. It involves UKBA staff being stationed at ports and asking incoming passengers, from selected flights and ferry crossings, for identification in order to verify their immigration status in the UK. It is mostly domestic flights that are monitored and, as a result, not all passengers will be carrying passports. A photographic driving licence is a sufficient form of identification for most airlines operating domestic flights. The purpose of Operation Gull has not been officially made public. Its purpose was explained to the investigators, by some IOs, as protecting the Common Travel Area, through detecting people who may attempt to cross the land border with the Republic of Ireland. However, other IOs saw the unique geographic location of Northern Ireland as a way of detecting irregular migrants in the UK. As one senior UKBA employee stated, “Belfast is like a giant airport”.

This chapter will look at how Operation Gull is carried out by IOs operating in Northern Ireland, how people come to be detained as a result of it and what subsidiary powers IOs use in recommending, or authorising, detention.

## Methodology of the investigation

The Commission’s investigators were given the opportunity to observe Operation Gull over two days at Belfast City Airport. The UKBA decided on the dates that could be observed and the chief immigration officer (CIO), IOs, assistant immigration officers (AIOs) and seconded Police Service of Northern Ireland (PSNI) officers were made aware, in advance, that the investigators would be present. The investigators were stationed with IOs at the airport and observed their interaction with disembarking passengers. In addition, some passengers arriving at Belfast Docks were taken to the airport for further questioning by the IOs. Passengers were taken aside, away from public view or into a separate room, for further

questioning. Investigators observed that process too, up to the point of papers being served or individuals being released. From the outset, the IO explained the reason for the investigators’ presence and sought consent from the detainee.

After the interview process between the IO and passenger, IOs left the room and the investigators were able to interview detainees in private, with their permission. At this point the investigators explained, again, the reason for their interview, assured the detainee that he or she would not be identifiable through the investigation report, and that the investigators were unable to help detainees with individual circumstances or provide any individual advice.

The investigators interviewed a number of people detained under Operation Gull at the custody suite in which they were being held pending transportation to Great Britain. These interviews were carried out several weeks following the observation of Operation Gull, during October and November 2007. The UKBA was not aware that the investigators would be conducting these interviews and had no prior warning of them. The Commission’s access was negotiated directly with a senior police officer at the police station and with the custody sergeants who were on duty at those times.

In addition, the UKBA provided data on the numbers of people against whom enforcement action was taken under Operation Gull between April 2006 to February 2007, and April 2007 to August 2007.<sup>62</sup> Some form of enforcement action was taken against approximately 600 people in that period.

## Resources and rationale

Operation Gull is unique to Northern Ireland because IOs do not normally monitor people as they move internally within the UK from one city/region to another. Passengers on trains or flights from London to Edinburgh would not normally expect to be met by IOs asking for identification as they disembark.

<sup>62</sup> As at December 2007, these were the most up to date figures the UKBA had collated.

This chapter shows the extent to which considerable resources are invested in the operation. As already stated, a team of IOs, including one CIO, travels from Liverpool Enforcement Office to Belfast. This has become more frequent in recent months, increasing from a monthly exercise to bi-monthly and usually over four days (Friday to Monday inclusive). In addition, a number of PSNI officers seconded to the UKBA in Northern Ireland will also be on hand at the ports. On occasion, IOs and AIOs from the Northern Ireland Enforcement Office will also be present, as will security staff who will escort detainees between ports for questioning, on to custody suites and then to the ferry for transportation to Dungavel House, Immigration Removal Centre (IRC).

In addition, selected PSNI custody suites are required to ringfence a number of cells for use by the UKBA each time Operation Gull is being carried out. As the field work began, one particular custody suite ringfenced a total of six cells every two weeks for people detained under Operation Gull, and a number of other custody suites were routinely used over the weekends that the operation was running. The UKBA is charged for use of the cells by the PSNI and the Commission’s access to PSNI records revealed that the UKBA is charged for each amenity provided to detainees. This includes access to a doctor (forensic medical officer) blankets, pillows and food, as well as overtime incurred by PSNI staff as a result of the additional pressure on its custody suite. The PSNI confirmed that when Operation Gull was running an additional custody sergeant would also be on duty. In one operation, taking place over a period of four days, in which five cells were used in one custody suite, the Agency was charged in the region of £7,500 by the PSNI. Further access to figures provided by the UKBA also revealed that at least 17 individuals were detained by the UKBA over that four-day period, suggesting that additional suites would also have been used in other locations, incurring further costs to the UKBA as accrued by the PSNI. These figures suggest an average cost of

£1,500 for a detainee to be held in a police custody suite over four days, or an average cost of £375 per night accrued by the PSNI while a detainee is held in custody.

The time dedicated by both UKBA and PSNI staff must be included alongside the additional pressures placed on the PSNI when non-immigration detainees need to be transported and detained elsewhere due to full capacity with immigration detainees. In some cases, police officers will need to travel considerable distances with arrested individuals to a custody suite which has capacity. The arrangement between the PSNI and the UKBA was originally agreed in October 2004, in a *Protocol for the Use of PSNI Custody Facilities* by Her Majesty’s Customs and Excise Staff and the United Kingdom Immigration Service. Under the terms of that Protocol, arrangements exist “for payment for the use of the Police Service of Northern Ireland custody facilities by the Immigration Service”. That Protocol was replaced with a Memorandum of Understanding between the PSNI and the UKBA in November 2007. The arrangements for cost recovery, however, remain the same: “PSNI will recoup costs arising from the provision of detention facilities and associated services from UKBA”.<sup>63</sup>

The resource implications of Operation Gull are important to its rationale. IOs explained that the purpose of Operation Gull is to prevent abuse of the Common Travel Area (CTA). Its origins were explained as having emerged from immigration control efforts at Holyhead in Wales, from around 2000, where ferry crossings from the Republic of Ireland apparently revealed significant numbers of people with valid UK visas residing in the Republic of Ireland, yet claiming state benefits as residents of the UK. An IO commented, “[we were] frankly horrified with what we saw of abuse of the system”. He elaborated that, because the Republic of Ireland operated entry control, it emerged that people were going through Northern Ireland to evade that. As a result, a need was identified by the UKBA to monitor and control movement through this region.

63 *Memorandum of Understanding between Police Service of Northern Ireland and the Border and Immigration Agency* (Formerly the UK Immigration Service), November 2007.

However, the rationale for monitoring movement through Northern Ireland to the Republic of Ireland cannot be explained by abuse of the benefits system. This is because immigration checks in Northern Ireland reveal a person’s immigration status in the UK and whether they are entitled to enter the Republic of Ireland. It does not reveal the extent of any ties to, or residence in, the Republic of Ireland. For example, a person with indefinite leave to remain in the UK would only be detected by IOs through Operation Gull. If such an individual was actually living in the Republic of Ireland while, for example, claiming Disability Living Allowance in the UK, that information would not be revealed through checks at a Northern Ireland port. It would be unlikely that the individual would have registered with any official agency using the same name and personal details in the Republic of Ireland, if they had registered at all. Further, from the investigation observations, interviews and access to statistical information, it does not appear that individuals with long-term residence status in the UK are of particular interest to the authorities.

Operation Gull, however, would prevent individuals who do not have the necessary documentation from entering the Republic of Ireland via Northern Ireland, by removing them from the UK *before* they have had an opportunity to take up any form of residence in this region. As might be predicted, this particular way of working is extremely problematic from a human rights perspective. From the perspective of criminal law norms, taking punitive action against individuals before they have broken the law is unacceptable.

In fact, the interviews with IOs working on Operation Gull suggest a different rationale. IOs believed that their work had led to the detection of significant numbers of individuals obtaining valid UK visas, travelling to Belfast by ferry or plane, making use of an uncontrolled land border and subsequently taking up residence in the Republic of Ireland – joining family or contacts there, assuming

false identities, claiming state benefits they were not entitled to, and generally exploiting the Irish state.

If Operation Gull is about monitoring the Common Travel Area, as articulated by the vast majority of IOs, the question arises as to why the UK is investing such considerable resources in protecting the economic interests of the Republic of Ireland.

Irrespective of this, the human rights protections of all passengers, regardless of whether they are subsequently detained and removed, must by statute be protected. An examination of the human rights protections is outlined below.

## The experience of detainees and human rights protections

### Racial profiling

Any exercise conducted by immigration officials at ports raises concerns about racial profiling. Following a high profile incident involving a Zimbabwe national with legal residency in the UK being paid costs of £7,500 by the UKBA for false imprisonment and discrimination, there has been a degree of media interest in how Operation Gull is conducted.<sup>64</sup> Racial profiling occurs when ‘race’ or ethnicity is used by government officials as a basis for suspicion in investigations that essentially do not have a target suspect. In other words, the agency is not looking for any one person in particular, but a ‘type’ of person. The term is usually applicable to law enforcement officials but is not exclusive to their activities.

Racial profiling is a practice incompatible with international human rights standards. It is considered to be a discredited way of law enforcement. Under Article 2(1)(a) of the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD):

*Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all*

<sup>64</sup> In commenting on the factual accuracy of this report, the UKBA denied that the out of court settlement conceded discriminatory practice by UKBA staff. Instead, the UKBA insisted that the false imprisonment was due to “weak administrative procedures (in another part of UKBA) which failed to have an accurate record of the individual’s immigration status”. The administrative arrangements of the UKBA are discussed elsewhere in this report.

*public authorities and public institutions, national and local, shall act in conformity with this obligation.*

Further, the *Programme of Action* adopted after the World Conference against Racism, in 2001, urged:

*States to design, implement and enforce effective measures to eliminate the phenomenon popularly known as ‘racial profiling’ and comprising the practice of police and other law enforcement officers relying to any degree on race, colour, descent or national or ethnic origin as the basis for subjecting persons to investigatory activities or for determining whether an individual is engaged in criminal activity.*

Article 26 of the *International Covenant on Civil and Political Rights* (ICCPR) prohibits discrimination on any grounds and guarantees all individuals equal and effective protection of the law.<sup>65</sup> Collective action against a group of people because of their ethnicity has been considered a violation of Article 3 of the European Convention on Human Rights (ECHR) (prohibition of torture, inhuman or degrading treatment or punishment).

*The Race Relations Order (Amendment) Regulations (Northern Ireland) 2003*, does not make it unlawful for IOs to discriminate on the basis of nationality or ethnic or national origin, when authorised to do so by a Minister (a Ministerial Authorisation). Home Office sources state that Ministerial Authorisations are based on intelligence or statistics that provide evidence of threats to immigration controls.<sup>66</sup> None of the UKBA staff in Northern Ireland were aware of a Ministerial Authorisation being in place during the course of the Commission’s field work. That would suggest that any targeting of particular people on the basis of nationality or ethnic or national origin by IOs, during that period, was not in accordance with domestic legislation.

The investigators’ observation of Operation Gull at Belfast City Airport and the interviews with detainees raised serious concerns in relation to racial profiling. All disembarking passengers were

stopped and many of those interviewed by the Commission’s investigators said they saw IOs ask all passengers for some form of identification. However, not all detainees had been stopped as they were disembarking a flight or ferry crossing. In one situation, a detainee claimed that he was sought out from the waiting area in the ferry terminal because of his ethnicity. He was detained, in the first instance, at Belfast Docks while travelling with his girlfriend, and revealed that he was stopped for questioning while trying to purchase a ticket for the ferry crossing. He claimed that only people visibly from minority ethnic communities were being stopped and that perhaps the immigration officers did not think those from a minority ethnic background could be Irish.

Another account concerns an individual at Belfast Docks, standing in the queue for the check-in desk, when he saw two men stop a group of four people in the waiting room area. The individual recounted that the four were of South Asian origin and that others in the area were not stopped. The same individual then saw a woman of African origin being stopped and taken out of public view for questioning. This particular individual challenged the two men who were stopping individuals and was told that the stops were random and that they were police officers exercising powers under the *Terrorism Act 2000*. When the individual suggested that the officers were only stopping people who were not White, he was told that they had also stopped some Romanian people. While essentially conceding that foreign nationals were being targeted, the police officer tried to justify this on the grounds of executing a counter-terrorism exercise. However, the ‘stop and search’ powers under the *Terrorism Act 2000* are only to be used where there is evidence of a specific terrorist threat. This particular incident is an example of the conflation of migration and criminality, whereby legislative provisions relating to criminal activity are used to enforce, and indeed to justify, immigration control. As Chapter 4 has shown, many of the IOs

<sup>65</sup> At the time of writing, an individual complaint had been lodged with the Human Rights Committee against the racial profiling practice of Spanish law enforcement officials. See *Rosalind Williams Lecraft v Spain*.

<sup>66</sup> Woodfield K et al (2007) *Exploring the Decision Making of Immigration Officers: A Research Study Examining Non-EEA Passenger Stops and Refusals at UK Ports*, Home Office Online Report 01/07. Available at: <http://www.homeoffice.gov.uk/rds/pdfs07/rdsolr0107.pdf>.

and seconded PSNI officers, interviewed for the Commission’s investigation, felt that immigration control was important for the purposes of protecting the UK from crime.

A legal practitioner, interviewed as part of the investigation, recounted that when he had been disembarking a flight at Belfast City Airport, he had seen IOs asking only Black and minority ethnic individuals for identification. Given the limited time for the investigation and the limited access to Operation Gull, the Commission’s investigators are unable to confirm unequivocally whether such people are deliberately targeted for initial checks.

