

Sir Peter Lloyd  
President of the National Council  
Independent Monitoring Boards  
2<sup>nd</sup> Floor, Ashley House  
2 Monck Street  
SW1P 2BQ

[www.bia.homeoffice.gov.uk](http://www.bia.homeoffice.gov.uk)  
[www.justice.gov.uk](http://www.justice.gov.uk)

29 August 2007

## **IMB REPORT ON FOREIGN NATIONALS**

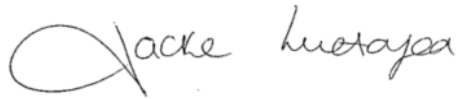
Thank you for your letter to Gerry Sutcliffe of 29 June in which you enclosed the National Council's report on Foreign Nationals.

We thank you for the opportunity to meet with you on 15 June. We found this of great benefit in allowing us an opportunity to discuss a number of your concerns in more detail. We are also very grateful for the opportunity to provide a response, as attached, to be set alongside your report, which outlines much of the progress that both the National Offender Management Service (NOMS) and the Border and Immigration Agency have made in their joint responsibility for those foreign nationals that commit crimes within the United Kingdom.


Mandie Campbell, the then director of the Criminal Casework Directorate which forms part of the Border and Immigration Agency, wrote to all Chairs of IMBs at the turn of the year inviting them and their colleagues to attend their offices and we would like to re-extend this invitation to you and your colleagues. Feedback from those members that have attended so far has been very positive and this has allowed a number of specific concerns to be addressed and for further improvements to the service we provide to be made. The Offender Policy and Rights Unit within NOMS (MoJ) will also be running some further training events for prison staff on the implications of the new legislation contained within the UK Borders Bill in early 2008.

We hope that some of your concerns have been addressed in our report and that the improvements that are being made will go some way to assuring both you and your colleagues of the weight we give to your feedback on how foreign national prisoners are managed .We look forward to the opportunity to meet again in due course.

Yours sincerely

Handwritten signature of Jackie Luetchford in cursive script.

Jackie Luetchford  
Director  
Criminal Casework Directorate  
Border and Immigration Agency

Handwritten signature of Pat Baskerville in cursive script.

Pat Baskerville  
Head of Offender Policy and Rights Unit  
Ministry of Justice

**Independent Monitoring Board National Council Report on Foreign Nationals – April  
2007**

**Response from the National Offender Management Service and the Border and  
Immigration Agency**

Both the National Offender Management Service and the Border and Immigration Agency welcome the opportunity to respond to this report. Since April last year both NOMS and BIA have been working closely to improve collaborative working to ensure that foreign national prisoners have their cases assessed in good time and that deportation consideration takes place before completion of custodial sentence.

Below we seek to address the issues that have been raised by the National Council's Report and outline the initiatives that are underway to further improve our joint management of foreign national prisoners.

**Senior level management of FNPs within HMPS**

Policy on the management of Foreign National Prisoners (FNPs) is clearly set within NOMS by the Offender Policy and Rights Unit of HMPS but there has to date been no operational lead. In the light of continually rising numbers and the concerns expressed by IMBs and others, Deputy Director General Michael Spurr, has decided to appoint a senior operational manager, Paul Carroll, to work with the policy unit and provide advice and leadership on operational issues.

**Training and information for prisons**

A range of guidance and information is available to prison staff concerned with managing FNPs. Offender Policy and Rights Unit (OPRU) publishes a quarterly newsletter which is available in hard copy and on the HMPS intranet and is sent to Governors and Foreign National Co-ordinators. It provides contact details for further advice. Issue number 22 was published in July.

Between October 2006 and January 2007 OPRU also led a series of 10 regional training seminars, with immigration colleagues, to which all prisons were invited. The seminars covered a range of FNP issues but focused particularly on the relationship with Criminal Casework Directorate (CCD) of the Borders and Immigrations Agency (BIA). The early seminars exposed the continuing problems with communication and decision-making in CCD. Casework staff and managers attended to hear the criticisms, adjustments were made and feed-back provided. By the end of the series, prison staff acknowledged a significant improvement in both information and responsiveness.

