

Determining identity and nationality in local policing

Niall Hamilton-Smith and Shilpa Patel

The study involved an examination of practices for checking the nationality and migrant status of arrestees in a sample of custody suites in England and Wales in 2006/07. The study also involved the piloting of enhanced checking processes in four custody suites. The aim was to examine the use of immigration powers when dealing with foreign national (FN) arrestees and whether this could be expanded and improved.

- The circumstances surrounding the arrest of FNs and the nature of their offending was examined. It was notable that of the offences which have a significant level of FN involvement many are commonly associated with organised crime and are also inherently transnational. These arrests may merit particular attention, not only because an arrestee may have been culpably involved in serious or organised offending but also because, in some instances, an arrested individual may actually be a victim of organised criminals, having been trafficked or exploited for material gain.

- Aside from these offences, the involvement of different FN groups in serious offending was mostly similar to that of UK nationals. It is also important to note that, in most sites, officers said that their most common encounters with FNs were as either victims or witnesses.
- Across the sites, there were wide variations in the quality of practice. Less effective performance in this area was primarily demonstrated by a lack of thoroughness in checking an arrestee's identity and migrant status and failing to pursue an appropriate course of action when an FN arrestee or illegal migrant had been identified. Processes were generally strongest in sites where dedicated custody officers undertook checks, as this provided clarity about roles.
- The police were found to be generally happy with the level of service that they received from the UK Border Agency when it came to telephone queries, and they particularly welcomed the provision of a 24-hour telephone service.

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Keywords

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- The research found that more support needs to be provided for custody officers to ensure that the correct checks on migrant status are undertaken.
- Beyond this, some custody suites would benefit from more intensive support from the UK Border Agency. This research successfully employed one model for providing this (embedding UK Border Agency officers in custody suites).
- The pilots showed that custody suites could significantly increase the volume of checks undertaken and the number of FN and illegal migrant arrestees identified. This represents an opportunity for police and the UK Border Agency to work together to reduce harm caused by foreign national offenders and increase community confidence and cohesion through coordinated enforcement action and intelligence collection.
- The research also demonstrated that more rigorous practices in custody suites could increase the number of FNs and illegal migrants who are identified as being involved in criminal activity.
- Consideration should be given to prioritising the *quality* as well as the *quantity* of cases resolved (i.e. recognising that the removal of one very 'harmful' individual from the UK may be worth more than the removal of several 'low harm' – but nevertheless illegally resident – individuals).
- Despite some of the issues raised during the fieldwork, significant progress and momentum in addressing many of these problems was achieved in the pilot sites. The embedded immigration officers in particular appeared highly adept at working productively and cooperatively within a custody suite environment, and were very highly regarded by custody suite staff. In the three years since the fieldwork was completed, the police and UK Border Agency have also implemented a range of improvements to processes and practices, referenced in the main report where relevant.

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The broad aim of this research was to examine the practice for determining the identity and nationality of foreign nationals (FNs) who have been arrested and how to improve the effectiveness of these processes. It reports on the findings of a pilot study introduced in four areas to assess the efficacy of enhanced checks to determine immigration and nationality status. It also examines the effect of these enhanced checks on local frontline policing and in particular on practices within police custody suites. The fieldwork that underpins this study was undertaken in 2006-07 and since then the police and the UK Border Agency have implemented a range of actions designed to improve the practices involved in checking the nationality and migrant status of arrestees. These actions are referenced in the report where relevant.

Approach

The study examined practices for checking the nationality and migrant status of arrestees in a sample of 14 custody suites in England and Wales in 2006/07. The study also involved piloting enhanced checking processes in four of these custody suites.

In the absence of data to allow a random systematic sample of custody suites to be selected, sites were selected principally on the basis of police force characteristics and census data (estimates of foreign-born populations within local authority areas). Furthermore, areas were purposively selected to ensure that they covered a diverse range of geographic regions (e.g. metropolitan, suburban, rural). Additional criteria used to select the four pilot sites included performance data from the UK Border Agency on existing levels of support provided to police custody suites.