An equal concern is the set of factors which determine whether the IO will continue with further questioning. At the end of the Operation Gull observed by the investigators, the CIO instructed IOs that they could stop work. One IO commented that it was frustrating when they had to stop for the day and “watch people who may be of interest” just walk by. This particular IO did not elaborate further on which people, exactly, would be of interest.

The IO, having asked for identification, then has to make a decision as to whether further questioning of the passenger is required. In the interviews with IOs, the investigators asked how, for example, might a driving licence be sufficient for some passengers while others may be asked to produce a passport; and if a passenger was unable to produce a passport why was he or she questioned further in order to clarify immigration status. One IO explained that he would exchange a few words with all incoming passengers and that, in so doing, he would know if a driving licence was sufficient. He explained that the passenger’s accent was an important factor.

Another IO explained that it was a matter of “feel” more than anything else, elaborating that if the person was born in the UK, usually a driving licence would be “ok”, unless there was a “feeling” that something was not quite right. This included a document which “doesn’t feel right, the appearance

doesn’t match and the person is behaving suspiciously”. In such situations, the IO explained, an additional form of identification would be requested. In the IO’s experience, given that most people usually have another form with them, it did not prove difficult to check. Looking through the passenger’s bags was another option used by the IO to ascertain the person’s reasons for being in Northern Ireland.

Most of the IOs indicated that there was no uniform process or ‘formula’ for carrying out immigration enforcement under Operation Gull. An AIO claimed that it was “the person themselves [who] can give it away with eye contact and how they appear”. Another IO felt that it involved a “common sense approach” – if someone refused to show an additional form of identification, or if there were doubts as to the authenticity of the documents, it would have to be explained to the passenger that failure to answer questions is an offence.

In contrast, another IO said that if a passenger responded with hostility to a request for another form of identification and made a lot of “fuss”, that would often satisfy him that the person’s immigration status was secure in the UK. The logic of this IO’s conclusion seemed to be that only a person with secure status would have the confidence to respond in this way.

When asked if particular nationalities were ever targeted or raised cause for concern, one IO stated that Nigeria had a very high level of forged documents and that every single Nigerian passport is therefore checked. The IO explained that even if the passport had a valid visa stamp, it would still be checked. An AIO viewed Operation Gull as a positive measure because it was a means of detecting people engaged in benefit fraud. He commented that the system was being abused by “several nationalities”. When asked if particular nationalities had been identified, the AIO said, “Yes definitely”, but added, in contradiction, “But [I] don’t want to generalise like that”.

Interestingly, one AIO could not understand why anyone would travel without a passport: “... you shouldn’t be allowed a driving licence. Everyone should have a passport”.

In general, IOs could not articulate, or provide in written form, a standard process for conducting Operation Gull. As a means of avoiding discrimination on grounds of ethnic origin, many thought it sufficient that they could confirm that all passengers were initially stopped. When probed further on how they decided if additional questioning and investigation were required, answers became more ambiguous and, in some cases (as cited above), IOs appeared to contradict one another in how they approached the job.

What can be confirmed, through access to Operation Gull records collated by the UKBA itself, is that in the period between April 2007 and June 2007, IOs stopped a total of 202 people for further enquiries. Of these, 47 were of Nigerian nationality, 19 were Chinese and 15 were from the Philippines. Further, the incoming flights that were targeted appeared to be almost exclusively those from London airports, from where there is likely to be a higher number of passengers from minority ethnic backgrounds in comparison to airports north of London.

The majority of those stopped for further enquiry and/or subsequently detained over that period of time are likely to have been identified as belonging to an ethnic or national minority. There may, of course, be reasonable explanations for such trends, the most notable being that those stopped and detained under Operation Gull reflect a UK-wide pattern of nationalities detected by UKBA staff and found to be immigration offenders or failed asylum seekers. That trend can, in turn, be used to suggest that particular nationalities are more likely to breach the terms of their immigration stay in the UK and, further, to then justify the deliberate targeting by IOs. Justification of such trends in this manner is extremely problematic given the very obvious danger that they become self-fulfilling. If non-White passengers are disproportionately

targeted then it is somewhat obvious that they would become disproportionately represented in the statistics on immigration ‘offenders’. Indeed, the notion that police officers are justified in targeting Black and minority ethnic males, in exercising stop and search powers on the grounds that this group represents a disproportionate percentage of those convicted for criminal offences in comparison to their representation in the overall population, is largely discredited in human rights discourse.

### Section 10 cases

As stated in Chapter 3, information made available to the investigators by the UKBA shows that section 10 of the *Immigration, Nationality and Asylum Act 1999* is frequently used by IOs for detaining people under Operation Gull. In particular, it appears to be used to remove individuals with valid UK entry on grounds that they entered by deception – the deception being that they actually intended to travel on to the Republic of Ireland. IOs insisted that to remove people on this basis was a valid interpretation of the legislation. It was suggested that the visa entry form required individuals to disclose whether they had relatives in another EU state and, where an IO discovered that the passenger had relatives in the Republic of Ireland, it could be assumed that they had not disclosed this information despite the requirement. The IO thought it reasonable that individuals be, therefore, removed on that basis. Notably, however, the relevant application form (VAF1) asks specifically about family ties in the UK, not in any other EU state, nor the Republic of Ireland more specifically.

Detecting people, who fall under section 10, permits the IO a considerable degree of discretion. Having seen a passport with valid UK entry, the IO must make an immediate decision as to whether this is sufficient. IOs could not elaborate on what would motivate them not to accept a valid visa stamp, acknowledging that “suspicion” was a key factor. During the observation of Operation Gull, a number of passengers who were foreign nationals

were stopped and simply let go precisely because they had valid UK visas. These passengers included a number of Indonesian passengers, a Philippine woman and a Nigerian man.

When asked specifically about 'section 10 cases', a number of IOs could recount instances where individuals with UK visas were stopped and, when their bags were checked, it would emerge that they were intending to visit family in the Republic of Ireland. In one example, a man had come to Belfast having spent a week in London. His bags were checked to reveal dresses and food and further questioning revealed that he had a wife and children living in Dublin.

Removal on this basis amounts to taking punitive measures against an individual before they have broken the law. Indeed, in the case of section 10 as it is used in Operation Gull, even if a person were to attempt to move on to the Republic of Ireland, they would breach immigration rules of the Republic of Ireland, not those of the UK. Operation Gull essentially appears to be a form of internal immigration control and double-checking of the validity of an already-issued UK entry visa, but this was not the rationale advanced by any of the UKBA personnel interviewed, including senior officials.

### Legal advice and representation

A major concern with immigration enforcement, in general, and Operation Gull, in particular, has been the stage at which detained individuals are able to speak to a legal practitioner. It is at a port in Northern Ireland that a decision will be made to remove a person ultimately from the UK. Once a passenger is taken aside for further questioning, he is likely to be fingerprinted, subjected to fairly rigorous questioning, belongings are likely to be searched and relatives and friends may be contacted by the IO to 'confirm' the passenger's story. At this point, the passenger essentially becomes a detainee although, as discussed below, it is suggested by the UKBA that this is a voluntary process. The comparison with an interview that might take place between a police officer and a

suspect in a criminal investigation is not a disingenuous one. Indeed, during our observations, detainees were visibly upset and/or angry, generally confused about the legal basis of what was happening and uncertain of the implications of what was being asked. The general negativity of the experience was magnified for those with valid UK visas. Two people interviewed, who had UK visit visas and who were detained in a policy custody suite pending removal, continually asked if they had done anything illegal. Another common question from detainees in this category was, understandably, "is Belfast not in the UK?". The uncertainty and confusion was further exacerbated by the fact that some detainees could not communicate easily in the English language, had been travelling for a long time, were physically tired, and felt humiliated at being in a custody suite when they had not participated in any criminal activity.

During the interview process with an IO, the detainee is given a copy of the interview record and asked to sign it. Most detainees are also given forms – IS91R (see Appendix 2), which explains the reasons for detention and gives an explanation of bail rights; and IS151A which is the notice given to a person liable to removal. In addition, the IS101 (see Appendix 3) gives the opportunity for voluntary departure. Under the Home Office *Operation Enforcement Manual*, individuals liable for removal are to be given 72 hours to access legal advice and challenge the removal decision. However, by signing form IS101, the detainee concedes to being removed immediately without seeking legal advice or waiting for the outcome of any representations being made on their behalf.

The detainees, to whom the investigators spoke, felt pressurised into signing the documentation, including the record of the interview and the IS101. The interview record and all other forms are in the English language, although the content of them is to be explained by an interpreter if the

IO feels that one is needed. One detainee felt that he was “forced” to sign the papers. Another felt that she was not given sufficient time to read over what she was being asked to sign and so she refused to do so. In general, detainees felt overwhelmed by the process and struggled to understand what was happening. One detainee, an overstayer who had been living in London for a number of years, asked when he would be going to court to challenge the detention. He could not understand why he was being held in Belfast and facing the prospect of being sent to an immigration removal centre in Scotland when he was from London.

In another interview, a detainee, a Mongolian national, struggled to understand the IO in English but, nonetheless, was expected to sign the interview record which had been handwritten by the IO. No effort was made by the IO to read the record back to the detainee and allow for translation, or to ensure that the detainee understood what he was signing.

One woman, making a claim for asylum, cried repeatedly during the interview and explained that she was five months pregnant. The IO conducting the interview asked if she wanted to take a break for about 20 minutes, to which the woman agreed. However, the IO returned to the interview within seconds. The woman was expected to sign the documentation as an accurate record, despite her visibly vulnerable state.

Of grave concern was the fact that many detainees believed that by signing the IS101 they would be removed to their home country immediately and, certainly, well within 72 hours. Detainees who had signed the form did not understand that it was more than likely they would be transported to an immigration removal centre in Great Britain before being removed.

Two detainees reported that when they spoke to a solicitor at the custody suite, they were told that they should not have signed the IS101 and now there was little the solicitor could do for them.

The interview process is a complex and draining one for the detainee and it is during this process that a decision will be made regarding his or her fate. Once the individual is removed to a custody suite or immigration removal centre, removal directions will already be in place.

The investigators were informed that the detainees were held under caution and not arrested during Operation Gull, unless some form of prosecution was to be pursued, in which case seconded PSNI officers would make an arrest. However, the decision to pursue a criminal prosecution, rather than administrative removal, rests with the UKBA not the PSNI. The investigators were also informed that the core of IOs who carry out Operation Gull are not trained in arrest and, therefore, could not carry out an arrest. The legal position of being interviewed under caution, as opposed to having been arrested, means that individuals are held on a voluntary basis and are free to leave at any time. However, in none of the interviews observed by the investigators were detainees made aware by the IO that they were free to leave, including the individuals who had valid UK visas. Of those interviewed by the investigators in the custody suites following Operation Gull, three had valid UK visas but none were aware that they could have simply left the interview process. Certainly, the investigators were not aware that this was a voluntary process until they were told during an interview with an IO that this was the case. This was later confirmed by a number of other IOs, including a CIO. One IO, who had not been involved in Operation Gull, was not sure how IOs who had not been arrest trained could be conducting Operation Gull.<sup>67</sup>

Although detainees are interviewed without having been arrested and are, therefore, free to leave at any time, the way in which IOs operate means that detainees cannot necessarily be aware that they are in a voluntary process.

<sup>67</sup> Arrest trained IOs must complete a two-day refresher course each year in order to keep their ‘arrest ticket’.

Indeed, detainees can, in some cases, be held for several hours in one location and watched by uniformed security guards, before being transported to another location for questioning – when personal belongings may be taken from them, their baggage searched and detailed personal questions asked. Nothing in the process, from beginning to end, would imply to the detainee that the IO does not have legal powers to force him or her to stay until the questioning is concluded.

Indeed, as already indicated, the atmosphere of the interview process appeared to be markedly similar to that of a criminal investigation. IOs have the power to search bags and, in one interview, investigators observed the IO take a mobile phone from the detainee and offer to answer an incoming call from the detainee’s girlfriend. Another detainee also reported that her phone had been taken from her and that the IO had read incoming text messages, the content of which he subsequently used to authorise her detention and removal. In another instance, a Nigerian national reported that the IO had answered a phone call from his wife while pretending to be a taxi driver. Allegedly, the ‘taxi driver’ claimed to have been sent by the detainee’s friends to pick him up from the airport. The ‘taxi driver’ then asked the detainee’s wife to confirm if the detainee was going to Dublin. When she confirmed that this was the arrangement, the IO then had sufficient information to have directions for removal put in place. This particular detainee had a valid UK visit visa, but alleged that the IO told him, “every Black man that’s coming to Belfast, is going to Dublin”.

In another situation, the IOs had received a phone call from a ferry company desk to inform them that two Mongolian nationals were waiting to pick up a friend. Both were subsequently detained and questioned by IOs, along with another Mongolian male national who had come to the UK on a business visa.

In the interviews observed by the investigators, IOs explained that the interview was being conducted under caution and that the detainee did not have to

answer any questions. However, if they answered later, the fact that they had not answered previously could be used against them. Crucially, detainees were not told they were free to leave at any point during the process.

