

**INDEPENDENT MONITORING  
BOARD**

**NATIONAL COUNCIL**

**Report  
on**

**FOREIGN NATIONALS**

**April 2007**

# NATIONAL COUNCIL FOR INDEPENDENT MONITORING BOARDS

## Foreign Nationals

### Introduction

The National Council for Independent Monitoring Boards has been concerned for some time over the position of foreign nationals in prisons and immigration removal centres, the apparent lack of urgency when many of them are being held beyond their sentence expiry date, the fact that no one within HM Prison Service appears to have been given operational responsibility for resolving these problems and the continuing lack of effective communication between HM Prison Service (HMPS) and the Borders and Immigration Agency (BIA). This paper summarises the National Council's main concerns at April 2007.

### No ownership of overall responsibility for FNPs

2. No one person appears to have dedicated operational responsibility for Foreign National Prisoners (FNPs) either in HMPS headquarters or at Area Office level. The view is that they are 'ordinary' prisoners. But they are not. This is a very large group of prisoners with very specific problems in the same way that the much smaller groups of women or young offenders do. They have dedicated managers responsible for them.

3. Establishments have had to resource staff to deal with FNPs 'on the ground'. They are often untrained, self-taught administrative officers who are trying their best to deal with CCD and the particular problems of FNPs. IND, now the Border and Immigration Agency (BIA), are now offering a little training/information to FN co-ordinators from prisons which is helpful but establishments without BIA immigration officers on site find it very difficult. FNPs are in nearly if not all establishments with the exception of those holding Category D prisoners.

4. **There is a large number of prisoners with very particular needs, which are not being properly addressed.** FNPs need help with language translation. Inadequate and very expensive telephone contact is also a common problem. There are often specific dietary requirements. They often have no belongings or possessions are retained by the police and do not follow the FNP. Establishments are trying to sort these issues out themselves with **little or no lead from above.**

5. HMPS needs a single person charged with management of FNPs. A **single comprehensive oversight** at a sufficiently high level able to give the necessary weight to resolving the problems and ensuring the procedures are stream-lined and coherent **is essential to the provision of an efficient and humane process.**

### Insufficient cross-government communication

6. IMBs are seeing **no evidence of systematic progress**, merely of “fire-fighting”. **The systems are confusing and varied** but as the responsibility seems to cross government departments it seems the issues are passed from one to another. There are some channels of communication but they appear sporadic and are not easy to find. They are certainly unknown to HMPS staff on the ground. The process must be extremely confusing for FNPs particularly those with poor English.

7. BIA seem to have arbitrary arrangements for putting staff into prisons. Bullwood Hall with 180 prisoners has four full time immigration officers but the Mount with more than 300 FNPs has recently received 1 officer for four days a week.

8. The channels of **cross-government communication** between HMPS and BIA’s various departments - CCD, the Enforcement and Detention Department and the Nationality Department - **need aligning and strengthening**. The police need to be involved so that property matters can be resolved where necessary.

### Number being held past sentence expiry

9. PMU ( Prison Management Unit) has been able to provide statistics for the number of **detainees (prisoners past their sentence expiry date ‘SED’)** detained in prisons and IRCs. Obviously this is a figure that changes on a daily basis but **on 19th March there were 1343**, on 7th July last year there were 1373. This figure has been fairly constant except for a rise of nearly 300 from the end of November 2006 to mid- February 2007. It peaked at 1622 on 8<sup>th</sup> January 2007. This is a large number of people being held apparently only because paperwork or removal has not yet been arranged due, in some cases, to appeals being lodged but in others to inadequate BIA procedures. **The total number of Foreign National Prisoners (FNPs) held by HMPS is about 11,000 although this number is not separately recorded on HMPS’ weekly population briefs.**

### Nationality is not established until end of sentence

10. On entry into prison the method of establishing nationality is for a prison officer to ask the prisoner to state his nationality. **There is no firm and objective procedure for confirming nationality.** At present what the prisoner says it is, is what it is unless and until confirmed or proven otherwise. Some prisoners state they are from a country (taken to be of that nationality) whereas they actually mean they are of that ethnicity. They may now be British. Some countries are extremely slow in providing documentation. **There ought to be a requirement for BIA to authoritatively establish nationality on entry to prison** (either remanded or convicted), so that paperwork and passports can be sought if necessary at the start of sentence not 20 weeks or even 12 months from the end of sentence. Some countries are extremely slow in providing documentation and many are held past their SED as passports

are not available. This would also stop the cases of British prisoners being held as FNPs, even after SED.