The fieldwork (primarily interviews, focus groups and observations) was conducted between mid-2006 and early 2007. Fieldwork in the pilot sites consisted of a core three-month period when enhanced checks on all

suspected FN arrestees were undertaken to determine their identity, nationality and migrant status.

The diverse characteristics of the pilot sites meant that enhanced checking processes were managed and resourced slightly differently in each site. Generally, the pilots involved the following:

- improving the use of Livescan (Livescan allows arrestees' biographical details and fingerprints to be checked against offender records held on the Police National Computer (PNC), while simultaneously checking fingerprints against UK Border Agency immigration records);
- introducing the use of European Economic Area (EEA) 'country check' questions and visual aids to enable officers to interrogate those arrestees who claimed to come from an EEA country; and
- encouraging officers to use the new 24-hour UK Border Agency telephone line to check arrestees' immigration status outside of office hours.

One particular site had immigration officers physically located in the custody suite for the course of the pilot.

At the end of the pilot, custody suite data, together with data from the UK Border Agency and – in one site – PNC records, were analysed to build up a profile of the characteristics of FN arrestees held within each custody suite during the pilot. Of particular interest to this research were patterns of alleged offending and the immigration status of detainees. Figures for the pilot period were also compared with figures for the previous six months in each of the sites.

Summary of research findings

Pilot and baseline practices for determining nationality and migrant status varied widely, and in some instances

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a definitive determination of identity, nationality or migrant status was not possible with the time and resources available. Findings and figures based on the results of these checks must, therefore, only be viewed as indicative.

Basic support provided by the UK Border Agency

- All baseline and pilot sites had regular experience of dealing with FN arrestees and illegal migrants. However, there were large variations in the extent to which FNs were encountered, with the proportion of arrestees in custody identified as FN in the pilot sites ranging from one to 25 per cent of all arrestees.
- Widely varying levels of demand for UK Border Agency services were not always matched by either the level or type of response provided by regional UK Border Agency staff. It appeared that different enforcement offices had different policies and approaches that governed how they responded to police requests for assistance.
- One common resource that was highly appreciated by police officers was the newly introduced 24-hour UK Border Agency telephone helpline. This service was reported to work well, and allowed officers to start progressing checking processes out of office hours.
- In sites with very high levels of FN 'throughput', having an immigration officer on site for at least some of the time had clear advantages both in terms of the completeness and accuracy of checks and the potential for adding value (such as processing identified illegal migrants more effectively and identifying opportunities for developing immigration-related intelligence).
- While on-site support was effective in high-demand areas, police officers in all baseline and pilot sites felt that a minimum level of support from the UK Border Agency was important. Police officers rightly felt that they could not be expected to keep up to date with all the relevant developments in the areas of immigration control and evasion, so an active relationship with the UK Border Agency was therefore essential.

Police practices in checking FN and migrant status

- Across the sites, there were wide variations in the quality and quantity of checks undertaken.
- Some evidence pointed to a lack of thoroughness in checking an arrestee's migrant status, and failing to pursue an appropriate course of action when an FN arrestee or illegal migrant had been identified. These problems appear, in part, to have derived from a lack of understanding and agreement as to the respective roles and priorities of the police service and the UK Border Agency.

Progressing cases, detaining illegal migrants, and case outcomes

- If an FN was identified and subsequently charged with a serious criminal offence, police officers did not always complete an IM3 form, which would permit the judge to recommend the deportation of a convicted FN offender at the end of his/her custodial sentence. However, it should be acknowledged that during the fieldwork visits (in early 2007) there were some indications of an increased use of these forms in some sites, which may be due to the issues highlighted during the foreign national prisoners crisis. Since the research the Crown Prosecution Service (CPS) has taken forward work to improve the handling of foreign nationals. In June 2009 they undertook to capture and disseminate best practice in relation to the prosecution of foreign nationals and the gathering and effective use of foreign criminality information. This included increasing awareness of the importance of serving IM3 forms.
- In most sites, when a suspected illegal migrant was identified by the police, officers sometimes perceived a conflict between the local priorities of the police and the UK Border Agency, which had an impact on the level of support subsequently provided by the UK Border Agency.
- The police were generally sympathetic to the constraints and difficulties faced by the UK Border Agency staff in trying to successfully process and remove illegal migrants.
- Police officers were generally uncomfortable with the practice of detaining illegal migrants, who had

not been charged with a criminal offence, in police custody suites for any prolonged period.