Aside from the status of the detentions at this stage, the situations described above raise important concerns about the tactics employed by IOs to ascertain immigration status and/or the onward travel plans of passengers.

The example of the IO posing as a taxi driver can be compared to entrapment tactics employed by police officers in criminal law enforcement. Entrapment, when used by police officers, raises important human rights concerns, particularly in relation to Article 6 of the ECHR (right to a fair trial). Entrapment in itself does not constitute a violation of Article 6, but jurisprudence has established that it must be used within certain boundaries. In the House of Lords case of *R v Looseley*, the Lords said that the proper approach to take, where a state agent had lured a citizen into committing an offence, was for the court to stop the prosecution as an abuse of process. The Lords said that when a court is considering the limits of acceptable police behaviour in a particular case, a useful guide is to consider whether the police did no more than present the defendant with an unexceptional opportunity to commit a crime. If the police officers went further than others might have done in a similar position, then the police are to be regarded as artificially creating the crime.<sup>68</sup>

Other allegations were made against IOs during the course of the fieldwork interviews. One detainee, with a visit visa, claimed that she had been detained because the IO suspected she had come to the UK to work. The IO is alleged to have said that because it was his birthday he would be nice to her, and that if she confessed he would not cancel her visa but only arrange for her removal. Another detainee claimed he was given the option of being deported to Nigeria or being sent to an immigration camp, which the IO apparently described as “an awful place... you are not going

to like it there. ... Take a lawyer, and you will have to go to the camp”. The detainee claims to have signed the IS101 as a result.

While the actions in these incidents cannot be objectively verified and do not necessarily indicate that the IOs artificially created any crime or pressurised anyone into making a ‘confession’, the accusations raise very real concerns about the accountability of IOs. Where such tactics might be used by police officers, ‘suspects’ are ultimately entitled to an Article 6 (ECHR) compliant fair trial, during which such processes come to light and an independent judge decides on an appropriate outcome. In *R v Loosely*, the judgment held that a prosecution could not follow where inappropriate tactics had been used by police officers. However, given that only some of the procedural protections of Article 5 of the ECHR (right to liberty and security of person), but not the fair trial provisions of Article 6, apply in the immigration field, Article 6 is not accorded to immigration detainees and many will be removed without any of these issues coming to light. This has consequences not only for the rights of individuals subjected to immigration procedures, but also for the systemic workings of the UKBA.

In criminal law, the sequence of procedures that must be followed leading to a conviction and any punitive action has been clearly established, but this is not the case with immigration procedures. Passengers are routinely stopped and questioned for no discernible reason and IOs, themselves, could not articulate the reasons for subjecting some individuals to further questioning and not others. Once the passenger is taken aside, the lines between a formal interview, an interrogation and the IOs investigation become seriously blurred. The situation could be compared to a police officer using stop and search powers, under section 44 of the *Terrorism Act 2000*, and then using the power to contact the subject’s friends and/or relatives to enquire about the subject’s recent movements and future plans, while in fact posing as someone to whom the friend or relative is more likely to divulge further information.

In addition, there would appear to be little consistency in the approach of individual IOs to the interview process. The, quite incredible, lengths to which the IO is alleged to have gone in the case involving the Nigerian male national contrast starkly to another, in which a Sudanese national was also detained on the basis that he had a sister in the Republic of Ireland and would attempt to visit her there. This particular individual told us that he had a friend waiting in the airport to pick him up. The IOs could have spoken to his friend in an attempt to verify the detainee’s assertion that he had no intention of travelling on to the Republic of Ireland but they did not do so, choosing instead to detain him under section 10 of the *Immigration, Nationality and Asylum Act 1999*, with a view to removing him from the UK.

IOs did not disagree about the need to offer access to legal advice early in the interview process. In fact, the overwhelming majority of those interviewed insisted that access to legal advice was offered immediately, and that once an individual was taken aside for further questioning, and before any papers were served, he or she would be offered a solicitor. One IO, however, contradicted this and said that while he thought it appropriate to offer legal advice immediately, the CIO often preferred to wait until detainees were transported to the police station before making the offer. The IO explained that if the detainee was offered legal representation at the port and confirmed that they wanted it, they would have to be moved to the police station and the interview would have to be video-recorded. He explained: “We are not that much of a democracy”, and that he would have to do as the CIO asked in such situations. Indeed, this particular IO’s account would seem to tally with the view of the Government. When asked, at its examination by the UN Human Rights Committee, what the policy for transportation from Northern Ireland to Great Britain meant for securing continuity of legal advice for detained individuals, the Government delegation responded that this was not an issue given that most people were detained at ports and

transported immediately on to immigration removal centres in Great Britain.<sup>69</sup> The Government’s response indicates, therefore, that unless detained at a custody suite, legal advice is not offered anywhere in Northern Ireland, but only once detainees arrive at the immigration removal centre in Great Britain and, indeed, that it is of the view that legal advice at any earlier stage is not required. The investigation’s findings dispute both these claims and, given the level of discretion and powers available to IOs, timely access to independent legal representation is a vital entitlement for the detainee, and one that could equally protect the IO from accusations of impropriety.

### Conditions of detention

Following the interview process at Northern Ireland ports, as with people detained as a result of ‘traditional enforcement’ work, Operation Gull detainees are routinely held in police custody suites in Northern Ireland before being transported to immigration removal centres in Great Britain. It is of note that the UK Government delegation did not concede this before the Human Rights Committee in July 2008, claiming instead that detainees were transported immediately from port to removal centres in Great Britain. IOs, security firms, custody sergeants and legal practitioners, interviewed during the investigation, did not substantiate this claim and it would certainly appear that it is routine practice to hold Operation Gull detainees in police custody suites at least overnight and, in some cases, over a number of days.

Operation Gull detainees were not treated any differently than other immigration detainees but, in some respects, had very different needs. Many had few or no contacts in Northern Ireland and were genuinely confused about the reasons for their detention. Custody sergeants explained that they were usually unaware of how long detainees would spend in custody and that this was problematic for them as well as for the detainees.

While they would have approximate removal times and dates, these would often change at short notice. Detainees were obviously anxious to know when they would be removed, and to where, and custody sergeants felt it was difficult to keep them informed. In one situation, as the investigators waited to interview a detainee, a phone call came through to the custody sergeant asking for a named detainee. The custody sergeant did not have anyone of that name, but the caller insisted he had been informed that his friend was being held there. Another police officer said that he was not aware of anyone of that name having been in custody and was “just glad to get them out”. Another custody sergeant commented that when several immigration detainees were in the suite, he found it particularly difficult and he struggled to meet their needs because his head would be “spinning” with the demands of his role; he would not know why the person was being detained other than under the *Immigration Act 1971*, and he would have very little engagement with the IOs. In contrast with PACE detainees, custody sergeants were well informed of the reasons for detention and knew, with certainty, the length of time a PACE prisoner was likely to be in the suite.

All detainees interviewed commented on the general helpfulness of the PSNI officers and custody sergeants. One commented that they had been “very, very good” and another mentioned a particular police officer by name, saying that he had been “wonderful”. A more general comment on the problems of use of custody suites is found in Chapter 5. Those problems are compounded by the fact that even though Operation Gull is now a routine and frequent exercise conducted by the UKBA, with no plans for its cessation, there is no specific mention of it in the Memorandum of Understanding between the PSNI and the UKBA, nor of any special arrangements that may need to be in place for the arrival of a number of foreign nationals with distinct cultural, religious and/or language needs.

During the course of the investigation, there were indications that the PSNI, at the request of the UKBA, were to re-open the police station in Larne for the purpose of holding immigration detainees prior to transportation. The Commission suspected that the rationale for such a move, given the proximity to Larne Docks, was to expedite the transportation process thereby minimising the time detainees would be held in Northern Ireland, frustrating their access to legal representation and, subsequently, the efforts of challenging the removal. In the event, the plans did not come to fruition because the UKBA was unable to meet the financial cost of re-opening the Larne Police Station.

## Conclusion

As discussed in Chapter 3, Article 5 of the ECHR permits some interference with liberty at port, in order to establish identity and immigration status. The preceding discussion shows that Operation Gull, as currently conducted in Northern Ireland, involves a range of “interference” methods and techniques employed by UKBA officers. It is suggested that many of these methods and techniques would not be acceptable in human rights terms if used by police officers in criminal law enforcement. Yet, these techniques are routinely employed to the detriment of people who represent no tangible risk to the UK population, who are unaware of the domestic provisions, the possible remedies available to them, or even how to seek independent, specialist advice.

Human rights standards require that domestic legal provisions apply to everyone within the territory of the state with consistency and certainty, yet the investigation could not uncover a consistent set of applicable tools being employed by IOs undertaking Operation Gull, with many relying on “feeling”, “suspicion” and, in some cases, stereotyped views about certain nationalities. In addition, the complex range of legislation governing immigration and criminal procedures makes it extremely difficult for even custody sergeants to be aware of the very

precise legal basis for an individual’s detention in their custody suites. So, for example, custody sergeants would not routinely know which of their detainees were ‘overstayers’, failed asylum seekers or people with valid UK visas detained under section 10 of the *Immigration, Nationality and Asylum Act 1999*. These differentiations are important because, without awareness of them, the custody sergeant is completely reliant on the information provided to him or her by IOs and is, therefore, unable to ascertain the lawfulness of the detention, which is a crucial role of the custody sergeant in non-immigration cases. In one situation, the custody sergeant was unaware that the detainee was wanted by the British Transport Police despite this information being on the UKBA removal form.

The officially stated rationale for Operation Gull is that it protects against abuse of the Common Travel Area. That rationale is problematic on a number of fronts. First, insofar as it does protect against any abuse, the essential outcome is that individuals are punished before they have done anything wrong and, in some cases, are punished simply because they happen to have a contact in the Republic of Ireland. By standards of criminal law, such practice by the state would be strongly contested by human rights standards and those of the common law. Crucial, of course, is the very real possibility that Operation Gull punishes people who had no intention of abusing the Common Travel Area. Yet, people exercising rights of free movement are reprimanded tens of miles from the border with the Republic of Ireland, on grounds of simply an IO’s suspicion that they may travel to a bordering state.

Second, the Commission is not aware of any reciprocal arrangement existing with the Republic of Ireland. The UKBA was not able to tell the Commission if a similar operation was being conducted at Irish ports to detect people attempting to enter the UK. Indeed, where individuals with residency in the Republic of Ireland were detected by IOs under Operation Gull, without valid UK entry, they were simply returned to Irish officials in Dundalk. No follow-up action was

intended nor, more worryingly from a human rights perspective, would assurances be sought about the treatment of individuals once returned.

Third, whatever the official rationale, it is apparent that the UKBA uses Operation Gull as a form of internal immigration control whereby people travelling from one part of the UK to another are routinely stopped by state officials and subjected to questioning about their personal movements and intentions. While undocumented migrants might be detected as a result of Operation Gull, people with legal residency are also stopped, detained and questioned for several hours and, in the case of the out of court settlement of the Zimbabwean national cited above, have in the past been detained in a maximum security prison. It is suggested, therefore, that if Operation Gull is a form of internal immigration control, then it seriously compromises the right to freedom of movement under Article 12 of the ICCPR (freedom of movement).

Finally, IOs in conducting Operation Gull, in many respects, exercise police-like powers but without any of the accountability, training or oversight mechanisms under which police officers must operate. This will be discussed in more detail in Chapter 7.

This chapter concludes with the observation of one IO shadowed by the investigators during Operation Gull. At the end of the first day of observation, no one had been detained. The IO complained that the day had not been much fun and he described his job as being similar to someone who was being paid to clean a park – if by the end of the day the park was not clean, “questions would be asked”.

# Scrutiny and oversight of the UK Border Agency’s functions

## Introduction

As Chapters 3 to 6 have evidenced in detail, immigration officers (IOs) operating in Northern Ireland have significant powers by virtue of what is contained in statute as well as, and equally importantly, what is not. IOs, therefore, exercise considerable discretion in the execution of their duties and, in Northern Ireland, without any meaningful independent oversight and scrutiny. As has been previously explained, an IO makes the *recommendation* for detention while the *decision* to detain ultimately rests with the chief immigration officer (CIO). However, the practice, certainly in Northern Ireland, is that CIOs are relying almost entirely on the information provided to them by the IO. CIOs will not routinely observe how an IO conducts an interview or speaks with a detainee. This chapter discusses the powers available to IOs and CIOs and whether the current level of independent oversight of the exercise of those powers is sufficient to safeguard against abuse or misconduct on the part of those that hold them.

## Powers available to IOs

Not everyone coming into contact with the UK Border Agency (UKBA) officials is guaranteed the same treatment (see Chapters 5 and 6). Many factors will influence whether an individual is detained or not, including resource implications of the detention; the likelihood of obtaining emergency travel documents; the IO’s perception of whether the individual will comply with any reporting requirements if given temporary release; the IOs decision to pursue a certain line of questioning and enquiry; and the IOs own feelings or suspicions about a person. The factors indicate that the criteria for detention are by no means objective. In relation to Operation Gull in particular, IOs who were interviewed throughout the investigation found it difficult to articulate an objective criterion and accounts of any criterion, insofar as one existed, were not always consistent.