There have been cases of frantic efforts to get passports for prisoners so they can be deported when the document exists in police custody, or has been destroyed by police, or even is in property storage in the prison. The **Police Service ought to be required to forward to HMPS any passport ( and personal possessions) of a person remanded or sentenced to imprisonment.** Obtaining a passport early on would alleviate a big problem.

### **Notification to CCD happens too late**

11. On Reception into a prison if it is thought that a prisoner is an FNP a fax is sent by HMPS to CCD. No receipt is issued for this information. The prisoner's information is then faxed again by HMPS at 20 weeks before the SED ( at this stage numbers are collected by PMU) and again at 2 weeks if no contact has been made and if necessary 2 days before followed up by urgent phone calls from the establishment. This is BIA's required procedure. If there is a delay on the part of CCD in processing the IS91, if one is to be issued, problems can arise, as in the case of the FNP being released on his SED 10 minutes before an IS91 arrived at the establishment (9.3.07).

### **Unjust reply time imposed on FNPs**

12. If a notice of liability to deport is served on an FNP he is allowed a mere 6 days to state any reasons why he should not be deported. This is far too short a time for prisoners whose first language is not English. They need to get help in prison and shortage of staff to help places stress on everyone. CCD may then take as long as they wish to progress the case. Sometimes nothing more is heard for months or even until the SED. CCD have no time limits imposed on them. **This is inequitable.**

### **IND staff in prisons themselves frustrated by CCD**

13. There is not sufficient communication between immigration officers who are in some establishments and case workers in CCD offices. Immigration officers in prison establishments are themselves frequently frustrated in getting decisions from the case workers. The BIA staff in establishments need more support. **They are not able to issue the IS91s.**

14. CCD case workers (as opposed to Immigration Officers in establishments) do not seem to realise the distress being caused to prisoners and HMPS staff by delaying decisions. CCD managers do not seem to be aware how late paperwork is being served. **Some FNPs are still being notified very late in their sentence,** when they are expecting to be released, that they will be detained and deported. **This is inhumane** and impossible to justify when prisoners have been imprisoned often for years. There is some risk that in trying to clear the backlog from the end of the queue BIA will never catch up. Some 'easier' cases are being decided earlier but what is required is to start

dealing with cases much earlier than even 12 months before. A six month target is not enough.

### **No consideration of the effects of the process**

15. CCD is now allocating dedicated case workers to files (sometimes at the 12 month notification) but usually only at the 20 week before SED stage. BIA's aim is to improve this. 20 weeks, or even **6 months before SED is often not enough time** to enable the FNPs who are to be deported to receive the necessary paperwork, particularly if passport documentation is not available, before their SED. **This is causing HMPS staff a large amount of extra work and time in advising the FNP who is often extremely distressed, perhaps needing to be put on an ACCT, placed in a Care and Separation Unit (Segregation) or even transferred.** The situation whereby 8 IS91s can be served on a Saturday recently (10.2.07), causing a near riot in a dedicated FN establishment with CCD staff on site, is unreasonable. It is surprising that more problems have not been encountered in establishments. BIA deal with paperwork but HMPS are dealing with the prisoners and the human side of this.

### **Willing deportees being delayed**

16. There are some FNPs who are happy to be deported but even they are sometimes held past their SED. **Those FNPs who do not wish to appeal their deportation should be fast tracked out,** but this can be delayed as they may not have passports, or flights have not been arranged by the Enforcement Unit. Decisions need to be made earlier in sentence.

### **Fear and distress of long term residents of the UK and their families**

17. **There is evidence of injustice** where FNPs who have been resident in the country for many years, have married British nationals and have British children, are being deported because they have not become naturalised British citizens. **The fear and distress FNPs are experiencing is inhumane.** Cases such as that of a wife waiting in the car park to collect a prisoner on his release date to discover he has been served with an IS91 stating the intention to detain him that day. There is also the distress being suffered by families of FNPs who have lived in Britain for years but where the FNP is not naturalized and is at risk of deportation although his wife and children may never have been to his country of birth. Many phone the establishments frequently for information. Resolving nationality earlier would at least help them to come to terms with the issues, although **enforced separation or uprooting families against their wishes probably contravenes Human Rights legislation.**

### **Enforcement Office needs incorporating into process**

18. The BIA Enforcement office needs utilising more. There are reports that FNPs are returning to prison, sometimes to the same establishments, having managed to re-enter the UK. Sometimes they are recognised by BIA on arrival in the UK, sometimes by staff in the same prison from which they were

deported originally. They may be using a different name, so presumably there are others who are not recognised at all. **The penalty for breach of a deportation order is re-imprisonment.** They are re-sentenced and go through the process all over again. This is an enormous waste of resources. Provision needs to be made for by-passing the system the second time around. There appear to be no figures collated on this even for the ones who are caught.