In addition, CCD offer training sessions to HMPS staff and an invitation has been extended to prison service staff through the quarterly NOMS FNP newsletter to visit the offices of CCD. To date approximately 30 prison officers have visited CCD. CCD's Operations Team, who conduct FNP surgeries in prisons, can also provide bespoke training for prison staff on FNP issues at the prison's request.

## **Language needs**

We recognise that language difficulties are a significant problem for many prisoners, not all of them FNPs. There is no easy answer to this. The number of languages spoken and the potential range of information required in translation constantly expands, while resources remain limited. Prisoner Information Books and the Foreign National Prisoners' resource pack *are* available in translation - though only in 21 languages - but these rapidly become out-of-date and some of the more important documents for individual prisoners are locally generated and cannot be translated centrally. However, new forms of providing information to prisoners are being considered and language needs will be part of that consideration.

## **Communication between HMPS and BIA**

At headquarters level, a monthly liaison meeting is held between all relevant parties in NOMS and BIA to consider general issues and specific cases, particularly those of time-expired prisoners. A protocol has been agreed between NOMS and BIA to cover those ex-FNPs who need to be held in prison pending deportation because they are unsuitable for the BIA estate.

On a practical level, in October 2006 CCD introduced a new system of individual case ownership to ensure that all deportation cases are managed and tracked by individual caseworkers as they pass through the system. This is supported by a new telephone system that allows prison staff to get the most up to date information on individual cases and this has been widely communicated to all staff within the Prison Service. CCD has since received positive feedback from prison staff on the success of this system.

## **Cat D Reviews**

We are aware that in recent months very few FNPs have been moved to Cat D establishments. It is not correct there have been none but the numbers are low. While FNPs remain formally eligible for consideration, Governors have exercised a correct and natural caution in approving such moves unless BIA have confirmed that the prisoner is not due to be removed. It is also the case that prisoners who are likely to be removed cannot benefit from significant elements of the Cat D regime in that they are not able to work outside the prison.

We recognise that it can be frustrating for prisoners to be considered for Cat D if they have no realistic chance of approval but we do not believe that it would be right to alter the guidance in relation to FNPs at this time. With earlier decisions being made by BIA, the pool of FNPs who have a real chance of transfer - because it has already been determined that they are not to be removed - should start to increase and some of these may be considered suitable for re-categorisation in the normal way. In the short-term, to make use of capacity in the open estate, NOMS and BIA are also looking at cases of FNPs who have been approved for Early Removal Scheme and reconsidering their suitability for open prisons. However, these prisoners would still be excluded from some resettlement aspects of the regime.

In the medium term, the Borders Bill, if enacted in its present form, will introduce a greater degree of automaticity into the removal process. Those FNPs who are subject to automatic consideration will receive information early in their sentence about the likely consequences of

their sentence, including the impact of removal on their eligibility for open conditions. This should reduce the level of false expectations among FNPs as a whole, without ruling out the possibility of Cat D for those FNPs who will stay in the UK, and the incentive that provides.

## **Deportation**

Early removal of foreign national prisoners who meet the criteria for deportation remains the Border and Immigration Agency's priority. Our objective is to protect the UK by deporting all foreign nationals, where legislation permits, who commit serious criminal offences. The Home Secretary has made clear that BIA would not release those foreign national prisoners who ought to be considered for deportation before such consideration had been completed and that BIA would continue to detain them until that was done.

In the financial year 2006-07, we removed or deported a record volume of foreign national prisoners – 2784, compared to 1500 in previous years. We expect over 4000 FNPs will have left the UK in 2007.