The investigation shows that enforcement operations are complex as, indeed, are the laws that govern them. In addition, the demarcation

between the different aspects of an IO’s work and the legal authority for it are not always clear. For example, as discussed in Chapter 6, the point at which an individual is being held on a consensual basis, as opposed to being formally detained, is often uncertain. The boundaries between an IO asking initial questions and conducting a formal interview for the purposes of putting removal directions in place are similarly blurred. Clarification on these boundaries is essential when assessing the extent to which the state complies with the requirements of Article 5 of the European Convention on Human Rights (ECHR) (right to liberty and security) and, in particular, in discerning whether individuals are being held on an arbitrary basis, or as stated in the ECHR, in “accordance with a procedure prescribed by law”.

Also of importance, is the fact that even while detainees are held in accommodation for which the Police Service of Northern Ireland (PSNI) has ultimate responsibility, they continue to be held under immigration authority and IOs have the power to enter custody suites to serve papers, re-interview detainees and go on to make enquiries with other people connected with the detainee, particularly when searching for travel documents. Such people might include the individual’s solicitor, employer, housemates or relatives. These practices can engage Article 3 of the ECHR (prohibition of torture, cruel or inhuman treatment or punishment) and the potential for abuse is further heightened by the very fact that IOs are permitted to have contact with detainees in isolation, away from public view. These exchanges are not audio-recorded or video-recorded, and an IO may never be required to hand over his or her written record of the exchange to an independent authority. There are also implications for the Article 8 (ECHR) rights (respect for private and family life) of those other people the IO may feel the need to speak to in relation to an arrest that he or she has made.

Other state actors with such powers, in relation to people held in detention facilities in the UK, are police officers and, to some extent, prison officers.

Both are subject to rigorous independent oversight and scrutiny. Given the potential adverse impact on human rights that an IO’s actions may have, this chapter examines the scrutiny and oversight mechanisms that immigration enforcement officials operate under in the UK generally and in Northern Ireland more specifically.

### Oversight mechanisms

Individuals in detention will be held in custody suites. The independent oversight mechanisms involved are the custody visiting scheme (operated by the Northern Ireland Policing Board), HM Inspectorate of Constabulary and Criminal Justice Inspection Northern Ireland. The last of these is solely mandated to inspect conditions in detention, not to examine or comment on the process by which individuals come to be detained in the first place or, indeed, whether IOs have conducted themselves within the confines of domestic legislation. These three bodies are essentially oversight mechanisms of the PSNI and criminal justice agencies, rather than of the UKBA. In fact, to date, there has been no oversight mechanism that evaluates the conduct of UKBA officials during immigration enforcement work specifically in light of human rights standards.

The contact between an IO and individuals who may have reasons to complain, enquire or commend the IO’s behaviour is a lengthy one. It covers many different locations and involves a number of different agencies, each of which is subject to its own regulations and, indeed, oversight in some cases. The Commission’s investigation has also shown that, in Northern Ireland, people coming into contact with the UKBA and, in particular, those who are subsequently detained will be physically tired, in some cases emotionally drained; have difficulties communicating; will be confused about the reasons for detention and what is going to

happen to them; be anxious about any valuables they have and whether they can recover these; and they may be actively seeking to challenge the removal directions. Any framework for ensuring accountability within the UKBA must, therefore, be equipped to deal with the complexities of immigration enforcement work and the particularly difficult circumstances facing affected individuals in this area.

The Government appears to have shown some recognition of the police-like powers that UKBA officers exercise, particularly following their extension under the *UK Borders Act 2007*, and has acknowledged the need for these to be balanced with increased accountability.<sup>70</sup> Government has therefore responded by creating a new body to look at the overall work of the UKBA, and by extending the remit of existing organisations to look at complaints. These are discussed in more detail below.

### The role of the Independent Police Complaints Commission (IPCC)

The IPCC became operational in April 2004. It is a non-departmental public body (NDPB), funded by the Home Office, but by law entirely independent of the police, interest groups and political parties. The IPCC’s job is to make sure that complaints against the police are dealt with effectively. It sets standards for the way the police handle complaints and, when something has gone wrong, assists the police to learn lessons and improve the way they work.<sup>71</sup>

Section 41 of the *Police and Justice Act 2006* enabled the Secretary of State to issue regulations giving new powers to the IPCC, including investigation of complaints and alleged misconduct regarding the exercise of specified functions by a number of agencies, including, what was then, the Border and Immigration Agency.

In mid-2007, the UKBA consulted on the possible remit and functions of the IPCC in relation to the

<sup>70</sup> Home Office Border and Immigration Agency (2008) *The Independent Police Complaints Commission Oversight of Border and Immigration Agency Incidents and Complaints Policy Statement*, BIA, London.

<sup>71</sup> Available at: <http://www.ipcc.gov.uk/index.htm>.

conduct of the Agency’s enforcement operations,<sup>72</sup> and the necessary legislative provision was issued in 2008.<sup>73</sup> The remit of the IPCC extends only to England and Wales. However, the legislation and regulations regarding the IPCC include some scope for co-operation between the two agencies in relation to ‘cross-border’ cases (understood as borders between different jurisdictions within the UK). This co-operation would, therefore, have some impact on Northern Ireland.

At the time of writing, the Government was planning to introduce legislation that will extend the remit of the Office of the Police Ombudsman for Northern Ireland in terms similar to that of the IPCC. Like the IPCC, the Office of the Police Ombudsman is a non-departmental public body and was established to provide an independent, impartial police complaints system. In its document, *Making Change Stick*, the Government indicated that the necessary legislation will be included in the *Citizenship, Immigration and Borders Bill* to be introduced in the 2008/2009 Parliamentary year.<sup>74</sup> However, there is no such provision in the *Borders, Immigration and Citizenship Bill*, which is currently before Parliament.

The precise nature of the Government’s plans with regard to the remit of the Police Ombudsman was not available at the time of writing. However, the Government had publicly stated that it was “looking at [...] legislation relating to allowing the Police Ombudsman for Northern Ireland (PONI) to look at malpractice by UKBA staff”. Given this intention, it is likely that the Police Ombudsman’s remit will be significantly shaped by that of the IPCC.

By virtue of legislation, the IPCC, as of February 2008, is able to investigate complaints relating to the exercise of enforcement functions listed in the Regulations by immigration officers and other officials of the Secretary of State. Those functions are:

- a) powers of entry
- b) powers to search persons and property
- c) powers to seize or detain property
- d) powers to arrest persons
- e) powers to detain persons
- f) powers to examine persons or otherwise obtain information (including powers to take fingerprints or to acquire other personal data), and
- g) powers in connection with the removal of persons from the UK.<sup>75</sup>

The Regulations include certain limitations as to which cases can be looked at by the IPCC. The IPCC is not able to investigate complaints relating to the making of an immigration decision, the making of any decision to grant or refuse asylum, or the issuing of directions to remove persons from the UK. Nor, is it able to investigate any complaints relating to events that occurred before 1 April 2007.

The Regulations also specify that allegations of any of the following must be referred to the IPCC:

- a) death or serious injury
- b) a serious assault
- c) a serious sexual offence
- d) serious corruption
- e) a criminal offence or behaviour which can constitute a disciplinary matter and which was aggravated by discriminatory behaviour on the grounds of a person’s race, sex, religion, or other status, or
- f) any incident that engages Articles 2 or 3 of the ECHR.

The IPCC is, however, also able to investigate matters which do not fall within any of the above categories, but which are voluntarily referred to it by the UKBA (for example, because of the

<sup>72</sup> Home Office Border and Immigration Agency (2008), as above.

<sup>73</sup> *The Independent Police Complaints Commission (Immigration and Asylum Enforcement Functions) Regulations 2008* (2008 No 212).

<sup>74</sup> Available at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/>

[policyandlaw/immigrationandcitizenshipbill/](http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationandcitizenshipbill/) [Accessed 24 July 2008].

<sup>75</sup> *The Independent Police Complaints Commission (Immigration and Asylum Enforcement Functions) Regulations 2008* (2008 No 212).

seriousness of a particular allegation) or matters which have resulted from joint UKBA/police actions. The IPCC is also able to ‘call-in’ and investigate any other issue due to its gravity or exceptional circumstances, which comes to its attention.

In line with arrangements already existing for the investigation of complaints by the IPCC in other areas (such as police conduct), a number of individuals or bodies have the right to initiate a complaint. These include the person who has been directly affected by the actions of UKBA staff; anyone who has been negatively affected by their conduct (for example, a spouse or other family member); a witness of a particular incident; or a person; or an organisation that is acting on behalf of any of those individuals.

The remit of the IPCC, in relation to complaints against the UKBA, should be seen as the bare minimum requirements of an oversight body. Indeed, as it currently stands, there are concerns that people who are removed from the UK within a very short period of time are not, in reality, able to avail of the complaints mechanism.

In its consultation document on the extension of the IPCC’s remit, the Government responded to suggestions that when a complaint has been made, the IPCC ought to be able to delay removal in order to facilitate investigation. In response, the Government insisted that, first, every detainee, on arrival at a detention centre, is informed verbally and in writing about how to make a complaint; and, second, that the UKBA allows a minimum of 72 hours between giving notice of removal and the actual removal, which gives any person sufficient time to make a complaint from within the UK. In any case, the Government argued, anyone who is removed is “free to make a complaint to the IPCC from abroad if they do not make the complaint whilst in the UK”.<sup>76</sup>

Government’s defence of its position is problematic because the 72-hour minimum referred to in the *Operation Enforcement Manual* is

intended to allow time for detainees to challenge their removal, and it was never intended to allow detainees time to make a complaint against UKBA officials. Indeed, for many detainees initially detected in Northern Ireland, a considerable proportion of those 72 hours will be spent in transportation from one location to another, without access to the complaints mechanism. With detainees seeking legal advice in Northern Ireland, then in Scotland and possibly in England too, explaining their circumstances to a number of different solicitors while also preparing for the possibility that their removal from the UK is imminent, it is unreasonable to expect them in that time to understand the current IPCC complaint process and, potentially, that of the Police Ombudsman in the future.

Further, the Commission’s investigation has revealed the serious problems in the way in which the UKBA processes and stores case files relating to individual detainees. As discussed in the introduction to this report, it proved extremely difficult for the investigators to locate the case files of individuals originally detected in Northern Ireland. Given that it took eight months for those files to be located, it is difficult to envisage how the IPCC or the Police Ombudsman would be able to carry out a meaningful investigation within sufficient time when a complaint is made. Neither organisation would have timely access to the record of events that took place, the interview notes between detainee and IO, or the paperwork provided to the detainee. Accurate record-keeping and the ability of independent oversight mechanisms to scrutinise that record-keeping would appear to be key to an effective investigation. For the IPCC or the Police Ombudsman to be expected to wait for such lengths for records to be made available and to investigate without being able to interview the complainant, would be an unsatisfactory arrangement.

Perhaps the most fundamental gap in the IPCC model of addressing complaints is the absence of any remedy to those whose complaints are upheld. When a complaint against a state agency is upheld,

<sup>76</sup> Home Office Border and Immigration Agency (2008) *The Independent Police Complaints Commission Oversight of Border and Immigration Agency Incidents and Complaints Policy Statement*, BIA, London.

it should serve two purposes: first, to aid the Government in improving its services/actions for the future and, second, to provide a remedy or compensation to the complainant. Indeed, the latter is a requirement of the Government under Article 5(5) of the ECHR, which states:

*Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.*

As well as the potential for an immediate adverse human rights impact in the interaction between an IO and another individual, and that the ultimate outcome of that interaction can be removal from the UK – an event that will have long-term consequences for that individual – appropriate remedies within the model are vital.

In a criminal law context, a police officer who is executing his duties with the ultimate aim of a successful prosecution does not have the power to prosecute. That decision is made by an independent and impartial prosecutor as required by Article 6 of the ECHR. That same mechanism has scope, if presented with sufficient evidence, to decide if the police officer(s) has acted within the confines of domestic legislation and common law provisions, and if a prosecution can follow if he has not. In the case of miscarriages of justice, compensation will be made available to the victim by way of remedy. Given the level and range of powers that an IO has, along with the consequences of both his execution of those powers and recommendations made to the CIO, the opportunities for remedy are not sufficiently dealt with by the Government. The Commission’s investigation has shown that IOs carry responsibility to a level where, ultimately, someone’s removal from the country follows from the IO’s actions. The investigation bears out, therefore, that employments are terminated, individuals are split from families, and short-term and long-term plans are seriously disrupted or even halted, due to an IO’s recommendation to the CIO. The decisions made by IOs as to which

individuals to stop, who to question further, how and what questions are asked, assumptions made about individual circumstances, and the likelihood of an individual absconding, are all key factors in informing the decision for detention in the first instance and, ultimately, removal. In contrast, the type of complaints mechanism formulated for the situation of asylum seekers and immigrants, via the IPCC, with the absence of any mechanism beyond that, does not correlate with the consequences of an IO’s actions. There is no mention of remedy or compensation in the current legislation, as required by Article 5(5) of the ECHR and, as already established in Chapter 3, Article 6 has not been deemed applicable in the field of immigration. There is an opportunity to challenge detention and removal decisions via the Judicial Review procedure, but the reality is that this avenue is seriously frustrated by the current policy of transporting individuals detained in Northern Ireland across jurisdictions of the UK during the 72-hour period.