- The attention given by the police to the welfare of immigration detainees, and the duty of care that they had for them, was a positive finding from this research.
- In half of the sites, custody suite leads perceived illegal migrants as being a drain on custody suite time and resources, which required the services of interpreters, social services and health care professionals. These detainees might also need to be placed under close supervision because officers perceived them as being particularly 'at risk' or vulnerable.
- When immigration detainees left police custody suites, the police often remained unaware of subsequent case outcomes. In cases where detainees' details had been recorded on police databases, immigration outcomes were rarely updated or recorded, and there seemed to be few other formal mechanisms for the UK Border Agency to inform local police officers of case outcomes.
- Although difficult to verify, in a substantial minority of cases there was information to suggest that illegal migrants may have had their entry into the UK facilitated through third parties providing some form of illegal service or resource.
- In addition to information on how they got into the UK, illegal migrants often supplied information that could have been of use to the UK Border Agency (such as their address, who they lived/associated with, where they worked, what documentation was in their possession). However, there appeared to be no consistent mechanisms in place in many sites for flagging up, recording, or developing such locally derived intelligence. Ongoing developments should improve the ability to retain and share key information and evidence of identity and nationality. For example the roll-out of the Police National Database (PND) from the autumn of 2010 has the potential to assist the UK Border Agency in identifying and documenting foreign nationals as the PND processes will include technology that enables police officers to scan identity documents

and supporting evidence of nationality. The scan could then be attached to the custody record and maintained until such time as retention of the record is reviewed.

Introducing more rigorous checks

- The introduction of enhanced checking processes in the pilot sites led to a substantial increase in the number of checks undertaken, with the volume of checks across the four sites increasing by over 400 per cent. The effort required to do this, however, produced a substantial pay-off in terms of potential law enforcement and UK Border Agency outcomes, whether in terms of the early identification of serious FN criminals, or in terms of producing opportunities for identifying and removing illegal migrants more generally. The number of confirmed and suspected illegal migrants identified across the four sites increased from 73 to 250 (a 242% increase) during the pilots.
- In all four sites there was a clear sub-population of FN and illegal migrant arrestees who were arrested for serious offences. The research was not able to track through whether offence allegations translated into subsequent convictions, but a supplementary analysis of prison service data supported these indicative findings.

Nature of offending among FNs

- In all sites, interviewees and focus group participants reported that the majority of offending associated with FNs was low level and focused around nuisance behaviours, minor disorder (both often drink-related), and shoplifting.
- It was notable that some of the offences which have a significant level of FN involvement are commonly associated with organised crime and are also inherently transnational; the disproportionate involvement of FN offenders in this type of crime is hardly unexpected.
- Aside from these offences, the involvement of FNs in serious offending was mostly similar to that of UK nationals.
- Giving careful scrutiny to certain arrested FNs has the additional merit that it may result in the further identification of victims. For instance, a

report published recently by the Anti-Trafficking Monitoring Group (2010)¹ highlights the situation where individuals arrested, for instance for cannabis cultivation, may in fact be trafficking victims. Another example, drawn from one of the pilot sites, was where an arrest for domestic violence led in turn to the identification, by the UK Border Agency officers, of a victim of forced marriage.

- It is also important to note that, in most sites, officers said that their most common encounters with FNs were as either victims or witnesses.
- It should be noted that this research spanned a rather intense period of media reporting associated with the foreign national prisoners crisis. Commentators of varying persuasions construed events at this time as either evidence of significant and disproportionate FN offending, or alternatively, as evidence of a criminal justice system intent on criminalising foreigners. Such perspectives, however, are challenged by recent pan-European research, which estimates that the UK prison estate has proportionately one of the smallest FN inmate populations in Europe (see Palidda *et al.*, 2009).