With regard to efforts to enhance BIA's procedures, there have been notable successes in improving the rigour of deportation consideration, and increased removals have been achieved through a number of mechanisms, which include: reviews of policy, guidance, and workflow processes; improvements to data quality and information management; changes to management structures; and a very significant injection of resource from elsewhere within the BIA. These improvements form a key component of a wider programme of initiatives introduced by the Home Secretary in May 2006.

## **Identifying Nationality**

This wider programme includes the advancement of closer joint working with the Police and other agencies in the piloting of new arrangements for identifying foreign nationals when they enter the criminal justice system. The Border and Immigration Agency and the Police have long worked together to identify foreign national offenders. The pilot involves them doing so more systematically and involves the other criminal justice agencies to help to identify more accurately and earlier in the process those eligible for deportation. Since April a pilot has been operating in three London boroughs – Hillingdon, Waltham Forest and Westminster. It involves new processes for establishing and recording nationality within the criminal justice system. The pilot, which is expected to run until the end of 2007, involves the Border and Immigration Agency working together with the Metropolitan Police, the Crown Prosecution Service, HM Courts Service and the National Offender Management Service.

## **Immigration Casework**

The Criminal Casework Directorate (CCD) is now considering most new deportation cases 8 months before the earliest date of release. CCD expect to continue to build on this and have a challenging new target of considering cases 12 months before release date, where sentence length allows for this, by November of this year. Once a decision on deportation has been reached this is communicated to the FNP and prison at the earliest opportunity.

Earlier consideration should allow for the legal process to be speeded up before release from custody and help to reduce delays between FNPs being released from prison and being

deported. Existing case law states that the appropriate time to make a decision regarding deportation would be shortly before it is to be exercised, that is to say towards the end of the sentence. This would ensure that the decision can take into consideration the prisoner's most current circumstances and those in his country of origin.

### **Barriers to Removal**

There are occasions when early removal is not possible, such as when a prisoner/detainee refuses to comply with the deportation process, makes a late application for leave to remain, has an outstanding appeal against deportation or does not possess a valid travel document. Foreign nationals cannot be returned without documentation from their home country and this process is often lengthy for certain nationalities, even where an established returns agreement exists. Where there are difficulties in obtaining documentation, the issues are taken forward directly with the respective Embassy or High Commission.

### **Border and Immigration Agency Staff in Prisons**

As part of our steps to improve the early identification and documentation of foreign national prisoners within the criminal justice system we have pioneered the use of HMP Canterbury and HMP Bullwood Hall as foreign national prisoner establishments. Such specialist facilities will help us develop expertise when dealing with foreign national prisoners. We have further expanded this by arranging for immigration officers to attend other prisons with large number of FNPs in order to conduct case surgeries and have also enlisted the assistance of local enforcement office staff to attend prisons in order to conduct interviews with FNPs for the purpose of travel documents.

### **Facilitated Return Scheme**

The Facilitated Return Scheme (FRS) was set up in October 2006 to facilitate the removal of those foreign national prisoners who would wish to return to their country of origin voluntarily. The scheme has proved highly successful and to date it has resulted in over 600 prisoners leaving the United Kingdom.

Additional resources are currently being placed within the dedicated team and a large marketing campaign is under way. With the support of policy colleagues within Her Majesty's Prison Service it is planned that the FRS will be promoted to every foreign national prisoner as part of the induction process. We have also compiled revised leaflets and posters which are being sent to every prison and detention facility in the United Kingdom to increase awareness of the scheme.

### **New Legislation**

The provisions in the UK Borders Bill which are currently being debated by Parliament will also help us build on our reform of the system once they are enacted. Under the proposals, a foreign national will face automatic consideration of deportation if they are given a custodial sentence of 12 months or more or are given a custodial sentence of any length for a serious crime, unless one of a number of limited exceptions applies. Appeals against deportation will normally be from abroad, unless the foreign national makes a human rights or asylum claim that is not clearly unfounded. The legislation is expected to come into force early next year.