The current reality represents a serious shortcoming in oversight mechanisms, more broadly, and in the IPCC’s remit, more specifically, and it seems likely that this situation will remain when oversight is extended to Northern Ireland.

It must be noted that the IPCC has not given any indication that it seeks the power to delay removal. Given that in many instances the power to delay removal would mean that people are, as a result, detained for longer, there must be sympathy for that view. However, the Commission’s position must be seen as inextricably linked to its overarching recommendation: that individuals must only be detained in cases where to do otherwise would pose a real threat to the public. If the majority of individuals were given temporary release, delaying removal while an IPCC (or Police Ombudsman) investigation is ongoing, this would not have the same adverse consequence of prolonged detention. That being the case, the Commission recommends that the Police Ombudsman for Northern Ireland ought to be given

the power to delay removal while an investigation is ongoing.

The other failure of the current IPCC mechanism is that it would not appear to extend to those private security firms that routinely transport detainees between jurisdictions. The original Home Office consultation paper on the IPCC’s remit did not appear to recognise the extent of private sector involvement in aspects of immigration control that require the transportation of detainees between jurisdictions or, indeed, the extent of transportation itself. Rather, the document concentrated on the extent to which only the UKBA officials are involved in that transportation and claimed:

*It is not anticipated that many complaints will involve cross border activity [between different UK jurisdictions] but it cannot be ruled out as, for example, detainees are sometimes transported by Border and Immigration Agency staff between England and Scotland.*

Current UKBA practice in Northern Ireland involves the routine transportation of detainees to Scotland. The cross-border activities, referred to in the consultation document, are in fact frequent and significant, involving tens of people on a monthly basis in at least two types of transportation and contact with two different branches of the private security firm that is responsible for providing escorts. A previous report, of 2006, by HM Inspectorate of Prisons commented in some detail on the impact of this for detainees,<sup>77</sup> in particular, that detainees continue to be handcuffed while in transport (on entry and when leaving the ferry), despite an earlier recommendation that this practice should be stopped. The report also commented on the lack of continuity in access to legal advice (if taken in Northern Ireland), as well as difficulties in retrieving belongings that were left by detainees in Northern Ireland.

Despite the existence of such information in an official report by an inspectorate which reports

directly to the Home Office, Northern Ireland was not mentioned in the relevant section of the Home Office consultation document. Government’s apparent lack of knowledge and understanding of how immigration policies operate in reality, particularly in Northern Ireland, are of concern. While forthcoming legislation may rectify the lack of statutory scrutiny in relation to private firms operating in Great Britain, that lack may not be guaranteed in the case of the Police Ombudsman’s remit in Northern Ireland, given the gaps in knowledge of enforcement operations in this jurisdiction as evidenced above. Such a failure would represent a further serious shortcoming in any oversight mechanism operating in Northern Ireland.

## Current mechanisms

At present, the only mechanism for dealing with complaints against IOs operating in Northern Ireland is the UKBA’s own internal complaints procedure. When asked about the procedures for complaints against IOs, a CIO asserted that he was uncomfortable answering such a question because he could not envisage any of the IOs, working with him, behaving in a way that would require any type of disciplinary action against them. A close examination of the UKBA’s grievance procedure would indicate that this view is shared by those who formulated the procedure. The Home Office document entitled *Discipline*,<sup>78</sup> makes no reference to complaints in relation to an official’s treatment of members of the public and focuses exclusively on internal interaction between officials which may require disciplinary action.

The *UK Borders Act 2007* provided for the establishment of an office of the Chief Inspector of the Border and Immigration Agency.<sup>79</sup> The inspector “shall monitor and report on the efficiency and effectiveness of the Border and Immigration Agency”, and make recommendations about, among other issues, the practice and procedure in decision-making by UKBA staff, the treatment of claimants and applicants, the provision of

<sup>77</sup> HM Inspectorate of Prisons (2007) *Report of an announced inspection of Dungavel House Immigration Removal Centre, 4-8 December 2006* by HM Chief Inspector of Prisons, HMIP, London.

<sup>78</sup> Sent to NIHRC by UKBA on request.

<sup>79</sup> See: clauses 48 to 53 of the *UK Borders Act 2007*, now relating to the UKBA.

information and the handling of complaints. This remit is, however, confined to the general performance of the UKBA and excludes consideration of individual complaints which, as already discussed, is the responsibility of the IPCC.

In preparing inspection plans, the chief inspector is obliged to consult “prescribed persons” (external bodies) on the inspection objectives and terms of reference. He/she is also obliged to send consultees a copy of the plan as soon as practicable after it has been agreed. The legislation also provides for co-operation between the chief inspector and other bodies in cases where “the Chief Inspector thinks it in the interests of the efficient and effective performance” of his/her functions.

Importantly, however, the chief inspector is also empowered to prevent inspections of the UKBA by other bodies, by issuing a “non-interference” notice. The legislation states that the inspector may issue such notice if another body proposes to inspect any aspect of the work of the UKBA where the inspector believes that such inspection “may impose an unreasonable burden” on the UKBA.

The prescribed persons (or bodies) that may be subject to such notice are to be listed in an order by the Secretary of State for the Home Office. The Secretary of State also has the power to cancel a non-interference notice on the grounds that the inspection would not impose an unreasonable burden on the UKBA. At the time of writing, the relevant Order prescribing such external bodies was yet to be published. However, of great concern are the grounds for issuing a non-interference notice, which would appear to have little to do with upholding the interests of those who may be disaffected by UKBA actions and more about protecting its interests.

The Commission, through its concerns regarding the curtailment of its own powers within the *Justice and Security (Northern Ireland) Act 2007*, is acutely aware of attempts to restrict its own work because of a perceived, or actual, inconvenience to statutory agencies that could potentially be

endangering people’s well-being. In drafting the *Borders Act 2007*, the Government has indicated that it does not trust independent statutory bodies to exercise their powers of inspection responsibly. The Commission is not aware of any evidence that suggests such bodies are exercising their powers when there are not legitimate concerns about the well-being of vulnerable individuals, and it is this that should be the fundamental concern of the chief inspector, not the burden that inspections might place on a heavily resourced and funded government agency.

In addition, under section 50 of the *Borders Act 2007*, the chief inspector, will report annually to the Secretary of State in the first instance, and not directly to Parliament. However, the Secretary of State may omit material from the annual report if he/she thinks that its publication is undesirable for reasons of national security, or might jeopardise an individual’s safety. As the legislation stands, there is too great an opportunity for undue and arbitrary censoring by the Secretary of State of the information presented to Parliament and then publicly. At the time the Bill was going through Parliament, the Commission commented that a suitably qualified and experienced chief inspector ought to be empowered by the Government not to endanger any individual. The Commission was equally concerned about the potentially broad interpretation of the term “national security”. By contrast, section 57 of the *Criminal Justice Act 1982*, provides for the Chief Inspector of Prisons to lay her annual report before the Secretary of State, but makes no provision for the Secretary of State to omit information from it on any grounds. Regardless of these concerns, the legislation reached statute in this form.

The Commission’s investigation has consistently compared the work of the UKBA to that of the police force. The IO, like a police officer, has powers to stop, question, search belongings, question individuals who may be able to shed further light on the individual that is ‘of interest’ and, ultimately, recommend that the individual be

deprived of his liberty. That analogy goes further when considering the types of views expressed by IOs that indicate how ‘institutionalised’ IOs can become. Interviews with CIOs, IOs and AIOs all revealed a sense of righteousness about their actions and a lack of ability to objectively evaluate the consequences of their decisions. One IO with experience of working in a busy enforcement office in England commented that, in that particular location, immigration personnel could get “jaded” and make snap judgments about people they dealt with, and that some IOs going on enforcement visits were “high on adrenalin”. While this IO suggested that Northern Ireland was different, the interviews conducted as part of this investigation did, in fact, reveal similar tendencies.

One IO constantly referred to his job as being “fun”, when he was able to detain people. In traditional enforcement operations, the van that was used to escort individuals (including, the investigators believe, families) from their residence or place of work to the police custody suite, where they would be detained before being transported and ultimately removed, was constantly referred to by IOs as “the fun bus” or “happy bus”. Of concern, was the fact that UKBA officials who would not in any way be considered experienced in their profession had, in a very short space of time, assimilated the ‘culture of disbelief’ referred to by others researching immigration enforcement work.<sup>80</sup> One official, who had conducted a number of ‘bio’ interviews for the purposes of gaining emergency travel documents, commented that “they [the interviews] were a waste of time”, and went on to say:

*“I like to hear peoples’ stories but it’s the same thing over again because the word is on the street about what to say.”*

The same official continued:

*“I will let them know [interviewees] they’re lying. I’ll question them with different questions. I can’t do anything about it but I can let them know that I’m not a mug.”*

Another IO, explaining how he handled enforcement visits, said that when people were gathered together it was good to lighten the mood with “a joke”. As discussed in Chapter 4, a number of IOs interviewed stressed that a primary skill required for their job was patience, suggesting that they frequently came across individuals who tested their patience.

The comments also indicate a lack of respect for the people with whom immigration officials come into contact, and a presumption that they will be told lies. When immigration officials are only ever evaluated by other immigration officials there is a very real danger that such tendencies will be overlooked or, indeed, not seen as problematic and needing to be challenged. Indeed, given this investigation’s findings, it is of concern that a CIO could not fathom the possibility that an IO would behave with impropriety to a level that disciplinary action might be required.

The findings of this investigation indicate a clear need for appropriate oversight mechanisms of immigration enforcement officials. However, appropriate oversight on its own would not be sufficient to protect individuals who come into contact with the UKBA, whether UK nationals or non-UK nationals. The investigation, in fact, indicates more strongly the inappropriateness of the current level and range of powers available to IOs and the absence of more thorough and far-reaching reform of the Border Agency and its operations in the UK. The concluding chapter now turns to that wider discussion.

# Conclusions and recommendations

## Challenging myths and popular discourse

The subject of this concluding chapter is whether, in light of the evidence revealed by the investigation, such a range of powers is appropriate and necessary for a civilian force tasked with immigration control. The discussion for the purposes of this investigation must, of course, be centrally informed by the human rights implications of these powers for those directly in contact with immigration enforcement officials.

Throughout the course of the investigation, immigration officers (IOs) did not appear to fully comprehend the very serious outcomes of their decisions and/or recommendations and were not convinced that their actions should be subject to oversight in comparison to, for example, the Police Service of Northern Ireland (PSNI). IOs did not comment on their powers but, when asked what would help them carry out their duties more effectively, many did feel more resources were needed, not more powers with regards to detaining, searching or questioning. In fact, when asked about the merit of Home Office priorities and legislative initiatives, a common view from IOs was that these were politically driven rather than a response to realities facing IOs on the ground. One IO commented:

*“Policies come from Government; I’ve never been asked what I think.”*

Another expressed the view that:

*“Whatever the Daily Mail and Star have a rant about is what gets listened to.”*

However, it may be argued that such powers are indeed necessary if the net result is to be a more effective system of immigration control in the UK. Such sentiments expressed in the popular media are often, but not exclusively, linked to racial stereotypes or general xenophobia. Where racism or xenophobia is the motivation behind repeated and forceful calls for increased immigration checks to be carried out by officers with increased powers,

they can easily be discredited and indeed discounted in human rights terms. However, it can be the case that such calls are disguised as concerns about the wider impact of migration. For example, over the course of the investigation, immigration officials, as well as seconded PSNI officers, were asked why they felt immigration control was important for the UK. The vast majority of officers from both the UK Border Agency (UKBA) and the PSNI felt that immigration control was important to control criminality, control benefit fraud and to protect the economic interests of the UK. One IO repeatedly said, before going on enforcement visits to places of work, that such visits were needed to protect the economic interests of the UK because employers who knowingly employed undocumented migrants were enjoying an unfair advantage by not paying taxes and National Insurance contributions for their employees. However, from the statistical data made available to the Commission and its observations, no detainee was to be prosecuted for any criminal act/behaviour including any form of benefit fraud.<sup>81</sup>

The following accounts explain the situations of some of the individuals detained under immigration law, during the Commission’s investigation, and against whom removal directions were being put in place as the investigators spoke to them:

- A woman, who was a failed asylum seeker, had been detained by the UKBA. She had Tuberculosis. She had been refused asylum and her appeal rights were exhausted. She had been cleaning toilets in a bar where, she explained, some women would give her money – a couple of pence or a pound, and sometimes nothing. Other than that, she had no money to live on. She had received a letter from the Home Office informing her that her support was to be stopped and that she needed to leave the UK. The woman’s husband had been kidnapped and killed in Nigeria and she did not feel able to return. The woman told the investigators that she was scared in the police cell. She had been

<sup>81</sup> The UKBA has subsequently stated that from the period March 2007 to date (23 January 2009), 120 prosecutions have been brought, with considerable sums seized under the *Proceeds of Crime Act*. The UKBA has not, however, disclosed the amount or the types of crimes being committed, nor what proportion this represents of all those detained during that period.

held overnight, but papers from the UKBA still had to be served.