Conclusions

This research received strong encouragement and practical support from immigration officials, including senior managers, who wanted to see the work of the UK Border Agency more focused on maximising the reduction in harms associated with illegal migration, supporting the shared police and the UK Border Agency objective of safeguarding communities from harm and removing harmful individuals. This work demonstrated that custody suites were, at the time of the fieldwork, not being used as effectively as they could be for identifying both FN and illegal migrant offenders, whose removal would certainly support more harm-focused police and UK Border Agency priorities. The pilot sites demonstrated that, with minimal additional resource, much more effective checking practices could be introduced, and the potential dividends from introducing them could be both considerable and varied.

During this research, unrelated developments led to a programme of work within the Home Office to introduce new national standards and practices to identify FNs and

illegal migrants within the criminal justice system. Findings from the current work were able to help inform this. However, wide differences in terms of the characteristics of custody suites together with significant variations in the extent to which significant numbers of FN arrestees are encountered, imply that a uniform approach to improving practices and supporting custody suites in this area is not appropriate on its own. For instance, in the 'highest-demand' pilot area, immigration officers working directly in custody suites proved to be particularly effective. Further work following on from these pilots has continued to explore and develop alternative models for joint police/UK Border Agency working in different local contexts.

Despite some of the issues raised during the fieldwork, significant progress and momentum in addressing many of these problems was achieved in the pilot sites. The embedded immigration officers in particular appeared highly adept at working productively and cooperatively within a custody suite environment, and were very highly regarded by custody suite staff. More generally, police and immigration officers alike seemed enthusiastic about the prospect of building a stronger relationship, and generally recognised the mutual benefits of doing so. Since the completion of fieldwork, a range of policy and operational improvements have been implemented that have addressed many of the issues identified by the research. These include the following.

- A Home Office-led programme of work (as a result of the foreign national prisoners crisis in 2006) to introduce new national standards and practices in identifying FNs and illegal migrants within the criminal justice system.
- Provisions in the UK Borders Act 2007, following a series of successful pilots, began to be rolled out to all police forces from 1 April 2010. At the time of the research, the ability for police to ascertain an individual as a foreign national was hampered by a lack of powers to search for and seize evidence of nationality.
- In June 2009, the Crown Prosecution Service undertook to capture and disseminate best practice in relation to the prosecution of foreign nationals and the gathering and effective use of foreign criminality information.

1. See http://www.amnesty.org.uk/uploads/documents/doc_20461.pdf

- Ongoing developments to improve the ability to retain and share key information and evidence of identity and nationality. For example the roll-out of the Police National Database (PND) from the autumn of 2010 has the potential to assist the UK Border Agency in identifying and documenting foreign nationals as the PND processes will include technology enabling police officers to scan identity documents and supporting evidence of nationality.
- Ongoing implementation of commitments set out in a UK Border Agency 'crime strategy', *Protecting our Border, Protecting the Public (2010)*, sets out the UK Border Agency's role as a law enforcement agency with multi-agency approaches to tackling immigration and immigration crime as core parts of this approach. Closer working with third countries has enabled the UK Border Agency to tackle crime at source and increased joint working between Government Departments and corporate partners has supported the development of work to create stronger internal controls on illegal migration through effective partnership working. Regionalisation and the roll-out of Local Immigration Teams (LITs) and Immigration Crime Teams is also intended to facilitate closer working with other agencies, including the police, to address local priorities.
- The establishment this year of a UK Border Agency Crime Directorate with dedicated Immigration Crime Teams across the country, headed by an ex-senior policeman, is part of an internal programme to improve the Agency's law enforcement capability and to help ensure prioritisation of efforts against the most harmful, alongside partners such as the police, HMRC and SOCA.
- The UK Border Agency's e-borders system checks people entering and leaving the UK against watch lists to detect criminals and immigration offenders. As of December 2009 it had already resulted in 4,800 arrests, including 33 for murder, and by March 2014 it is intended to screen 100 per cent of all passengers and air crew (UK Border Agency, 2010).