### **Release into the Community but no OM programmes**

19. Bullwood Hall, a dedicated FN prison, release in excess of 50% of its FNPs back into the community. On re-role, services were cut as it was thought that no offender management (OM) programmes were needed. The Governor signs licences to release prisoners to IRCs and 6 months later, if the decision made by BIA is not to deport, it may be that licence which releases the FNP into the community. There are instances of FNPs in IRCs being held there because BIA need longer to consider his case, then being bailed by the court pending a decision. At this point they can disappear again.

### **FRS and ERS could be better used**

20. **The Facilitated Return Scheme should be examined** and an accurate statistical analysis and comparison with CCD removals made. The FRS scheme which was brought in to ease the backlog has been extremely successful where it is being well used. The figures for HMP Canterbury (a dedicated FN establishment) show that:

- in February 2007 there were 16 FRS, 5 ERS and 5 CCD removals;
- upto 22 March the figures for the month were 17 FRS, 4ERS and 1 CCD removal.

21. Other establishments do not share the same success with FRS as questions are unanswered. Perhaps training for HMPS staff would help. This needs to be looked at.

This form of removal is effectively an administrative removal. CCD appear keen for FRS removals to continue.

**The question of administrative removals should be looked at to see if greater use can be made of them.**

22. **The Early Release Scheme should be offered earlier** ( if moves to establish nationality earlier are not made) Too many eligible FNPs are missing out on it because they have no documentation on the eligible date so are unable to take this up.

### **False hopes are encouraged by saying FNPs are eligible for Cat D reviews**

23. **The present position is unacceptable. The treatment of these prisoners is neither humane nor just.** They are having expectations raised by being processed and told they are eligible for a cat D review but the reality is that they will not be successful in a move to a Cat D establishment. **There**

are no FNPs in Cat D conditions, except those already there who were allowed to stay when conditions were altered last year.

**24. Without an oversight of both HMPS and BIA these problems will continue as they are spread over several departments with insufficient co-operation between them. HMPS cannot change the rules and processes of IND but have to deal with the consequences of them. Communication needs to improve rapidly if there is to be a reduction in this very large category of prisoners and an improvement in the way they are treated.**

### **Summary**

25. The National Council considers that:

- HMPS needs a dedicated person at a senior level charged solely with the management of foreign national prisoners (paragraph 5)
- there is no evidence of systematic progress over the problems with foreign national prisoners, only “fire-fighting” (paragraph 6)
- channels of communication between HMPS and BIA appear sporadic and not easy to find; they need aligning and strengthening (paragraphs 6 and 8)
- statistics should be maintained and published on the number of foreign nationals in prisons and the number held beyond their sentence expiry date (paragraph 9)
- there is no firm and objective procedure for confirming nationality when a person enters prison; BIA should be required to authoritatively establish nationality on a person’s entry to prison (paragraph 10)
- the police service should be required to forward to HMPS any passport (and personal possessions) of a person remanded or sentenced to imprisonment (paragraph 10)
- a foreign national prisoner should be given more than 6 days from the notice of liability to deport to state why he should not be deported (paragraph 12)
- deportation cases should be started much earlier than twelve months before the prisoner’s sentence expiry date (paragraphs 15 and 16); to notify them of deportation very late in their sentence is inhumane (paragraph 14)
- those foreign national prisoners who do not wish to appeal their deportation should be fast tracked out (paragraph 16)

- there is evidence of injustice where foreign national prisoners are being deported despite having lived in the UK for many years and having a British family (paragraph 17)
- the Facilitated Return Scheme and Early Release Scheme could be better used (paragraphs 20 – 22)
- false hopes are encouraged by saying foreign nationals prisoners are eligible for Cat D reviews (paragraph 23)
- finally, communication and co-operation need to improve rapidly if there is to be a reduction in this very large category of prisoners and an improvement in the way they are treated (paragraph 24).

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