- A Nigerian man, a civil engineer, had been travelling on a business visa. He had been detained by the UKBA. He conceded that he had a wife and two children in the Republic of Ireland, who had refugee status there. Their lives were in danger in Nigeria because she was Muslim and he was Christian. His wife was making arrangements to have him join her in the Republic of Ireland on a permanent basis but, in the meantime, he was desperate to see his children and was going to visit them in Dublin. He had been in Northern Ireland before, when his wife had travelled to Belfast to see him and he had flown back to Nigeria after spending some time with them, well before his visa expired. The man was visibly upset and crying because he had not seen his children. He explained that he had no desire to stay in Europe irregularly: “I just want to see my children, they don’t remember me”.
- A Filipino man had been working in a residential home. The UKBA had carried out an enforcement visit on information that this man had been given a 24-hour transit visa, in 2004, and never left the UK. According to the Home Office, he had made no further application for leave to enter or remain in the UK, or for a work permit. When arrested, the UKBA officials, in fact, found the individual’s work permit which was valid until 2011. The man was to be removed because, although he had a work permit, he did not have a valid UK visa. The IO in charge explained that it was the employer’s duty to ensure that the employee had the necessary documentation to work. Nonetheless, it was this employee who was effectively being removed from his employment and removed from the UK. On the discrepancy between the Home Office database and other documentation, the officer in charge commented: “It’s a case of the left hand not knowing what the right hand is doing”.

- An Indian man, with a work permit for domestic work, was detained on the basis that he was working in a restaurant when his work permit was for employment in someone’s home. The man explained that the restaurant belonged to his employer and that the employer had undergone surgery recently and asked him to work in the restaurant for a few hours each day until he was better. The man had a wife and two daughters in India. Being Muslim, he subsequently contacted the Commission’s investigators on the evening before the Muslim festival of Eid, from Dungavel Immigration Removal Centre, explaining that he and his family faced severe financial hardship in India. He had borrowed a lot of money to come to the UK and could not repay it if removed to India.

The above accounts are fairly representative of the 21 detainees interviewed by the investigators. All of them were held for some time in a police custody suite alongside PACE prisoners, many at least overnight, and subsequently transported to Dungavel Immigration Removal Centre. Yet, none were being prosecuted for a criminal offence, nor, indeed, had an offence been committed, to the knowledge of the custody sergeants holding them in the PSNI custody suites. Many of the detainees were essentially losing their livelihoods by virtue of an IO’s decision. They told the investigators that they were being removed to countries where they, and in some cases their families, would now suffer severe economic hardship or persecution. Other individuals detained included those that were simply making a claim for asylum, a right enshrined in the 1951 *Convention relating to the status of Refugees* as well as in the *Universal Declaration of Human Rights*.

The investigation does not ignore the reality that, in some cases, state benefits are applied for and received through false information by individuals not entitled to, or in need of, them. But it also uncovers the stark reality facing people who come to, or remain in, the UK without the necessary documents. It also uncovers the fate of many, who in fact are in the UK with the necessary

documents, but whom IOs operating in Northern Ireland refuse to believe, and then decide to overturn decisions made by their colleagues in other UK jurisdictions. As revealed, in Chapter 6 and above, that decision is made at considerable economic expense to the UK.

The snapshot of evidence provided by the investigation suggests, therefore, that the powers available to IOs are a disproportionate response to the ‘problem’ as articulated by the UKBA and the Government more broadly. Further, despite many references in the media and political discourse suggesting a huge cost to the UK incurred by inward migration generally, and irregular migration more specifically, in justifying increasing the powers of IOs, the Government has thus far been unable to fully quantify the financial cost of these trends to the UK or, indeed, the precise scale of them and offset these against the financial and societal benefits.

Government has revealed more generally, for example, that in 2006 a total of £18m was lost through social security benefit fraud and a further £3m through Housing Benefit fraud.<sup>82</sup> However, these figures represent totals and are not restricted to fraud which non-UK nationals may have instigated. In 2008, the Audit Commission published the *National Fraud Initiative 2006/2007*<sup>83</sup> revealing that a total of £140m had been lost to council benefit fraud and overpayments. The Audit Commission’s report did make some attempt to quantify the proportion of that amount which could specifically be linked to people with no entitlement to work in the UK because of their immigration status. The report revealed:

- 157 employees being dismissed or resigning at 56 participating bodies. The affected bodies included London Boroughs, NHS acute hospitals, foundation trusts and primary care trusts, as well as probation boards and police authorities;
- payroll overpayments of around £69,000 being recovered;

- 30 housing benefit overpayments totalling just over £70,000 being identified by local authorities and a further 610 cases of overpayment of Job Seeker Allowance or Income Support being identified by Job Centre Plus;
- one property being recovered following deportation action;
- five market trader licences being cancelled and/or not renewed;
- one right to buy application being stopped; and
- a number of cases where co-ordinated action with the UK Border Agency led to persons being dismissed and arrested for deportation.<sup>84</sup>

While the list cited above is not insubstantial, the proportion in relation to the total figure of £140m could be argued as minimal. In particular, it is insightful to compare the figure of £140m to a study conducted by the Institute of Public Policy Research<sup>85</sup> which revealed that migrants accounted for 10 per cent of the Government’s receipts in public finance and 9.1 per cent of expenditure in 2003-2004, therefore showing a net benefit to the UK economy of inward migration. What appears then to be disproportionate, or certainly a response by the Government to migration flows that is unsubstantiated by empirical evidence, is compounded by the fact that, despite the legislative provision for the powers of immigration enforcement officials since 1971 and a consistent increase of these powers since then, there has in fact been a system of oversight of the UKBA’s enforcement function that has so far been minimal.

The Commission is of the view that the scale of the Government’s response is not only unsubstantiated but, indeed, misrepresentative of the actual impact of migration. As the accounts highlighted above indicate, the representation of undocumented migrants as unscrupulous individuals, setting out to defraud and exploit the generosity of the UK state is a highly contestable one. While certain studies

<sup>82</sup> See: <http://www.stopbenefitfraud.gov.uk/cost.htm> [accessed 25 August 2008].

<sup>83</sup> The full text of the report can be found at <http://www.audit-commission.gov.uk>.

<sup>84</sup> The Audit Commission (2008) *National Fraud Initiative 2006/2007*, London.

<sup>85</sup> Dhananjayan S, Cooley L and Reed H (2005) *Paying Their Way: The Fiscal Contributions of Immigrants in the UK*, Institute of Public Policy Research, London.

may point to the existence of such individuals, they are not exclusive to the migrant population and, further, are not necessarily representative of that population. Other representations of the migrant population in the UK can be found in the tragic examples of the 18 Chinese cockle pickers killed at Morecombe Bay in 2004, or the individuals this investigation uncovered who were earning below the statutory minimum wage in order to provide a basic standard of living for their families in their home countries. Human rights are universal: rights that are owed to all by virtue of being human, not by virtue of being citizens of a particular state, which in most cases is determined by birth.

It is essential that human beings are not treated as commodities. The investigation has examined the impact in human rights terms on those individuals who had first hand contact with immigration enforcement officials in Northern Ireland. However, the investigation could not be complete without some reference to the arguments that have continued, and will undoubtedly continue, to be used to justify the way in which IOs operate and the statutory and policy remit of their operations.

Linked closely to those arguments is the economic cost to the UK of unchecked migration. Taken to a logical conclusion, it might even be argued that the cost of irregular immigration in the UK impedes the protection of a range of economic, social and cultural rights for those who are in the state or who have entered it through regular means. Given the very limited resources available to the Government, where resources are claimed by those with no legal entitlement the ultimate result might be seen as disadvantaging those with legal entitlements and, indeed, with needs that the state is expected to meet under a range of human rights treaties. However, whatever the costs of honouring economic, social and cultural rights to those with legal entitlements, it must be recognised that there are very tangible costs of enforcing immigration

controls that equally may detract from the protection of economic, social and cultural rights.

As discussed in Chapter 6, the cost of one detainee spending one night in a police custody suite has been calculated at around £375, amounting to more than the average weekly earning in the UK. The average cost of carrying out the enforced removal of a failed asylum seeker in the UK has been calculated as £11,000, and the number of irregular migrants in the UK has been estimated by the Home Office as around 430,000.<sup>86</sup> Thus, if all irregular migrants had been removed from the UK in 2004, the total cost to the UK would have been in the region of £4.7 billion. Conversely, if that same population of irregular migrants was to be given legal residency through a programme of regularisation, the benefit to the Exchequer in terms of tax revenues has been estimated as £485 million per year.<sup>87</sup>

Also, of course, there is the much expressed view that immigration control is needed to control criminality. The standpoint of conflating migration and criminality was given further credence when a senior police officer claimed that increases in inward migration had led to an increase in certain types of offences and called for more resources to tackle this.<sup>88</sup> The senior officer also stated:

*"We have had the Iraqi Kurds who carry knives and the Poles and the Lithuanians who carry knives. If it is normal to carry them where you come from, you need to educate them pretty quickly. We have done a lot of work to tell them not to, and we have seen it go down."<sup>89</sup>*

This was despite a report for the Association of Chief Police Officers<sup>90</sup>, revealing that there was no such correlation between increased inward migration and crime and the British Crime Survey showing an overall reduction in reported crime, including violence against the person over the last year.<sup>91</sup>

<sup>86</sup> Pinkerton C et al (2004) *Sizing the Illegally Resident Population in the UK* Migration Research Unit, University College London. Home Office Online Report. Available at: <http://www.homeoffice.gov.uk/rds/pdfs04/rdsolr5804.pdf>.

<sup>87</sup> Farrant M et al (2006) *Irregular migration in the UK: An IPPR FactFile*, IPPR, London.

<sup>88</sup> Cambridgeshire, Chief Constable Julie Spence quoted in *The Guardian*. Available at: <http://tiny.cc/diiQV> [accessed 28 August 2008].

<sup>89</sup> *Daily Mail*, 4 June 2008. Available at: <http://tiny.cc/m4BgK>.

<sup>90</sup> ACPO press release, 16 April 2008. Available at: <http://tiny.cc/liclA>.

<sup>91</sup> Home Office Crime Statistics. Available at: <http://tiny.cc/TWWvh> [accessed July 17 2008].

Regardless of the perceptions and realities of the advantages and disadvantages brought by inward migration, the Government must respect a range of rights of all individuals within the territory of the state, regardless of nationality and legal status. Those rights, as discussed throughout this investigation, include the right to life, the right to be free from torture and inhuman or degrading treatment or punishment, the right to liberty, the right to privacy and family life and the right not to be discriminated against in the protection of these rights. As legislation, policy and practice currently stand, the extent to which these rights are in fact being protected by the UKBA is questionable and raises concerns.

The Commission asserts that the Government has a positive duty to respond to such myths and stereotypes with accurate information and to recognise the risks that they bring to migrant and minority ethnic communities in the UK by feeding and/or creating stereotypes. Yet, that positive duty is not being met and instead the Government appears to be pressing for ever increasing powers for immigration enforcement officials that could seriously increase the prospect of abuse.

This investigation has revealed a range of rights that appear to be compromised by the way in which immigration enforcement is carried out in Northern Ireland. The rights that ought to provide the framework for the Government’s legislation, policy and practice were set out and discussed in Chapters 2 and 3. In this concluding chapter, and in light of the research outlined in Chapters 4 to 7, an assessment is put forward as to the extent to which those rights are being protected by immigration enforcement activities in Northern Ireland. In line with the Commission’s statutory duty to advise on the measures that ought to be taken to protect human rights in Northern Ireland, the report concludes with a number of recommendations to the UK Government.

## Detention and arrest

Under Article 5 of the *European Convention on Human Rights* (ECHR) and Article 9 of the

*International Covenant on Civil and Political Rights* (ICCPR), all individuals have the right to be free from arbitrary detention. A number of procedural rights follow on from Article 5 and Article 9, respectively, including the right to challenge the lawfulness of detention and the right to seek independent legal advice.

However, Chapters 5 and 6 have revealed the lack of clarity in the way in which IOs carry out their duties and make recommendations for detention. This has meant that some individuals, in very similar circumstances, meet very different fates. For example, an Indian national with a permit for domestic work found working in a take-away was removed to a detention facility in Great Britain almost immediately, while a Nigerian national ‘overstayer’ was given temporary release after being held for several hours in a custody suite. The only explanation for the latter decision was the resource implications of detention.

Perhaps the most fundamental problem in terms of the procedural rights is the complete lack of clarity in the process when someone moves from being held on a consensual basis and a formal arrest is made. In traditional enforcement operations there was a preference for IOs to move on a consensual basis rather than make an arrest – many appeared to suggest that this was in the interests of the ‘target’. In the case of Operation Gull, it emerged that the IOs simply were not arrest trained and could not carry out an arrest.

The Commission contends that this lack of clarity is extremely problematic in terms of guarantee of the right to seek legal advice under Article 9 of the ICCPR. Chapter 3 discussed the importance of timely access to legal advice and the situations described in Chapters 5 and 6 provide further evidence of why that is needed for people who are being held for unspecified reasons. For that legal advice to be meaningful, it needs to be free and of the highest possible standard.

The lack of clarity has also led to situations where custody sergeants and forensic medical officers in custody suites are not able to meet their duty of

care to detainees. For example, it was shown in Chapter 5 how, despite one detainee wanting to wait for his solicitor to arrive before being served papers, the custody sergeant insisted on the papers being served in the absence of a solicitor and allowed that IO to engage in further questioning with the detainee. Similarly, a forensic medical officer, after stating the detainee was not medically fit for further questioning was persuaded of the fact that the detainee was only being put through a short bio-interview that would not risk his health further. Yet, the investigators witnessed the detainee visibly upset and crying through the course of that interview which took well over an hour to conclude. Again, the custody sergeant permitted the interview to proceed without a solicitor. One had been contacted but would not come to the police station before the next morning. In another more alarming case, the investigators observed an interview with a woman seeking asylum, during which she had told the IO she was pregnant. However, the pregnancy was not recorded in the woman’s custody record.

In light of the above, the Commission recommends that:

- **The UK Government should give domestic effect to Protocol 4 of the *European Convention on Human Rights* and that any attempts at internal immigration control operate in accordance with Protocol 4.**
- **Detention of both asylum seekers and perceived immigration offenders should be used only as a last resort and when to do otherwise would prove a threat to the public. The over-arching preference should be for temporary release in line with the *Concluding Observations on Australia* in 2000.<sup>92</sup> Where detention is authorised as a matter of last resort, it should be subject to effective judicial oversight and the detention be time limited.**
- **Where detention is authorised as a matter of last resort, standard procedure on provision of information to the detainee should be implemented.**
- **Where detention is authorised as a matter of last resort, custody staff in places of detention should be fully trained in immigration law, briefed about all circumstances regarding the detainee’s status, and provided with regular updates by the UKBA staff.**
- **The point of arrest should be clearly articulated by IOs in traditional enforcement work and in Operation Gull.**
- **Only “arrest trained officers” should conduct Operation Gull.**
- **Interviews of all individuals stopped under Operation Gull should only be conducted in the presence of a solicitor representing the subject’s interests.**
- **All documentation forming part of the arrest process, including forms IS91R, IS151A and IS101, should be made available in a range of languages and served immediately on contact between the immigration officer and detainee.**
- **Interpreters should be made available as soon as practicable for the purposes of explaining to the detainee the implications of the process he/she has just undergone. Resource implications should in no circumstances determine whether a detainee has access to an interpreter.**
- **Once forms have been served, no further questioning should be permitted without a solicitor present.**
- **On a quarterly basis, data regarding people against whom enforcement action is being taken should be made publicly available. This information should clearly categorise perceived immigration offenders, asylum seekers, families, unaccompanied minors and nationalities.**

<sup>92</sup> UN doc. A/55/40, paras 526-527.

## The right to be free from torture and inhuman and degrading treatment or punishment

Under Article 3 of the ECHR and Article 7 of the ICCPR, all individuals have the right to be free from torture and inhuman and degrading treatment or punishment. The internationally recognised *non-refoulement* provision also requires that states do not return people to countries where they might face torture or be treated in an inhuman or degrading manner.

The investigation found that physical conditions in some of the custody suites in Northern Ireland are wholly unsatisfactory. HM Inspectorate of Prisons has also reported on the many problems relating to Dungavel Immigration Removal Centre, to which many detainees are transported from Northern Ireland in the first instance. While those conditions may not cross the threshold in relation to Article 3 of the ECHR and Article 7 of the ICCPR, the way in which immigration detainees are treated and cared for is extremely problematic. Chapters 5 and 6 have shown, in particular, how custody sergeants are often unaware of the legislative basis for the detention. It is questionable how far a custody sergeant can meet his or her duty of care if he or she is not able to tell which one of the detainees is an asylum seeker possibly fleeing persecution and suffering trauma. Further, custody suites in Northern Ireland are not equipped to meet the diverse cultural and linguistic needs of immigration detainees and nor where they ever intended to. Custody sergeants confirmed that while 'Big Word'<sup>93</sup> was an option to communicate more substantive issues to detainees and *vice versa*, detainees with a low command of the English language had no way of communicating their most basic needs, including dietary requirements, sudden poor health, access to a solicitor or even to be able to ask how long they were going to be detained for.

The Commission recommends that:

- **In those cases where detention must be authorised as a matter of last resort for asylum seekers or perceived immigration offenders, custody suites should not be used. The UK Government, in line with the recommendation contained in the Concluding Observations on the UK of the Human Rights Committee in 2008, should provide appropriate detention facilities in Northern Ireland for individuals facing deportation.<sup>94</sup> Such facilities should not be structured or run on a prison regime.**
  - **The PSNI should take greater account of the consequences of UKBA enforcement visits with regard to race relations, and exercise its power of veto appropriately in areas where there is a danger of an adverse impact.**
- Chapter 6 revealed that Operation Gull raises a number of very specific concerns in relation to degrading treatment, particularly around what appeared to be the practice of racial profiling. In addition, as a result of Operation Gull, individuals are routinely returned to the border with the Republic of Ireland and simply handed over to the relevant authorities there.
- The Commission recommends that:
- **Government should publicly state the rationale behind Operation Gull and publish the costs that are incurred as a result of it.**
  - **The practice of singling out particular nationalities and people visibly from a minority ethnic background should be ceased immediately.**
  - **Only arrest trained officers should conduct Operation Gull. Interviews of all individuals stopped under Operation Gull should only be conducted with a solicitor present representing the subject's interests.**
  - **The UK should engage further with the Republic of Ireland on the treatment of individuals returned there, and seek assurances that no punitive measures will be taken against such individuals.**

<sup>93</sup> *Big Word* is the facility that has interpreters available by phone.

<sup>94</sup> CCPR/C/GBR/CO/6, available at: <http://tinyurl.com/698r7t> [accessed 22/09/08].

- **The assurances should be made public.**
- **On a quarterly basis, the UK should make publicly available the numbers of individuals removed to the Republic of Ireland.**
- **Individuals being removed should be informed by the UKBA of the contact details of migrant welfare groups operating in the Republic of Ireland.**

### **The right to privacy and family life**

Under Article 8 of the ECHR and Article 17 of the ICCPR, all individuals have the right to privacy and family life. Chapter 2 showed how the European Court of Human Rights has not been sympathetic to the notion that the immigration policies of a state ought to necessarily permit non-nationals legal entry and residency if they are married to a national of a country which is signatory to the ECHR. Instead, the Court is more likely to ask the question if the right to privacy and family life can be enjoyed elsewhere. However, this investigation has contended that this interpretation is a root cause of irregular migration for many people. The stark reality would appear to be that individuals will attempt to enter states through irregular means in order to join their families in an EU state. The case of the Nigerian national wanting to visit his wife and children in the Republic of Ireland, cited above, is just one example.

This investigation has also looked beyond the interpretations of Article 8 of the ECHR that have been tested in the courts to examine how immigration enforcement activity potentially or actually impacts on the individuals as they have face-to-face contact with IOs in Northern Ireland. In particular, the Commission is concerned about the impact on families of removals and, indeed, of individuals as their homes and private belongings are searched. In addition, the interview process subjected detainees to intimate questions about their close family relationships, the level of contact with family and caused visible distress to detainees. Detainees who had been visited at their

home were particularly vulnerable, given that they had been subjected to early morning visits between 6.00am and 7.00am. The investigators were also concerned about the level of ‘collateral’ intrusion of such visits. For example, whether the ‘target’ was located, or not, on a home visit, others residing at that address would also be subject to questioning and possibly some level of searching.

The Commission recommends that:

- **IOs should be instructed, in line with General Comment 16 of the Human Rights Committee, as detailed below:**

*Searches of a person’s home should be restricted to a search for necessary evidence and should not be allowed to amount to harassment. So far as personal and body search is concerned, effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched.*

- **The practice of ‘dawn raids’ should be ceased immediately.**
- **All lay magistrates with responsibility for issuing warrants should be trained in immigration and human rights law and the powers of immigration officials, and that such training be audited.**
- **When UKBA officials are conducting ‘pastoral visits’, the imminence of removal should be explained to the family, with the best interests of the child being the primary consideration in any deliberations around removal.**

### **Overarching principles**

As discussed in the first part of this chapter, the Commission is acutely aware of the general discourse around immigration and asylum. The fieldwork, itself, revealed a general weariness of the Government’s knee-jerk response to widespread views that immigration is generally bad for the UK. However, IOs themselves at times appeared to ‘buy in’ to that discourse, by expressing views around, for example, people of

Nigerian nationality and a general disbelief towards the individuals they faced. The Commission suggests that, given the prolonged period of time over which IOs have operated in a virtually unchallenged environment, this is inevitable. The Government, therefore, has a vital role to play in both challenging the popular discourse and in creating a mechanism of consistent and thorough checks on the work of the UKBA with human rights impact at the core of its mandate.

The Commission therefore recommends that:

- **The remit of the Police Ombudsman for Northern Ireland should be extended to address complaints relating to the UKBA as a matter of urgency. The remit should be extended to delaying removal where appropriate.**
- **Legislative provisions should be made that would ensure the remit of the Chief Inspector of the UKBA has human rights impact at the core of its mandate, and that the office is resourced appropriately to meet its mandate.**
- **The UK Government should challenge myths, stereotypes and xenophobic sentiments articulated in the media and by others around immigration and asylum, by consistently stating the benefits of migration and its duties in relation to people seeking asylum.**
- **The Home Office *Operation Enforcement Manual* should be amended in accordance with the recommendations in this report, positively addressing the full range of the UK’s human rights commitments.**
- **All immigration enforcement officials should be expected to undergo regular human rights training and that this be audited.**
- **The UKBA system of storing case files should be amended to ensure speedy access to a person’s individual file for the purposes of access by his or her legal**

**representative and/or independent and thorough scrutiny of UKBA decision making.**

## Future developments

At the time of writing the *Borders, Immigration and Citizenship Bill* is before Parliament. In particular, the Bill will introduce immigration checks within the Common Travel Area (CTA). The Government has given assurances that immigration checks will not affect rights of free movement across the CTA. The human rights impact assessment conducted on the CTA proposals indicates that no human rights implications derive from the reforms. The Commission is concerned that the measures are likely to have far reaching human rights implications in Northern Ireland. The equality impact assessment of the proposals deals with issues around racial profiling dismissing concerns by stating as fact:

*Passengers will not be (and are never) targeted on the basis of racial profiling.*<sup>95</sup>

However, at Committee stage in the House of Lords, the Minister gave the clearest details to date on how such mobile checkpoints will operate. Arguing that passengers will be selected on the basis of “intelligence and risk”, he outlined that, on the busy main Belfast to Dublin route, the UKBA would:

*“...target the odd bus, minibus or taxi, because our experience has shown that those are much more likely to be a threat.”*<sup>96</sup>

Given the Minister’s comments and the investigators’ first hand observations of the impact of one attempt to monitor and control movement across the Common Travel Area, the Commission cannot envisage how such checks could operate without first, impacting upon free movement and, second, without the deliberate targeting of ethnic minorities which could constitute racial profiling.

It is therefore envisaged that immigration enforcement operations are likely to become more frequent, rigorous and invasive, not only for foreign

nationals but also for UK citizens as they go about their daily lives.<sup>97</sup> Greater oversight and scrutiny with a rigorous examination of the powers that IOs will be using as they roll out the Government's aspirations is required.

This investigation report has provided strong evidence of how broad and, in many cases, inappropriate those powers are, a problem exacerbated by the lack of appropriate oversight of the decision making processes of immigration officers. The Commission strongly urges the Government to reconsider its approach to immigration enforcement and to use the opportunity provided by the *Borders, Immigration and Citizenship Bill* to restrict those powers and

challenge popular myths in relation to migration and asylum in the Parliamentary debates and media coverage around the Bill.

As this investigation report was being drafted, following a visit to the UK in February 2008, and then in March/April 2008, Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe urged the UK to:

*[...] consider the possibility of drastically limiting the practice of administrative detention of migrants, one problematic aspect of which is the high degree of discretion and broad powers of immigration officers.*<sup>98</sup>

<sup>97</sup> For example, a joint statement from the Minister for Justice, Equality and Law Reform, Dermot Ahern TD, and the UK Home Secretary, Jacqui Smith, said: *We will tackle the challenges we face head on through the use of state of the art border technology, joint sea and port operations and the continued exchange of intelligence. We are both introducing electronic border management systems so we can count people in and out of the country.* Available at: <http://tiny.cc/90ILb> [accessed 21 August 2008].

<sup>98</sup> Memorandum by Thomas Hammarberg. Available at: <http://tiny.cc/BWB0k> [accessed 24/9/08].

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# Appendix 1: Methodology

The Commission wrote to the Director of what was at that time the Immigration and Nationality Directorate (now the UK Border Agency) in October 2006 to request the following:

- Files relating to asylum and immigration applicants stopped and interviewed by Immigration Services since the change of policy in January 2006, regardless of outcome;
  - Interviews with key Immigration Service managers and immigration officers who are responsible for immigration services in Northern Ireland;
  - Interviews with other professionals involved in immigration control, including the Northern Ireland Prison Service;
  - Interviews with the agencies responsible for escorting detainees and examination of paperwork held by them;
  - Interviews with immigration detainees including asylum applicants, and others with experience of applying for asylum;
  - Observation of Operation Gull and 'traditional enforcement work'.
- if an arrest is made, investigators are informed by the Officer in Charge of the visit and directed to the relevant custody suite;
  - investigators obtain consent from the detainee and the Custody Sergeant before observing any further interaction between the detainee and UKBA staff;
  - investigators obtain consent of the detainee to interview them in private;
  - investigators then attend a post visit de-brief conducted between the UKBA and PSNI officers who had attended the visit;

Investigators observed Operation Gull over one weekend. IOs conducted the operation at Belfast City Airport and Belfast Docks. The investigators observed the IOs at Belfast City Airport and all detainees, including those detected at Belfast Docks, were brought to the airport for further questioning. Investigators were allowed to observe IOs questioning passengers. As a follow up to this operation, investigators were given the opportunity to interview persons who had been detained at the Docks and at the Airport.

The Commission met with the UKBA Inspector responsible for Northern Ireland, Mr Elwyn Soutter, in November 2006, to discuss the nature of the fieldwork. Mr Soutter's role was to co-ordinate all the interactions between immigration staff and the investigators. Investigators then liaised directly with CIOs, IOs, AIOs and seconded PSNI staff to arrange suitable dates and times for interviews.

Fieldwork commenced in July 2007 and was completed by January 2008 and this involved observation of traditional enforcement work and Operation Gull. The investigators were able to observe 10 UKBA visits during this period. A detail of the investigators role in the visits is noted below:

Sample procedure:

- investigators attend the briefing session prior to an enforcement visit;
1. The detainee was asked what had happened to them and asked to describe their interaction so far with immigration officers.
  2. The detainee was asked if they were informed of their human rights, particularly in relation to legal advice.
  3. The detainee was asked about the conditions in the custody suite.

## Interviews

Semi-structured interviews were held in private with detainees arrested during the operations. Consent was obtained prior to the interviews. The investigators were able to interview 21 detainees from both 'traditional enforcement' visits and Operation Gull. The interviews were conducted using the same interview schedule, with questions stemming from four broad areas of concern. A sample is provided below:

4. The detainee was asked if they understood what had happened to them and if they had been provided with information about what was going to happen to them.

Contemporaneous notes were made of each interview and typed up after each session.

Confidential, semi-structured interviews were conducted with immigration staff:

- Inspector
- Chief Immigration Officers (CIOs)
- Immigration Officers (IOs)
- Assistant Immigration Officers (AIOs), and
- Police officers seconded from the Police Service of Northern Ireland (PSNI).

Investigators requested to tape the interview sessions but the majority of staff refused.

Therefore, contemporaneous notes were made of each interview and typed up after each session

The investigators formulated an interview guideline detailing the main topics to be addressed. The interviews with staff aimed to explore their areas of work and their views on the Immigration Service.

The details are noted below:

1. Why did you want to work in immigration enforcement?
2. What training was provided and what human rights training was provided?
3. What factors contribute to your decision to detain someone?
4. Why is immigration control important for the UK?
5. How do you deal with or approach particularly vulnerable people, specifically asylum seekers?

During the course of observing UKBA operations and visits, the investigators came into contact with custody sergeants at various custody suites. Although custody sergeants were not formally interviewed, the investigators did ask them

questions about their work and noted their views and experiences with immigration detainees. Custody sergeants were informed that their views may be cited in the report.

## Documentary analysis

The investigation drew upon the following sources:

- PSNI records and statistics
- *Memorandum of Understanding between the PSNI and UKBA* November, 2007
- Statistics from the UKBA of persons against whom enforcement action was taken under Operation Gull during 2007
- Immigration papers served to detainees arrested through traditional enforcement operations: form IS91; form IS91R; form IS151A and form IS86
- UKBA's *Operation Enforcement Manual*
- international standards and soft law standards
- domestic legislation
- policy on immigration and asylum
- relevant case law
- academic reports; and
- Statutory agency and NGOs reports.

## Focus groups

Investigators led focus groups with the following groups in order to inform the investigation:

- Custody Visitors
- Immigration Legal Practitioners
- G4S – security firm responsible for transportation of detainees, and
- NGOs working on immigration and asylum issues.

# Appendix 2: Notice to detainee – reasons for detention and bail rights



Port Ref: \_\_\_\_\_  
 HO Ref: **IS.91R**  
 UK Immigration Service  
 Festival Court  
 200 Brand Street  
 Glasgow  
 G51 1DH  
 Tel: 0141 419 1200 Fax: 0141 419 1290

**NOTICE TO DETAINEE  
 REASONS FOR DETENTION AND BAIL RIGHTS**

1. To:  
 I am ordering your detention under powers contained in the Immigration Act 1971 or the Nationality, Immigration and Asylum Act 2002.

See note <sup>(1)</sup>  
<sup>(2)</sup> <sup>(3)</sup>  
<sup>(4)</sup> <sup>(5)</sup>

2. Detention is only used when there is no reasonable alternative available. It has been decided that you should remain in detention because (tick all boxes that apply):

a.	<input type="checkbox"/>	You are likely to abscond if given temporary admission or release.
b.	<input type="checkbox"/>	There is insufficient reliable information to decide on whether to grant you temporary admission or release.
c.	<input type="checkbox"/>	Your removal from the United Kingdom is imminent.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	d. You need to be detained whilst alternative arrangements are made for your care.
e.	<input type="checkbox"/>	Your release is not considered conducive to the public good.
f.	<input type="checkbox"/>	I am satisfied that your application may be decided quickly using the fast track procedures.
<b>This decision has been reached on the basis of the following factors (tick <u>all</u> boxes that apply):</b>		
1.	<input type="checkbox"/>	You do not have enough close ties (eg. family or friends) to make it likely that you will stay in one place.
2.	<input type="checkbox"/>	You have previously failed to comply with conditions of your stay, temporary admission or release.
3.	<input type="checkbox"/>	You have previously absconded or escaped.
4.	<input type="checkbox"/>	On initial consideration, it appears that your application may be one which can be decided quickly.
5.	<input type="checkbox"/>	You have used or attempted to use deception in a way that leads us to consider you may continue to deceive.
6.	<input type="checkbox"/>	You have failed to give satisfactory or reliable answers to an Immigration Officer’s enquiries.
7.	<input type="checkbox"/>	You have not produced satisfactory evidence of your identity, nationality or lawful basis to be in the UK.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	8. You have previously failed or refused to leave the UK when required to do so.
9.	<input type="checkbox"/>	You are a young person without the care of a parent or guardian.
10.	<input type="checkbox"/>	Your health gives serious cause for concern on grounds of your own wellbeing and/or public health or safety.
11.	<input type="checkbox"/>	You are excluded from the UK at the personal direction of the Secretary of State.
12.	<input type="checkbox"/>	You are detained for reasons of national security, the reasons are/will be set out in another letter.
13.	<input type="checkbox"/>	Your unacceptable character, conduct or associations.
14.	<input type="checkbox"/>	I consider this reasonably necessary in order to take your fingerprints because you have failed to provide them voluntarily.

Your case will be regularly reviewed. You will be informed, in writing, of the outcome of the review.

Date \_\_\_\_\_ Sign \_\_\_\_\_ Immigration Officer /  
 Print \_\_\_\_\_ On behalf of the Secretary of State\*  
 (\*delete as appropriate)

**PLEASE TURN OVER**

**Important notice for detained persons**

You may on request have one person known to you or who is likely to take an interest in your welfare informed at public expense as soon as practicable of your whereabouts.

**3. Bail Rights**

This explains certain rights that you have as a detainee to apply to be released on bail.

- A If you have been detained pending an Immigration Officer’s or the Secretary of State’s decision on your application for leave to enter, you may, when seven days have elapsed since the date of your arrival in the United Kingdom, apply to an Adjudicator or to a Chief Immigration Officer to be released on bail.
- B If you have been detained pending the giving of removal directions, or you are awaiting removal in accordance with those directions, and you are not being detained under Schedule 3 to the 1971 Act, you may apply at any time to an Adjudicator or a Chief Immigration Officer to be released on bail.
- C If you have been served with a notice of intention to deport and have been detained pending the making of a deportation order you may apply at any time to an Adjudicator or a Chief Immigration Officer to be released on bail.
- D If you have been recommended for deportation by a court you may apply at any time, pending the giving of removal directions, to an Adjudicator or a Chief Immigration Officer to be released on bail.
- E If you have been served with a deportation order and you are detained pending your removal or voluntary departure, you may apply at any time, pending the giving of removal directions to an Adjudicator or a Chief Immigration Officer to be released on bail.

NOTE: If you have been detained for more than 8 days any application to be released on bail should be made to the Secretary of State rather than a Chief Immigration Officer.

**4. Assistance** If you need help making your application, the **Immigration Advisory Service (IAS)** or the **Refugee Legal Centre (RLC)** may be able to assist. Both provide free advice and assistance and are independent of Government. They may be able to arrange representation for you at Court. Contact details are as follows:-

**Immigration Advisory Service** (please contact local office)

Birmingham	(0121) 6163540	Cardiff	(029) 2049 6662	Glasgow	(0141) 248 2956
Heathrow	(020) 8814 1115	Leeds	(0113) 244 2460	London	(020) 79671200
Manchester	(0161) 834 9942	24 Hour helpline	(020) 7378 9191	Liverpool	(0151) 2420920

**Refugee Legal Centre**

Detention Advice Line	(0800) 592 398	Out of Hours Emergency Line	(0831) 598 057	Advice Line	(020) 7378 6242
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5.   The contents of this notice have been explained to you in English by me.

The contents of this notice have been explained to you \_\_\_\_\_ *Language*

in \_\_\_\_\_ *Name of interpreter*

by \_\_\_\_\_

Date \_\_\_\_\_ Signed \_\_\_\_\_ Immigration Officer /  
On behalf of the secretary of State\*

**Notes:**

**DETENTION POWERS**

- (1) For a passenger who has been informed on arrival that he/she is subject to examination/ further examination or has been refused leave to enter the United Kingdom - Paragraph 16 of Schedule 2 to the 1971 Act or section 62 of the 2002 Act.
- (2) For an illegal entrant or a person to whom section 10 of the Immigration and Asylum Act 1999 applies - Paragraph 16 of Schedule 2 to the 1971 Act or section 62 of the 2002 Act.
- (3) A person served with a Notice of Decision to make a deportation order, whose detention has been authorised by the Secretary of State.
- (4) For the subject of a Deportation Order whose detention has been authorised by the Secretary of State - Paragraph 2(3) of Schedule 3 to the 1971 Act.
- (5) For a person recommended for deportation by a court who has not been detained by the court nor released on bail - Paragraph 2(1) of Schedule 3 to the 1971 Act.

# Appendix 3: Disclaimer in the case of voluntary departure



Port Ref:  
 HO Ref: IS.101  
 UK Immigration Service  
 Festival Court  
 200 Brand Street  
 Glasgow  
 G51 1DH  
 Tel: 0141 419 1200 Fax: 0141 419 1290

## Disclaimer in the Case of Voluntary Departure

I, \_\_\_\_\_, have been notified that I am liable to be removed from the United Kingdom under immigration powers.<sup>i</sup>

However I wish to voluntarily depart the United Kingdom for \_\_\_\_\_ on \_\_\_\_\_ /as soon as possible.\*

Ensure the applicant ticks <b>all</b> relevant boxes	<input type="checkbox"/> I have been given the opportunity to access to legal advice <input type="checkbox"/> I have chosen to give up the minimum 72 hours notice period between receiving notification of Removal Directions and removal. <input type="checkbox"/> I am aware that my case is still under consideration but I wish nevertheless to leave the United Kingdom without waiting for the outcome of this consideration. <input type="checkbox"/> I am aware that _____ is making representations on my behalf but I wish to leave the United Kingdom without waiting for the outcome of these representations. <input type="checkbox"/> I wish to formally withdraw my appeal/judicial review application against: ( <i>decision in question</i> ),and authorise you to inform the appropriate authorities as necessary <input type="checkbox"/> I wish to withdraw any and all outstanding claims or applications I have made to stay in the United Kingdom <input type="checkbox"/> I have been advised that I should contact the European Court of Human Rights and confirm to the Court my wish to voluntarily depart and to withdraw my application. <input type="checkbox"/> I am unable/able and willing to depart at my own expense and have/have not purchased a ticket to ..... at ..... hours on ..... <input type="checkbox"/> I understand that I may reverse this decision prior to my departure but should I do so I may be liable to enforced removal
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The contents of this notice have been explained to me by in  
 .....(language).

\_\_\_\_\_  
 (name of interpreter)

\_\_\_\_\_  
 Subject’s signature/Date

The person named above signed this statement in my presence.

Signature (witness)	
Full name (capitals)	
Date	
Time	
Place	

\* delete as appropriate

<sup>i</sup> Schedule 2 to the 1971 Act/S.10 of the 1999 Act

**Northern Ireland Human Rights Commission**

Temple Court

39 North Street

Belfast BT1 1NA

**Tel:** (028) 9024 3987

**Fax:** (028) 9024 7844

**Textphone:** (028) 9024 9066

**SMS Text:** 07786 202075

**Email:** [information@nihrc.org](mailto:information@nihrc.org)

**Website:** [www.nihrc.org](http://www.nihrc.org)

A summary of this document can be made available in languages other than English, in Braille, on audio tape or in large print by request to the Commission's offices. It is also available on the Commission's website at [www.nihrc.org](http://www.nihrc.org)